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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Creed Hall,

Petitioner,

and

Public Employees of Ohio, Local Union No. 450,

Employee Organization,

and

Brown County Engineer's Department,

Employer.

CASE NUMBERS: 85-RD-09-4217

DIRECTIVE DISMISSING PETITION FOR DECERTIFICATION ELECTION, GRANTING
WITHDRAWAL FROM THE CONSENT ELECTION AGREEMENT, SUSPENDING ELECTION
BAR PERIOD, AND DIRECTING THE PARTIES TO PROCEED TO FACT-FINDING
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan and Board Member Fix; May 28, 1986.

This case is before the Board on a motion of Public Employees of Ohio, Local Union No. 450 (PEO) to stay a consent decertification election. In the alternative, the motion asks permission for PEO to withdraw from the consent election agreement.

In September 1984, the PEO was certified by the Board as the exclusive representative of an appropriate unit of employees of the Brown County Engineer's Department (Employer). In March 1985, PEO filed with the Board and served on the Employer a notice to negotiate. The parties proceeded to fact-finding under Ohio Revised Code Section 4117.14. A fact-finder selected by the parties was appointed by the Board in July 1985, after expiration of the ninety day negotiation period. The Employer then refused to participate in the fact-finding process and, on August 19, 1985, filed suit in the Court of Claims to enjoin the Board from proceeding with application of the dispute settlement procedures. The Court of Claims granted a preliminary injunction. On May 12, 1986, the Court of Claims denied a permanent injunction, holding that the parties and the Board should proceed with the fact-finding process.

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As a result of the Court of Claims' ruling, the PEO filed the motion at issue. For reasons stated in the attached opinion (incorporated by reference), the PEO is permitted to withdraw from the consent agreement by Board, sua sponte, vacates its approval of the consent election agreement and cancels the decertification election. The petition for decertification election is dismissed and the parties are directed to proceed to fact-finding in related Case No. 85-MF-03-3224. The election bar is extended in accordance with the terms of the attached opinion.

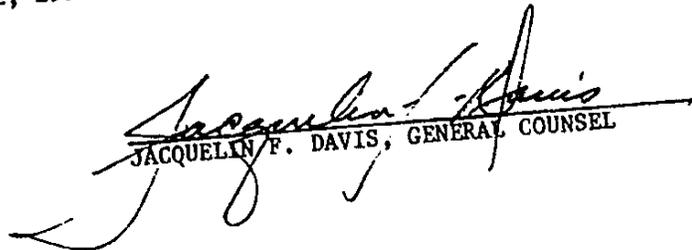
It is so directed.

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 June, 1986.



JACQUELIN F. DAVIS, GENERAL COUNSEL

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OPINION

Day, Chairman:

This case is here on the motion of Public Employees of Ohio, Local Union No. 450 (PEO or union) to stay a consent decertification election. In the alternative the motion asks permission for PEO to withdraw from the consent election agreement. The consent came after the filing of a decertification petition in Case No. 85-RD-09-0427.

For reasons adduced below, the PEO withdrawal is permitted, the State Employment Relations Board (SERB or Board), sua sponte, withdraws approval of the consent election agreement and the petition for decertification is dismissed. The parties are ordered to proceed to fact finding in Case No. 85-MF-03-3224.

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The factual background of this case is fundamental to its disposition. These are the essential facts:

1. On Sept. 13, 1984, PEO was certified as the exclusive bargaining representative after winning a representation election conducted by the State Employment Relations Board (SERB or Board) in an appropriate unit of employees in the Brown County Engineer's Department (Employer).
2. On or about March 22, 1985, PEO filed a notice to negotiate with both SERB and the Employer.
3. The contract sought by PEO was a first contract. For that reason a 90-day period for negotiation was initiated by the notice to negotiate, R.C. 4117.14(B)(2).
4. In a letter dated May 16, 1985, SERB's Bureau of Mediation presented the parties' representatives the names and biographies of potential members of a fact-finding panel. The same letter advised the parties that if they could not agree on a fact-finder of three or one by May 23, 1985, SERB's Bureau would make the appointment.
5. In a letter dated May 24, 1985, the Employer's representative notified the Administrator of the Bureau of Mediation that the parties had agreed upon a single fact-finder, Mr. Frank Keenan.
6. A lack of communication resulted in Mr. Keenan not being appointed by SERB until July 16, 1985.
7. The fact-finder appointment was outside the 90-day negotiation period.

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8. In a letter dated August 5, 1985, Fact-finder Keenan notified the parties that the fact-finding hearing would convene on August 10, 1985, in Georgetown, Ohio.
9. The Employer refused to participate in the fact-finding process and filed suit on August 19, 1985, in the Court of Claims. The suit sought a preliminary, and ultimately a permanent, injunction against SERB and others to prohibit their "appointing of a fact finding panel" James G. Beasley, etc. v. State Employment Relations Board, et al. (1986, Case No. 85-07846) p. 1. The issue was defined by the court: "whether the time period for the ninety day negotiation for a collective bargaining agreement is a directory or mandatory provision [R.C. 4117.14(B)(2)]." *Id.*
10. The Court of Claims held the statutory provision to be directory only. The entry was journalized and filed on May 12, 1986.

One salient fact emerges from the recital of the essential ones. The certified bargaining representative, through no fault of its own, has been foreclosed from the utilization of the impasse procedures provided by R.C. 4117.14 for the purpose of facilitating collective bargaining.

From at least August 19, 1985, until May 12, 1986, the employer's suit blocked fact-finding. No perjorative implication flows from that. The employer was perfectly within its rights in testing the legal implications of SERB's failure to make a timely appointment. However, the Court of Claims held SERB's omission not to be a fatal flaw. Nonetheless, PEO lost access to R.C. 4117.14 procedures during the testing interval. Arguably, it

also lost the one-year election bar defense¹ acquired when it won the representation election resulting in certification.

Thus, it appears that all parties to this delay (with the possible exception of SERB) have behaved faultlessly. But PEO, unless granted some relief, must run the guantlet of a decertification election.² And this despite the fact that the Court of Claims found, in effect, that a fact-finding appointment beyond the ninety-day period neither fatally marred the impasse process nor warranted the employer's refusal to participate in it.

Ohio Administrative Code, 4117-1-01(B) 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.)

The statutory objectives are both reflected in Ohio Administrative Code Rule 4117-1-01(B) and supplemented by it. And it is SERB's view that "orderly and constructive relationships" between the public employees and public employer involved in the instant proceedings will be promoted by

¹R.C. 4117.07(C):

"(6) The board may not conduct an election under this section in any appropriate bargaining unit within which a board-conducted election was held in the preceding twelve-month period, nor during the term of any lawful collective bargaining agreement between a public employer and an exclusive representative."

²PEO agreed to a consent election after the decertification petition was filed but claims the decertification process "has been caused in large part by the Employer's refusal to lawfully proceed to fact finding." Whether the cause and effect can be established or not, it is clear, absent some action by the Board, that the union has been shut out of impasse assisted bargaining unless it wins a second election.

(1) treating the election bar year as tolled during the period from the date of filing of suit in the Court of Claims until the decision in the case,³ (2) permitting PEO to withdraw from the consent election agreement, (3) withdrawing approval of the consent election, (4) dismissing the petition for election⁴ as premature because of an election bar, and (5) ordering the parties to proceed to fact-finding under R.C. 4117.14.

It is so ordered.

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

³August 19, 1985 - May 12, 1986.

⁴Case No. 85-RD-09-0427.