

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

James E. Martin,

Petitioner,

and

American Federation of State, County and
Municipal Employees, Local 3360

Employee Organization,

and

Cleveland Metropolitan General Hospital,

Employer.

CASE NUMBER: 89-REP-02-0036

OPINION AND DISMISSAL

Before Vice Chairman Davis and Board Member Latané; April 27, 1989.

Davis, Vice Chairman:

FACTS¹

On February 15, 1989, James E. Martin ("Petitioner") filed a petition seeking to alter an existing bargaining unit of employees of the Cleveland Metropolitan General Hospital ("Employer"). The unit to which the Petitioner refers is represented by the American Federation of State, County and Municipal Employees, Local 3360 ("Union" or "AFSCME"). The Union had been recognized prior to April 1, 1984, and therefore is the exclusive representative pursuant to Section 4 of Amended Substitute Senate Bill 133 of the 115th General Assembly (temporary language). (Employee Organization's Motion, filed 3/8/89, page 2 and Exhibit 1.)

In the petition, the Board is asked to exclude from the unit registered respiratory therapists, "based upon the duties and job classification of

¹The facts of this matter are gleaned from documents that were submitted by the parties and are maintained in the Board's official public case file. Citations to these documents are for convenience and are not intended to constitute the sole support in the case file for such statements.

employees in question." (Petition, filed February 15, 1989, page 1.)² The Petitioner contends that the therapists are professional employees and, therefore, should not be combined with other non-professional employees without a vote. AFSCME responded by filing a Motion to Dismiss, contending that, because the petition relates to a grandfathered unit, it is barred by Ohio Administrative Code ("O.A.C.") Rule 4117-5-01(F). In the alternative, AFSCME argues that the employees in question are not professionals. The Petitioner filed a response to the motion, to which AFSCME filed a reply memorandum. The Employer has filed no documentation in this action.

ISSUE

This case presents the novel issue of whether an individual employee has standing to file a petition for amendment or clarification of a unit.

DISCUSSION

The concepts of unit amendment and clarification are not addressed in the statute. Rather, these processes are part of the procedural and legal structure that has been built by the Board through the promulgation of rules. The applicable rule in this case is O.A.C. Rule 4117-5-01(E). It is reflective of similar provisions that have been developed by other, more experienced federal and state labor boards. Through their years of experience, such agencies have recognized the need to develop systems through which units may be altered or clarified. This Board followed the lead of its sister agencies by adopting O.A.C. Rule 4117-5-01(E), which provides that petitions for unit clarification or amendment of certification may be filed only when there is no question of representation and only "by the exclusive representative or by the employer." As with the provisions of many other jurisdictions, this rule does not give individual employees standing to submit such petitions.³

²The document filed is entitled "petition for unit clarification." Given the nature of Petitioner's request, however, the matter properly is a petition for amendment of certification. See O.A.C. Rule 4117-5-01(E)(1).

³See, for example, 29 C.F.R. §102.60(b) (National Labor Relations Board Rules); *Spencer v. NLRB*, 712 F. 2d 539, 113 LRRM 3178 (DC Cir. 1983), cert. denied, 104 S.Ct. 1908 (1984); California Administrative Code §32781; *Riverside Unified School District*, 9 PERC 16190 and 10 PERC 17031 (California Public Employment Relations Board, 1985); Florida Administrative Code Rules Sec. 38D-17.024; Illinois State Labor Relations Board/Local Labor Relations Board Rules §1210.170; *Racine and Ill. Dept of Personnel*, Case No. UC-81-91-OCB (Ill. Office of Collective Bargaining, 1982); Massachusetts Labor Relations Commission Rules §14.14; *Boston Association of School Administrators and Supervisors and Caradonlo*, Case No. MUPL-2423 (Mass. Labor Relations Commission, 1981); *City of Flint and Thivierge*, Case No. UC79 K-47 (Michigan Employment Relations Commission, 1980); New Hampshire Public Employee Labor Relations Board Rules Section Pub 302.05;

OPINION
Case 89-REP-02-0036
Page 3 of 4

Properly promulgated administrative rules have the force of law, and the Board applies them accordingly. Parfitt v. Columbus Correctional Facility, 62 Ohio St. 2d 434, 436 (1980); Rooney, SERB 89-018 (August 19, 1989). While the Board may waive technical defects in filings, a question of standing is no simple technical issue. Sound policy reasons support the widely followed limitation that petitions for unit clarification and amendment of certification may be filed only by employers or exclusive representatives.

Such petitions, by their very terms, relate to existing units for which there is exclusive representation. In other words, two events must have occurred: (1) either the employer and the union reached agreement as to an appropriate unit configuration or the Board determined an appropriate unit pursuant to O.R.C. §4117.06; and (2) a majority of employees in that unit selected a union as their exclusive representative. It is the second factor that relates to the issue of standing. Regardless of the genesis of the unit design, the question of standing turns upon the exclusivity of representation.

Once a union is selected as an exclusive representative, it acquires the single voice of the employees on matters of unit representation, including any desired changes in the unit structure. In the interest of labor stability and productive relations, some avenues through which individual employees might attempt to advance specific personal positions may be curtailed when there is an exclusive representative. Unit alteration is one such avenue. To allow individual employees to attack established unit structures would disrupt existing bargaining relationships, leaving both the union and employer with continual uncertainty about possible changes in the unit for which they bargain. Moreover, individual attempts to alter unit design would undercut--and be contrary to--the union's role as the exclusive representative of the employees. See Riverside Unified School Dist., 9 PERC 16190 (Calif. Public Employment Relations Board, 1985).

New Jersey Public Employment Relations Commission Rules 19:11 .1(a)(4) and (5), 19:11-1.5(a) and 19:11-1.6(a); New York Public Employment Relations Board Rule §201.2(b); Oregon Employment Relations Board Rules §115-25-005; Pennsylvania Administrative Code §95.23 and §95.24; Lackawanna County Housing Authority, Case Nos. PERA-U-88-334-E (PERA-R-2713-C) (Pa. Labor Relations Board, 1989); Washington Administrative Code 391-35-010 and 391-35-020; and Sobek and Milwaukee County, Decision No. 24212 (Wisc. Employment Relations Commission, 1987).

*If an employee believes that the exclusive representative is not fairly representing the interests of all employees in the unit, he or she may pursue redress through an unfair labor practice charge. O.R.C. §4117.11(B)(6).

The Petitioner is an individual employee and, for the reasons stated above, has no standing to bring the instant action. Accordingly, the matter is dismissed.⁵

It is so directed.

LATANE, Board Member, concurs. SHEEHAN, Chairman, absent.

Jacquelin F. Davis
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 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 3rd day of September, 1989.

Cynthia L. Spanski
CYNTHIA L. SPANSKI, CLERK

⁵Were the standing issue not dispositive of this action, a question would arise regarding the propriety of petitions seeking alteration of units grandfathered or "deemed certified" under Section 4 of Amended Substitute Senate Bill 133 of the 115th General Assembly ("temporary language"). O.A.C. Rule 4117-5-01(F). We need not reach that issue in this action.