

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SEEB OPINION 87-0  
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87-022

In the Matter of  
Eaton School Support Personnel, OEA/NEA,  
Rival Employee Organization,  
and  
Ohio Association of Public School Employees/ AFSCME, AFL-CIO,  
Incumbent Employee Organization,  
v.  
Eaton City Board of Education,  
Employer.

CASE NUMBER: 87-REP-3-0081

DIRECTION OF ELECTION  
(Dissenting Opinion attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Latané;  
August 20, 1987.

On March 3, 1987, the Eaton School Support Personnel, OEA/NEA (Rival Employee Organization) filed a Petition for Representation Election seeking to displace the Ohio Association of Public School Employees/AFSCME, AFL-CIO (Incumbent Employee Organization) as the exclusive representative for certain employees of the Eaton City Board of Education (Employer).

The Employer objected to the proposed bargaining unit and requested a hearing to determine whether certain classifications have supervisory or confidential status and thus should be excluded from the bargaining unit. The Rival Employee Organization responded to the Employer's objections stating the deemed certified unit, for which the petition was filed, is appropriate.

The Board directs an election in the deemed certified unit:

- INCLUDED: Employees assigned to the following positions: Account Clerk-Budget, Account Clerk-Payroll, Bus Driver, Cafeteria Manager, Cafeteria Worker-Full-Time, Cafeteria Worker-Part-Time, Custodian, Educational Aide-Classroom, Educational Aide-Library, Educational Aide-Study Hall, Fireman, Maintenance Worker, Mechanic, Secretary, exclusive of Superintendent's Secretary, Business Manager's Secretary, and Treasurer's Secretary.

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EXCLUDED: All employees whose classification is not listed above. Those classifications which on the effective date of the Agreement are represented by other established bargaining units. Temporary, seasonal and part-time employees other than regular part-time employees. A part-time employee is defined as an employee who is scheduled to work less than one hundred and twenty (120) days. Confidential, management and supervisory employees.

In the interest of an expedient resolution to the representation issue and the stability of labor relations within the unit, the Board directs an election in the "deemed certified" unit as early as possible. The "deemed certified" unit was constructed and agreed to by the Employer and the Incumbent Organization prior to the effective date of O.R.C. 4117. There is no factual dispute as to which positions are included. The unit has obviously served the parties well. To stay the election until the question raised by the Employer is determined would disrupt the bargaining process for an undetermined period. This is unnecessary. The elections can be held and if appropriateness of the unit issue is not rendered moot by the election, any party may petition the Board for unit clarification or amendment to certification. The Board then, if requested, will review the unit. Meanwhile, the stability of the bargaining process is maintained with minimal interruption.

As required by Ohio Administrative Code Rule 4117-5-07(A), no later than November 16, 1987, the Eaton City Board of Education shall serve on the Ohio Association of Public School Employees and the Eaton School Support Personnel and file with the Board a numbered, alphabetized election eligibility list containing the names and home addresses of all employees eligible to vote as of the pay period ending just prior to August 20, 1987.

The specific dates, places, and times of the election shall be determined by the Administrator of Representation in consultation with the parties.

It is so directed.

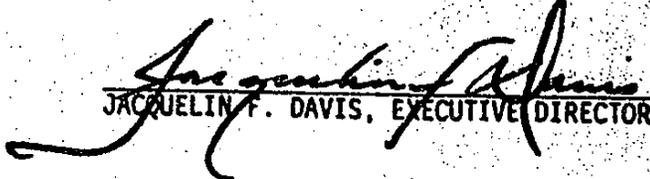
SHEEHAN, Vice Chairman, and LATANE, Board Member, concur. DAY, Chairman; dissents.



WILLIAM P. SHEEHAN, VICE CHAIRMAN

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I certify that this document was filed and a copy served upon each party  
on this 9<sup>th</sup> day of November, 1987.

  
JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

MLO:saml/4944r1-3:12/29/87

STATE OF OHIO  
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Eaton City Board of Education,

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DISSENTING OPINION

Day, Chairman, Dissenting:

Respectfully I dissent from the majority decision not to order a hearing to determine the unit appropriate in the representation election impending in this case. The election contest will be between no representative, an incumbent employee organization, and a challenging union. The incumbent is a union deemed certified pursuant to Temporary Law, Section 4(A).<sup>1</sup> The constituent unit for the subject election is a unit never approved by the State Employment Relations Board (Board or SERB). For the existing unit

<sup>1</sup> Temporary Law 4(A):

"Exclusive recognition through a written contract, agreement, or memorandum of understanding by a public employer to an employee organization whether specifically stated or through tradition, custom, practice, election, or negotiation the employee organization has been the only employee organization representing all employees in the unit is protected subject to the time restriction in division (B) of section 4117.05 of the Revised Code. Notwithstanding any other provision of this act, an employee organization recognized as the exclusive representative shall be deemed certified until challenged by another employee organization under the provisions of this act and the State Employment Relations Board has certified an exclusive representative."

