85-005

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.[1] 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.

[1] 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.

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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

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Ohio Association of Public School Employees,

Charging Party,

v.

Cleveland School District Board of Education,

Charged Party.

Case No. 84-UR-05-1151

ORDER DISMISSING UNFAIR LABOR PRACTICE CHARGE

Before Chairman Day, Vice-Chairman Sheehan and Board Member Fix; December 5, 1984.

On May 17, 1984, the Ohio Association of Public School Employees (Charging Party) filed a unfair labor practice charge against the Cleveland City School District Board of Education (Charged Party). The charge alleged that the Charged Party had refused to bargain with the Charging Party in violation of 4117.11(A)(1),(2), and (5) of the Revised Code.

Pursuant to Section 4117.12 of the Revised Code and Rule 4117-7-02 of the Administrative Code, the Board conducted an investigation of this matter. The investigation reveals that there is no probable cause to believe that the Charged Party has violated Section 4117.11 of the Revised Code. The charge is dismissed. The reasons for this conclusion are set forth in the attached opinion, incorporated by reference.

It is so ordered.

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

JACK G. DAY, CHAIRMAN

I hereby certify that this document was filed and a copy served upon each party on this 14 day of February, 1985.

KENNETH W. BARRETT
EXECUTIVE DIRECTOR

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It is so ordered.

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

JACK G. DAY, CHAIRMAN

I hereby certify that this document was filed and a copy served upon each party on this 6th day of February, 1985.

By
KENNETH W. BARRETT
EXECUTIVE DIRECTOR

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