STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

District 925/Service Employees International Union,

Employee Organization,

and

Cuyahoga Community College,

Employer.

CASE NUMBER: 85-VR-07-3932
85-RC-07-3941

DENIAL OF MOTIONS
(Supplemental Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; November 13, 1986.

On October 22, 1986, the Board issued a directive and opinion in the above-referenced case. Subsequently, the Cuyahoga Community College (Employer) filed with the Board a motion to stay proceedings pending the resolution of its motion for reconsideration and a motion for reconsideration and request for oral argument.

The motion for reconsideration and request for oral argument is denied. The motion to stay proceedings is denied as moot. Supplemental opinion to the one issued on October 22, 1986 is attached and incorporated by reference.

No later than December 5, 1986, the Employer shall serve upon the Employee Organization and file with the Board an alphabetized eligibility list stating names and home addresses of all employees eligible to vote as of the pay period ending just prior to September 11, 1986, in the unit determined to be appropriate in the Board's directive in the above-referenced case of October 22, 1986.

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 November, 1986.

JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

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OPINION

Sheehan, Vice Chairman:

On October 28, 1986 and October 31, 1986, the Cuyahoga Community College (Employer or Movant) filed two motions, respectively, with the State Employment Relations Board (SERB or Board). The first motion asked the Board to stay all proceedings pending resolution of its second motion to reconsider and to hear oral arguments.

The motions followed the Board's decision and its Direction of Election on October 22, 1985, of the petitioned-for unit of all part-time employees[1] of the Cuyahoga Community College.

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[1] Excluded from the unit were:
a) Those employees excluded by mutual stipulations of the parties (Stipulation No. 8 of Hearing Officer's Recommended Determination).
b) "Students" who work less than fifty percent of the normal year in the employees' bargaining unit. (Hearing Officer's Conclusion of Law No. 4.)
c) Those who meet the definitions of seasonal or casual are determined by the State Employment Relations Board, pursuant to O.R.C. Section 4117.01(C)(3). (Hearing Officer's Conclusion of Law No. 5.)

In its second motion, movant challenged, and correctly so, a citation in the initial opinion. The author acknowledges the error. The proper citation from Westinghouse Air Brake[2] is as follows:

> "Nevertheless, in a citation such as this, we will recognize a residual unit of all remaining unrepresented technical employees. Here, no other union seeks to represent the residual technicals and they will go unrepresented if we dismiss the petition insofar as it seeks to represent them."

The Board had determined that the elements and conditions in the instant case were sufficient to consider it a residual unit and treat it as such. The correctness of that decision was countenanced by the absence of an acceptable alternative to the proposed unit and the near certainty that these employees would go unrepresented if their petition were denied. Apart from the movant's challenge to the citation, no new issues were raised. Consequently, the Board reaffirms it's earlier decision.

Finally, the employees' petitions have been in the Board's processes for over sixteen months. It is indeed time the employees are given the opportunity pursuant to 4117.03(A)(1)[3] to freely express their choice for or against representation.

For these reasons, the motion to reconsider and to hear oral arguments is denied. The motion to stay proceedings pending resolution of the motion to reconsider is moot.

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[2] Westinghouse Air Brake Co., 119 NLRB No. 169, 41 LRRM 1307 (1958).

[3] 4117.03(A)(1) provides:

> "Public employees have the right to:
> (1) Form, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in, except as otherwise provided in Chapter 4117. of the Revised Code, any employee organization of their own choosing;"

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85-RC-07-3941

DIRECTION OF ELECTION
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; September 11, 1986.

District 925/Service Employees International Union (Employee Organization) filed a Request for Voluntary Recognition. The Employer, Cuyahoga Community College, filed a responsive Petition for Representation Election. The matter was directed to hearing. The Board has reviewed the record, the hearing officer's recommendation, exceptions to the recommendation, cross-exceptions and response. For the reasons set forth in the attached opinion, incorporated by reference, the Board approves the hearing officer's findings of fact, amends conclusion of law #3 to read that "a bargaining unit of all part-time employees of the Cuyahoga Community College subject to the stipulated exclusions herein, is an appropriate unit for purposes of collective bargaining pursuant to O.R.C. Section 4117.06(B)," adopts conclusions of law numbers 1, 2, 4, 5, and 3 as amended, and directs an election in the above-mentioned appropriate unit to be held at the place, dates and times to be determined in consultation with the parties.

No later than October 31, 1986, the Employer shall serve upon the Employee Organization and file with the Board an alphabetized eligibility list stating names and home addresses of all employees eligible to vote as of the pay period ending just prior to September 11, 1986.

It is so directed.

DAY, Chairman; SHEEHAN, Vice Chairman; and FIX, Board Member, concur.

Jack G. Day

JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 22nd day of October, 1986.

