85-028

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Ohio Council 8, American Federation of State County and Municipal Employees, AFL/CIO,

Employee Organization,

and

Wayne County Engineer,

Employer.

CASE NUMBER: 84-RC-08-1825

DENIAL OF MOTION TO WITHDRAW FROM CONSENT ELECTION AGREEMENT
(OPINION ATTACHED)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix, June 26, 1985.

On May 28, 1985, the Wayne County Engineer (Employer) signed a Consent Election Agreement with the American Federation of State, County and Municipal Employees, AFL/CIO, Ohio Council 8 (Employee Organization). The Employee Organization executed the agreement on May 31, 1985. Subsequently, the Employer submitted to the Board a letter requesting to withdraw from the Consent Election Agreement. This letter was followed by a formal motion that was served on the Employee Organization. For the reasons stated in the attached opinion, incorporated by reference, the Employer's Motion is denied. The election scheduled for July 17, 1985, will go forward as directed.

It is so directed.

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

Jack G. Day

JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 9th day of July 1985.

Kenneth W. Barrett

KENNETH W. BARRETT, EXECUTIVE DIRECTOR

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Ohio Council 8, American Federation of
State, County & Municipal Employees, AFL-CIO,

Petitioner,

and

Wayne County Engineer,

Respondent.

CASE NUMBER: 84-RC-08-1825

OPINION

Day, Chairman:

Action on this motion requires decision on two separate questions:

1) Will the State Employment Relations Board (Board or SERB) treat a letter as a motion where the objective desired would ordinarily, or more properly, be sought by a formal motion with verified service on other parties?

2) Upon proper application, will an employer which has agreed to a consent election be permitted to withdraw its consent after the election date has been set and announced?[1]

For reasons to be adduced below the first question is answered, "Yes," with explicit reservations and the second question is answered, "No."

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[1]This question is framed to narrowly reflect the fact situation in this case.

I

The movant is an employer which charges the Board with a double standard in the application of policy when deciding whether to treat letters of request as motions. Not so. The examples cited in the exhibits attached to the motion represent actions taken before the Board policy changed. It is the current view of the Board that letters tantamount to motions should not be treated as motions unless in motion form and accompanied by verification of service on all other parties.[2]

However, to avoid even the slightest hint of unfairness, the movant's letter will be treated as a motion in this case.[3]

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[2]Since June 24, 1984, Rule 4117-1-04, has provided in pertinent part:

> "(D) Rulings on motions filed with the board shall be issued in writing and a copy served upon each of the parties. The board, board member, or hearing officer may orally rule on the record on a motion at the hearing but shall issue a ruling in writing if such ruling is made after the hearing."

Although the rule seems clear enough to have warranted immediately an arctic approach to motion requirements, especially service, the Board has applied a lenient policy and, on occasion, treated letters of request as motions. See p.e. the Clermont case cited in fn. 4 infra. Enough time has passed for parties to become familiar with the rule. Accordingly, the requirements are now being applied with more literalness. For recent cases applying the rule more rigidly, see Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Crawford County Engineer, Case No. 84-RC-05-1291 (6/26/85) and Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Ottawa County Engineer, Case Nos. 84-RC-05-1263, 85-VR-01-2744 (6/26/85).

[3]A later document document titled, "SUPPLEMENT TO MOTION FOR LEAVE TO WITHDRAW CONSENT ELECTION AGREEMENT," was filed in motion form with a certificate of service.

II

Upon consideration of its substance, the motion lacks merit. For a strong Board policy against withdrawals aborting consent elections is required in the interest of fairness both to the parties and the Board. Normally, one or both parties will have expended time and money in preparation for the election and the Board cannot afford to squander its lirited resources preparing for easily abandoned enterprises.

Thus it was that union withdrawal from a scheduled consent election resulted in a sanction preventing refiling for six months.[4] However, when an employer seeks to withdraw from a consent election, there is no effective comparable penalty.[5] One may assume, without straining logic, that when a union seeks to withdraw from an election, the employer is not perturbed unless it anticipates union defeat and seeks election bar protection for the future. Thus, an employer who wants out of an election agreement, ordinarily will not conceive itself as discommoded if it succeeds in withdrawing and postponing the election.

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[4]See Ohio Council 8, American Federation of State, County and Municipal Employees and Clermont County Commissioner, Clermont County Community Service Department(1984), Case No. 84-RC-04-0765, 1 OPER para 1146

[5]Whether comparability of circumstances could arise when an employer's petition for election is involved under R.C. 4117.07(A)(2) need not be decided in this case. That issue is reserved for another day.

Putting to one side an election set under R.C. 4117.07(A)(2) (see fn. 5), is there any conceivable sanction that can touch employers in the same fashion that a six-month refiling ban affects employee organizations? The answer to the rhetorical question is that the Board is aware of none. Accordingly, SERB has concluded that the fairest policy for handling withdrawals from consent elections is to allow union withdrawal coupled with filing disability for a period of time and to deny employer applications to withdraw. Of course, extraordinary circumstances might justify non-application of this rule. The justification advanced for employer withdrawal in this case does not reach that critical level.[6]

III

The employer's motion to withdraw is denied.

Sheehan, Vice Chairman, and Fix, Board Member, concur.

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[6]The movant claims "certain information became available which caused respondent to cancel its agreement." Documents submitted by the movant indicate that what the respondent did not know when executing the agreement pertained to facts about classifications included in the agreed bargaining unit. The movant does <u>not</u> say that what it did not know <u>was not discoverable by reasonable diligence</u>. Moreover, if movant did not know the facts about its own job classifications, who would? Of course, a party's lack of information about the law is no excuse.

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