

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Association of Airport Fire Fighters,
Employee Organization,
and
Ohio Council 8, American Federation
of State, County and Municipal Employees, AFL-CIO,
Employee Organization,
and
City of Cleveland,
Employer.

CASE NUMBER: 87-REP-3-0064

DIRECTIVE REMANDING CASE TO HEARING
(Opinion attached)

Before Chairman Sheehan and Board Member Latané; January 7, 1988.

On March 3, 1987, the Association of Airport Fire Fighters (AAFF) filed a petition for representation election seeking to carve a unit of all full-time and regular part-time airport safetyemen employed by the City of Cleveland (Employer) out of a larger existing bargaining unit presently represented by Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME). The case was directed to hearing.

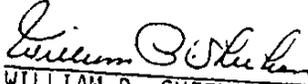
The Board has reviewed the record, the hearing officer's recommended determination and AFSCME's exceptions. For the reasons stated in the opinion attached, incorporated by reference, the Board adopts the Findings of Fact and Conclusions of Law Nos. 1, 2 and 3, reverses Conclusion of Law No. 4 to read: "The Association of Airport Fire Fighters is an employee organization as defined in Ohio Revised Code (O.R.C.) §4117.01(D)" and dismisses Conclusion of Law No. 5.

The Board remands this case to hearing to determine the appropriate unit issue.

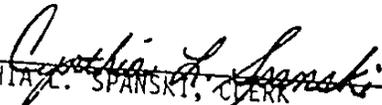
It is so directed.

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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 19th day of April, 1988.


CYNTHIA L. SPANSKI, CLERK

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Association of Airport Fire Fighters,
Employee Organization,

and

Ohio Council 8, American Federation of State, County
and Municipal Employees, AFL-CIO,

Incumbent Employee Organization,

and

City of Cleveland,

Employer.

CASE NUMBER: 87-REP-3-0064

OPINION

Latané, Board Member:

I

This case involves an organization, the Association of Airport Fire Fighters (AAFF), which sought to displace Ohio Council 8, American Federation of State, County and Municipal Employees, (AFSCME) AFL-CIO as the exclusive representative for a bargaining unit consisting of all full-time and regular part-time airport safetyemen employed by the City of Cleveland.

On March 3, 1987, the AAFF filed a petition for representation election seeking to displace Ohio Council 8, AFSCME, AFL-CIO, Local 100 (incumbent union), asserting that a bargaining unit consisting of all full-time and regular part-time airport safetyemen employed by the City of Cleveland is an appropriate unit. The petition seeks representation status for a classification of employees that is currently included in a larger unit containing several classifications of employees of the City of Cleveland.

On June 18, 1987, the State Employment Relations Board (SERB) directed the matter to hearing for determination of an appropriate bargaining unit. The case was assigned to Hearing Officer Chester C. Christie and an evidentiary hearing was conducted on September 22, 1987.

At the hearing, the incumbent union moved for dismissal of the petition on the basis that the AAFF is not an employee organization as defined in O.R.C. §4117.01(D).

The Hearing Officer granted the motion and recommended dismissal of the petition for representation election filed by the AAFF.

II

The issue is whether the AAFF is an employee organization as defined in O.R.C. §4117.01(D). The Board disagrees with the Hearing Officer's conclusions, and notes that the issue is one of first impression which warrants definition by the Board.

III

An employee organization is defined in Section 4117.01(D) as:

"'Employee organization' means any labor or bona fide organization in which public employees participate and which exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, hours, terms and other conditions of employment."

On its face, the requirements for a group to qualify as an "Employee Organization" within the meaning of O.R.C. §4117.01(D) are quite plain. The only requisites are 1) it must be a group in which employees participate and 2) it must exist for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, hours and terms and other conditions of employment. No other limitations are imposed. An employee organization need not have a constitution or by-laws, elected officials, regular meetings, dues or other formal structure in order to participate in the collective bargaining process.

The AAFF consists of approximately 22 firefighters employed at Cleveland Hopkins Airport. It has been in existence for approximately two years, having been created for the purpose of initiating legal proceedings against the City of Cleveland in a wage and hour dispute and for filing the petition which is the subject of this case.¹

Even though it has no constitution and no membership meetings, because it is a group of public employees which formed for the purpose of dealing with an employer in a wage and hour dispute, it does meet the requirements of O.R.C. §4117.01(D).

An employee organization should not be barred, solely because it is in its formative stages, from seeking to become, or becoming, the exclusive representative of a body of employees.

Section 2(5) of the National Labor Relations Act (NLRA) defines a labor organization as:

"Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

One may safely infer that the Ohio statutory language in O.R.C. §4117.01(D), which is almost identical to the above, was borrowed from Section 2(5) of the NLRA. While the NLRB found in Columbia Transit Corp., 237 NLRB 1196, 99 LRRM 1114 (1978), and the cases cited therein, that there are only two requirements for meeting the standard of being a legitimate employee organization. One is the requirement of employee participation, and the second is the purpose of dealing with employers over wages, hours,

¹F.F. 2.

conditions, rates, or grievances. The AAFF meets both of these conditions. Further the United States Supreme Court held in NLRB v. Cabot Carbon Co., 360 U.S. 203 (1959), 44 LRRM 2204 that, under the NLRA, an employee group could meet the test of validity as a labor organization without having ever negotiated a collective bargaining agreement.

IV

The Hearing Officer found further confirmation that the AAFF is not an employee organization in finding that the AAFF failed to meet the indicia required under O.R.C. §4117.19² which state in pertinent part:

"(A) Every employee organization that is certified or recognized as a representative of public employees under Chapter 4117. of the Revised Code shall file with the State Employment Relations Board a registration report, signed by its president or other appropriate officer....

and

(B) Every employee organization shall file with the board an annual report."

Failing to meet the requirements of O.R.C. §4117.19 does not prevent the AAFF being an employee organization, as O.R.C. §4117.19, unlike O.R.C. §4117.01(D) is not a definition section but a section of statutory duties that an employee organization has to perform. Moreover, O.R.C. §4117.19(A) requires only that a certified employee organization comply with this section.

While O.R.C. §4117.19(B) might be construed strictly and separately from O.R.C. §4117.19(A) as requiring every employee organization, certified or not, to file an annual report with SERB, to do so defies logic and the liberal construction provided SERB under O.R.C. §4117.22.

The Board finds that neither a registration report nor an annual report is required of non-certified employee organizations. To require an annual

report from a fledgling employee organization such as the AAF. It would have a chilling effect on such an organization's development and participation in the collective bargaining process. (This determination is not meant to imply that the Board will look favorably on non-compliance with O.R.C. §4117.19 from certified employee organizations.)

v

The Board concludes that at the very minimum an employee group qualifies as an employee organization within the meaning of O.R.C. §4117.01(D) if:

1) There is participation by a group of employees [as defined in O.R.C. §4117.01(C)] of the public employer and

2) The group exists for the purpose of dealing with the employer, in whole or in part, over bargainable issues as defined in O.R.C. §4117.03.

A non-certified employee organization is not required to file a registration report nor an annual report.

These are minimum standards applied to the instant case. They are considered by the Board to be subject to modification if the need arises.

For these reasons, the Board reverses the Hearing Officer's conclusions and finds:

1) The Association of Airport Fire Fighters is an employee organization as defined in O.R.C. §4117.01(D).

2) The case is remanded to the Hearing Officer for determination of an appropriate bargaining unit.

Sheehan, Chairman, and Davis, Vice Chairman, concur.