

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SEAB OPINION 88-0

156

88-002

In the Matter of

Erie County Care Facility,

Employer,

and

American Federation of State, County and  
Municipal Employees, Ohio Council 8 and Local 3358,  
Employee Organization.

CASE NUMBER: 87-MED-01-0002

DIRECTIVE DENYING MOTION TO REINSTATE  
FACT FINDER'S JURISDICTION  
(Opinion attached.)

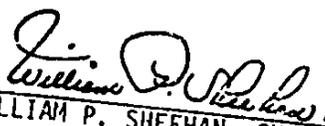
Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;  
January 21, 1988.

On November 12, 1987, the Erie County Care Facility (Employer) filed a Motion to Reinstate Fact Finder's Jurisdiction. The Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (Employee Organization) on November 16, 1987, filed a motion to consolidate the case with several related unfair labor practice cases for investigation.

For the reasons stated in the attached opinion, incorporated by reference, the Employer's motion is denied. The Employee Organization's motion for consolidation is denied as moot.

It is so directed.

SHEEHAN, Chairman; DAVIS, Vice Chairman; and LATANE, Board Member,  
concur.

  
WILLIAM P. SHEEHAN, CHAIRMAN

I certify that this document was filed and a copy served upon each party  
on this 14<sup>th</sup> day of March, 1988.

  
CYNTHIA L. SPANSKI, CLERK

1583b:j1b

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of  
Erie County Care Facility,  
Employer,  
and  
American Federation of State, County and  
Municipal Employees, Ohio Council 8 and Local 3358,  
Employee Organization.

CASE NUMBER: 87-MED-01-0002

OPINION

Davis, Vice Chairman:

This matter is before the Board in consideration of the Erie County Care Facility's "Motion to Reinstate Fact Finder's Jurisdiction." The factual and procedural background of the case follows.

## I

The American Federation of State, County and Municipal Employees, Ohio Council 8 and Local 3358 ("AFSCME") filed with the Board on January 2, 1987, and served upon the Erie County Care Facility ("Employer") on December 30, 1986, a Notice to Negotiate seeking to commence collective bargaining negotiations for a unit of which AFSCME had been newly certified as the exclusive representative.

Negotiations progressed pursuant to the statutory procedures of Ohio Revised Code (O.R.C.) §4117.14. A mediator was assigned on February 13, 1987. A fact finder selected by mutual agreement of the parties was appointed by the Board on March 11, 1987. At that time, numerous issues remained unresolved. As permitted by O.R.C. §4117.14(C)(4)(f), the fact finder and parties engaged in mediation before commencing the formal fact finding process, and all but four issues were resolved. As stated in the Employer's motion, these matters "were signed-off by the parties as tentative agreements." Employer's Motion filed November 12, 1987, page 2. The four remaining issues then were considered by the fact finder and, on April 21, 1987, he issued his report.

The AFSCME membership timely voted to accept the fact finder's report, and this vote was properly certified to the Employer and SERB in accordance with O.R.C. §4117.14(C)(6) and Ohio Administrative Code (O.A.C.) Rule 4117-9-05. The Employer's legislative body - the Erie County Board of Commissioners ("Commissioners") - voted on April 29, 1987, to reject the fact finder's report. Under O.R.C. §4117.14(C)(6) and O.A.C. Rule

4117-9-05, however, the last date for the Commissioners to timely vote for rejection was April 28, 1987.<sup>1</sup> Thus, the vote was not taken within the time limits required by statute and rule. By failing to timely and properly reject the fact finder's report, the Board considers the Employer to have accepted the report and recommendations. The Board formally notified the Employer that the report was "deemed accepted," but the Employer refused to fulfill its obligation to execute a collective bargaining agreement embodying the fact finder's recommendations.

