

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 89

In the Matter of

Montgomery County Joint Vocational
School District Board of Education,
Employer,

and

Montgomery County Joint Vocational School
Employees' Association,
Employee Organization.

89-010

CASE NUMBERS: 88-REP-08-0162
88-REP-08-0163

OPINION AND AMENDMENT OF CERTIFICATION

Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;
February 2, 1989.
Davis, Vice Chairman:

FACTS

Pursuant to Ohio Revised Code §4117.05(A)(2), the Montgomery County Joint Vocational School Employees' Association ("Employee Organization" or "MCJVSEA") was certified in 1986 as the exclusive representative of two bargaining units of employees of the Montgomery County Joint Vocational School District Board of Education ("Employer"). On August 8, 1988, the Employee Organization filed a Petition for Amendment of Certification seeking to reflect its recent affiliation with the Ohio Federation of Teachers/American Federation of Teachers/AFL-CIO. The MCJVSEA previously had been an unaffiliated association.

In response, the Employer filed a letter stating its objection to the proposed amendment. The Employer alleged that "minimal standards of due process were not followed in the 'affiliation'" and that there "may be reason to question whether the MCJVS Employees' Association represents a majority of each of the two units." Employer's letter filed August 23, 1988, page 1. In support of its allegation regarding the Employee Organization's continuing majority support, the Employer attached as an exhibit a letter dated May 31, 1988, from an employee who stated that some employees objected to the proposed affiliation and that the author of the letter was the president of a newly forming rival organization.

The Employee Organization on September 19, 1988, filed a motion requesting that the Board strike the Employer's letter because it did not contain a proof of service. In the alternative, the Union sought leave to respond to the Employer's allegations. On October 6, 1988, the Board denied

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the Employee Organization's motion to strike. Thereafter, the Employee Organization submitted a response in which it documented the steps it had taken in pursuing and determining the issue of affiliation. The following is an excerpt from that response, with citations to exhibits omitted:

October 15, 1987 - Membership meeting held to discuss the issue of affiliation;

October 19, 1987 - MCJVSEA President, Mike Mullen, sends Memo to the members of the MCJVSEA which includes a "tear-off" ballot designed to elicit a "straw poll" on the issue of affiliation.

October 23, 1987 - Mike Mullen and the Executive Committee issue an informational letter setting forth the results of the "straw poll" of the two bargaining units for which the MCJVSEA is the exclusive representative, i.e., certified employees and classified employees. The "straw poll" results were 69.6% of the certified employees voted for the affiliation and 69.5% of the classified employees voted for the affiliation.

October 29, 1987 - Informational meeting held to answer any questions concerning the issue of affiliation.

October 30, 1987 - Mike Mullen and the Executive Committee notify MCJVS (sic) members that a special meeting will be held on November 12, 1987 to vote on the issue of affiliation.

November 5, 1987 - MCJVSEA Executive Committee meeting held at which motion is passed to include on the November 12, 1987 secret ballot a choice of affiliations with the Ohio Education Association ("OEA") and the Ohio Federation of Teachers ("OFT").

November 6, 1987 - MCJVSEA President, Mike Mullen, sends MCJVSEA members a letter detailing the procedure which will be followed at the November 12, 1987 secret ballot vote on the issue of affiliation.

November 12, 1987 - Secret ballot vote on the issue of affiliation is conducted. The results of the affiliation vote were:

OEA - 30 votes;
OFT - 83 votes; and
7 abstention votes.

The subsequent secret ballot vote results to change the constitution to reflect the OFT affiliation were: 84

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votes in favor of changing the constitution to reflect the OFT affiliation; 38 votes against changing the constitution to reflect the OFT affiliation.

Employee Organization's Response to Employer's Challenge to Petitions, filed October 12, 1988, pages 4 and 5 (references to exhibits omitted).

This information, obtained in the course of this agency's investigation pursuant to Ohio Administrative Code ("OAC") Rule 4117-5-04, was not challenged or responded to by the Employer. The investigation also reveals that no petition for election has been filed by a rival employee organization, nor has a petition for decertification election been filed by any employees in the units.¹

DISCUSSION

A. Elements Necessary to Support Amendment

This Board has not previously determined the elements necessary to support an amendment of certification that reflects the initial affiliation of an unaffiliated employee organization.² In ascertaining the appropriate

¹The facts in this case have been derived from the Board's investigation conducted pursuant to O.A.C. Rule 4117-5-04. All materials relied upon are the product of this investigation, have been served upon or received by the other parties, and are contained in the Board's public file. References to documentation are intended for convenience and are not intended to suggest that such references are the sole documentation for the fact stated.

