

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

85-062

In the Matter of  
Ohio Association of Public School Employees,  
Employee Organization,  
and  
South Community, Inc.,  
Employer.

Case Number: 84-RC-11-2351

DIRECTION OF RERUN ELECTION  
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; December 5, 1985.

On October 30, 1985, the State Employment Relations Board conducted a secret ballot election for certain employees of South Community, Inc. (Employer). Subsequent to the election and pursuant to Ohio Administrative Code Rule 4117-5-10, the Employer filed objections to the results of the election, contending that certain documents distributed by the Ohio Association of Public School Employees affected the results of the election. The Employer's objections were properly supported by attached documentation and affidavits. The Ohio Association of Public School Employees filed a timely response to the objections, also supplying the Board with affidavits and documents. Based upon these submissions, it is clear that the facts in this case are not in dispute.

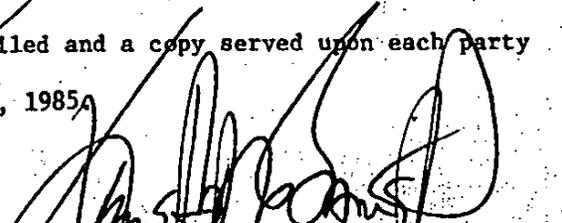
For the reasons stated in the attached opinion, incorporated by reference, the Board sets aside the results of the October 30 election and directs a rerun election to be held on December 18, 1985. The polling places, election hours, and eligibility list shall be the same as in the previous election.

It is so directed.

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

  
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JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 6<sup>th</sup> day of December, 1985.

  
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KENNETH W. BARRETT, EXECUTIVE DIRECTOR

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OPINION

Fix, Board Member:

In the instant case, the employer objects to conduct by the employee organization which the employer alleges affected the results of the election conducted by the State Employment Relations Board (SERB) October 30, 1985.

I

On October 23, 1985, the employee organization mailed to all employees whose names appeared on the election eligibility list copies of official documents of SERB. These included the "Official Secret Ballot" prepared by the Board and posted by the employer in accordance with ORC Rule 4117-5-06.

According to the employer, the employee organization altered the "Official Secret Ballot" in such a way as to suggest that SERB endorsed a single unit of professional and non-professional employees for the purposes of collective bargaining, and also endorsed the employee organization as exclusive representative for purposes of collective bargaining.

The employer is asking SERB to set aside the results of the election and to conduct a new election.

SERB grants the employer's request for the reasons set forth below.

II

The facts in the instant case are undisputed. The motivation behind the action gives rise to a difference of opinion.

Prior to the election, the employee organization did, as alleged by the employer, mail to each employee eligible to vote copies of the description of the voting unit, date, hours and places of the election, and sample ballots marked with a red X. The red X designated the position on the ballot issues which was preferred by the employee organization. The envelope in which the information was mailed was clearly identified as being sent by the employee organization. It also contained a newsletter from the employee organization.

The election was on two issues: whether or not professional employees and non-professional employees wanted to be included in a single unit for the purposes of collective bargaining and whether or not they wanted to be represented for purposes of collective bargaining by the employee organization in the instant case. The official sample ballots distributed to the employees prior to the election, indicated that the employee organization preferred a "yes" vote on both issues.

In determining this case, the Board must decide if the action of the employee organization was misleading and interfered with the employees' free choice in the election. The sample ballot sent the employees by the employee organization was an exact copy of the SERB official ballot. The

alteration to indicate the preference of the employee organization could have a misleading effect whether the action was deliberate or unintentional.

The Board has a responsibility to insure the integrity of its elections. An altered ballot, for whatever purpose, impinges on this integrity.

While not controlling on this Board, it is helpful to examine the actions of the National Labor Relations Board in cases similar to the one being considered by SERB. The NLRB has consistently ordered that a new election be conducted when either party engages in misuse of the Board's election process. In Allied Electrical Products, Inc., 109 NLRB No. 177, 34 LRRM 1538 (1954), the NLRB specifically ruled that the distribution of marked copies of the NLRB election ballots would result in the ordering of a new election. The NLRB reaffirmed this policy years later in Mercury Industries, Inc., 238 NLRB No. 124, 99 LRRM 1391 (1978).

In both cases, the key issue was the misleading effect of altered ballots and the erroneous impression that the Board gave its endorsement to the union. The facts in the instant case are similar to those in Allied and Mercury Industries. It is essential for the fair and effective implementation of ORC Chapter 4117 that SERB preserve its integrity and its neutrality. It cannot discharge this obligation if its official documents are used to gain a partisan advantage and to give the impression that the Board endorses one party or the other.

11

III

In keeping with this objective, the Board sets aside the election in the instant case and orders a new election be held on Dec. 18, 1985.

In addition the Board rules that its official documents may not be reproduced in the future by either party as a part of campaign propaganda unless the reproduction 1) is completely unaltered in form, and 2) is clearly marked sample on its face.

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

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