The parties continued discussions in an attempt to adjust a few matters that had been addressed in the fact finder's report, but AFSCME proceeded with these discussions only after specifying that it had not waived its contention that the Employer was obligated to execute the collective bargaining agreement pursuant to the resolution by the fact finder. As a result of these discussions, the Employer in August 1987 submitted to the Commissioners a proposed adjustment to the fact finder's report. The Employer also submitted to the Commissioners all tentative agreements that had been reached prior to fact-finding. The Commissioners questioned two of the tentatively agreed provisions. As stated in the Employer's memorandum:

[b]ecause of concerns in the seniority and conversion of sick leave provisions [items on which tentative agreement had been reached prior to fact-finding], the Commissioners refused to ratify the previously agreed-to tentative agreement. Therefore, the entire agreement was turned down even though the fact finder's issues were agreed to by the Commissioners.

Employer's Motion filed November 12, 1987, page 2.

The Employer asserts that the Commissioners' rejection of provisions that had been tentatively agreed upon prior to acceptance of the fact finder's report creates a new impasse to which O.R.C. §4117.14 applies. The Employer argues that an "area of impasse under the jurisdiction of [the fact finder] still exists," *id.*, page 3, and asks the Board to rule that the fact finder retains jurisdiction over the two issues that the Commissioners rejected.

---

<sup>1</sup>The seven-day voting period is triggered by service of the report, not by receipt as suggested by the Employer. O.R.C. §4117.14(C)(6) specifies that the vote must be taken "not later than seven days after the findings and recommendations are sent..." O.A.C. Rule 4117-9-05(N) further clarifies the requirement by providing that the vote must take place "not later than seven days after the findings, recommendations and summaries of the fact-finding panel are served pursuant to paragraph C of rule 4117-1-02 of the Administrative Code..." (Although this version of the rule was not in effect at the time the Employer acted, the prior version, which then was codified as O.A.C. Rule 4117-9-05(L) and was effective until May 18, 1987, referenced service as the triggering event.)

II

The motion raises this issue: Does both parties' acceptance or deemed acceptance of a fact finder's report preclude reopening of issues upon which the parties had tentatively agreed prior to fact-finding? For the reasons set forth below, the Board concludes that the answer is "Yes" and denies the motion.

III

The Commissioners' attempted rejection of two tentatively agreed provisions was ineffective. All tentatively agreed provisions, including the two that the Commissioners attempted to reject, became firm on April 28, 1987, when the fact finder's report became final as a result of AFSCME's acceptance and the Employer's failure to properly reject the report.

In collective bargaining negotiations, the term "tentative agreement" indicates that the provision is accepted by both sides but that finality on the provision is dependent upon some event or factor. Unless otherwise specified by the parties, the event that gives rise to finality on tentatively agreed language is closure on all unresolved issues. Once closure of unresolved issues is achieved, the tentative quality of previously agreed language is eliminated, and those provisions become a part of the entire package of agreed terms that compose the collective bargaining agreement.

In this case, closure on all outstanding issues was achieved when the fact finder's report became final. When the voting period expired with neither party having properly rejected the fact-finding report, all outstanding issues were resolved and, therefore, closure on the entire package was attained. All tentative agreements then lost their impermanence, and the entire process of bargaining was completed. At that time, the Employer's duty to execute the collective bargaining agreement arose.<sup>2</sup>

To allow reopening of tentatively resolved issues after acceptance of a fact finder's report could enable one party to draw out negotiations ad infinitum, delaying or effectively blocking the solidification of collective bargaining rights. The processes set forth in O.R.C. 64117.14 are structured to produce timely, efficient impasse resolution and the prompt

<sup>2</sup>That the parties in this case were able to work productively (although under protest by the union) to seek mutual agreement on possible alteration of a fact finder's recommendation does not alter the parties' obligation to execute an agreement incorporating the fact finder's recommendations. AFSCME had participated in the "adjustment" discussions under protest and had been endeavoring, under stated objections, to achieve positive movement in the face of the Employer's resistance.

plementation of a collective bargaining agreement that embodies the  
atters agreed and resolved. The precise timelines imposed in the statute  
emonstrate the legislative intent to do precisely the opposite of what the  
employer seeks - to obtain prompt and complete finality to enable the  
parties to settle their disputes and move on to a period of stable labor  
management relations. The Employer, through its motion, would elongate the  
period of process and negate the essence of the statutory design.

Sheehan, Chairman, and Latané, Board Member, concur.

0353B:d/b:3/11/88:f