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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

South Euclid-Lyndhurst City
School District Board of Education

Case No. 84-US-09-1930

v.

OPINION

Ohio Association of Professional
School Employees, Chapter No. 110

* * *

Day, Chairman:

According to the Ohio statutes, when a strike occurs, the employer may request the State Employment Relations Board (SERB or Board) to determine whether it is authorized[1]. The Board must act on the request and render its decision within seventy-two hours[2].

In this case a strike is conceded. The request for a determination was received by SERB at 4:49 p.m. on Tuesday, September 18, 1984. The Board summoned the parties to a hearing held on September 19, 1984. At 1:30 p.m. on Thursday, September 20, 1984 the Board met its statutory obligation. It found the strike to be unauthorized and notified the parties.

I

The strike giving rise to these proceedings terminated sometime on September 20, 1984. Nevertheless, the reach of the principle in this case makes this a propitious occasion for an opinion.

The rationale of decision might never be established if a narrow mootness doctrine were applied. And the justification for an explication of a decision is still present when it is probable that the issue or issues in question may arise again and again in future cases even though the immediate controversy is in total remission[3].

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1. R.C. 4117.23(A)

2. Id.

3. See Nebraska Press Assn. v Stuart (1976)427 U.S. 539, 546-547. The mootness theory applied by the Supreme Court of the United States in Stuart in a review context is apposite with equal force in the circumstances of the present case.

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II

The strike notice in this case was dated August 22, 1984. An intent to strike in ten days was indicated in a general declaration without explicit reference to time and date. In point of fact the strike did not begin until September 12, 1984. No additional notice was given. And the parties did not agree on an extension.

These circumstances suggest a number of questions. However, the basic issue — whether the strike was authorized under the statute — can be resolved by decision on a single relatively narrow question. That question is the legal sufficiency of the strike notice.

III

Sufficiency implicates two sections of the statute. These are R.C. 4117.14(D)(2)[4] and R.C. 4117.11(B)(8)[5]. Given the proposition that plain meaning in a statute does not require interpretation, when that plainness is at war with statutory objectives, one may look to other sections of the law to assess legislative intent. Here the "plainness" abstracted from R.C. 4117.14(D)(2) is so blandly general that plainness disappears. And, unless it is assumed that the legislature intended the strike notice not to advise but rather was designed to allow surprise tactics, the notion that R.C. 4117.14(D)(2) is "plain" must be abandoned. Do any other sections of the enactment inform the generality of R.C. 4117.14(D)(2)? One does. And that one is R.C. 4117.11(B)(8).

There it is set down that "striking" and some other job actions are unauthorized without a notice specifying the "date and time" the action will commence. These specificity standards applied to R.C. 4117.14(D)(2) make the notice more comprehensible as a communication and comports more logically with the rational objectives of the statute. Those objectives clearly are collective bargaining, peaceful labor relations in the public sector and strikes only as a last resort. And then in circumstances limited in a manner designed to take account of the public employers' public responsibilities[6].

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4. R.C. 4117.14(D)(2). Public employees other than those listed in division (D)(1) of this section have the right to strike under Chapter 4117. of the Revised Code provided that the employee organization representing the employees has given a ten-day prior written notice of an intent to strike to the public employer and to the board; however, the board, at its discretion, may attempt mediation at any time.

5. R.C. 4117.11(B)It is an unfair labor practice for an employee organization...to:(8)Engage in any picketing, striking, or other concerted refusal to work without giving written notice to the public employer and to the State Employment Relations Board not less than ten days prior to the action. The notice shall state the date and time that the action will commence and, once the notice is given, the parties may extend it by the written agreement of both.

6. The public employers' public obligation was clearly on the legislative mind. Why else the prohibition of lockouts [R.C. 4117:11(A)(7)] coupled with a conditional right to strike?

Accordingly, the two sections under discussion have been read together and applied to the notice given. This application makes the notice inadequate for lack of a specification of date and time.

The strike is unauthorized because of the faulty notice.

IV

The determination that a strike is not authorized quickens access to sanctions of a very severe nature[7]. Since this is so, the burden of proof lies with the proponent employer and the quantum of proof is by clear and convincing evidence.

On the facts in this case both the burden and standard of proof have been met.

SHEEHAN, Vice-Chairman; and FIX, Board Member, concur.

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7. R.C. 4117.23(B).
(B) If the board determines that the strike is not authorized then the public employer:

(1) May remove or suspend those employees who one day after notification by the public employer of the board decision that a strike is not authorized continue to engage in the nonauthorized strike; and

(2) If the employee is appointed or reappointed, employed, or reemployed, as a public employee, within the same appointing authority, may impose the following conditions:

(a) The employee's compensation shall in no event exceed that received by him immediately prior to the time of the violation.

(b) The employee's compensation is not increased until after the expiration of one year from the appointment or reappointment, employment, or reemployment.

(3) Shall deduct from each striking employee's wages, if the board also determines that the public employer did not provoke the strike, the equivalent of two days' wages for each day the employee remains on strike commencing one day after receiving the notice called for in division (B)(1) of this section. The employer shall give the employee credit for wages not paid after that point in time due to the employee's absence from his place of employment because he is on strike.

Any penalty that is imposed upon the employee, except for the penalty imposed under division (B)(3) of this section, may be appealed to the board. The board may modify, suspend, or reverse the penalty imposed by the public employer, if the board does not find that the penalties are appropriate to the situation; the imposition of a penalty is appealable to the court.