

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

96-024

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In the Matter of

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

Employee Organization,

and

Lucas County Department of Human Services Employees Chapter, Local 544-A,
American Federation of State, County and Municipal Employees, AFL-CIO,

Employee Organization,

and

Lucas County Department of Human Services,

Employer.

CASE NUMBER: 85-UC-05-3788

AMENDMENT OF UNIT
(Opinion Attached)

Before Vice Chairman Sheehan and Board Member Fix; May 15, 1986.

In May 1985 the Lucas County Department of Human Services (Employer) filed a Petition for Unit Clarification. Subsequently, the matter was heard by a Board hearing officer.

The Board has reviewed the record, the hearing officer's recommendations, the exceptions to the recommendations, and responses. For the reasons stated in the attached Opinion, incorporated by reference, the Board adopts the Hearing Officer's findings of fact and approves the conclusions of law and recommendations, but not necessarily the analysis. The Board amends the unit in accordance with the recommendation of the hearing officer and finds that the two recommended units, each represented by Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, and Lucas County Department of Human Services Employees Chapter, Local 544-A, American Federation of State, County and Municipal Employees, AFL-CIO, are appropriate.

It is so directed.

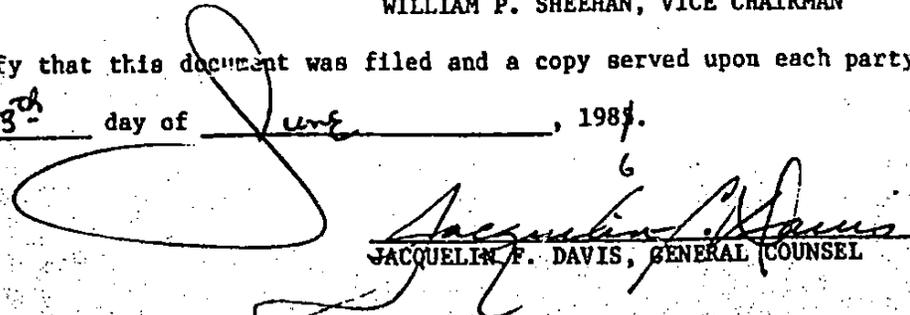
SHEEHAN, Vice Chairman, and FIX, Board Member, concur. DAY, Chairman, absent.



WILLIAM P. SHEEHAN, VICE CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 13th day of June, 1986.

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JACQUELIN F. DAVIS, GENERAL COUNSEL

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OPINION

Fix, Board Member:

This case involves a petition for unit clarification. The employer seeks to exclude a number of job classifications from the existing unit represented by the American Federation of State, County and Municipal Employees (AFSCME). Among them are employees who perform the functions of guards. The combination of guards with other employees is proscribed by O.R.C. Chapter 4117.

The petition was directed to hearing for consideration of all relevant issues as limited by the decision of the State Employment Relations Board (SERB) in Akron Education Association and Akron Public Schools.¹ The instant case meets the qualifications established in the Akron opinion.

¹Akron Education Association and Akron Public School, 2 OPER Para. 2629 (May 22, 1985)

"No petition for unilateral clarification or amendment in 'deemed certified', 'voluntarily recognized' or 'agreed' unit will be entertained unless made during the window period and directed at the exclusion of statutorily proscribed classifications." (Id, at page 434. Emphasis added.)

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property of the employer or to protect the safety of persons on the employer's premises in a unit with other employees."

Additionally, in University of Cincinnati (University Hospital), 2 OPER, Para. 2626 (May 22, 1985) SERB explained its position regarding the legislative intent of uncodified Section 4(A). In pertinent part the opinion states:

"...but it is hardly conceivable that the legislature intended to proscribe specific job combinations in the same unit (as it obviously did) and at the same time intended to allow those combinations to stand indefinitely simply because they were negotiated before the effective date of the Act.

If followed, these principles may ultimately place pre-April 1, 1984, unit combinations of prohibited categories negotiated by 'deemed certified' representatives on the same plane with such combinations when negotiated by post-April 1, 1984, voluntarily recognized or certified exclusive representatives."

III

The request of the petitioner meets the standards enumerated in the Akron Case and follows the legislative intent of O.R.C. 4117.06(D)(2).

Therefore as the agent charged with implementing O.R.C. Chapter 4117, SERB does have jurisdiction to rule on the instant case.

IV

The employer's petition for unit clarification does warrant separating a "deemed certified" bargaining unit into two units.

Both parties agree that employees in the job classifications of security officer I-III are guards as defined in O.R.C. 4117.06(D)(2).⁴

Conformity with the legislative intent of this section requires that the proscribed employees be placed into a separate unit.

⁴Stipulation 5.

Pursuant to the rationale of the Akron and University of Cincinnati decisions, SERB places the proscribed classification of guards into a separate unit.

No certification is involved in this action. Both units, the original one without the guards and the separate guards unit, have the status of "deemed certified" unit with the same deemed certified exclusive bargaining agent, Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO.

In addition, the employer's exception with regard to excluding a supervisor is denied. Pursuant to the Akron and University of Cincinnati decisions a unilateral unit clarification petition is not the appropriate tool to exclude supervisors.

Sheehan, Vice Chairman, concurs. Day, Chairman, absent.

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