

89-018

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

89-01

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In the Matter of

Winifred M. Rooney,

Petitioner,

and

Ohio Council 8, American Federation of State, County
and Municipal Employees, AFL-CIO,

Employer Organization,

and

Miami University,

Employer.

CASE NUMBER: 89-REP-05-0103

OPINION AND DENIAL OF MOTION FOR RECONSIDERATION

Before Chairman Sheehan and Vice Chairman Davis; August 17, 1989. Board
Member Latané abstains.

I. Facts

This matter comes before the Board pursuant to Miami University's ("Employer's") Motion for Reconsideration regarding the Board's May 11, 1989, dismissal of a petition for decertification election that had been filed by Winifred M. Rooney ("Petitioner"). The facts leading to the dismissal follow.

On December 12, 1985, in a Board-conducted election a majority of employees in a unit of non-teaching support and maintenance personnel selected Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO ("Employee Organization" or "AFSCME") as their exclusive representative pursuant to Ohio Revised Code ("O.R.C.") §4117.07 and 4117.05(A)(1). The Employer and AFSCME subsequently entered into a collective bargaining agreement which will expire on August 21, 1989.

The facts of this matter are gleaned from documents filed by the parties to this action. All documents are contained in the official public case file, with the exception of the showing of interest. These filings are accorded confidentiality pursuant to Ohio Administrative Code ("O.A.C.") Rule 4:17-1-02(G) in order to protect the identity of the Employees and to preserve the secrecy of their preference should a secret ballot election ultimately occur. O.R.C. §4117.07. Citations to file documents are for convenience only and are not intended to suggest that such references are the sole support in the file for the fact asserted.

The Petitioner on May 2, 1989, filed a petition for decertification election. In support of the petition were filed several separate documents, each of which was a circulation-style petition containing a list of employees' signatures. At the top of each document, preceding the signatures, appears this language.

The undersigned employees request that the state employment relations board proceed under its proper authority pursuant to Ohio Revised Code 4117.07 to conduct an election among the employees in the bargaining unit.

The documents then set forth instruction to the employees to "please sign only if you are in the bargaining unit and sign only once," and contain numbered blanks on which the employees signed their names. The signatures themselves are not dated. At the bottom of each page is this statement: "Collected after January 10, 1989," followed by the Petitioner's notarized signature.

On May 11, 1989, the Board voted to dismiss the petition without prejudice. The entry memorializing this action was issued on May 16, 1989, and states that:

The Petition was not supported by evidence indicating that the incumbent exclusive representative is no longer the representative of the majority, and the statements submitted in support of the petition were not individually dated as required by Ohio Administrative Code Rule 4117-5-02(C)(5)(a).

Dismissal of Petition, Case No. 89-REP-05-0103, issued May 16, 1989, page 1. On May 15, 1989, the Employer filed a motion for reconsideration. Neither the Petitioner nor AFSCME has filed a response.

II. Analysis

O.A.C. Rule 4117-5-02(C)(5) requires that a petition for decertification election be supported by:

...evidence that at least fifty per cent of the employees in the unit no longer wish to be represented by the exclusive representative, such evidence to consist of:
(a) Original signed and dated statements, with each signature dated and signed not more than one year prior to the date of

²A few employees did affix the date of signature immediately after their names. These dated signatures represent 5.7% of the total employees in the unit.

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filing, including but not limited to cards and petitions, that clearly set forth the intent of the employee with respect to representation by the employee organization; provided, however, that, at its discretion, the Board in the interest of fairness may waive the one-year time limitation....

In its Motion, the Employer states that it has "not been favored with an explanation as to how the petition fails to satisfy O.A.C. §4117-5-02(C)(5)(a){sic}...." However, the Board's dismissal entry, issued a mere three working days after the Board voted, is quoted above and clearly states the two inadequacies of the showing of interest: (1) there is no evidence that AFSCME no longer represents a majority of employees and (2) the signatures are not individually dated.

