

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of  
Northern Ohio Patrolmen's Benevolent Association,  
Employee Organization,  
and  
City of Hauseon,  
Employer.

88-019

CASE NUMBER: 88-REP-01-0008

OPINION AND DIRECTION OF ELECTION

Before Chairman Sheehan, Vice Chairman Davis and Board Member Latané;  
September 29, 1988.  
Davis, Vice Chairman:

I. Procedural Background and Issue

This matter arose from a Petition for Election filed by the Northern Ohio Patrolmen's Benevolent Association ("NOPBA" or "Employee Organization"). Through this petition, the Employee Organization is seeking a representation election for a unit of "all regular full-time sergeants" employed by the City of Hauseon ("Employer"). The matter was directed to hearing for resolution of disputed unit issues. On August 9, 1988, Hearing Officer William Dennis issued his report and recommendation. The Employer timely filed exceptions to which the Employee Organization submitted a response. The Employer also has filed a Motion for Oral Argument.

The facts of this case have been thoroughly presented in the hearing officer's report and are adopted and incorporated herein by reference. The pivotal fact giving rise to the dispute at hand is that, at present, the proposed unit consists of only one employee. This employee is a sergeant and is not a supervisor within the definition set forth in Ohio Revised Code ("O.R.C.") §4117.01(F)(2). Thus, the single issue presented by this case is whether the Board will approve as appropriate a proposed bargaining unit consisting of only one sergeant.

'O.R.C. §4117.01(C)(10) excepts supervisors from the definition of "public employee" (i.e., those entitled to the coverage of O.R.C. Chapter 4117). "Supervisor" is defined in O.R.C. §4117.01(F), and division (2) of that paragraph specifies that, "with respect to members of a police or fire department, no person shall be deemed a supervisor except the chief of the department or those individuals who, in the absence of the chief, are authorized to exercise the authority and perform the duties of the chief, or the department." The hearing officer has recommended that the chief, or question is not a "supervisor." Hearing Officer's Report and Recommendation, issued August 9, 1988, page 6, and Conclusion of Law 4, page 7. Neither party raised an exception to this recommendation.

Arguments offered by both parties were thorough and well-presented. There is no need for further development or debate of the issues. Therefore, the Employer's Motion for Oral Argument is denied pursuant to Ohio Administrative Code ("O.A.C.") Rule 4117-1-14.

II.

In objecting to the proposed unit, the Employer cites cases from other jurisdictions in which single-employee units have been disallowed. The flaw in the Employer's reliance upon these citations is that not one case involves the application or interpretation of comparable key statutory provisions.

It is well-established that this Board will examine, for instructive value, the approaches of other labor jurisdictions if those jurisdictions are applying legal provisions that are comparable to the relevant portion of O.R.C. Chapter 4117. See, e.g., City of Bedford Heights, SERB 87-016 at 3-55 (July 24, 1987), aff'd., 8th District Court of Appeals, Case No. 54484, 1987 SERB 4-88 (November 25, 1987), and Warren County Sheriff, SERB 88-014 at 3-77 (September 28, 1988). The National Labor Relations Act and the collective bargaining laws of numerous other states contain language similar to O.R.C. Chapter 4117 in many areas, including representation and unit design. However, the statute of no other jurisdiction contains the restriction on police unit structure set forth in O.R.C. §4117.06(D)(6). That provision requires that:

With respect to members of a police department, [the Board shall not] designate as appropriate a unit that includes rank and file members of the department with members who are of the rank of sergeant or above.

