

86-012

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of  
Ohio Association of Public School Employees,  
Employee Organization,  
and  
Vandalia-Butler City School District,  
Employer.

CASE NUMBER: 85-MF-05-3600

DETERMINATION OF UNAUTHORIZED STRIKE  
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, Board Member Fix; March 12, 1986.

Pursuant to the Determination of Authorized Strike issued by the Board on March 12, 1986, in accordance with Ohio Revised Code Section 4117.23, the attached opinion is released and is incorporated by reference in that determination.

It is so directed

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

*Jack G. Day*  
JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 27<sup>th</sup> day of March, 1986.

*Jacqueline F. Davis*  
JACQUELINE F. DAVIS, GENERAL COUNSEL

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OPINION

Day, Chairman:

The issue here is whether a strike of school employees of the Vandalia-Butler City School District (District or Vandalia-Butler) is illegal.<sup>1</sup> The strikers, represented by the Ohio Association of Public School Employees (OAPSE or Union) are in a category for whom strikes are legal under R.C. 4117 when statutory conditions are satisfied. For reasons adduced below, the State Employment Relations Board (SERB or Board) finds the strike to be legal.

I

Negotiations have been in progress since before the expiration date of a collective bargaining agreement.<sup>2</sup> The parties have resorted to, and

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<sup>1</sup>The management was notified that the strike would begin on Monday, March 10, 1986 at 12:01 a.m. There is no claim that the notice is flawed.

<sup>2</sup>The agreement was reached on or about September 1, 1983. It expired on June 30, 1985. Negotiations continued virtually unabated until a strike notice setting job action for 12:01 on Monday, March 10, 1986. A grandfathered agreement results. See Temp. Law, Section 4(A) and (B).

exhausted, a mediation procedure contained in their agreement.<sup>3</sup> They have stipulated<sup>4</sup> that the process provided in the contract is "an impasse resolution procedure." However they do not agree that it is a valid mutually agreed dispute resolution procedure (MAD) within the meaning of R.C. 4117.14. The District claims it is invalid. OAPSE contends the contrary. Neither do they agree on the status of the expired contract although it is the most recent collective bargaining agreement between them.<sup>5</sup> Management claims it has not been extended. The Union insists it has.<sup>6</sup>

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<sup>3</sup>Under the heading "Mediation" Section 3.09 provides:

"A. If an agreement is not reached during negotiations, the items upon which agreement has not been reached will be submitted to mediation.

B. The Federal Mediation and Conciliation Service shall be utilized and mediation shall conform with their rules and guidelines.

C. In the event mediation is unable to produce agreement within twenty-one (21) calendar days after the first meeting with the mediator, the teams shall within five (5) calendar days, prepare either a joint or separate report(s) which will then be submitted to the OAPSE and the Board containing recommended solutions of the differences or delineating the recommended procedures for resolving the impasse. The twenty-one (21) day period may be extended by mutual agreement.

D. Ratification of the total agreement as one substantive package shall follow the form prescribed in Section 3.09."

<sup>4</sup>The parties agreed to 19 written stipulations of fact before the hearing. The quoted language appears in Stipulation No. 6.

<sup>5</sup>Stipulation No. 5.

<sup>6</sup>However, the parties have not based their positions on the extension point. Ironically, they are on opposite sides of an issue arguably dispositive of illegality if the contract was in fact extended, see R.C. 4117.18(C).

The parties have so positioned themselves on the facts and law that the resolution of the legal status of the MAD is crucial to the resolution of the question whether the strike is legal or illegal.

II

The decision in this case needs a preface. It is this - the General Assembly manifestly intended more flexibility for job actions by public employees permitted to strike (strike permissive employees) than for those who were not (strike prohibited employees).<sup>7</sup> This being so the provisions of the statute permitting parties to adopt a mutually agreeable alternative impasse procedure (MAD) in place of that provided by R.C. 4117.14<sup>8</sup> must be treated more liberally when "strike permissive" employees rather than "strike prohibited" employees are involved. To illustrate the point, it is inconceivable that the legislature intended the statutory permission for a mutually agreed impasse provision to allow the parties to legalize strikes

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<sup>7</sup>Contrast the strictures imposed by R.C. 4117.14(D)(1) [Strikes not permitted; conciliation (arbitration) required.] with the provisions of R.C. 4117.14(D)(2) [Right to strike upon ten days' "prior written notice" of intent].

<sup>8</sup>R.C. 4117.14:

"(C) In the event the parties are unable to reach an agreement, they may submit, at any time prior to forty-five days before the expiration date of the collective bargaining agreement, the issues in dispute to any mutually agreed upon dispute settlement procedure which supersedes the procedures contained in this section.

(1) The procedures may include:

(f) Any other dispute settlement procedure mutually agreed to by the parties. ....

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(E) Nothing in this section shall be construed to prohibit the parties, at any time, from voluntarily agreeing to submit any or all of the issues in dispute to any other alternative dispute settlement procedure. An agreement or statutory requirement to arbitrate or to settle a dispute pursuant to a final offer settlement procedure and the award issued in accordance with the agreement or statutory requirement is enforceable in the same manner as specified in division (B) of section 4117.09 of the Revised Code."

by "strike prohibited" public employees.<sup>9</sup> The same inference can not be drawn for "strike permissive" categories.

Moreover, the statutory commitment to superceding MAD's<sup>10</sup> reflects the legislative conclusion that parties may do better, or may feel they do better, for themselves than government can do for them. Thus, a broad interpretation of R.C. 4117.14(C)(1)(f) and (E) is warranted in this and similar cases. Of course, any party which feels insecure in the face of a particular MAD proposal need not agree to it; but when agreement is reached, the MAD will be sustained absent some compelling public policy against it.

In this case, the Board finds an alternative procedure for strike permissive public employees was in place and exhausted before the strike began. Therefore, the Board concludes that the strike was legal.

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

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<sup>9</sup>Such an agreement seems unlikely but the leverage of economic trade-offs in collective bargaining should not be discounted.

<sup>10</sup>See fn. 8, supra.