Jacqueline F. Davis

JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

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OPINION

Sheehan, Vice Chairman:

I

The threshold issue in the instant case is whether a unit consisting of "all regular part-time staff and tutors at Cuyahoga Community College" is an appropriate unit for the purposes of collective bargaining pursuant to O.R.C. Section 4117.06. Attendant issues are: 1) whether the employees identified as "students" are properly included in the proposed unit, and 2) whether part-time employees who work less than twenty hours per week or one thousand hours per year should be included.

Except for those employees stipulated by the parties to be excluded, the parties stipulated that all other part-time employee classifications are properly included in the proposed bargaining unit.[1]

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[1]Stipulation Nos. 8, 9, 10, and 11.

II

The hearing officer found the proposed unit to be inappropriate but, should the Board find otherwise, fashioned his recommendation to exclude part-time employees who are "students" and work less than fifty percent of the normal year in the employees' bargaining unit and to include part-time employees who work less than twenty hours per week or one thousand hours per year unless they meet the definition of "seasonal" or "casual" as determined by the State Employment Relations Board.[2]

III

For reasons adduced below, the Board does not concur with the hearing officer's conclusions.[3] The Board finds the proposed unit to be an appropriate unit for the purpose of collective bargaining pursuant to O.R.C. 4117.06. The Board does concur with the hearing officer's Conclusions of Law No. 4 and No. 5.[4]

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[2]Case 84-RC-04-0080, OCSEA v. Hamilton County Department of Human Services.

[3]Hearing Officer's Conclusion of Law No. 3:
"A bargaining unit of "all part-time employees of the Cuyahoga Community College," subject to the stipulated exclusions herein, is not an appropriate unit for purposes of collective bargaining pursuant to O.R.C. Section 4117.06(B).

[4]Conclusions of Law:
"4. Part-time employees who are "students" and work more than fifty percent of the normal year in the employees' bargaining unit are "public employees" as defined in O.R.C. Section 4117.01(C). "Students" who work less than fifty percent of the normal year in the employees' bargaining unit are properly excluded pursuant to O.R.C. Section 4117.01(C)(1).
"5. Part-time employees who work less than twenty hours per week or one thousand hours per year shall not be excluded from the bargaining unit unless they meet the definition of "seasonal" or "casual" as determined by the State Employment Relations Board, pursuant to O.R.C. Section 4117.01(C)(3)."

IV.

The employees in the proposed unit are all public employees pursuant to 4117.01(C)[5] and, as such, enjoy the full exercise of rights as set forth in 4117.03(A)(1) through (5).[6] The employer raised several objections to the appropriateness of the unit, the thrust being that the employees do not form a cohesive group but comprise groups of miscellaneous employees having only in common their lack of representation. Even if this argument were essentially correct, which the Board does not acknowledge, the proposed unit can still be considered appropriate as a residual one. The National Labor Relations Board (NLRB) has confronted the issue of residual units. In Westinghouse Air Brake Co.,[7] the Board held:

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[5]O.R.C. 4117.01(C):
"'public employee' means any person holding a position by appointment or employment in the service of a public employer, including any person working pursuant to a contract between a public employer and a private employer and over whom the national labor relations board has declined jurisdiction on the basis that the involved employees are employees of a public employer except:..."

[6]O.R.C. 4117.03(A):
"(1) Form, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in, except as otherwise provided in Chapter 4117. of the Revised Code, any employee organization of their own choosing;
"(2) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection;
"(3) Representation by an employee organization;
"(4) Bargain collectively with their public employers to determine wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, and enter into collective bargaining agreements;
"(5) Present grievances and have them adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and as long as the bargaining representatives have the opportunity to be present at the adjustment."

[7]Westinghouse Air Brake Co.; NLRB; 1958, 41 LRRM 1307; Suppl'd. 1959, 44 LRRM ... (North American Aviation, Inc.; NLRB, 18988, 42 LRRM 1146)

"Residual groups of unrepresented employees may constitute separate units if (1) they are not part of an existing unit, (2) they constitute all of the unrepresented employees, and (3) they will be unrepresented if the petitioner's request is denied."

Although the SERB is not bound by NLRB decisions, it is swayed by the cogency of the reasoning on a case-by-case basis. The conditions and elements established in Westinghouse (supra) warranting consideration of a residual unit are indeed persuasive. These elements and conditions are all present in the instant case. Of these, the Board finds most compelling the denial of the employees' statutory rights to be represented if the employee organization's petition is denied.

Moreover, all the employees in the proposed unit have the same generic salary scale.[8] The fact that they have different supervisors and are scaled differently with regard to wages does not determine lack of community of interest. If such were the case, wall-to-wall industrial units would never have been found appropriate.

This is not a precedent for finding appropriate units of wall-to-wall part-time employees. In other cases, full-time and part-time employees may be found appropriate. However, in this case, where the full-time employees are presently organized in separate units, the proposed unit is appropriate.[9]

Day, Chairman, and Fix, Board Member, concur.

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[8] FF 9.

[9] See Case 84-VR-07-1543, Toledo Federation of Teachers v. Toledo Board of Education.

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