This separate unit requirement casts a different light on the issue and renders Ohio's consideration of single-sergeant units unique. Accordingly, the Board is not persuaded by the citations offered demonstrating that neither the National Labor Relations Board ("NLRB") nor most states permit the establishment of single-employee units.<sup>2</sup>

<sup>2</sup>Although most states with public sector bargaining laws do not approve single-employee units, this approach is not unanimous. Michigan and Maine have permitted single-employee units under circumstances arguably less compelling than those of this case. Egleston Township and Teamsters State, County and Municipal Workers, Local 214, Case No. R87 B-45, slip opinion, page 2 (November 16, 1987); summarized in CCH Public Employee Bargaining Reporter, Para. 45,098 (Mich. 1987), and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (IBT), Local 48 and Town of Wells, Case No. 84-A-03, slip opinion at pages 9 and 10 (April 11, 1988), summarized in CCH Public Employee Bargaining Reporter, Para. 44,356 (Me.1984).

Under the unambiguous strictures of O.R.C. §4117.06(D)(6), the NOPBA had no choice but to propose a single-sergeant unit. For that level of police officer, there is no other possible unit. The sergeant cannot be included with the rank and file officers, and O.R.C. §4117.06(D)(3) prohibits including him with any other type of employee in the department.<sup>3</sup> Given these statutory constraints on unit design, the only way the sergeant in this police department may reap the bargaining and representational benefits of O.R.C. Chapter 4117 is through the approval of a single-sergeant unit. This board is not inclined to deny an employee the opportunity to exercise the rights of representation and bargaining simply because an unusual statutory term results in a peculiar unit structure.

The Employer argues that a single-employee unit is contrary to the collectivity component of "collective" bargaining. Certainly, as has been stated often by those jurisdictions that have rejected single-employee units, collective bargaining rights are "oriented toward collectivity" and ...[do] not guarantee the right of an employee to represent himself or herself and negotiate as an individual for his or her own terms and conditions of employment.

*Mass v. Borough of Shrewsbury*, 174 N.J. Super. 25, 415 A.2d 356, 105 LRRM 2736, 2737 (NJ Superior Ct. 1980), certification denied, 85 N.J. 129, 425 A.2d 286 (N.J., July 21, 1980). The Board agrees. However, in the case at hand, the employee is not seeking the opportunity for individual or personal negotiations focused only upon himself. Rather, this sergeant is asking to be represented by an employee organization that represents and negotiates for numerous other units of Ohio public employees. While there is no collective group in this particular unit, the general concept of collectivity is present because the single sergeant would be represented by an established employee organization that has as its function the collective bargaining representation of other public employee units.<sup>4</sup>

<sup>3</sup>O.R.C. §4117.06(D)(3) prohibits the Board from including "members of a police or fire department or members of the state highway patrol in a unit with other classifications of public employees of the department...."

<sup>4</sup>A similar analysis was employed by the Michigan Employment Relations Commission in approving a single-employee unit. That Board stated:

We have held that one person bargaining units are appropriate for purposes of collective bargaining under PERA [the Michigan Public Employment Relations Act] and the Labor Mediation Act if the petitioner is a labor organization affiliated with and representing other bargaining units, as distinguished from an independent labor organization composed only of the employee seeking representation.

*Egleston Township and Teamsters State, County and Municipal Workers, Local 214*, Case No. R87 B-45, slip opinion at page 2 (November 16, 1987); summarized in CCH Public Employee Bargaining Reporter, Para. 45,098 (Mich. 1987).

The Employer further argues that the statute inherently prohibits single sergeant units because O.R.C. §4117.06(B) uses the plural term "employees" and instructs the Board to consider "community of interest" and "the effect of over-fragmentation". In designing units. The use of plural terminology does not preclude the possibility of a single-employee unit; the wording of the statute merely reflects the reality that nearly all bargaining does involve groups of employees. Moreover, O.R.C. §4117.06(B) must be taken as a whole. Single words or phrases cannot be read in isolation from the entire section or chapter. The components of O.R.C. §4117.06(B) must be considered in the context of the principles and goals of the Act. So viewed, it is clear that the factors cited by the Employer are of significance primarily in cases where there is potential variety and great discretion in the Board's choice of an appropriate unit structure. In the instant case there is no design discretion. Either the unit is appropriate as proposed or there will be no unit.

