

85-060

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

John C. Cole,

Petitioner,

and

Ohio Association of Public School Employees/American
Federation of State, County and Municipal Employees, AFL-CIO,

Employee Organization,

and

New Miami Local School District Board of Education,

Employer.

CASE NUMBERS: 85-RC-02-2973

DISMISSAL OF PETITION FOR DECERTIFICATION ELECTION
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; November 15, 1985.

John C. Cole (Petitioner), an employee of the New Miami Board of Education filed a Petition For Decertification Election relating to a unit of employees currently represented by the Ohio Association of Public School Employees/American Federation of State, County and Municipal Employees, AFL-CIO. The matter was referred to hearing.

The Board has reviewed the hearing officer's recommendation, the exceptions, responses to exceptions, and the cross-exceptions. For the reasons stated in the attached opinion, incorporated by reference, the Board rejects the hearing officer's recommendations and conclusions of law and dismisses the Petition For Decertification Election.

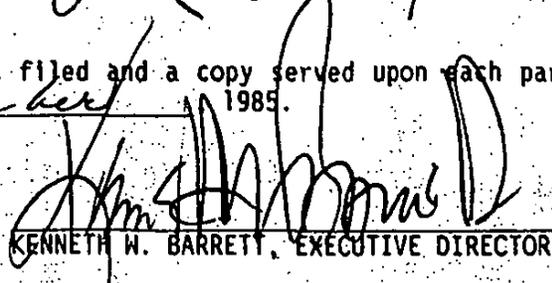
It is so directed.

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 19th day of November 1985.



KENNETH W. BARRETT, EXECUTIVE DIRECTOR

OPINION

Fix, Board Member:

In the instant case, John C. Cole, ("petitioner") filed a petition for decertification election of a unit of non-certificated employees - secretaries, cooks, janitors, and aides, who are represented by Ohio Association of Public School Employees/AFSCME, AFL-CIO ("OAPSE"). The petition was signed by more than 50% of those in the unit. The unit in question is deemed certified and grandfathered into the Act under provisions of Section 4 of the temporary language.

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The issue is:

Does the petitioner have standing to file this decertification petition?

The answer is "no" for the reasons set forth below.

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II

The Board believes Section 4(A) of the temporary law in the Act creates an exception to Section 4117.07.

Section 4(A) states in pertinent part:

"Notwithstanding any other provisions of this Act, an employee organization recognized as the exclusive representative shall be deemed certified until challenged by another employee organization under the provisions of this Act and the State Employment Relations Board has certified an exclusive representative."

The language of this section is quite clear. Only an employee organization may challenge a deemed certified unit. Therefore, in the instant case, John Cole does not have standing to challenge a deemed certified unit. By the same token, under Section 4117.07, John Cole, as a public employee, would have standing to challenge a certified unit.

III

The difference in these two sections of the statute indicates that the legislature intended to afford additional protection from challenges to deemed certified units.

Day, Chairman, and Sheehan, Vice Chairman, concur.