

86-032 Feb

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Newton Falls Exempted Village School District,

Petitioner,

and

Ohio Association of Public School Employees, Chapter No. 281,
APSCME, AFL-CIO,

Respondent.

CASE NUMBERS: 86-MED-2-0140
86-ULP-9-0317

DENIAL OF REQUEST FOR DETERMINATION OF UNAUTHORIZED STRIKE AND
FINDING OF PROBABLE CAUSE

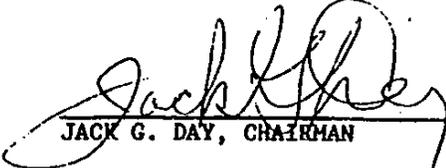
Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix;
September 4, 1986.

This case is before the Board on the employer's Notice of Strike and Request For Determination of Unauthorized Strike filed pursuant to Ohio Revised Code Section 4116.23 in September 2, 1986.

The Board conducted a hearing in this matter on September 4, 1986. The Board finds that the preponderance of the evidence does not show that an unauthorized strike took place. The Board finds probable cause in Case No. 86-ULP-9-0317. An opinion has been written in this case and is incorporated by reference.

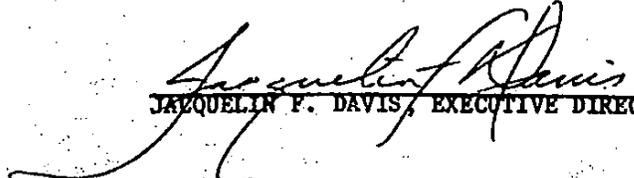
It is so directed.

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 5th day of September, 1986.



JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

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OPINION

Day, Chairman:

The subject case came on for hearing on the employer's Notice of Strike and Request for Determination of Unauthorized Strike filed pursuant to R.C. 4117.23 at 2:34 p.m. on September 2, 1986.

Both parties appeared by Counsel on September 4, 1986, and were given full opportunity to present legal and factual positions. Facts were presented by written stipulation (St. Ex. No. 1) and by oral argument under Counsel's agreement that facts stated by counsel in argument would be treated as though adduced through witnesses.

The Board finds that the proponent's proof of unauthorized strike action must be made by a preponderance of the evidence.

In this case, putting the management's claim in its most favorable light, it has not proven an unauthorized strike by a preponderance of the evidence. First, the workers in question returned to work after one day. Second, the mere fact that some persons in the unit admittedly did not report to work stations on September 2, 1986, does not, without more, establish a connection between work absence and concerted action to remain away.

However, the stipulation of facts, coupled with the conflict of facts established in oral argument, provide probable cause to believe that the unfair labor practice charged in 86-ULP-9-0317 has enough merit to warrant a hearing. Accordingly, probable cause is found and complaint will issue in due course.

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

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