

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SEEB OPINION 90-007

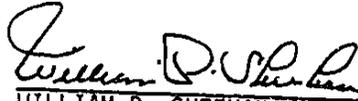
In the Matter of  
Western Reserve Transit Authority,  
Employer,  
and  
Amalgamated Transit Union, Local 272,  
Employee Organization.  
CASE NUMBER: 90-STK-04-0004

ISSUANCE OF OPINION

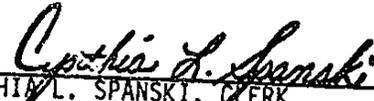
Before Chairman Sheehan and Board Member Latané: April 5, 1990.

On April 5, 1990, pursuant to Ohio Revised Code (O.R.C.) §4117.23, the Board issued its determination in this case. The opinion relating to and referenced in that determination is attached.

SHEEHAN, Chairman, and LATANE, Board Member, concur.

  
WILLIAM P. SHEEHAN, CHAIRMAN

I certify that this document was filed and a copy served upon each party  
on this 23<sup>rd</sup> day of May, 1990.

  
CYNTHIA L. SPANSKI, CLERK

1927b:j1b

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 90-007

In the Matter of  
Amalgamated Transit Union, Local 272,  
Employee Organization,  
and  
Western Reserve Transit Authority,  
Employer.

CASE NUMBER: 90-STK-04-0004

DETERMINATION

Before Chairman Sheehan and Board Member Latané: April 5, 1990.

This case comes before the State Employment Relations Board (SERB) upon the Request for Determination of Unauthorized Strike filed by the Western Reserve Transit Authority (Employer) on April 4, 1990, at 9:57 a.m. SERB is required, pursuant to Ohio Revised Code (O.R.C.) §4117.23, to issue its determination within seventy-two (72) hours.

Upon consideration of the original filings, stipulations, proffered evidence, exhibits and arguments of counsel, the Board finds that the action described here, which constitutes the issue at hand, is not a strike and does not fall within the purview of O.R.C. §4117.23. Consequently, the Request for Determination of Unauthorized Strike is dismissed.

An opinion will follow.

It is so directed.

SHEEHAN, Chairman, and LATANE, Board Member, concur.

*William P. Sheehan*

WILLIAM P. SHEEHAN, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 5<sup>th</sup> day of April, 1990.

*Cynthia L. Spanski*

CYNTHIA L. SPANSKI, CLERK

2316b:LSI/j1b

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 90-007

In the Matter of  
Amalgamated Transit Union, Local 272,  
Employee Organization,  
and  
Western Reserve Transit Authority,  
Employer.

CASE NUMBER: 90-STK-04-0004

OPINION

Sheehan, Chairman:

I.

This case comes before the State Employment Relations Board (SERB or Board) upon the Request for Determination of Unauthorized Strike filed by the Western Reserve Transit Authority (WRTA or Employer) at 9:57 a.m. on April 4, 1990. Pursuant to Ohio Revised Code (O.R.C.) §4117.23, SERB is required to issue its determination within seventy-two (72) hours of receipt of such request. A hearing was conducted by this Board on April 5, 1990, beginning at 2:00 p.m. Evidence presented consisted of original filing, stipulations, proffered evidence, exhibits and arguments of counsel.

The parties agreed to the following stipulations:

1. The Western Reserve Transit Authority ("WRTA") is a "public employer" as defined by O.R.C. §4117.01(B).
2. The Amalgamated Transit Union, Local 272 ("ATU") is an "employee organization" as defined by O.R.C. §4117.01(D).
3. WRTA filed a Request for Determination of Unauthorized Strike with the State Employment Relations Board ("SERB") on April 4, 1990.

4. O.R.C. §4117.01(H) states in pertinent part as follows:

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 of employment for the purpose of inducing, influencing, or coercing a change in wages, hours, terms and other conditions of employment.

5. WRTA and ATU were signatories to a collective bargaining agreement [sic] effective from July 1, 1988 (Jt. Exh. A). That agreement provides at Article V(J) as follows: "It shall be optional with the regular operators whether or not they work overtime."

6. No written notice of intent to strike has been given to WRTA or SERB by ATU.

7. Since approximately February 22, 1990, no members of ATU have signed up to perform additional overtime work on days that they were scheduled to work an ordinary shift. However, members of ATU continued to sign up for and accept overtime assignments on their scheduled days off. All overtime work performed is compensated at time and a half.

8. Since March 17, 1990, no ATU members have signed up to perform overtime work on scheduled days off.

## II.

The issue in this case is whether the failure of employees to volunteer for overtime work constitutes a strike.

O.R.C. §4117.01(H) defines a strike as " ... 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 of employment for the purpose of inducing, influencing, or coercing a change in wages, hours, terms and other conditions of employment .... "

The parties' collective bargaining agreement specifically provides that "it shall be optional with the regular operators whether or not they work

overtime."<sup>1</sup> WRTA admitted it had no authority under the contract to order Amalgamated Transit Union, Local 272, (ATU) employees to work overtime. A "duty" or "duties of employment" as used in O.R.C. §4117.01(H) cannot be so broadly construed as to render obligatory what the parties in their contract specifically designated as optional.

When a collective bargaining agreement explicitly provides employees with the right of choice in respect to certain work, exercising that choice, regardless of what the choice may be, cannot be considered a violation of "the full, faithful and proper performance of the duties of employment" under O.R.C. §4117.01(H), and hence is not a strike. In the case at issue, the collective bargaining agreement gives the regular operators the option to work overtime. Exercising this contractual option, whether by volunteering to work overtime or by refraining from doing so, complies with the duties of employment as agreed by the parties in their contract and, thus, cannot constitute a strike.

There were no allegations that the employees failed to report for their regular shifts nor that they performed their duties in less than an acceptable fashion. Their required duties were fully discharged and there was no "abstinence in whole or in part" from their regular assignments.

WRTA argued that even though overtime is voluntary under the contract, the absence of employees to work overtime constitutes a strike since it has been past practice for the drivers to sign up for overtime work. This argument is not well taken. Even if it has been past practice for the

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<sup>1</sup>Stipulation No. 5 and Jt. Exhibit A, Article V(J).

drivers to sign up for overtime work, it was always voluntary and done by choice. Thus, the element of choice, which includes the option not to sign up for overtime work, is as much past practice as the signing up.

To define the employees' exercise of choice as a strike action might result in committing them to perform optional overtime work or subjecting them to possible punishment for withholding a service they were under no obligation to give.

For the reasons addressed above, the Board finds that the action alleged in this charge does not constitute a strike. In the absence of a strike action, the request for an unauthorized strike determination is denied.

Latané, Board Member, concurs.

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