86-023

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

District 925, Service Employees International Union, AFL-CIO,

Employee Organization,

and

University of Cincinnati,

Employer.

CASE NUMBER: 85-UC-12-4737

OPINION

Day, Chairman, concurring:

I concur in the conclusions of the principal opinion but add these few words of explanation to lend emphasis to a part of my concurrence.

The management disperses confidential duties widely to qualify forty-four employees for exemption. This diffused allocation of functions has the effect of diluting the bargaining unit and is contrary to the purposes of Chapter 4117. Between them, the forty-four exempt employees claimed by the employer expend 88,000 hours in a regular work year. Obviously, all of this time is not spent on confidential activities as defined in the Act. Under the anti-dilution principle of Fraternal Order of Police and City of Loveland, (1985) SERB Case Nos. 85-RC-04-0338, 84-VR-04-0357, 84-RC-04-1095, and 84-RC-05-1096, management can concentrate functions of particular employees to cover activities that are solely confidential thus protecting the legitimate interests of management without illicitly blocking the legitimate aspirations of employees for collective bargaining representation.

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OPINION

Fix, Board Member:

The opinion in this case will be confined to determination of supervisory and confidential employees.

I

The State Employment Relations Board (SERB) concurs in the finding of fact, conclusions of law and recommendation of the hearing officer. The Board does not necessarily adopt all of the rationale of the hearing officer's analysis and discussion.

In agreeing with the hearing officer's recommendation regarding exclusions of supervisory personnel, the Board applied the principles set forth in Fraternal Order of Police, Ohio Labor Council, Inc., and Amalgamated Transit Union, Local 268 and the Greater Cleveland Regional Transit Authority, SERB Case Nos. 85-RD-04-3385, 85-RD-04-3386, 85-RC-04-3531 and 85-RC-04-3532 (April 17, 1986).[1]

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[1]"The Board rules that to qualify as a supervisor an individual must possess more than one of the responsibilities contained in R.C. 4117.01(F). While R.C. 4117.01(F) is similar to the National Labor Relations Act (NLRA), it applies to the public rather than private sector. Herein lies the difference. The public sector is governed by many more constraints in relation to promotions and supervisory status than is the private sector. Thus R.C. 4117.01(F) requires a more narrow interpretation. And key to that supervisory status is the use of independent judgment in the exercise of authority."

II

Regarding confidential status, the employer, University of Cincinnati, requested exclusion from the bargaining unit of 44 persons on the basis of confidentiality. However, the hearing officer recommended that only four employees be excluded as confidential.

The Board accepts this recommendation for the reasons set forth below.

III

In examining the positions the employer seeks to exclude on the basis of confidentiality, it is apparent that the employer has its own interpretation of the statutory language, "directly participating in collective bargaining on behalf of the employer."[2]

To the employer this means directly participating in the administration of the collective bargaining agreement. Following this line of reasoning, the employer proposes to exclude as confidential all employees who have access to grievances, disciplinary actions, promotions, tenure decisions and any other matters relating to the administration of the collective bargaining agreement.

However, the Board interprets the language in O.R.C. 4117.01(J) more narrowly as applying to those persons directly participating in <u>collective bargaining negotiations</u>. (Emphasis added.) This stricter view as to exclusions from the bargaining unit implements the legislative intent of the statute and is within the Board's prerogative to liberally construe the Act "for the accomplishment of the purpose of promoting orderly and constructive

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[2]O.R.C. 4117.01(J).

relationships between all public employers and their employees."[3] To augment rather than limit the opportunity for representation in a bargaining unit is in keeping with the legislative intent of the Act. By interpreting the language of O.R.C. 4117.01(J) broadly, the employer considers as confidential a much larger number of employees than the Board's strict interpretation would encompass.

IV

The employer has established four advisory committees, one for each set of collective bargaining negotiations. Each vice president is a permanent member of at least one advisory committee. The employer argues that secretaries of advisory committee members perform confidential duties and should be excluded from the unit.

The Board applies the principles enunciated in Fraternal Order of Police and City of Loveland, SERB Case Nos. 85-RC-04-0338, 84-VR-04-0357, 84-RC-05-1095 and 84-RC-05-1096.[4]

While the facts differ, the intent of the employer in this case has the appearance of being similar.

This Board does not question the right of management to delegate supervisory and confidential duties to its employees. In this case, the employer has exercised this right liberally.

However, the Board is charged with the responsibility of implementing both the letter and spirit of Chapter 4117. Broad designation of

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[3] O.R.C. 4117.22

[4] "The right of management to delegate authority is unquestioned. However, shift rotation to permit several people to act in the absence of the chief is vulnerable to manipulation and could result in subverting the intended purposes of the Act."

confidential and supervisory employees "could result in subverting the intended purpose of the Act."[5]

The Board finds appropriate the confidential exclusions recommended by the hearing officer.

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[5]Id.

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