

86-026

B
26

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Ohio Association of Public School Employees,
Employee Organization,
and
West Carrollton City School District,
Employer.

CASE NUMBERS: 85-UR-11-4675
85-MF-10-4583
86-MED-4-0449

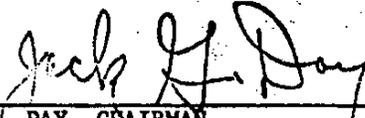
DIRECTIVE GRANTING MOTION FOR CLARIFICATION, DISMISSING NOTICE
TO NEGOTIATE AND DENYING MOTION TO STAY THE STATUTORY IMPASSE PROCEDURE
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan and Board Member Fix; May 8,
1986.

The referenced cases are before the Board for disposition of three motions filed by the West Carrollton City School District (Employer): a motion to clarify the Board's directive dismissing the unfair labor practice charge in Case No. 85-UR-11-4675; a motion to dismiss Case No. 85-MF-10-4583; and a motion to a stay the dispute resolution process in Case No. 86-MED-4-0449 pending disposition of the motions to clarify and to dismiss. For reasons provided in the attached opinion (incorporated by reference), the motions to clarify and to dismiss are granted. These actions render the motion to stay moot. Accordingly, that motion is dismissed.

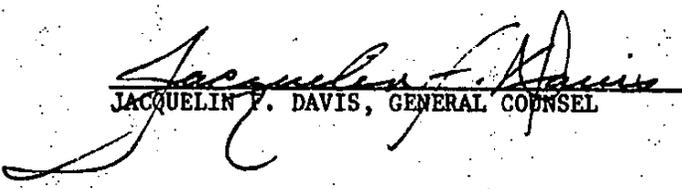
It is so directed.

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 June, 1986.



JACQUELIN F. DAVIS, GENERAL COUNSEL

1358g

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Ohio Association of Public School Employees,
Employee Organization,
and
West Carrollton City School District,
Employer.

CASE NUMBERS: 85-UR-11-4675
85-MF-10-4583
86-MED-4-0449

OPINION

Day, Chairman:

These cases are here for the disposition of three motions. The motions are interrelated. The first asks for clarification of the order of the State Employment Relations Board (SERB or Board) dismissing the unfair labor practice charge (ULP) in Case No. 85-UR-11-4675. The second seeks dismissal of Mediation Case 85-MF-10-4583, and the third, filed in case number 86-MED-4-0449, requests a stay pending disposition of the Motion For Clarification and the Motion To Dismiss.

For reasons assessed below, the motions to clarify and to dismiss are granted. These actions moot the Motion To Stay. Therefore, that motion is dismissed.

I

The Motion For Clarification

The Ohio Association of Public School Employees (OAPSE or union) and the City of West Carrollton School District Board of Education (employer or school board) were parties to a collective bargaining contract (CBC or

agreement) reached before the effective date of the Ohio Public Employee Collective Bargaining Act (Act or statute).

The agreement contained a Clause XXXVI with this pertinent language:

"This Agreement shall be effective as of January 1, 1984 and shall remain in effect through December 31, 1985 and for yearly periods from year to year thereafter, unless either party shall give the other written notice of its intention to terminate this Agreement not more than one hundred twenty (120) days and not less than ninety (90) days prior to the expiration date of December 31, 1985, or the end of any yearly extension period...."

On October 30, 1985, the union filed a Notice To Negotiate. Obviously, the notice did not meet the requirements of Clause XXXVI, and the operation of the clause would have extended the CBC until December 31, 1986 but for the action of a rival union. That union, West Carrollton Employees Association (WCEA/OEA) filed a petition for representation election on September 25, 1985. This action was within the statutory window period. It founded a good faith employer doubt that OAPSE continued to represent a majority of the employees in the unit involved, mandated neutrality for the employer pending resolution of the representation issue¹ and resulted in the dismissal of OAPSE's Unfair Labor Practice charge that the employer was refusing to bargain. However, these were not the only consequences of WCEA/OEA's petition for representation.

That petition rendered the OAPSE 10/30/85 untimely Notice to Negotiate, a futile act and a nullity. And, for the same reason, the notice would have

¹See Ohio Association of Public School Employees v. Cleveland School District Board of Education (1985) 2 OPER 2083, VII 63.

