

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 87-029

151

In the Matter of
Northern Ohio Patrolmen's Benevolent Association,
Employee Organization,
and
Fraternal Order of Police, Niles Lodge No. 22,
Employee Organization,
and
City of Niles,
Employer.

CASE NUMBER: 87-REP-9-0217

DIRECTION OF ELECTION PURSUANT TO CONSENT AGREEMENT
(Opinions attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Latané;
November 19, 1987.

Pursuant to Ohio Revised Code Section 4117.07(B) and Ohio Administrative Code Chapter 4117-5, and for the reasons stated in the opinion attached, incorporated by reference, the Board approves the consent election agreement executed by the parties and directs that a representation election be conducted in accordance with the terms of the consent agreement.

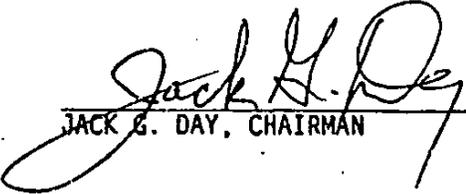
As required by Ohio Administrative Code Rule 4117-5-07(A), no later than December 4, 1987, the City of Niles shall serve on the Northern Ohio Patrolmen's Benevolent Association and the Fraternal Order of Police, Niles Lodge No. 22 and file with the Board a numbered, alphabetized election eligibility list containing the names and home addresses of all employees eligible to vote as of November 4, 1987.

The election shall be held on December 15, 1987.

A Dissenting Opinion relating to this decision is attached.

It is so directed.

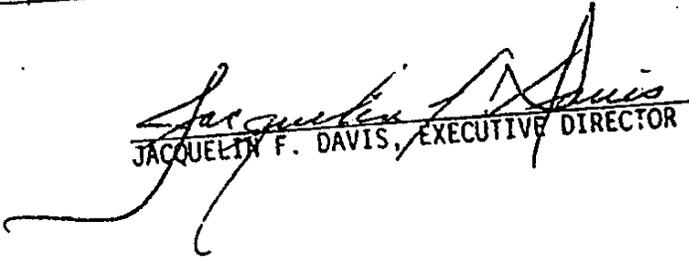
DAY, Chairman and SHEEHAN, Vice Chairman, concur. LATANE, Board Member, dissents.



JACK G. DAY, CHAIRMAN

DIRECTION OF ELECTION
CASE No. 87-REP-9-0217
NOVEMBER 19, 1987
PAGE 2 of 2

I certify that this document was filed and a copy served upon each party
on this 25th day of November, 1987.


JACQUELYN F. DAVIS, EXECUTIVE DIRECTOR

NES:vmc/18720:4/19/88:g1-59E

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD.

In the Matter of
Northern Ohio Patrolmen's Benevolent Association,
Employee Organization,
and
Fraternal Order of Police, Niles Lodge No. 27,
Employee Organization,
and
City of Niles,
Employer.

CASE NUMBER: 87-REP-9-0217

OPINION

Day, Chairman:

The three (3) parties in this case, the Employer, the incumbent union and the rival union, agreed to and signed a consent election agreement with an election date of December 15, 1987. The collective bargaining agreement between the incumbent union and the employer has an expiration date of December 31, 1987. At first blush the contract seems an impediment to the election by consent because Ohio Revised Code (O.R.C.) §4117.07(C)(6) provides: "The Board may not conduct an election under this section in any appropriate bargaining unit ... during the term of any lawful collective bargaining agreement between a public employer and an exclusive representative." At second blush it does not.

In unrefined terms, the question in this case is whether the Board can approve the consent agreement and direct an election because the election

will occur sixteen (16) days prior to the expiration of the collective bargaining agreement. The answer is "yes."

The reason for the affirmative answer is quite simple. The collective bargaining agreement has terminated. This is so because the employer and the incumbent union, when confronted with a challenge from a rival union, had the option to either assert the contract bar or abandon the contract termination date and agree with each other and the challenger to an election. The parties to the collective bargaining contract, in effect, opted out of it and consented to the statutory electoral process which will lead to an early resolution of the representation question.

Both management and the incumbent union had the right to stay with the collective agreement's termination date and assert the contract bar. Neither did. This became evident when they signed the consent agreement. Under these circumstances the existing contract termination date was accelerated to the date of the consent. And nothing in the statute prohibits the State Employment Relations Board from approving the consent agreement (absent a contract) and ordering an election.

This perfectly legal process has the additional merit of assisting the parties in their quest for an expeditious determination of representation rights. A result clearly desired by the management, the incumbent union, and the challenger. The three way consent to an election proves that O.R.C. §4117.07(C)(6) does not apply.

Sheehan, Vice Chairman, concurs.

0343B:d/b:11/24/87:f

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Northern Ohio Patrolmen's Benevolent Association,
Employee Organization,
and
Fraternal Order of Police, Niles Lodge No. 27,
Employee Organization,
and
City of Niles,
Employer.

CASE NUMBER: 87-REP-9-0217

DISSENTING OPINION

Latané, Board Member, dissenting:

I respectfully dissent from the majority vote which approves a consent election to be held within the term of a lawful collective bargaining agreement.

The majority infers from the signing of a Consent Election Agreement that the employer and the incumbent union intended to terminate their collective bargaining agreement earlier than its original expiration date. This inference has no basis.

There is no doubt that two parties to a collective bargaining agreement can agree at any time to terminate their agreement. However, there has to be a clear manifestation of intent and agreement to do so. A Consent Election Agreement means no more and no less than what it says, i.e., that the signing parties wish to have election conducted in a certain unit at a

certain time and place and for certain choices on the ballot. The aim of a consent election agreement is to determine who, if at all, is going to represent certain employees as the exclusive bargaining agent for purpose of collective bargaining.

In this case there is no manifestation that the parties to the collective bargaining agreement intended to do anything more than to have election conducted on December 15, 1987, sixteen days prior to the expiration date of the collective bargaining agreement. Thus, the question is whether the Board should direct election during the term of a lawful bargaining agreement. The answer is "No."

O.R.C. 4117.06(C)(6) clearly and unambiguously states:

"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."

It is bad precedent to open the door to allow elections to be held during the term of a collective bargaining agreement. The collective bargaining statute, Chapter 4117 of the Ohio Revised Code, provides for protection of a contract during its life. Allowing an election to be held while a contract is in effect causes overlapping of different stages of the collective bargaining process. This action could allow a rival employee organization to become the representative of employees in the bargaining unit while another employee organization still has a valid contract with the employer. In such instance, ambiguity could ensue. As an example, if an unfair labor practice or grievance charge were filed during that period, who would represent the employee? Both employee organizations could make a case for either representing or not representing the employee.

O.R.C. §4117.22 mandates liberal construction of Chapter 4117 for "... the purpose of promoting orderly and constructive relationships between all public employers and their employees." Liberal construction in this case could have quite the opposite effect. Holding an election during the term of a collective bargaining agreement for the mere convenience of the parties does not justify overriding a specific legislative prohibition, which in the author's opinion is not permissive.

0341B:1/b:11/24/87:f