

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SERO OPINION 88-1

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In the Matter of  
Mad River-Green Local Board of Education,  
Employer,  
and  
Mad River-Green Local Education Association,  
Employee Organization.

CASE NUMBER: 88-STK-09-0001

ISSUANCE OF OPINION

88-016

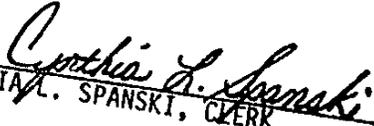
Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;  
September 10, 1988.

On September 12, 1988, pursuant to O.R.C. Section 4117.23, the Board  
issued its determination in this case. The opinion relating to and  
referenced in that determination is attached.

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 29<sup>th</sup> day of September, 1988.

  
CYNTHIA L. SPANSKI, CLERK

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of  
Mad River-Green Local Board of Education,  
Employer,  
and  
Mad River-Green Local Education Association,  
Employee Organization.

CASE NUMBER: 88-STK-09-0001

DETERMINATION

Before Chairman Sheehan, Vice Chairman Davis and Board Member Latané,  
September 10, 1988.

This case comes before the State Employment Relations Board (SERB) upon the Motion for Determination of Unauthorized Strike filed by the Mad River-Green Local Board of Education (Employer) on September 9, 1988, at 12:51 p.m. SERB is required, pursuant to Ohio Revised Code (O.R.C.) 4117.23, to issue its determination with seventy-two (72) hours.

Upon consideration of the original filings, stipulations, exhibits of both parties, witness testimony, and arguments of counsel, SERB concludes that the strike is unauthorized.

While the parties stipulated that they have a mutually agreed alternate dispute resolution procedure (MAD), the Board finds this MAD faulty and thus inoperative with regard to the reopener. To apply this MAD provision, as it is, would be in direct contradiction with the policy of encouraging parties to utilize reopeners as a method of settlement. (See Carlisle Teachers Association and Carlisle Local Board of Education, SERB 87-025.) There is no practical way to interpret the MAD provision to allow for the exercise for employee rights under Chapter 4117. Moreover, the Board does not construe this MAD as a waiver of the right to strike.

Since the MAD is faulty, no dispute settlement procedure has been exhausted and thus, the strike is unauthorized. In the absence of an effective contractual impasse resolution procedure, O.R.C. §4117.14 applies.

Opinion will follow.

It is so directed.

DETERMINATION  
September 10, 1988  
88-SIK-09-0001  
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SHEEHAN, Chairman; DAVIS, Vice Chairman; and LATANE, Board Member,  
concur.

*William P. Sheehan*  
WILLIAM P. SHEEHAN, CHAIRMAN

I certify that this document was filed and a copy served upon each party  
on this 12<sup>th</sup> day of September, 1988.

*Cynthia L. Spanski*  
CYNTHIA L. SPANSKI, CLERK

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of  
Mad River-Green Local Board of Education,  
Employer,  
and  
Mad River-Green Local Education Association,  
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CASE NUMBER: 88-STK-09-0001

OPINION

Sheehan, Chairman:

This case comes before the State Employment Relations Board (SERB) upon the Motion for Determination of Unauthorized Strike filed by the Mad River-Green Local Board of Education (Employer) on September 9, 1988.

I.

The Employer and the Employee Organization are parties to a collective bargaining agreement which by its terms is effective from September 1, 1987, through August 31, 1989 (Exhibit 1). Article XIV of the agreement provides for a reopener to determine the 1988-89 index, longevity, hourly rate and the base salary in accordance with Article III which states the Negotiations Procedures.

Article III states:

G. Disagreement

1. Mediation

At any time during negotiations and prior to the expiration of the Agreement, impasse may be declared by either party, at which time a joint written request shall be made to the State Employment Relations Board (SERB) to assist the Parties in reaching an agreement. Mediation shall begin as soon as the mediator can be available to the Parties and shall continue until agreement is reached or the expiration of this Agreement. (Emphasis added.)

On May 5, 1988, the Employee Organization filed a Notice to Negotiate (Exhibit 2) pursuant to the reopener and subsequently declared an impasse. On June 15, 1988, the Parties jointly requested the appointment of a mediator and a mediator was appointed. (Exhibit 3.) On August 29, 1988, the Employee Organization filed a Notice of Intent to Strike starting on September 8, 1988. Because the Parties continued mediation in an attempt toward settlement late into the day of September 8, 1988, the strike did not actually commence until September 9, 1988.

The Parties stipulated that in Article III (G) they had a mutually agreed alternate dispute resolution procedure (MAD) which superseded the statutory dispute resolution procedure. For the reasons stated below, the Board finds that the parties' MAD with regard to the reopener is faulty and thus inoperative.

II.

The right of "strike permissive" employees to strike during reopener periods was established in Carlisle Teachers Association and Carlisle Local Board of Education, SERB 87-025, where the Board stated that "To foreclose on the employees' right to strike when impasse is reached during contract reopening period is to foreclose on reopener provisions and, consequently, to eliminate an effective and efficient instrument for reaching settlement." Applying the principle of Carlisle to the present case, where

no clear and unequivocal waiver of this right to strike exists, the employees should be able to exercise their right to strike during the reopener once the MAD is exhausted. However, under the plain language of Article III (G), the MAD might never be exhausted prior to the expiration of the Agreement thus allowing no accommodation for employees' right of strike during the reopener period.

Moreover, there is no practical way to interpret the MAD provision to allow for the exercise of this right; since if no settlement is reached, the parties, pursuant to the MAD, are supposed to continue mediation until the expiration of the Agreement which, at that point, for all practicable purposes disannuls the right to strike on a mid-term reopener.

The conclusion of the above analysis is that the MAD in this case is faulty and thus inoperative with regard to the reopener. In Vandalia-Butler City School District, SERB 86-012, the Board stated that statutory provisions pertaining to MADs must be treated more liberally when "strike permissive" employees rather than "strike prohibited" employees are involved, and that when agreement to operate under a MAD is reached, the MAD will be sustained absent some compelling public policy against it. In this case, the MAD cannot be sustained, since to apply the provisions of this MAD, whose terms render it virtually inexhaustible for reopeners, would be in direct contradiction with the policy of sanctioning reopeners as a method of settlement.

Since the MAD is faulty, no dispute settlement procedure has been exhausted and thus, the strike is unauthorized. In the absence of an effective contractual impasse resolution procedure, O.R.C. §4117.14 applies.

Davis, Vice Chairman, and Latané, Board Member, concur.