The employer recognizes this position and argues it forcefully in its Memorandum In Support of Motion (for clarification). The pages of the memorandum are inexplicably unnumbered, but the argument appears on what would be Pages 2 and 3 had counsel chosen to paginate the document.

OPINION

Cases 85-UR-11-4675, 85-MF-10-4583 & 86-MED-4-0449

Page -3-

been ineffective, even if timely. The petition also prevented a year-long extension of the Collective Bargaining Agreement under Clause XXXVI. In addition, for the period from September 25, 1985 until the representation question was resolved, there was an hiatus during which bargaining on new terms and conditions was tolled.

When OAPSE won the representation election and verified its status as the majority collective bargaining representative in the appropriate unit, the tolling ceased and the status quo ante was restored despite the expiration of the CBC on December 31, 1985. The terms and conditions of that expired agreement will continue. The parties must negotiate until a new agreement is reached or statutory impasse procedures exhausted.² Thus

²During such a suspension what is the status of the terms and conditions of employment in the bargaining unit? This problem has been posed and answered in the private sector. In Producers Dairy Delivery v. Pension Fund (9th Cir. 1981) 108 LRRM 2510, 2512 the United State Court of Appeals had to decide whether an employer was required to continue payments into a pension trust under an expired collective bargaining agreement while negotiations for a successor contract continued. They held the payments should continue:

"... here the payments were made in conformity with the terms of an expired written agreement during the course of collective bargaining negotiations. It is lawful for an employer to continue the payments under these circumstances. Furthermore, it would constitute an unfair labor practice if the employer failed to continue making the contributions under those circumstances. During the negotiations following the expiration of a collective bargaining agreement, the employer is required to 'maintain the status quo as to wages and working conditions.' Peerless Roofing Co., Ltd. v. NLRB, 641 F. 2d 734, 736, 107 LRRM 2330 (9th Cir. 1981). The obligation to maintain the status quo encompasses the obligation to continue making pension fund contributions. Id. This obligation continues until negotiations reach an impasse. Hinson v. NLRB, 428 F. 2d 133, 73 LRRM 2667 (8th Cir. 1970)." (Emphasis added.)

It is clear that the "collective bargaining agreement survive[d] its expiration date for some purposes." Peerless Roofing Co., Ltd. v. NLRB, supra. Because this "survival for some purposes" principle comports with the objective of stabilizing labor relations, SERB adopts and applies it in the present case.

55

the window period in Clause XXXVI is still in place. But a practical question remains - on what date did the window period begin to run? Either the date of the election or the date of certification are arguably appropriate. SERB deems the certification date to be the more logical one because certification officially reconfirmed the majority status of OAPSE, the incumbent union. Accordingly, the certification date, February 20, 1985, will be established by SERB order as the new date for the window period to begin. It follows that when OAPSE filed a second Notice to Negotiate on April 11, 1986, it was reasonable and the union and the school board were positioned for negotiations for a successor contract.

The Motion For Clarification is granted. For the reasons given, the one-year extension of the CBC was blocked despite the incumbent's untimely attempt to re-open. But the expiration of the agreement did not mean that a term and condition vacuum was created. For the reasons assessed in footnote 2, existing terms in this case continue pending settlement of new terms or statutory impasse.

II

The Motion To Dismiss

The OAPSE attempt to open negotiations was flawed but in any event was a nullity. The employer, harboring a good faith doubt of the incumbent's majority status, could not have negotiated even pursuant to a timely notice without risking an unfair labor practice. It recognized this and apparently would not have negotiated even had the notice been timely. For the timely filing of the rival union's petition for representation election coupled

OPINION

Cases 85-UR-11-4675, 85-MF-10-4583 & 86-MED-4-0449

Page -5-

with good faith doubt³ imposed neutrality and effectively obliterated the legal effect of OAPSE's first Notice to Negotiate. It follows that Case No. 85-MF-10-4583 was improvidently opened.⁴ The motion to dismiss it is granted.

III

The Motion To Stay

Given the dispositions of the motions for clarification and to dismiss, the Motion To Stay has no basis. It is dismissed for mootness.

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

³See fn. 1, *supra*.

⁴Whether the parties have a mutually agreed dispute settlement process superceding the statutory impasse procedure is an issue not presently before the Board.

57