With regard to potential "over-fragmentation," O.R.C. §4117.06(B) simply cautions the Board to consider "the effect of over-fragmentation" (emphasis added). The Employer has advanced no argument alleging any damaging effect or any impairment upon the efficiency or structure of its operation. Certainly, the unit restrictions presented by O.R.C. §4117.06(D)(6) have created some technical complications in those smaller jurisdictions that employ just a few law enforcement personnel. In such cases, however, the employers and unions often have overcome the statutorily built-in fragmentation by exercising the opportunity to engage in multi-unit bargaining. Such bargaining involves one set of negotiations for two or more units and results in a single collective bargaining agreement covering those units. In this case any potential detriment of having a separate, small unit may be mitigated by the pursuit of multi-unit bargaining, if the parties so agree.

O.R.C. §4117.06(B) also requires that the Board take into consideration "other relevant factors" when determining appropriate units. In this case, a prevailing factor is that disapproval of the proposed unit would result in the denial of bargaining rights to an employee who on every other basis is

<sup>5</sup>Indeed, after setting forth the restrictions on unit configuration, O.R.C. §4117.06(D) concludes with the specification that "This section shall not be deemed to prohibit multi-unit bargaining." That the smaller jurisdictions frequently engage in multi-unit bargaining is indicated by a review of contract data currently on file in the SERB Clearinghouse System, a database of Ohio public sector collective bargaining agreements. Of 292 city safety force collective bargaining agreements, 112 are multi-unit contracts. Of 86 sheriff department contracts, 46 are multi-unit agreements. Of the 112 multi-unit city contracts, 67 cover units for which the combined total personnel is fewer than 25 employees. All but 7 involve cities with populations under 50,000.

<sup>6</sup>The NOPBA also represents the rank and file unit which is composed of approximately five police officers. See SERB Case No. 85-VR-11-4694 (Certification issued 1-22-86).

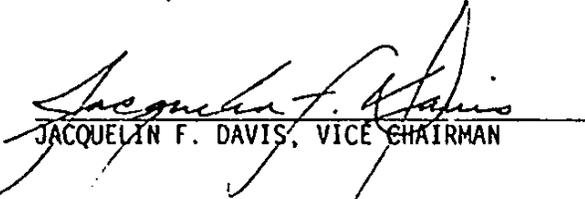
unquestionably entitled to the benefits of the Act.<sup>7</sup> Thus, where there is no other possible unit configuration, where the employee seeks representation by an established employee organization that also represents other units in collective bargaining, and where no harmful effects to the Employer's efficiency or structure are demonstrated, this Board will find single-employee units appropriate.

III. Conclusion

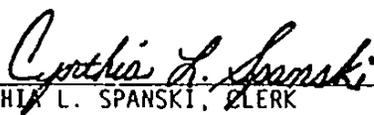
For the foregoing reasons, the Board finds that the proposed unit is appropriate. The Board directs that a secret ballot election be conducted in the appropriate unit at a date and time set by the Administrator of Representation in consultation with the parties. No later than January 3, 1989, the Employer shall supply an election eligibility list that conforms to the requirements of O.A.C. Rule 4117-5-07. Eligibility to vote shall be based upon the payroll records for the pay period ending just prior to December 21, 1988.

It is so directed.

SHEEHAN, Chairman, and LATANE, Board Member, concur.

  
JACQUELIN F. DAVIS, VICE CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 23<sup>rd</sup> day of December, 1988.

  
CYNTHIA L. SPANSKI, CLERK

<sup>7</sup>The availability of bargaining rights to ranking, non-supervisory police officers is shown to have been a matter of great enough importance to the Ohio General Assembly that it adopted specially designed language to guarantee that availability of those rights. O.R.C. §4117.01(F)(2). See also, City of Gahanna, SERB 85-052 (September 30, 1985), and City of Loveland, SERB 85-010 (March 28, 1985). The Board thus wishes to avoid an overly rigid application of the discretionary factors of O.R.C. §4117.06 in a way that would negate the legislature's intent to provide bargaining rights for ranking officers.

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