Although the Employer initially made reference to the expectation of a hearing (Employer's letter, filed August 23, 1988, page 1), a hearing in this action is unwarranted. There has been no challenge to the facts set forth in the Employee Organization's documentation, and there were no contrary facts gleaned in the course of the investigation. Hearings in the determination of actions of this nature are not required by statute or rule. O.A.C. Rule 4117-5-04 provides for an investigation to determine "whether there is evidence to support the petition." The need for a subsequent hearing is solely within the Board's discretion.

²This Board addressed a related, albeit more complex, issue in the context of an unfair labor practice complaint in Mad River-Green Local School District, SERB 86-029 (July 31, 1986). That case involved an affiliated local that had been "deemed certified" or "grandfathered" pursuant to Section 4 of Amended Substitute Senate Bill 133 of the 115th General Assembly (uncodified language) and the employer's response to the union's change in affiliation between two competing state/national organizations. As noted by the Board in that case, an initial affiliation presents a different question with the potential for a simpler resolution. Id., page 303.

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approach to such an issue, this Board, for guidance, looks to NLRB v. Financial Institution Employees of America, Local 1182, 475 U.S. 192, 121 LRRM 2741 (1986), in which the United States Supreme Court reviewed the National Labor Relations Board's precedent regarding changes in affiliation. While not bound by this decision, we are persuaded by and therefore draw from the analysis of the Court and the experience of the NLRB in this regard.

In Financial Institution Employees, the Court addressed a change in the NLRB's approach to affiliation issues and rejected the new NLRB requirement that all unit employees, union and non-union, be permitted to vote on the question of affiliation. The Court held that the NLRB's new condition was an undue intrusion into internal union matters.³ The Court, however, approvingly cited the core components of long-standing NLRB principles on matters of affiliation. Having reviewed the sound justifications for the NLRB's approach and having found that numerous other states employ comparable approaches,⁴ we adopt a similar approach to petitions for amendment of certification reflecting initial affiliations.

A previously unaffiliated employee organization may obtain an amendment of certification reflecting an affiliation if:

1. The employee organization verifies in the course of the investigation pursuant to O.A.C. Rule 4117-5-04 that adequate internal affiliation election procedures were followed. Such procedures should provide that:

- a. Union members are given reasonable notice of the upcoming vote on the question of affiliation;
- b. Union members are given an opportunity to discuss the affiliation election; and

³As stated in Mad River-Green Local Board of Education, SERB 86-029, page 303 (July 31, 1986), this Board agrees that voting on the question of affiliation is an internal union matter left to determination by those employees who have chosen to be members of the union.

⁴See, e.g., Racine Unified School District, Decision No. 10095-B (Wis. HERC, decision issued December 22, 1988); Orange County Police Benevolent Association, Inc., order No. 86M-179, 12 FPER ¶17227 (Fla. PERC, decision issued June 30, 1986); and Lackawanna Trail School District, Case No. PERA-U-80-83-C, 12 PPER ¶12064, (Pa. PLRB, order issued January 26, 1981). See also, Board of Education of the City School District of the City of New York, Case Nos. C-2190, E-0716 1; PERB ¶4011 (NY PERB, February 1984). These jurisdictions, as well as the NLRB, tend to draw no distinction between initial affiliation and a change in affiliation or mergers and consolidations. The instant case, however, does not require us to address issues presented by changes of affiliation or mergers.

- c. Steps are taken to protect the secrecy of the ballots used in the affiliation election.
2. There is substantial continuity between the employee organization before and after affiliation, thus eliminating the possibility of a question of representation arising from a change in identity of the union. Determination of this factual question will, of necessity, be made by the Board on a case-by-case basis.
3. Pursuant to O.A.C. Rule 4117-5-01(E), there is no other question of representation pending.

The Board recognizes that affiliation, in general, is an internal union organizational matter that "does not create a new organization, nor does it result in the dissolution of an already existing organization." NLRB v. Financial Institution Employees, 475 U.S. 192 at 206, quoting Amoco Production Co., 239 NLRB 1195, 100 LRRM 1127 (1979). We also recognize the need to maintain labor-management peace through a variety of representation--a goal that is advanced by the Act through stability of provisions: the one-year election bar of O.R.C. §4117.07(B)(6); the contract bar addressed in that same paragraph; specific requirements for decertification or challenge elections as provided in O.R.C. §4117.07(A)(1); and special protections for exclusive representatives recognized prior to the effective date of O.R.C. Chapter 4117, established through Sections 4 and 5 of Amended Substitute Senate Bill 133 as enacted by the 115th General Assembly (uncodified provisions).

