

45-054

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Public Employees of Ohio, Local 450,

Employee Organization,

and

Ohio Council 8, American Federation of State County
and Municipal Employees, Local 217, AFL-CIO, CLC,

Intervening Employee Organization,

and

University of Cincinnati,

Employer

CASE NUMBERS: 84-RC-07-1550
84-UR-12-2603

DISMISSAL OF PETITION AND DISMISSAL OF UNFAIR LABOR PRACTICE CHARGE
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan and Board Member Fix; October 10, 1985.

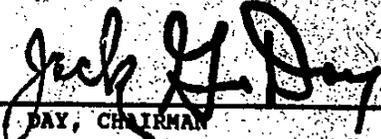
The Public Employees of Ohio, Local 450 (PEO) filed a Petition for Representation Election regarding a unit of "all full-time and regular part-time classified blue-collar employees" of the University of Cincinnati (Employer). PEO later clarified its petition to apply to service and maintenance employees at the Clifton Campus and all branch campuses, excluding all employees of the University Hospital and Holmes Hospital. Ohio Council 8, American Federation of State, County and Municipal Employees, Local 217, AFL-CIO, CLC (AFSCME) intervened in this action, and the matter was referred to hearing.

The Board has reviewed the record, the hearing officer's recommendations, exceptions, and responses. For the reasons stated in the attached opinion, incorporated by reference, the Board concludes that the proposed bargaining unit is inappropriate. Therefore, the petition is dismissed.

The related unfair labor practice charge against the Employer, alleging interference and domination in the execution of a collective bargaining agreement with AFSCME is dismissed. The facts developed in the hearing of Case No. 84-RC-07-1550 indicate that there is no probable cause to believe that the Employer violated Ohio Revised Code Section 4117.11.

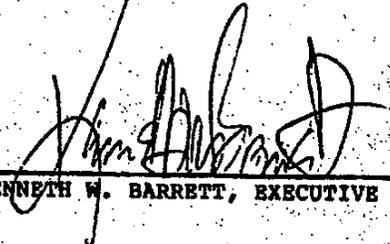
It is so directed.

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 15th day of October, 1985.



KENNETH W. BARRETT, EXECUTIVE DIRECTOR

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Public Employees of Ohio, Local Union No. 450

Petitioner,

and

University of Cincinnati,

Respondent,

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

Intervenor.

CASE NUMBER: 84-RC-07-1550

OPINION

Sheehan, Vice Chairman:

I

In this case, the petitioner, Public Employees of Ohio Local 450, sought to represent approximately 450 service and maintenance employees at Cincinnati University Hospital and Holmes Hospital. The 450 employees are part of a larger unit of 1497 employees which are represented by AFSCME (the intervenor). AFSCME has negotiated and signed agreements for this unit since 1970 with the University of Cincinnati (the respondent), which has operational control over University and Holmes Hospitals. Prior to that, memoranda of understanding were incorporated into resolutions passed by the University's Board of Trustees.

II

The issue is whether the unit sought is an appropriate unit?

III

The Board does not concur with the Hearing Officer's recommendations and finds the unit to be inappropriate.

The statute gives the Board the conclusive authority to determine units appropriate for collective bargaining and sets forth factors relevant to that determination.

4117.06 provides:

(A) The State Employment Relations Board shall decide in each case the unit appropriate for the purposes of collective bargaining. The determination is final and conclusive and not appealable to the court.

(B) The Board shall determine the appropriateness of each bargaining unit and shall consider among other relevant factors, the desire of the employees' the community of interest; wages, hours, and other working conditions of the public employees; the effect of over fragmentation; the efficiency of operations of the public employer; the administrative structure of the public employer, and the history of collective bargaining.

(C) The Board may determine a unit to be the appropriate unit in a particular case, even though some other unit might also be appropriate.

The relevant factors set forth above for determining the appropriateness of a unit are more than satisfied when applied to the broader historical unit, as it is presently constituted. By contrast, the Petitioner's proposed unit fares less well by the same test. This alone, however, is not enough to deny the Petitioner's proposed unit because more than one bargaining unit configuration may be found appropriate.

The administrative structure of the University and its long history of bargaining with the Intervenor in the historic unit must be given substantial weight. In the absence of proof that the structure of the historic unit has inadequately served the interest of the Employer and Employees, and in the light of over two decades of bargaining history, one must conclude that a constructive and stable relationship has fostered

between the Respondent and the Intervenor. It surely must require more to disturb such a relationship than a petition to break-up the historic unit to satisfy the desires of a small portion of employees who wish to change exclusive representatives. Moreover, the Statute does not expressly provide for the changing of an exclusive representative for a portion of the certified unit. However this issue need not be addressed in the instant case.

The Board in carrying out its legislative mandate to promote orderly and constructive relationships between all public employers and their employees would hardly be advancing that goal by tampering with the broader unit. In short, to use the vernacular, if it isn't broken, don't fix it.

IV

Therefore, the Board upon consideration finds the objections of the Respondent and the Intervenor well taken and the unit described by the Hearing Officer in Conclusions of Law (IV(4), page 9) to be inappropriate.

The Board further finds the appropriate bargaining unit to be the unit of service and maintenance employees more fully described in appendix of the agreement entered into on December 4, 1984, between the University of Cincinnati, University Hospital and Christian R. Holmes Division and Local 217 of AFSCME, Ohio Council 8, APL-CIO, which is incorporated by reference and made part of this order.

The Board further finds that the Petitioner, Public Employees of Ohio, Local 450, has not demonstrated a sufficient showing of interest in the appropriate unit.

Based on the foregoing findings, the Board finds the unfair labor practice charge filed by the Petitioner to be moot.

It is therefore ordered that:

- 1) Case 84-RC-07-1550 be dismissed.
- 2) Case 84-OR-12-2603 be dismissed.

Day, Chairman, and Fix, Board Member, concur.

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