

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 89-002

179

In the Matter of

Groveport Madison Local School District
Board of Education,

Employer,

and

Groveport Madison Local Education Association, OEA/HEA,

Employee Organization.

CASE NUMBER: 89-STK-01-0001

ISSUANCE OF OPINION

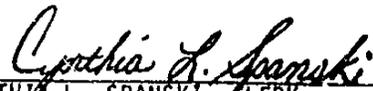
Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;
January 19, 1989.

On January 19, 1989, pursuant to Ohio Revised Code (O.R.C.) §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 27th day of January, 1989.


CYNTHIA L. SPANSKI, CLERK

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OPINION

Sheehan, Chairman:

I.

This case involves a request by the Groveport Madison Local School District Board of Education (Employer) for a determination of an unauthorized strike currently being conducted by the Groveport Madison Local Education Association, OEA/NEA (Employee Organization). The evidential presentations were made on stipulations, presentation by counsel and other documents' filed with the State Employment Relations Board (Board) and made part of the record.

On or about January 6, 1989, the Groveport Madison Local Education Association, OEA/NEA (Association) notified the Groveport Madison Local School District Board of Education (Employer) of an intent to strike on January 18, 1989.

Employer's brief in support of a Request for Determination of Unauthorized Strike.
Employer's supplemental brief in support of a Request for Determination of Unauthorized Strike.
Employee Organization's Memorandum in Opposition to the Request for Determination of Unauthorized Strike.
Request for Determination of Unauthorized Strike.
Notice of Intent to Strike.

The Notice of Intent to Strike set forth the proposed strike action:

The Groveport Madison Local Education Association, OEA/NEA gives notice of its intention to strike and hereby gives notice of its intentions to abstain in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in wages, hours, terms and other conditions of employment.

Attached hereto are Attachment A, A(1), A(2), A(3), A(4), A(5), A(6), A(7), A(8), A(9), A(10), A(11), A(12), A(13) and A(14) which specifically delineate the time periods in which the Association will abstain from the full, faithful and proper performance of the duties of employment. At all other times the Association will not abstain from the full, faithful, and proper performance of the duties of employment.

The attachments referenced in the notice were twenty-six pages of schedules describing the precise times of day the teachers would be on strike at the different schools.² At all other times of the normal school day, the teachers would pursue their regular assignments. The schedule covered all regularly scheduled school days beginning January 18 and running through February 28, 1989.

On January 18, the Association initiated their strike at all schools in accordance with its notice. On the same day, at 11:49 a.m., the Employer filed its Request for Determination of Unauthorized Strike arguing that this particular strike action as conducted by the Association is prohibited by the relevant provision of Ohio Revised Code Chapter (O.R.C.) 4117, as well

²There were ten schools involved: Groveport Elementary, Madison Elementary, Sedalia Elementary, Dunloe Elementary, Asbury Elementary School, Glendening Elementary School, Groveport Madison Middle School-South, Groveport Madison Middle School-North, Groveport Madison Freshmen and Groveport Madison High.

as pertinent case law. Citing the Board's decision in Fort Frye Local School District Board of Education, SERB 87-921 (Nov. 3, 1987), the Employer claimed the action and the activities in the instant case go far beyond the illegality of the "gamesmanship" found in Fort Frye by having teachers at each school building in the school district walk in and out of the classrooms on different days and at different times of the day. The Employer further argued that these strike tactics were intended solely to create maximum disruption to the school environment at the expense of the school district's reason for being, the students.

The Association responded by claiming the strike action pursued by its members comports with the statutory requirements of O.R.C. Chapter 4117,³ and the interrupted abstinence from performance of their duties is lawful pursuant to O.R.C. §4117.01(H). Further, the strike notice afforded the Employer ample opportunity to take whatever defensive action deemed necessary and does not frustrate the legislative control objectives.

II

Do the principles enunciated in Fort Frye, supra, render this action unauthorized?

The Board's determination in Fort Frye turned on a faulty strike notice. The notice is not an issue in the present case. Here the notice satisfied all the statutory requirements of O.R.C. §4117.14(D)(2) and O.A.C.

³O.R.C. §4117.01(H) (in relevant part) provides: "Strike" means concerted action in failing to report to duty; willful absence from one's position; stoppage of work; slowdown, or abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in wages, hours, terms and other conditions of employment.

Rule 4117 13-01. It was served upon the Employer more than ten days prior to the intended action and set forth the time and date that the action would occur, and the action was initiated at the time and date consistent with the notice.

Is intermittent strike action statutorily proscribed? The language of O.R.C. §4117.01(H), in pertinent part, provides for "[A]bstinence in whole or in part from the full, faithful and proper performance of the duties of employment. . . ." This is a case of first impression, but a reading of this provision, on its face, would permit such action.⁴

What is left to determine is whether the legislature control objectives, as described in Fort Frye,⁵ are compromised in the instant case.

The strike was hardly 24 hours old when this hearing was held. The District Board of Education, in its stipulations, made clear that it was not claiming that the strike was causing it to fail to provide education and instructions in accordance with the state minimum standards as required by state law.

Despite these stipulations, the Board nevertheless is concerned that the legislative control objectives are assaulted by the mere complexities of this job action. The in and out, off and on, back and forth movements

⁴The legislative history sheds no particular light as to the legislative intent of the provision. Whether the legislature intended this interpretation is a question we need not reach in this case.

⁵The clear legislative objective was to apprise public employers of projected job actions to enable them to institute whatever damage controls were available to them.

throughout the day creates, over any protracted period of time, a logistical nightmare with which both parties must cope. The execution of such an elaborate scheme requires the precision of a military close-order drill team and the precision monitoring of an NFL timekeeper which are beyond the capabilities of each. This type of irregular activity is, in concept, contrary to the very principle of damage control inherent in the statute and redirects the parties' energies more toward complex scheduling and away from settlement of their differences. At the very least, it tampers with the legislative control objectives.

The strike is unauthorized.

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

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