86-007

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Employee Organization,

and

Franklin County Sheriff,

Employer.

CASE NUMBERS: 84-VR-11-2440
84-RC-11-2364

CERTIFICATION PURSUANT TO REQUEST FOR VOLUNTARY RECOGNITION

(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan and Board Member Fix; February 20, 1986.

Ohio Council 8, American Federation of State, County and Municipal Employees (Employee Organization) filed a Request For Voluntary Recognition. The Employer, Franklin County Commissioners, filed a responsive Petition For Representation Election. The matter was directed to hearing. The Board approves the hearing officer's findings of fact, conclusions of law and recommendations. The Board does not necessarily adopt the hearing officer's reasoning and analysis. The attached opinion, incorporated by reference, addresses the question of whether the Franklin Board of County Commissioners is a joint employer with the Franklin County Sheriff. The Franklin County Board of Commissioners is not a joint employer with the sheriff.

Accordingly, the Board certifies the unit recommended by the hearing officer.

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 26th day of February, 1986.

KENNETH W. BARRETT, EXECUTIVE DIRECTOR

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Employee Organization,

and

Franklin County Sheriff,

Employer.

CASE NUMBERS: 84-VR-11-2420
84-RC-11-2364

OPINION

Day, Chairman:

There are four issues listed by the hearing officer in this case.[1] There is also a motion by the "employer" to brief exceptions to the Hearing Officer's Recommended Determination in excess of fifteen pages.

The Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer's Report are adopted. However, the reasoning and analysis are not. This opinion will be confined to a single question and answer responding to the first issue in footnote 1.

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[1] "1. Is the [Franklin County Commission] FCC a "joint employer" with the Sheriff, thereby permitting the FCC to challenge AFSCME's [the union] Voluntary Recognition Request?
2. Is [American Federation of State, County and Municipal Employees] AFSCME entitled to certification pursuant to their Voluntary Recognition Request?
3. Is James Guthrie a "supervisor" as defined in O.R.C. Section 4117.01(E):
4. If James Guthrie is a "supervisor" did this supervisor in fact engage in conduct which tainted the atmosphere during AFSCME's organizational campaign requiring the invalidation of AFSCME's substantial evidence of majority support filed with their Voluntary Recognition Request?"

The motion for excess pages is granted only because of the unique stance of the employer identification issue.[2]

I

Do R.C. 4117.10 (B) and (C) establish joint employer status between county elected officials and boards of county commissioners (BCC)?

The question is answered, "no."

The reasons for a negative answer will be adduced below.

II

Before considering the relevance of R.C. 4117.10 (B) and (C) to joint employer status between a BCC and a county elected official, it is useful to examine and analyze the definition of "public employer" in Chapter 4117.

R.C. 4117.01 (B) provides:

> "'Public employer' means the state or any political subdivision of the state located entirely within the state including, without limitation, any municipal corporation with a population of at least five thousand according to the most recent federal decennial census, county, township with a population of at least five thousand in the unincorporated area of the township according to the most recent federal decennial census, school district, state institution of higher learning, any public or special district, any state agency, authority, commission or board, or other branch of public employment."

Although the definition makes no specific reference to legislative bodies[3] or county elected officeholders, clearly both are public employers in some sense. Otherwise, the General Assembly would not have found it necessary to exempt legislative body employees "whose principal duties are directly related to the legislative functions..."[4] Neither would it have found it necessary to give

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[2]The motion should have been directed to the hearing officer rather than the Board. The procedural leniency demonstrated in accepting it is discretionary with the Board, but is not precedential and not favored.

[3]BCCs are legislative bodies. See fn. 5 *infra*.

[4]R.C. 4117.01(C)(2).

indeed compels, a differentiation which portends a resolution of the co-employer (joint employer) issue.

Whether a BCC is a co-employer of the employees of elected officeholders in the county depends largely upon the meaning of R.C. 4117.10. Despite some seeming contradictions in the statute, the question is hardly difficult. For the relevant verbiage, which appears in Divisions (B) and (C) of R.C. 4117.10, establishes a distinction between public employers and BCCs based both in language and in logic.

For example, R.C. 4117.10 Section (B) requires a public employer to

> "submit a request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the appropriate legislative body to the legislative body..."

The legislative body "must approve or reject the submission as a whole." Time points for submission and approval are established. The legislative body is deemed to have approved if it has not acted within thirty days after the submission. In addition "the parties" may specify that provisions of an agreement not requiring legislative approval "are effective and operative in accordance with the terms of the agreement, provided there has been compliance with Division (C) of this section."[6] Should the "legislative body" reject the submission of "the public employer," then "either party may reopen all or part

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[6] "Compliance with Division (C) is a somewhat obscure directive. Apart from mandating the appointment of a representative for negotiations, (C) does hardly more than echo (B). Although the language in (C) might be interpreted as establishing co-negotiators from a BCC and the offices of elected county officials, that interpretation is tortured. For neither history, experience or logic argues for BCCs having a voice in the terms and conditions of employment of the workers in the office of independently elected county officials except in budgetary matters. See Parts IV and V, infra. The terms of R.C. 4117.10(B) and (C) amply demonstrate that fiscal control has been retained in the BCCs. However, the power allocation between the legislative body and the parties (in matters concerned with "effecting" and "rejecting" contract terms) carries a lurking potential for conflict which may require resolution in a future case.

of the entire agreement."[7] Taken together these references warrant, indeed virtually compel, the conclusion that BCCs have a specified function but are not co-employers or joint employers of the employees hired, supervised and directed by elected county officials.

