85-053 B

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Fraternal Order of Police, Ohio Labor Council, Inc.,

Employee Organization,

and

Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Local 1699, American Federation of State, County and Municipal Employees, AFL-CIO,

Intervening Employee Organization,

and

Ohio University,

Employer

CASE NUMBERS: 85-RC-02-2946
85-RC-02-2947
85-RC-03-3054
85-RC-03-3055

DISMISSAL OF PETITIONS; REMAND FOR HEARING
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; October 3, 1985.

On February 14, 1985, the Fraternal Order of Police, Ohio Labor Council, Inc. (FOP) filed two petitions for representation election relating to a proposed unit of radio dispatchers and a proposed unit of police officers employed by Ohio University (Employer)(Case Numbers 85-RC-02-2946 and 85-RC-02-2947). On March 4, 1985, the FOP filed two additional petitions for representation election for the same two units (Case Numbers 85-RC-03-3054 and 85-RC-03-3055). In response to the Petitions, the Employer raised the possibility of contract bar under Ohio Revised Code Section 4117.07(C)(6). The cases were referred to hearing.

Ohio Council 8, American Federation of State and County and Municipal Employees, AFL-CIO and Local 1699, American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) intervened, and it was stipulated that AFSCME was the exclusive representative of the bargaining unit at issue. All parties executed stipulations of fact and agreed that only the issue of contract bar would be presented for determination at this time.

The Board has reviewed the stipulated facts, the hearing officer's recommendation, and the exceptions to the recommendation. The Board approves the hearing officer's recommendation for the reasons stated in the attached opinion, incorporated by reference. Case Numbers 85-RC-02-2946 and 85-RC-02-2947 are dismissed because of contract bar. There is no contract bar in Case Numbers 85-RC-03-3054 and 85-RC-03-3055, and these cases are remanded for hearing on any remaining issues.

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 4th day of October, 1985.

Kenneth W. Barrett

KENNETH W. BARRETT, EXECUTIVE DIRECTOR

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Fraternal Order of Police, Ohio Labor Council, Inc.,

Petitioner,

Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Local 1699, American Federation of State, County and Municipal Employees, AFL-CIO,

Intervenor,

and

Ohio University,

Respondent.

CASE NUMBERS: 85-RC-02-2946
85-RC-02-2947
85-RC-03-3054
85-RC-03-3055

OPINION

Day, Chairman:

Petitioner, Fraternal Order of Police (FOP), filed representation petitions for two units on February 14, 1985. One petition was for a unit of radio dispatchers, the other for a unit of police officers. FOP filed again for the same two entities on March 4, 1985. Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) moved to intervene in each of the representation proceedings. The intervenor raised the defense of contract bar. It was agreed between the parties "that only if a contract bar were held not to exist would a hearing in other issues in the case be conducted."[1]

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[1]Hearing Officer's Recommended Determination, p. 1.

Thus the issue is:

Whether a valid collective bargaining agreement existed between AFSCME and Ohio University (respondent) which would bar the FOP petitions for representation elections?

For reasons adduced below there is a valid contract bar defense to the petitions for election filed on February 14, 1985, but not to those filed on March 4, 1985.

I

Case Nos. 85-RC-02-2946 and 85-RC-02-2947, filed on February 14, 1985, are considered first.

At the time the subject petitions were filed, a contract between AFSCME and the respondent was in effect with an expiration date of March 1, 1985. A petition challenging an incumbent union's representation right during an existing contract will lie only during the window period.[2] The petitions under consideration were filed roughly two weeks before the expiration date. Thus the petitions were untimely, are barred by the contract and must be dismissed.

II

The circumstances surrounding the filing of the March 4, 1985 petitions[3] are undisputed. The collective bargaining agreement supporting the intervenor's contract bar defense expired on March 1, 1985. The new contract was completed and ratified by AFSCME on March 12, 1985. While the

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[2]The "window" period is the 30-day interval spaced between 120 days before and 90 days before the expiration date of an existing contract. A petition for representation by an attacking union must fall within the 30-day interval or it is untimely. Ohio Revised Code, Section 4117.07(C)(6)(2nd paragraph). Hereafter the code will be cited only by section and number.

[3]Case Nos. 85-RC-03-3054 and 85-RC-03-3055.

preceding contract expired March 1, 1985, and the successor agreement was completed on March 4, 1985, only AFSCME had ratified the new agreement on that date.

Assuming, arguendo, that ratification on the same date (March 4) that election petitions were filed was timely, the issue remains whether the contract will constitute a bar[4] before it is fully executed by both parties.

The last sentence of Section 4117.01(C) is explicit on the subject of the advent of binding contractual terms:

> "When the matters about which there is agreement are reduced to writing and approved by the employee organization and the legislative body, the agreement is binding upon the legislative body, the employer, and the employee organization and employees covered by the agreement."

Under Section 4117.01(C) there can be no "binding agreement" until "reduced to writing and approved by the employee organization and the legislative body." Clearly, the binding conditions were not met on March 4, 1985. Accordingly, there was no contract and no contract bar to the petitions in Case Nos. 85-RC-03-3054 and 85-RC-03-3055 filed on that date.

III

The petitions in Case Nos. 85-RC-02-2946 and 85-RC-02-2947 are dismissed. Case Nos. 85-RC-03-3054 and 85-RC-03-3055 are remanded for hearing on any issues remaining.

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

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[4]AFSCME and the respondent extended the contract on a day to day basis. The extensions were ineffective for contract bar purposes. See Sections 4117.04(A), .07(C)(6) and .09(D). Because the employer's approval was clearly out of time, it is unnecessary to decide whether the union approval was also.