

85-037

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Ohio Association of Public School Employees,
Employee Organization,
and
North Canton City Schools,
Employer.

CASE NUMBER: 84-MP-04-3572

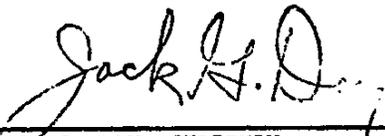
STAY OF NEGOTIATIONS
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; July 17, 1985.

The North Canton City Schools (Employer) has filed a motion seeking reconsideration of the Board's denial of the Employer's motion to stay negotiations with the Ohio Association of Public School Employees (Employee Organization). For the reasons stated in the attached opinion, incorporated by reference, the Board grants the motion, vacates the denial of the motion to stay, and grants the Employer's motion to stay negotiations pending resolution of the representation issue.

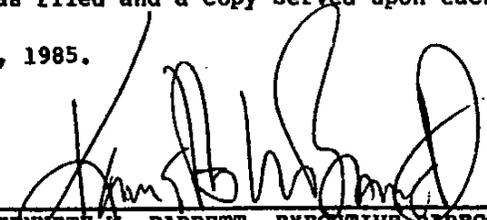
It is so directed.

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



JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 2nd day of August, 1985.



KENNETH W. BARRETT, EXECUTIVE DIRECTOR

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OPINION

Day, Chairman:

The North Canton City Schools (North Canton, Movant or Employer) has moved for reconsideration of an order issued by the State Employment Relations Board (SERB or Board). That order denied the motion of North Canton for a stay of the negotiations in progress between North Canton and its incumbent union.¹

For reasons adduced below the motion for reconsideration is granted and, upon reconsideration, the motion to stay is granted.

I

Both the original motion and the motion for reconsideration are premised upon the Board's decision in the Cleveland Board of Education case.²

¹A rival union filed a timely petition for a representation election supported by the requisite showing of interest, see Ohio Revised Code, Section 4117.07(A)(1).

²Ohio Association of Public School Employees v. Cleveland Board of Education (1985), Case No. 84-UR-05-1156.

Upon reflection the Board has determined the movant's contention is valid. For the Cleveland case did indeed decide 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.³ And that doubt warrants, indeed requires, a strictly neutral stance on the employer's part until the representation dispute is decided."

In point of fact, the Cleveland case did involve an investigation in the limited sense that the statutory showing of interest to satisfy reasonable cause had been verified by the Board. But neither the Cleveland opinion nor the previous opinion in this case even mentioned that circumstance much less emphasize its necessity. With this emphasis addendum, however, the principle intended for the Cleveland decision is clear. Moreover, it controls this case. For investigation of the present petition has revealed a showing of interest sufficient to satisfy "reasonable cause to believe a question of representation exists."⁴

Accordingly, SERB grants the motion to reconsider, vacates its prior order in the instant case, applies the clarified principal of the Cleveland decision and grants the employer's motion to stay negotiations pending resolution of the representation issue.

Vice Chairman Sheehan and Board Member Fix concur.

³There is neither an indication nor any contention of frivolity in the present case.

⁴Ohio Revised Code, Section 4117.07(A)(1).

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OPINION

Day, Chairman:

In this case, the employer has filed a Motion to Stay Negotiation with an incumbent union. The ground is that the employer, faced with a representation petition from a rival union, entertains a "bona fide" doubt of the continuing majority status of the incumbent. For reasons adduced below, the motion is overruled.

I

The decision on this motion involves policy considerations distinguishable from the policy decisions made in the cases of Ohio Association of Public School Employees v. Cleveland Board of Education, Case No. 84-UR-05-1156 (1985) or City of Oakwood and Fraternal Order of Police, Oakwood Lodge No. 107, Case No. 84-UR-12-2552 (1985).

In Cleveland Board of Education, SERB declined to issue a complaint after an unfair labor practice charge of refusal to bargain. The refusal

followed a factual investigation of the employer's claim of good faith doubt of continuing majority status stemming from a rival union election petition during the window period. The investigation developed no evidence that the employee's representation petition was frivolous or fatuous or that the employer's action was tainted by unfair labor practices. The conclusion was that the good faith doubt was real, meritorious and could find easy and early resolve through an election. In the Oakwood case, the unfair labor practice claim implicated the scope of bargaining rights. The Board declined to suspend the bargaining process. To have done otherwise would have established the possibility for a stalling tactic¹ with Board approval. SERB did grant a stay of the running of the statutory impasse period until determination of the pending unfair labor practice. The unfair labor practice procedure was deemed a better forum than the impasse process for the determination of a mandatory subject of bargaining issue.

Oakwood has little or no relevance to the instant case. Here there is neither an unfair labor practice charge or a complaint pending. And there is no request to suspend the statutory impasse procedure. Obviously, the relief presently sought (a suspension of bargaining without an investigation) could lead to a very different consequence than did the mere stay of impasse proceedings.

The Cleveland Board of Education case is closer in its fact pattern to the present case but still so distinct that a different analysis and response is required. For the Cleveland decision was based on a factual

¹ E.g., by raising specious claims coupled with refusals to bargain.

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determination. By contrast the employer motion in the present case asks the Board to stay negotiations while awaiting resolution of the representation issue without a factual inquiry. This is tantamount to asking for advance absolution for an action that could eventuate in an unfair labor practice. The claimed justification, untested by investigation, is the employer's unilateral, parthenogenetic, factual conclusion that it has a good faith doubt of the incumbent union's majority status. Moreover, to grant the motion would involve the Board, in effect, in an advisory opinion in the absence of a real controversy.

The Board declines to stay the negotiations.

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

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