

86-029

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
State Employment Relations Board,
Complainant,

vs.

Mad River-Green Local Board of Education,
Respondent.

CASE NUMBER 84-UR-11-2393

FINDING OF UNFAIR LABOR PRACTICE; DIRECTION OF ELECTION
(Opinion Attached)

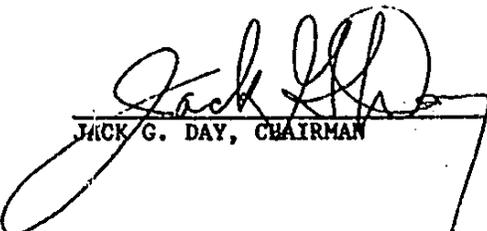
Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; June 19, 1986.

The Mad River-Green Local Education Association, OEA/NEA, (MRGLEA/OEA/NEA) filed an unfair labor practice charge against the Mad River-Green Local Board of Education (Respondent). Pursuant to Ohio Revised Code Section 4117.12, the Board conducted an investigation in the charge and found probable cause to believe that an unfair labor practice had been committed. Subsequently, a complaint was issued alleging that Respondent had violated Ohio Revised Code Section 4117.11 (A), (1) (2), and (5) by recognizing another employee organization (Mad River-Green Local Education Association, OET/AFT) as the exclusive representative of employees in the bargaining unit; unilaterally amending the recognition provisions of the collective bargaining agreement; and unilaterally remitting dues deducted from the salaries of employees in the bargaining unit to the Mad River-Green Local Education Association (OET/AFT), rather than the Mad River-Green Local Education Association (OEA/NEA). The matter was heard by a Board hearing officer.

The Board has reviewed the record, the hearing officer's recommendation, exceptions to the recommendation and responses. For the reasons set forth in the attached opinion, incorporated by reference, the Board approves the hearing officer's findings of fact, but not the conclusions of law or the recommendations. The Employer is found to have violated Ohio Revised Code Section 4117.11 (A) (1) and (5). It is ordered to cease and desist from bargaining with the local and either of the implicated national unions (except when bargaining with the local may be necessary to maintain the existing terms and conditions of employment) until such time as an election can be held to determine which organization will be the exclusive representative of the employees in the unit. A representation election will be held at an appropriate date to be determined by SERB staff in consultation with the parties, with a ballot providing these choices: "Mad River-Green Local Education Association, OEA/NEA," "Mad River-Green Local Education Association, OET/AFT" and "no representative."

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 31st day of July, 1986.



JACQUELIN F. DAVIS, GENERAL COUNSEL

**APPEAL OF SPBR DECISION TO COURT
STATEMENT**

July 20, 2011

Case Name: Luke Johansen v Ohio Department of Transportation
SPBR Case Number 2011-REC-03-0063 & 2011-RED-03-0064
Court Case Number: 11 CV 008283
Court Franklin County Court of Common Pleas
345 S. High St., FL 1B
Columbus, OH 43215-4544

Administrative Costs to Certify SPBR Case Record to Court

Transcript of SPBR Hearing: NA
Copies of Documents: \$8.50
Shipping and Handling: NA

Total: \$ 8.50

Amount Paid: \$ 25.00

Paid By: Michael Moses, Attorney
100 East Broad Street
Columbus, Ohio 43215

Balance: \$ 16.50

ENCLOSED PLEASE FIND A **REFUND** OF THE BALANCE DUE FOR OVERPAYMENT OF COSTS. IF YOU HAVE ANY QUESTIONS, PLEASE CALL SPBR AT 614/4667046.

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
State Employment Relations Board,
Complainant,

and

Mad River-Green Local Board of Education,
Respondent.

CASE NUMBER: 84-UR-11-2393

OPINION

Day, Chairman:

In this case a unique question is presented:

Is it an Unfair Labor Practice for an employer to contract with a local union (deemed certified under the Ohio Collective Bargaining Act) which has changed its national affiliation outside the procedures provided by the Act?

For reasons to be adduced below, such an action by the Employer constitutes a refusal to bargain and is a violation of R.C. 4117.11(A)(5).

I

The pertinent facts are these*:

1. Since 1968, the Mad River-Green Local Education Association (MRGLEA or local) has been the recognized exclusive bargaining representative for the employees in a bargaining unit composed of full time and regular part time certificated personnel employed under contract as classroom teachers with the Mad River-Green Local Board of Education (School Board or employer).

*In compliance with Ohio Revised Code, Sec. 4117.12(B)(3).

