

85-049

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

Belmont County Engineer,

Employer.

CASE NUMBERS: 84-RC-04-0520

DIRECTION OF RERUN ELECTION
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix:
September 19, 1985.

Pursuant to a Petition For Representation Election filed by Ohio Council 8, American Federation of State, County and Municipal Employees (Employee Organization), on November 16, 1984, the Board conducted a secret ballot election in an appropriate unit of employees of the Belmont County Engineer (Employer). Of 48 votes cast in that election, 23 were cast for the Employee Organization and 25 were cast for "no representative." Pursuant to Ohio Administrative Code Rule 4117-5-10, the Employee Organization filed objections to the election alleging, among other things, that the employer conducted a "captive audience" speech that tainted the election. The matter was referred to hearing.

The Board has reviewed the record, the hearing officer's recommendation, exceptions to the recommendations, and responses. For the reasons set forth in the attached opinion, incorporated by reference, the Board holds that the results of the election held on November 16, 1984, will be set aside and that a rerun election will be directed.

The rerun election will be held at the date, times, and places to be determined by the Administrator of Representation in consultation with the parties.

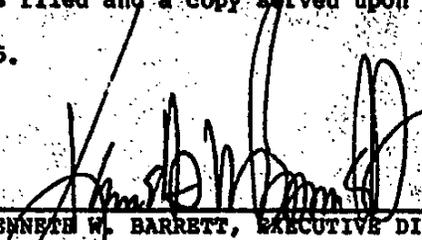
It is so directed.

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 26th day of September, 1985.



KENNETH W. BARRETT, EXECUTIVE DIRECTOR

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OPINION

Day, Chairman:

In this case an election is set aside and another ordered because of a captive audience exercise of speech. There is no doubt at all that an employer has First Amendment rights. However, these must be balanced against a listener's rights under the same Amendment. Protected free speech must be associated with the cognate right to listen or not. It is this association of rights the captive audience denies.

One who expects government to protect First and Fourteenth Amendment rights must play according to the rules.

Sheehan, Vice Chairman, concurs; and Fix, Board Member, dissents.

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OPINION

Fix, Board Member, dissenting:

This case is similar to Case Number: 84-RC-04-0118, Ohio Council 8, American Federation of State, County & Municipal Employees, AFL-CIO and Noble County Engineer.

As in the aforementioned case, I concur with my colleagues that captive audience meetings have a chilling effect upon the guarantees of the First and Fourteenth Amendments. Such meetings which encroach upon these rights must not be condoned.

However, in the instant case, the Board's decision on captive audience meetings was rendered long after the meeting held by the employer. The employer did not intentionally violate any rulings of the Board.

This dissent is based solely on this reasoning.

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