

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
State Employment Relations Board,
Complainant,
and
Transport Workers Union, Local 208,
Intervenor,
v.
Central Ohio Transit Authority,
Respondent.

CASE NUMBERS: 87-ULP-04-0166
87-ULP-04-0167

NOTICE OF RECUSATION
and
OPINION

Davis, Vice Chairman:

The parties to this action are hereby notified that I have recused myself from participation in the resolution of the referenced action. The reasons for this action follow.

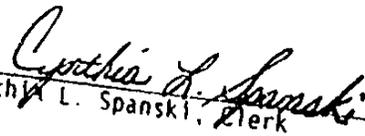
Pursuant to Ohio Revised Code Section 4117.12(B), a hearing on this matter was conducted by Board Hearing Officer Chester Christie. The hearing commenced on September 18, 1987. At that time, I held the position of Executive Director of this agency. During the course of the hearing, I was subpoenaed by the Central Ohio Transit Authority (Respondent) and, on October 14, 1987, appeared as a witness. Testimony elicited on both direct and cross examinations dealt with procedures followed in the investigation of the charge which led to the Board's finding of probable cause and issuance of the complaint. (Transcript, pp. 278-374). The challenge to procedure that led Respondent to seek this testimony has been withdrawn and is no longer an issue.

While I am confident that prior participation as a witness would not influence my judgment on the merits, recusation is appropriate to avoid even the appearance of any impropriety or conflict. In reaching this decision, I have turned for guidance to the Code of Judicial Conduct, as adopted by the Supreme Court of Ohio, December 20, 1973. Board members are not judges, but

the Board does function in a quasi-judicial manner. Thus, there could be no better standards to guide this Board in matters of ethical adjudication than those set forth in the Code of Judicial Conduct. Canon 3(C)(1)(b) of the Code requires that a judge disqualify himself or herself if he or she served as a material witness in the proceeding. While a debate could ensue as to whether the participation in question rose to the "material" level,¹ voluntary recusation relieves all parties from potentially awkward deliberation on that issue.


Jacquelin E. Davis, Vice Chairman

I certify that this document was filed and a copy served upon each party on this 15th day of February, 1989.


Cynthia L. Spanski, Clerk

¹See, e.g., *McCaffrey v. State of Ohio*, 105 Ohio St. 508 (1922), wherein a presiding judge's participation as a witness was held to be proper because testimony had been limited to formal or preliminary matters that bore no relevance to "any of the essential elements" of the case. The Court went on to state, however, that, had the trial judge "testified as to anything else than merely formal or preliminary matters, anything as to which there was conflict of testimony, or anything which was in dispute between the parties...or that was material to any of the issues or any other element of the offense...an entirely different question would then have been presented to this court for review." *Id.*, at 514.