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2. On Sept. 1, 1983, the school board and the local executed a collective bargaining agreement which became effective Sept. 16, 1983, with a termination date of August 31, 1985.
3. On May 14, 1984, a letter filed with the State Employment Relations Board (SERB) stated that a written contract was in effect between the board and the local affiliated with the Ohio Education Association/National Education Association (OEA/NEA). An OEA uniserve consultant was named as the filing party's principal representative (See Exhibit 6).¹
4. At all times relevant to the decision in this case, the local was affiliated with OEA/NEA until on or about October 25, 1984.
5. Sometime in August of 1984 the local conducted a straw vote of all teachers in the district. The vote was by secret ballot and was tallied by the local's executive board. The issue canvassed was a change in affiliation and the straw vote indicated that a majority of the teachers who voted favored a change from OEA/NEA to OET/AFT.²
6. In 1984, the local's constitution could be amended by a vote of two thirds of all members present and voting. A members only vote was

¹The collective bargaining agreement between the local and the board indicated that the local was the exclusive representative of the board's full time and regular part time certificated personnel. However, exhibit A under the rubric "recognition process" stated that the employer recognized that the local was affiliated with OEA/NEA (Joint Exhibit 3).

²The results of the straw vote were 98 for change to OET/AFT, 23 against change, 1 ballot was void and 23 did not vote. (See fn. 4 of the report and recommendation of the hearing officer citing Joint Exhibit 39.)

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taken on a change in affiliation and ninety teachers attended the meeting. The result of the vote favored change of affiliation from OEA/NEA to OFT/AFT.³

- 7. The president of the local sent the newly voted constitutional amendments with a letter to the superintendent of schools informing him of the election results and requesting that the collective bargaining agreement be changed to reflect the new affiliation. It was done.
- 8. After the vote to change the affiliation, the officers of the local remained the same.
- 9. After the 1983-85 contract terminated, the local (now MRGLEA/OFT/AFT) and the School Board negotiated a new collective bargaining agreement which was to be in effect from Sept. 1, 1985, through August 31, 1987.⁴

II

The posture of the facts gives rise to other questions subsumed under the issue stated in the initial paragraph of this opinion. The subsumed questions are:

- 1) If a vote of disaffiliation and reaffiliation were permissible, was it proper to confine the voting to members only?
- 2) Was the 1983-85 collective bargaining contract between the local and the board a bar to the board's recognition of another employee

³The tally was 76 for the change 14 against the change. Footnote 6 of the hearing officer's report and Joint Exhibit 40.

⁴See Hearing Officer's Finding of Fact No. 20 and Joint Exhibit 11.

- organization as the exclusive representative during the life of the contract?
- 3) If such recognition were a bar to the recognition of another employee organization, was there, on the facts of this case, such an organization involved in the change of recognition or was it the same organization with a mere change of name?
 - 4) If the recognition involved a new organization, was the recognition a violation of Section 4 of the temporary law⁵ and, if it were, what remedy is available to redress the illicit conduct?

III

The first of the subsumed questions raises a question vitally concerned with internal union affairs. Chapter 4117 provides no direct answer to the question of SERB's jurisdiction in such matters except perhaps the limited authority provided in R.C. 4117.09(C) for review of a union's decision on rebate under its internal procedures. That authority does not reach the question here.

The Supreme Court had occasion to determine a similar issue arising under the National Labor Relations Act in NLRB v. Financial Institution Employees (1986) 46 CCN S. Ct. Bull. p. B-1147. While SERB is administering

⁵Section 4. "Exclusive recognition through a written contract, agreement, or memorandum of understanding by a public employer to an employee organization whether specifically stated or through tradition, custom, practice, election, or negotiation the employee organization has been the only employee organization representing all employees in the unit is protected subject to the time restriction in division (B) of section 4117.05 of the Revised Code. Notwithstanding any other provision of this act, an employee organization recognized as the exclusive representative shall be deemed certified until challenged by another employee organization under the provisions of this act and the State Employment Relations Board has certified an exclusive representative." (Emphasis supplied.)

a different statute and is not bound by Supreme Court of the United States adjudication except on matters applying the United States Constitution and federal questions, the rationale of decision in the Financial Institution Employees is persuasive. Without repeating the rationale SERB follows it and adopts the conclusion:

"We hold that the board exceeded its authority under the act requiring that non-union employees be allowed to vote for affiliation before it would order the employer to bargain with the affiliated union."⁶

Accordingly, the confining of voting rights for the affiliation issue to union members was an internal union affair absolved from SERB regulation or interference.⁷

IV

At the time the affiliation vote was taken, a contract was in effect between the local and OEA/NEA. The conventional wisdom in such circumstances is that the collective bargaining agreement is a bar to a current change in the representation status of the union which holds the contract. So the question narrows. Was there a change in status by the vote to change affiliation or was there a simple change of name?