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was in place when the incumbent achieved the "deemed" certification. The employer challenges the appropriateness of the unit. This statement of background moves the discussion to the "nub" of the issue.

I

The critical point of difference between the majority and the minority in this case lies in the answer to the question:

Should the bargaining unit represented by a "deemed certified" incumbent be exempt from a SERB determination of an employer's objection to appropriateness when the incumbent is properly challenged in a representation election pursuant to Section 4(A) of the temporary law?

The question should be answered "No" for the reasons adduced below.

II

The temporary law provides for challenge "under provisions of the Act." The only difference between a Section 4(A) challenge to a "deemed certified" employee organization's representative status and any other electoral process under R.C. §§4117.05, .06, and .07 is standing. The challenger under 4(A) must be another employee organization. All other electoral processes under the statute remain the same. Accordingly, when a Section 4(A) attack is properly made, i.e., by an "employee organization" and the unit is claimed to be inappropriate, the normative SERB responsibilities attach and the Board must determine the unit appropriate. When necessary a hearing must be ordered to assist that determination. This assumes, of course, that the unit issue raises "a reasonable cause to believe that a question of representation exists," R.C. §4117.07(A)(2).

It is a consideration of prime significance that Chapter 4117 consistently and unvaryingly allocates appropriate unit determinations

exclusively to SERB except when a "deemed certified" incumbency occurs.<sup>2</sup> Thus, even an "agreed" unit in a consent election is subject to SERB review and approval.<sup>3</sup> And, the Board could not legally certify a successor employee organization under Section 4(A) in a unit including categories of employees whose combination in the same unit is forbidden.<sup>4</sup> Yet this consequence is a clear possibility if the principle set at large by the majority in this case prevails. Among other effects the idea that the Board should not review units of a challenged "deemed certified" incumbency would effectively block craft claims to representation in a part of a unit held by "deemed certified" incumbents. An election ordered in the total unit could swallow craft claims. Temporary Law Section 4(A) may have been intended to create stability. One may doubt that it was intended to make ice.

Significantly, Rule 4117-5-05(D) of the Administrative Code provides:

"If the board determines from the investigation that there is a question of majority representation requiring an election and there are no other disputed issues, the board may direct an election without a hearing." (Emphasis added.)

<sup>2</sup>See p.e. 4117.06(A),(B),(C), and (D). Any reliance upon In the Matter of Ohio Nurses Association and University of Cincinnati, Case No. 84-UC-10-2214, 2 OPER 2626, is misplaced. That case involved a petition for clarification not displacement by a rival union. Therefore, the propriety of a SERB determination of a unit appropriate during a rival union's Temporary Law Section 4(A) attack was not considered or decided. This issue could arise either on employer objection or a rival's claim to a unit less or more than that represented by the incumbent. None of these situations was involved in the Ohio Nurses Association case for there was no Section 4(A) challenge raised.

<sup>3</sup>The State Employment Relations Board shall decide in each case the unit appropriate for the purposes of collective bargaining. R.C. 4117.06(A). (Emphasis added.) Of course, there is no "case" under Temporary Law Sections 4(A) and (B) (in a confrontational or competitive sense) until "another employee organization" seeks to oust the "deemed certified" incumbent.

<sup>4</sup>See R.C. 4117.06(D)(1)-(6) for prohibitions and restrictions on combinations.

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In this instance there are "other disputed issues" affecting the unit appropriateness. In this situation the implication of the rule is clear-- there must be no election without hearing on the "other disputed issues."

Because of the foregoing configuration of facts, statute and rule, I would treat the management objections as a motion, find that a party's unit objections provide reasonable cause to believe that an issue exists, overrule the incumbent's motion to dismiss the representation petition on the ground that the continuing propriety of the existing unit raises a question of representation<sup>5</sup> and send the case to hearing on the appropriate unit issue.

All this, in my view, is warranted, indeed demanded, by the board's obligation and exclusive authority to determine appropriate units under Chapter 4117.

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<sup>5</sup>R.C. 4117.07(A)(1). Query, whether management may raise a unit claim by motion under R.C. 4117.07(A)(1), or must resort solely to a challenge by petition under R.C. 4117.07(A)(2)?

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