

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Fraternal Order of Police, Lodge #21,

Employee Organization,

Case No. 84-MF-11-2429

and

City of Lima,

Employer.

ORDER TO EXECUTE A  
COLLECTIVE BARGAINING  
AGREEMENT

Before Chairman Day, Vice-Chairman Sheehan and Board Member Fix;  
January 16, 1985.

On November 16, 1984, the Employer Organization filed with the Board's Notice To Negotiate. Once a copy of the notice filed between the parties was submitted to the Board, a mediator was assigned on November 27, 1984, in accordance with Section 4117.14 of the Ohio Revised Code. A letter pertaining to the selection of a fact-finding panel was sent immediately to the parties. The parties responded on December 7, 1984, and indicated their selection of a fact-finder.

The fact-finder was appointed on December 10, 1984, and was required to conduct a hearing and issue a report by December 24, 1984. Since the date of hearing was December 21, 1984, the fact-finder advised the parties that he could not complete the report by December 24, 1984. The fact-finder sent the report to the parties on or before December 29, 1984. Each party is required to vote on the report within seven days of issuance of the report, R.C. 4117.14(C)(6). Under Rule 4117-9-05 of the Administrative Code, the parties must certify the results of the vote within 24 hours of the tally of the votes. Taken together it is quite clear that a legally effective rejection must comply with both the statute and the rule. Failure to comply results in the fact-finding recommendation being treated as agreed between the parties. This is by operation of law.

Although the 24-hour reporting requirement is directory for days within the 7-day voting period, the 24-hour requirement is mandatory for a proper rejection if the tally of votes is not certified to the Board within 24 hours of the end of the 7-day period.

Neither party in the referenced case certified the results of the tally of its own vote regarding the fact-finding report within the 7-day period or within 24 hours of the 7th day of the voting period. The responsibility of certifying results of the tally rests solely with the party which conducted the vote. Rule 4117-9-05 of the Administrative Code requires that the certification of the tally include the number of eligible voters as well as the number of votes to accept and the number of votes to reject the fact-finding report. Certification to the Board may be conveyed by a telephone message to a Board employee, if the information is subsequently reduced to writing and sent to the Board as well as to the other party.

Neither party in the referenced case has rejected the report in compliance with the Rules of this agency. The fact-finding report must be deemed certified when neither party has voted nor communicated its vote to the Board in accordance with the relevant statutory provisions and rules.

Pursuant to Section 4117.14(C)(6) of the Revised Code, the Board orders that a collective bargaining agreement be executed by the parties to include the fact-finding panel's recommendations except as may be otherwise modified by the parties by mutual agreement.

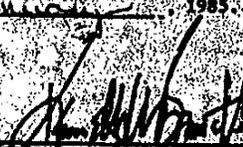
ORDER TO EXECUTE A  
COLLECTIVE BARGAINING  
AGREEMENT  
Case No. 84-07-11-2429  
Page 02

It is so ordered.

DAY, Chairman; SNEHAN, Vice-Chairman; FIX, Board Member, concur.

  
\_\_\_\_\_  
JACK G. DAY, CHAIRMAN

I hereby certify that this document was filed and a copy served on each party on this 25th day of January, 1985.

  
\_\_\_\_\_  
KENNETH W. BARRETT  
EXECUTIVE DIRECTOR

0171a

85-003

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the matter of

Ohio Association of Public School Employees

Case No. 84-UR-05-1151

Charging Party,

v.

Cleveland Board of Education

OPINION

Charged Party,

Day, J.:

The decision to dismiss the unfair labor practice in this case implicates issues of first impression under R.C. 4117.

Those issues are whether an employer may legally decline to bargain for a new contract with the exclusive representative of its employees whose majority status has been challenged during the window period. And, does it make any difference that the challenge was mounted by the filing of a petition for election (1) without supporting "objective considerations" or, (2) with supporting "objective considerations." In deciding this question the decisions of the National Labor Relations Board (NLRB) have been taken into account for their persuasiveness.<sup>1</sup> Of course, NLRB doctrine, and non-constitutional federal decisions have no binding effect on state law.

In the present case there is no record suggestion of an unfair labor practice of any kind apart from the refusal to bargain charge giving rise to the instant proceedings. So far as appears, the claim respecting majority status is a good faith doubt. "Objective considerations" are claimed to support this doubt. These are said to be exemplified by (1) oral communications of bargaining unit employees' dissatisfaction with the bargaining representative, (2) the representation petition of the competing union, and (3) the union's demand for recognition accompanied by the requisite showing of interest indicating support for the rival and repudiation of the incumbent.

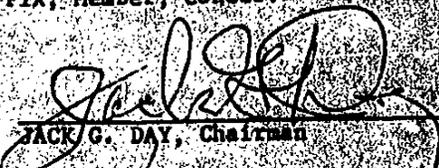
These considerable indications are interesting but not vital to SERB's disposition. For in this case, SERB adopts the principle that a petition for representation alone entitles one to conclude that an employer has a bona fide doubt of continuing majority status absent some clear indication that the petition is frivolous or fatuous. And that doubt warrants, indeed requires, a strictly neutral stance on the employer's part until the representation dispute is decided. Moreover, an early election will resolve the representation question and broadly protect the employees' freedom of choice.

<sup>1</sup>The undulating course of NLRB doctrine suggests the possibility of alternative persuasions or, at least, a choice. Cf. Midwest Piping & Supply Co., Inc. (1945) 63 NLRB 1060 with RCA Del Caribe, Inc. (1982) 110 LRRM 1369. And see intervening cases.

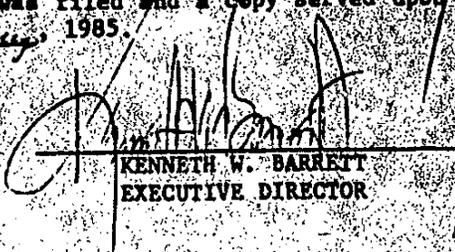
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
PAGE -2-

Accordingly, it is held that a rival union's petition for an election during the window period in R.C. 4117 supports the employer in a good faith doubt of continuing majority status (absent evidence of tainting unfair labor practices) and warrants a withdrawal from bargaining with the incumbent union until the representation issue is resolved.

DAY, Chairman; SHEEHAN, Vice-Chairman; FIX, Member, concur.

  
JACK G. DAY, Chairman

I hereby certify that this document was filed and a copy served upon each party on this 1st day of February, 1985.

  
KENNETH W. BARRETT  
EXECUTIVE DIRECTOR

0001b