

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Beaver Education Association,
Employee Organization,
and

Beaver Local School District Board of Education,
Employer.

CASE NUMBER: 90-STK-01-0001

OPINION

Sheehan, Chairman:

This case comes before the State Employment Relations Board (SERB) upon the Request for Determination of Unauthorized Strike filed by the Beaver Local School District Board of Education (Employer) at 12:01 p.m., Thursday, January 18, 1990. Pursuant to Ohio Revised Code (O.R.C.) §4117.23, SERB is required to issue its determination within seventy-two (72) hours of receiving the request. The evidential presentations were made on stipulations, memoranda, and presentations by counsel.

On or about January 4, 1990, the Beaver Local Education Association, OEA/NEA, (Employee Organization) noticed the Beaver Local School District Board of Education and SERB of its intent to strike. The Association, in fact, filed twelve separate notices. Each notice designated a day in which the Association would strike. The twelve listed school days were January 18, 19, 22, 23, 24, 25, 26, 29, 30, 31, February 1 and 2. On each of these days, the strike would be in progress from 12 noon to 11:59 p.m.

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On the day the strike was to commence, the Beaver Local School District Board of Education closed the schools. The schools were closed at the time this hearing convened. O.R.C. §4117.23 applies only if a strike is in progress. Technically, at least, there is no strike in progress. This is an unusual circumstance, but the parties urged the Board to determine the legality of the proposed strike action and stipulated to the following, in order for the Board to accept the request:

1. The Beaver Local School District Board of Education timely received the strike notices that are the subject of this action.
2. On the first strike day, January 18, 1990, and the second strike day, January 19, 1990, the schools were closed by the Board of Education.
3. The School District Board of Education does not claim that it is failing to provide education and instruction in accordance with state minimum standards and as required by state law.
4. The District intends commencing January 22, 1990, to provide instruction by properly certificated substitutes during the period that regular teachers are on strike and absent from their classrooms.
5. The parties agree that all preconditions to a strike as set forth in §4117.14 have occurred.
6. It is the School District's intention to and expectation that it will provide educational instruction in accordance with state minimum standards and as required by law even if regular teachers are absent pursuant to their strike notices.
7. The Beaver Local Education Association, for the purpose of this proceeding only, does not contest the fact that it was on strike on January 18, 1990, or January 19, 1990, although schools were closed by the Board of Education prior to the commencement of the strike on that day as set forth in the notice filed by the Association. The Association does not waive its right to assert in any and all other

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proceedings that it was not on strike after the closure of the schools on January 18, 1990, and on the morning of January 19, 1990.

8. Subject to any right of appeal which the parties may have, the parties agree to abide by the determination of SERB as to whether the strike of the Association is authorized, notwithstanding the fact that schools were closed on January 19 and January 20, 1990.

In view of these stipulations, the only issue before the Board is whether the strike action described in the Notices to Strike comports with the statutory requirements of O.R.C. Chapter 4117 and the inherent legislative control objectives referenced in Ft Frye Local School Dist., SERB 87-021 (11-5-87) and Groveport Madison Local School Dist. Bd. of Ed., SERB 89-002 (1-27-89).

The Beaver Local School District Board of Education asks SERB to declare the strikes unauthorized pursuant to its determination in Ft. Frye, supra,¹ and Groveport Madison, supra. The Employer in citing these cases as support for its request claims SERB "announced that partial day strikes would be found unauthorized in future cases and rejected on-again off-again strike actions by public employees."

Strike is defined in O.R.C. §4117.01(H) as:

'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

¹In Ft. Frye-the employee organization, having properly noticed the employer of its intent, went on strike vacating the schools' premises and withholding all services. On or about the fifteenth day of the strike, at or about 8:00 a.m., fifty-five members of the bargaining unit of seventy-three entered one of the struck schools on a unified campus. They remained in the school for approximately three hours and then departed in concert at 11:00 a.m.

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of employment for the purpose of inducing, influencing, or coercing a change in wages, hours, terms and other conditions of employment. Stoppage of work by employees in good faith because of dangerous or unhealthful working conditions at the place of employment which are abnormal to the place of employment shall not be deemed a strike. (Emphasis added.)

In Ft. Frye, supra, the Board held:

An arctic reading of R.C. 4117.01(H) and R.C. 4117.14(D)(2) would warrant the conclusion that all the activities listed in .01(H) were legal when a notice is given and is as broad as the one in issue here. However, one obvious legislative condition in extending the right to strike to those public employees who have it was to limit the right by specific notice restrictions. The clear legislative objective was to apprise public employers of projected job actions to enable them to institute whatever damage controls were available to them. (Emphasis added.)

The Employer's statement of what SERB said in the above-cited cases is a misreading of SERB's findings in these cases. In Ft. Frye, supra, the strike was deemed unauthorized because the strike notice lacked the specificity in apprising the employer of the action which occurred on or about the fifteenth day of the strike. The Board warned against future notices of such generality. In Groveport Madison, supra, the Board said in referring to intermittent strike action, that "a reading of the provision (O.R.C. §4117.01[H]), on its face, would permit such action." But, in that case, the Board was concerned with the elaborate and complex scheme of the strike action which created a logistical nightmare. The action was so intricate and complex, that despite proper advance notice, it defied the taking of any adequate damage control measures by the employer.

None of the elements are present in the case at hand, and the action described as compared to Groveport Madison is simple and clear. The Beaver Local School District Board of Education received proper and precise notice

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of the intended action. While the action may be somewhat unusual and departs from the generally held concept of a strike, it, nevertheless, comports with those activities set forth in O.R.C. §4117.01(H). Neither is the action seen to be any more disruptive than a strike where total services are withheld. Moreover, the Board can find no impediment through the action or the notice of action that would impair the employer from taking what damage control measures it deems necessary. Applying the Board's policy of balancing the statutory definition of a strike with inherent legislative control objectives, the Board finds the strike action here satisfies the statutory requirements of Chapter 4117 and constitutes a legal strike. Therefore, the strike is authorized.

Latané, Board Member, concurs.