IV

R.C. 4117.10(C) raises different questions with respect to the employer question. On its face, if (C) stood alone, one <u>might</u> conclude that a BCC and elected county officers are co-employers or joint employers of the public employees in the county offices. For (C) provides:

> "...the designated representative of the board of county commissioners and of each elected officeholder of the county whose employees are covered by the collective negotiations,...is responsible for negotiations in the collective bargaining process;"

However, the quotation is ambiguous. Does it mean that a representative of the BCC plus one representative of each county official are jointly responsible for negotiations for the employees in <u>separate</u> units confined to the respective county offices? Stretching the imagination, the language could be deemed to call for a management negotiating team composed of representatives of the BCC plus one each from the affected offices of county elected officials bargaining as a committee for a unit composed of all the employees in the combined elective offices. Another possibility is that a team composed of two persons, one BCC representative and one from each affected county office, was intended to negotiate with employee representatives for each single county office <u>unit</u>. None of these possibilities is easily compatible with the use of a singular verb in the phrase "...the designated representative...is responsible for negotiations in the collective bargaining process;".

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[7]Would it not torture the language to hold in this context that "either party" includes the "legislative body"?

Leaving the ambiguity to one side, the distinction between BCCs (i.e., legislative bodies) and public employers in Division (B) of R.C. 4117.10 is carried over into Division (C). For in the latter it is said that matters agreed upon and reduced to writing and "approved by the legislative body" are binding upon "the legislative body, the employer, and the employee organization and employees covered by the agreement."

Thus it can be seen that R.C. 4117.10 (B) and (C) repeatedly deal with the "legislative bodies" as entities separate from other public employers but with rights of approval and disapproval of collectively bargained contracts under specific circumstances. It is especially significant that only the "parties" are empowered to re-open the agreement after legislative rejection. Moreover, the entire thrust of R.C. 4117 is toward negotiations between "public employers" and employee organizations representing public employees. And the definition of public employer is such that it is consistent and logical that BCCs have public employer status only when negotiating with employees who are specifically hired by, and responsible to, the county commissioners but not engaged in duties "directly related to [BCC] legislative functions..."* Any other interpretation

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*R.C. 4117.01:

"(B)'Public employer' means the state or any political subdivision of the state located entirely within the state including, without limitation, any municipal corporation with a population of at least five thousand according to the most recent federal decennial census, county, township with a population of at least five thousand in the unincorporated area of the township according to the most recent federal decennial census, school district, state institution of higher learning, any public or special district, any state agency, authority, commission or board, or other branch of public employment.

"(C)'public employee' means any person holding a position by appointment or employment in the service of a public employer, including any person working pursuant to a contract between a public employer and a private employer and over whom the national labor relations board has declined jurisdiction on the basis that the involved employees are employees of a public employer except:...(2) employees of the general assembly and employees of any other legislative body of the public employer whose principal duties are directly related to the legislative functions of the body;"

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would constitute a BCC as a co-employer of all the employees in the employment of elected county officials.

V

R.C. 1.49(A) and (E) require one construing a statute to consider statutory objectives and the consequences of a particular construction.

A statutory reading finding joint employer status between legislative bodies and executive public employers would have both bizarre consequences and unconstitutional aspects. For the General Assembly would become joint employer with the administrative departments under the direct authority of the Governor and joint employer with the statewide elected officials other than Governor (Attorney General, Auditor, Secretary of State and Treasurer). In addition every BCC would be joint employer of the public employees in the offices of every elected county official,[9] and every municipal council would share employer status with every mayor in municipalities of over five thousand population. Such melding of functions raises obvious practical political difficulties quite apart from the constitutional issues posed by the integration of legislative and executive functions.

It taxes credulity to conclude that the General Assembly intended to create a condition in which BCC's of one political persuasion would be sharing joint employer bargaining duties with county officeholders of the opposite party.

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[9]It has been noted in II supra that R.C. 4117.06(D)(5) prohibits the State Employment Relations Board (SERB or Board) from including the employees of more than one elected county official in the same unit without the approval of both the elected officials and the BCC. Unit determination is a particular interest of employers and employee organizations. Accordingly, if the BCC were a joint employer with each elected county officeholder, a special provision would not be necessary to give it a voice in multi units of elected county office- holders' employees.

That is a formula for chaos. And the formula needs multiplication by 88 (counties) to expose the full entrophic potential.

VI

What then is the significance of the limited veto powers of the BCCs, the provision making the separate negotiators of the BCC and each county officeholder "responsible for negotiations",[10] and the concurrence needed before the establishment of bargaining units composed of the combined employees of more than one elected county official?[11]

If the statute is to make sense, the legislative approval/disapproval powers must be deemed to amount to no more than the General Assembly's effort to maintain the relationship between the legislative bodies, especially their fiscal authority, and the powers of the executive/ administrative branches. Although these elements of government are separate, there is not a hermetic seal between them.

VII

Accordingly, it is the judgment of the Board that R.C. 4117.10(B) and (C) require the conclusion that a BCC and a county officeholder are not joint or co-employers of the employees employed to perform the functions which are the responsibility of an elected county official. The elective office (and through it the elected county official) is the sole public employer of the employees in the office. Thus, in this case, the Board holds that the present BCC (for

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[10] R.C. Section 4117.10(C).

[11] R.C. Section 4117.06(D)(5).

Franklin County) and the Sheriff of Franklin County are not joint employers of the employees in the Sheriff's office.

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

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