

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

86-003

In the Matter of

Ohio Association of Public School Employees,
American Federation of State County and Municipal Employees,

Employee Organization,

and

South Community,

Employer.

CASE NUMBERS: 84-RC-11-2351

DISMISSAL OF ELECTION OBJECTIONS AND CERTIFICATION
OF EXCLUSIVE REPRESENTATION
(Opinion Attached)

Before Chairman Day and Vice Chairman Sheehan; January 23, 1986.

Pursuant to a Board directive issued on December 6, 1985, a rerun election was conducted on December 18, 1985, in a unit of employees of South Community (Employer). The Employer filed objections to the rerun election. The objections are dismissed for reasons stated in the accompanying opinion, incorporated by reference.

Accordingly, these election results are certified: of the twenty-four (24) votes cast by professional employees, there was one (1) challenged ballot, four (4) votes for separate units and nineteen (19) votes for a combined unit. Of the nine (9) votes cast by non-professional employees, four (4) votes were for separate units and five (5) votes were for a combined unit. A combined unit therefore is appropriate. In the combined unit, the election results are: of thirty-three (33) votes cast, the Ohio Association of Public School Employees received twenty-two (22) votes and "no representative" received ten (10) votes. The one (1) challenged ballot was not sufficient to affect the results of the election. Therefore, the Ohio Association of Public School Employees is certified as the exclusive representative of the combined unit.

It is so directed.

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



JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 10th day of February, 1986.



KENNETH W. BARRETT, EXECUTIVE DIRECTOR

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OPINION

Day, Chairman:

The employer objects to the re-run election results¹ in this case for two reasons. First, it argues that the employees were deprived of a fair canvass because the election notice was not posted ten days prior to the election. Next, the employer claims that because the State Employment Relations Board (SERB or Board) did not change the eligibility date for the re-run, twenty-three percent of the eligible voters were disfranchised.

For reasons adduced below neither of the objections has merit.

I

The first objection is flawed by the employer's own conduct. It received the notice on a Friday, the twelfth day before the election, but did not post it until the following Monday, the ninth day before. Had the objecting employer acted with dispatch, the omission on which it rests its

¹The re-run was ordered after an employer objection to misuse of a sample ballot by the employee organization was sustained.

case would not have occurred. One cannot both promote a foul and claim an advantage from it.²

II

The employees for whom disfranchisement is asserted were not on the eligibility list because they were not employed on the qualifying date. It is a long standing Board policy, epitomized in a rule, that "only employees who were eligible to vote in the first election and who remain eligible on the date of the run-off election shall be eligible to vote in the run-off election."³ The analogy to re-runs is obvious.⁴

This rule is supported by the hygienic electoral principle that eligibility lists ought to receive maximum protection from manipulation. Without intending any pejorative implication for the present employer or any other, this case presents an illustrative case in point. The twenty three percent "disfranchised" were all hired after the established eligibility date. Had this been done deliberately to dilute union support it would be indefensible. That it may have been done inadvertently or simply in response to business demands, would not purge the voting of the appearance of manipulation. Fairness must be observed both in fact and fancy. Hence the rule against changing eligibility lists for run-offs is adopted for re-runs. The rule will protect the electoral process against either tactical flooding or evaporation by strategic delay.

²Significantly the Board has heard no employee claim distress from lack of notice.

³Administrative Code Rule 4117-5-09(B).

⁴Re-runs are authorized by Administrative Code 4117-5-10(B).

III

The objections are dismissed and the employee organization certified pursuant to the order which this opinion supports.

Sheehan, Vice Chairman, concurs; Fix, Board Member, absent.

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