⁶NLRB v. The Financial Institution Employees, *supra*, B1165.

⁷The Financial Institution Employees case, except for its holding on the question of not allowing non-union employees to vote, is a very different case from that under consideration here. The present one does not involve simply the affiliation of a local union with a national. Rather there is a question of the propriety of an employer's recognition and bargaining action during a contract period when an affiliated local union with which it has contracted changes its affiliation from one national union to another. The difference is as great as the difference between a confrontation between two unions and a simple change of name can be.

If the local had been attempting an initial affiliation and not a change from one to another, the answer to the question would be relatively easy. It clearly would be the same organization unless, perhaps, a close vote coupled with other unusual circumstances indicated that a question of new representation was presented. In any event, the Ohio statute provides procedural methods for determining whether the existing certification retains its vitality. The statute does not set representative status in obsidian but attempts to balance reasonable stability with orderly change. This is the purpose of the contract bar principle.

V

A change in affiliation from one national union to another is not merely a change in name. Nor is it the fact, as the local argues, that an affiliation is only a process of contracting for services. It is unnecessary to elaborate all the advantages which a national connection brings a local. For it is clear that affiliation involves far more than a routine function providing amenities.*

More .. changes of affiliation were to be allowed to come about without regard to the processes provided under the statute, the stability objective of the law would be seriously impeded. This does not suggest that a local's affiliation stays in place forever. It is to suggest that stability is important enough to justify a contract bar principle and require that representation be maintained unless and until a change in certification has been achieved through the statutory electoral processes.

*A parent union may provide financial support during job actions, negotiating assistance, expert negotiators, economic data to support contract demands, legal representation in a variety of situations, and legislative lobbying. This list is not intended to be exhaustive.

VI

A new organization is involved in the change effected by the vote in this case. This is so because after the vote an entirely different entity came into the relationship. It provided different services, different support and different investments in time. These facts compel a conclusion that temporary law Section 4 was violated.⁹ For, under that section, a union holding contractual relationships with an employer before the effective date of the statute (as is the case here) is deemed certified and that condition continues unless, and until, a successful challenge by a new employee organization has displaced the deemed certified one and the new entity has been certified formally by SERB. Section 4 conditions were clearly not met.

VII

The problem in this case must be resolved in a way which takes account of the respective interests of the respondent, OEA/NEA, OET/AFT, the local and the members of the bargaining unit. A complicating factor is the existence of the current contract between the respondent and MRGLEA/OFT/AFT.

The situation is novel. The remedy must be novel to match it.

VIII

The authority for the creativeness of the remedy comes both from the statute and the rules.

The statute provides in R.C. 4117.02(H)(8) that the Board may "promulgate, amend, and rescind rules and procedures and exercise other powers appropriate to carry out Chapter 4117 of the Revised Code."

⁹See fn. 5 supra. Section 4 is a transitional provision intimately involved in the stability objectives of Chapter 4117.

(Emphasis added.) The pertinent rule authority is part of Administrative Code Rule 4117-1-01(B). It provides:

"The board may issue such orders and take such other action not specifically provided for in these rules as may be necessary to accomplish the purpose of promoting orderly and constructive relationships between all public employers and their employees to the extent not contrary to Chapter 4117 of the Revised Code or Chapters 4117-1 to 4117-25 of the Administrative Code." (Emphasis supplied.)

It is SERB's view that in the circumstances presented by this case, the only effective action to promote "orderly and constructive relationships" between the public employer and its employees is to provide an electoral process as soon as feasible to decide the representation question. To do otherwise would encourage raiding and promote instability in labor relations in direct contravention of a principal objective of the statute. Moreover, an election will provide a definitive settlement of the representation issue.

IX

The respondent employer is found to have committed a violation of R.C. 4117.11(A)(1) and (5). These violations occurred when the employer (1) recognized the affiliation change from OEA/NEA to OFT/AFT during the term of the 1982-85 contract and signed that contract as amended to recognize the putative successor,¹⁰ and (2) signed a successor contract with MRGLEA/OFT/AFT.

To effect a remedy, the employer will be ordered to cease and desist from bargaining with the local and either of the implicated national unions (except when bargaining with the local may be necessary to maintain existing terms and conditions of employment) until such time as an election can be

¹⁰The amendment changed recognition from MRGLEA/OEA/NEA to MRGLEA/OFT/AFT.

held to determine freshly which organization is to be the exclusive representative of the employees in the unit. To expedite that determination, it is ordered that the Administrator of Labor Relations determine an appropriate date in consultation with the parties for a new representation election with a ballot providing a choice between the "MRGLEA/OEA/NEA" and the "MRGLEA/OFT/AFT" and "No Representative".

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

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