The Board, as part of its statutory authority and duty must ensure that representation elections occur only after there has been a sufficiently identifiable demonstration that the employees desire a change in representation status. In re Delhi Twp., SERB 88-015 (9-29-88). To this end, the Board has promulgated rules pursuant to O.R.C. §§4117.02(H)(8), 4117.07(C)(2) and 119.03. These rules specify the essential components of a proper showing that the employees have such an identifiable, current desire. Such rules have the force of law, and the Board requires full compliance with their clear terms. Parfitt v. Columbus Correctional Facility, 62 Ohio St. 2d 434, 436 (1980); State, ex rel. Mansfield v. Mahoning County Board of Elections, 40 Ohio St. 3d 16, 18 (1988).

The two inadequacies in the documentation supplied by Petitioner relate to requirements that are clearly enunciated in O.A.C. Rule 4117-5-02(C)(5). The rule specifies that signatures must be individually dated. They were not. This requirement for individual dating of signatures relates to timeliness and currency of the signatures. A general statement as to the time span during which the signatures were obtained is inadequate. Although there is absolutely no suggestion of impropriety in the Petitioner's efforts in the instant case, any standard that would permit dating by someone other than the actual signatory would open opportunities for abuse and trickery.

The rule further specifies that the employee's statements must clearly set forth the employee's intent as to representation by the incumbent. The statement on the documents does not express such intent. Rather, it merely indicates a desire for "an election." The interest required to be shown under O.R.C. §4117.07 and O.A.C. Rule 4117-5-02 is not the simple desire for "an election" but a desire for a change in representation status--either to be represented where there is no exclusive representative, to change representative, or to revert to no representation where there is an incumbent. A general assertion that the signatories desire "an election" does not adequately identify a substantial workforce interest in altering its representational status.

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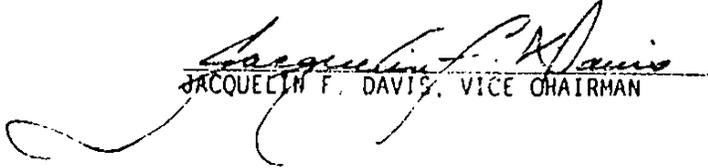
The Employer argues that the employees' intentions are clear: If an employee in a represented unit signs a statement requesting an election pursuant to O.R.C. §4117.07, the Board should infer that the employees no longer want to be represented by the incumbent union.³ This Board is unwilling to make such a tenuous inference, based upon the assumption (1) that all employees are readily conversant with specific Revised Code citations and (2) that decertification is the only possible motive an employee might have in seeking "an election." Such assumptions belie the existence of various other possible motivations employees might have had in signing the general request for "an election." One such possible motive is that pro-union employees may have viewed an election as an opportunity for reaffirmation of the exclusive representative rather than decertification.

The standards for showing of interest are designed so that the documentation will speak for itself, without the need for further inquiry. Indeed, without such restrictions, the Board would be forced to investigate or adjudicate the intent of signatories; as a result, the electoral process would be woefully incumbered and, as a more serious consequence, voters would lose the protection of confidentiality if forced to come forward to explain their intention or to publicly affirm their desires. Thus, precise, easily-understood standards have been set through which employees may express their desire for a change in representative status. The filings in the instant case do not present such documentation.

For these reasons, the Employer's Motion is denied and the original dismissal stands.

It is so directed.

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


JACQUELYN F. DAVIS, VICE CHAIRMAN

³Pursuant to O.A.C. Rule 4117-1-02(G), the Board at all times has maintained the confidentiality of the showing of interest documents so as to protect the identities of the employee-signatories. The Employer, however, indicates that it has seen and examined these documents. Since the documents were not available through the Board, we can only assume that copies of the signed statements were provided to the Employer by the Petitioner. The release of such information by Petitioner certainly is not required as part of the instant process.

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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 Court of Common Pleas within fifteen days after the mailing of this directive

I certify that this document was filed and a copy served upon each party on this 17th day of August, 1989.


CYNTHIA L. SPANSKI, CLERK

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