

76-033 ~~54~~
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Association of Painesville Township, OEA/NEA,
Petitioning Employee Organization,

and

Ohio Association of Public School Employees, AFSCME, AFL-CIO,
Incumbent Employee Organization,

and

Painesville Township Local Board of Education,

Employer.

CASE NUMBER: 86-REP-5-0163

DENIAL OF MOTION
(Opinion Attached)

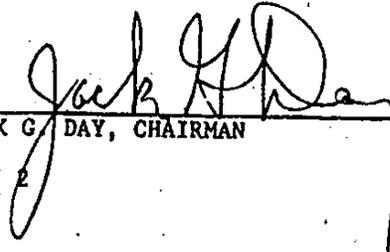
Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix;
July 31, 1986.

The Association of Painesville Township, OEA/NEA (AFT/OEA) has filed a Petition for Representation Election seeking to displace the Ohio Association of Public School Employees, AFSCME, AFL-CIO (OAPSE) as the exclusive representative of a unit of employees of the Painesville Township Local Board of Education (Employer). Although the AFT/OEA had filed the requisite showing of interest, OAPSE, the incumbent, subsequently submitted "revocation cards" in which certain employees stated that they wished to revoke their previous statements of support for AFT/OEA. OAPSE filed a Motion to Dismiss, contending that the revocation cards reduced the initial showing of interest below the thirty percent (30%) required by Ohio Revised Code Section 4117.07(A).

For the reasons stated in the attached opinion, incorporated by reference, the Board denies OAPSE's motion and remands the matter to the Labor Relations Department for further processing in an attempt to obtain a Consent Election Agreement.

It is so directed.

DAY, Chairman, and Fix, Board Member, concurring. SHEEHAN, Vice Chairman, dissents.



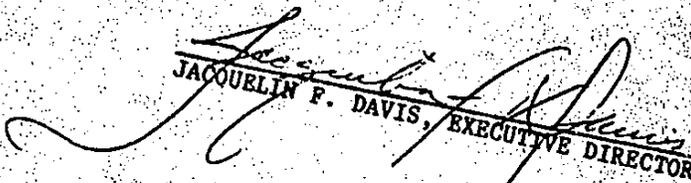
JACK G. DAY, CHAIRMAN

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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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STATE OF OHIO
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In the Matter of
Association of Painesville Township, OEA,
Employee Organization,
and
Ohio Association of Public School Employees/
American Federation of State, County and Municipal
Employees, AFL-CIO
Incumbent Organization,
and
Painesville Local Board of Education,
Employer.

CASE NUMBER: 86-REP-5-0163

OPINION

Fix, Board Member:

This case is concerned with one issue:
Is there a question of representation?

The answer is yes for the reasons set forth below.

I

An employee organization, seeking to displace the incumbent organization
as exclusive representative, filed with the State Employment Relations Board

(SERB), a petition for representation election supported by a 30% showing of interest as required by R.C. 4117.07(A)(1).¹

The incumbent organization subsequently filed a motion to dismiss the petition and also submitted "revocation cards" in support of the motion. The incumbent organization argues that the number of revocation cards it filed with SERB reduces the initial showing of interest below the required 30%, and that this result obviates the need for a determination on the question of representation.

II

The employee organization met the statutory requirement of 30% showing of interest. The incumbent organization's motion to dismiss the representation election petition and submission of revocation cards occurred after the initial showing of interest was filed. The Ohio statute is silent on the subject of revocation cards relative to a showing of interest.

In a Florida case involving revocation cards as a basis for challenging a showing of interest, the Florida Public Employee Relations Commission (PERC) stated in pertinent part:

"Further, a showing of interest is not subject to attack on the grounds that the signatures on which it was based have been revoked or withdrawn. Whether particular employees have changed their

¹R.C. 4117.07(A)(1):

"When a petition is filed, in accordance with rules prescribed by the State Employment Relations Board:

"(1) By any employee or group of employees, or any individual or employee organization acting in their behalf, alleging that at least thirty per cent of the employees in an appropriate unit wish to be represented for collective bargaining by an exclusive representative, or asserting that the designated exclusive representative is no longer the representative of the majority of employees in the unit, the board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, provide for an appropriate hearing upon due notice to the parties."

minds about union representation is best resolved on the basis of an election by secret ballot."²

III

In the instant case, the employee organization fulfilled the statutory requirements for seeking an election. A change of mind by some union members as to whom they preferred as exclusive representative is not sufficient grounds to negate a showing of interest. Indeed, this vacillation merely reenforces the question of representation issue.

The motion to dismiss the representation election petition is denied.

Day, Chairman, concurs. Sheehan, Vice Chairman, dissents.

²Mary Pamela Tibbetts v. Communications Workers of America, 4 FPER 4337 (1978); Fred Fini and Laborers International Union of North America, AFL-CIO, Local #517 (City of Daytona Beach), 4 FPER 4036 (1976).