

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

86-030

In the Matter of  
Fraternal Order of Police, Miami University Lodge No. 174,  
Employee Organization,  
and  
Miami University,  
Employer.

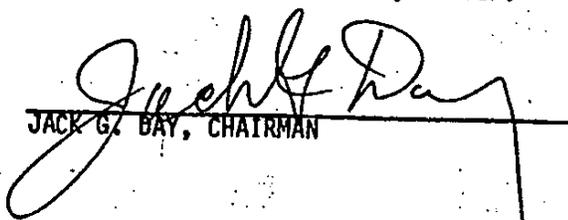
CASE NUMBER: 85-MF-10-4346

ISSUANCE OF OPINION

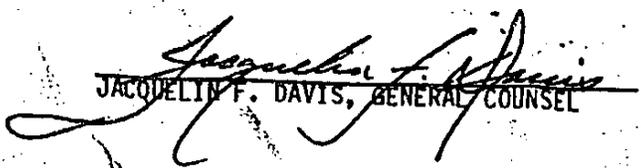
Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix;  
July 3, 1986.

On July 22, 1986, a directive was issued reflecting the Board's decision to grant Miami University's motion to deem a fact-finder's report accepted. The directive made reference to a forthcoming opinion. That opinion is attached.

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 7th day of August, 1986.

  
JACQUELIN F. DAVIS, GENERAL COUNSEL

1479g

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of  
Fraternal Order of Police  
Miami University Lodge No. 174,

Employee Organization,

and

Miami University,

Employer.

CASE NUMBER: 85-MF-10-4346

OPINION

Fix, Board Member:

This case involves the vote on rejection of a fact-finder's report. The employer accepted the report. The vote of the employee organization is the matter in question.

The hearing officer in the instant case addressed two issues:

1. the number of members of the employee organization
2. the total vote on the fact-finder's report

I

This opinion deals with the question:

Was the vote of the employee organization in compliance with Ohio Administrative Code 4117-9-05(K)?

The answer is no. The hearing officer's recommendation is overruled and the rejection vote is considered invalid for the reasons adduced below.

II

An investigation revealed there are 19 members in the employee organization. Thirteen were present at the meeting January 10, 1986, when ballots to approve or reject the fact-finder's report were distributed at 5:15 p.m.<sup>1</sup> The statute, R.C. 4117.14(C)(6), specifies that rejection must be by three-fifths majority of the total membership. In this case, that means three-fifths of 19 or 11 and two fifths. Thus, 12 votes were required for rejection.

At 5:20 p.m. on January 10, 1986, the marked ballots of 13 members were collected and returned to the meeting chairman.<sup>2</sup> At 5:30 p.m. the chairman declared the "election" officially closed. He counted the ballots in the presence of other officers. At least ten of these officers were aware of voting results which were 11-2 in favor of rejection of the fact-finder's report.<sup>3</sup>

Between 5:30 and 5:35 p.m. on January 10, 1986, the meeting chairman spoke by telephone to a reporter of the Cincinnati Enquirer and told her the vote was 11-2 in favor of rejection.<sup>4</sup>

At 5:35 p.m., January 10, 1986, another police officer arrived and was allowed to cast a ballot in the presence of other officers. His ballot was opened in the presence of the other officers.<sup>5</sup>

---

1F.F. 6.

2F.F. 7.

3F.F. 8.

4F.F. 9.

5F.F. 10.

On January 10, 1986, at 7:00 p.m., the meeting chairman was contacted by a reporter from the Hamilton Journal News. The chairman told the reporter the results of the vote were 11-2 in favor of rejection.<sup>6</sup>

On or about January 20, 1986, the chairman told the director of the Miami University's Hamilton campus that the vote was 11-2 in favor of rejection.<sup>7</sup>

A vote of 12-2 was certified to the State Employment Relations Board on Monday, January 13, 1986. The employer questions the timeliness of the certification. That is not in doubt. The propriety of the election is.

III

An election of an employee organization on a fact-finder's report is essentially an internal affair. However, Ohio Administrative Code 4117-9-05(K) specifies certain requirements for the conduct of the election. The code reads in pertinent part, "A secret ballot shall be conducted by the exclusive representative at the date, time, and places set forth in the notice....The ballots shall be tallied immediately upon the conclusion of the election." Once the ballots have been tallied, the election process is concluded and closed to further balloting.

In the instant case the ballots were tallied immediately upon the conclusion of the election and the results announced by the chairman were 11-2, one vote short of those needed for rejection.

Five minutes after the results were announced, another officer, who arrived late for the meeting, was permitted to vote. His vote brought the

---

<sup>6</sup>P.P. 12.

<sup>7</sup>P.P. 13.

vote to 12-2 for rejection, enough to meet the three-fifths required by the statute.

The Board does not view the counting of the fourteenth vote after the ballots had been tallied as interference with the conduct of the election, which could give rise to an unfair labor practice charge. However, this Board considers the fourteenth vote invalid since it jeopardizes the safeguards established in O.A.C. 4117-9-C5(K).

IV

Assuring the integrity of elections on fact-finding reports and protecting them from manipulation is one of SERB's responsibilities.

The action of the employee organization, in the instant case, in accepting an additional vote after the ballots had been tallied threatens the integrity of the election process.

The vote is ruled invalid and the fact-finder's report is deemed accepted.

Day, Chairman, and Sheehan, Vice Chairman, concur.