Balanced against these factors, however, is our obligation to ensure that full credit and effect are given to the employees' right to be represented by the body they initially selected. Thus, before sanctioning an affiliation by amending the exclusive representative's certification, the Board must intrude into the internal union affairs to the extent necessary to ensure (1) that the desire of the membership has been properly discerned, and (2) that the change is, in fact, an affiliation and not a replacement of the representational entity.

The foregoing approach achieves a balance of these competing interests. The electoral requirements are simple, yet they provide sufficient safeguards to ensure a reasonable and fair process. It would not be appropriate or realistic for the Board to impose more stringent election standards for a matter that is presumptively internal in nature. As noted by the NLRB in Amoco Production Co., 239 NLRB No. 182, 100 LRRM 1127 (1979):

The strictures which [the NLRB] imposes on its own election proceedings are not generally applicable in proceedings to amend certification, or in proceedings [like] this involving [union] affiliation elections.

Id., at 1128, quoting Quemetco, Inc., 226 NLRB 1398, 1399, 91 LRRM 1580 (1976), (bracketed language in original).

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The second component--substantial continuity between the pre- and post-affiliation local--ensures that there is no question of representation emanating from the change. If substantial continuity is lacking (for example, if the union no longer retains local control and local officers), then the organizational changes may necessitate a representation election pursuant to O.R.C. §4117.07.

Finally, the third element reflects the requirements of O.A.C. Rule 4117-5-01(E), which permits petitions for amendment of certification to be filed only "in the absence of a question of majority representation." If there is a representation question unrelated to the affiliation action, such as a pending decertification petition, the resolution of the pending representation matter thus will not be complicated by a mid-case amendment of certification.

B. Application to the Instant Case

In the instant case, all requisite elements have been satisfied. The union members had ample written notice of the proposed affiliation and were provided a forum for discussion of the issue. A secret ballot election was conducted, dates and procedures for which were outlined in written notices to the membership. Results of the balloting verify the choice for affiliation with the Ohio Federation of Teachers/American Federation of Teachers.

The documentation of this action also verifies that the union retains "local control and autonomy," that it maintains officers at the local level, and that the local constitution and by-laws remain largely intact, with only such amendments as were necessary to effectuate the affiliation. Employee Organization's Response, filed October 12, 1988, Exhibit I.

As to any question regarding the Employer's belief that the Employee Organization no longer represents a majority of employees in the unit, the Board notes that no petitions have been filed either by employees seeking to decertify the Employee Organization or by a rival union seeking to displace the incumbent. In the absence of any such filings, we find no merit in the Employer's contentions that there exists a question of representation.

C. Amendment of the Certification

Accordingly, the petition is granted, and the certification of the "Montgomery County Joint Vocational School Employees Association" in the two relevant units" is amended to reflect that the exclusive representative now is properly designated as: "Montgomery County Joint Vocational School

*The units for which the Employee Organization is the exclusive representative and the case numbers to which the petitions refer are:

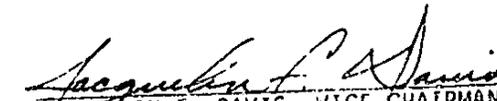
Case No. 88-REP-08-0162 (as certified in Case No. 86-REP-10-0331):
[Footnote continued on next page.]

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Employees Association, Local 4575, Ohio Federation of Teachers/American Federation of Teachers, AFL-CIO."

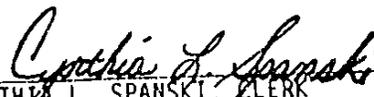
It is so directed.

SHEEHAN, Chairman; DAVIS, Vice Chairman; and LATANE, Board Member, concur.


JACQUELIN F. DAVIS, VICE CHAIRMAN

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 119.12, by filing a notice of appeal with the Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the Franklin County Common Pleas Court within fifteen days after the mailing of the Board's directive.

I certify that this document was filed and a copy served upon each party on this 11th day of May, 1989.


CYNTHIA L. SPANSKI, CLERK

Included: All full and regular part-time classroom teachers, including full-time Adult Education Teachers, Nurses, Counselors, Media Specialists, Program Coordinators, and Substitute Teachers under contract for 120 days or more.

Excluded: "As Needed" Substitute Teachers, Supplemental Adult School Teachers, Supervisory, Confidential and Administrative Personnel.

Case No. 88-REP-08-0163 (as certified in Case No. 86-REP-10-0332):

Included: All full and regular part-time Secretaries, Clerks, Aides, Custodians, Technicians, Maintenance Personnel and Bus Drivers.

Excluded: Supervisory personnel and "as needed" employees in the above categories.

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