

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 90-008

In the Matter of
Fraternal Order of Police, Lodge 67, (Garfield Heights Division)
Rival Employee Organization,
and
Northern Ohio Patrolmen's Benevolent Association,
Incumbent Employee Organization,
and
City of Garfield Heights,
Employer.

CASE NUMBER: 89-REP-11-0254

DIRECTIVE DISMISSING PETITION FOR REPRESENTATION ELECTION
(Opinion attached.)

Before Chairman Sheehan and Board Member Latané; March 22, 1990.

On December 4, 1989, the Fraternal Order of Police, Lodge 67 (Rival Employee Organization) filed a petition for representation election seeking to displace the Northern Ohio Patrolmen's Benevolent Association (Incumbent Employee Organization) as the exclusive representative of a bargaining unit consisting of all full time sworn patrolmen of the City of Garfield Heights (Employer).

On January 23, 1990, the Incumbent Employee Organization filed a motion to dismiss the Rival Employee Organization's petition because it was filed outside the window period pursuant to Ohio Revised Code §4117.07(C)(6).

For the reason stated in the attached opinion, incorporated by reference, the motion is granted. The petition is dismissed as having been filed untimely.

It is so directed.

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


WILLIAM P. SHEEHAN, CHAIRMAN

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Directive Dismissing Petition
for Representation Election
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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 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 18th day of June, 1990.

Cynthia L. Spanski
CYNTHIA L. SPANSKI, CLERK

2542b:jlb

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OPINION

Latané, Board Member:

The Fraternal Order of Police, Lodge 67, (Rival Employee Organization or F.O.P.) filed a Petition for Representation Election seeking to displace the Northern Ohio Patrolmen's Benevolent Association (Incumbent Employee Organization or N.O.P.B.A.) as the exclusive representative of a bargaining unit consisting of all full time sworn patrolmen of the City of Garfield Heights (Employer).

The Petition was filed on December 4, 1989. That is, it was time stamped by the State Employment Relations Board (S.E.R.B.) on that date and is, therefore, the date filed under Ohio Administrative Code (O.A.C.) Rule 4117-1-02(A). The F.O.P noted that it was postmarked by the U.S. Mail on November 28, 1989.

The expiration date of the contract between the N.O.P.B.A. and the City of Garfield Heights was February 28, 1990. The Incumbent claimed that the window period for filing a petition during the term of a contract with an expiration date of February 28, 1990, ended on November 30, 1989, pursuant to Ohio Revised Code (O.R.C.) §4117.07(B)(6). The Rival Employee Organization, citing O.A.C. Rule 4117-1-03, calculated that the expiration of the window period was Saturday, December 2, 1989, and, therefore, the filing on Monday, December 4, was timely.

O.R.C. §4117.07(B)(6) states in pertinent part:

Petitions for elections may be filed with the board no sooner than one hundred twenty days or later than ninety days before the expiration date of any collective bargaining agreement...

Ohio Administrative Code Rule 4117-1-03 states:

(A) In computing any time period prescribed by or allowed by Chapter 4117 of the Revised Code and Chapters 4117-1 to 4117-25 of the Administrative Code, or by order or directive of the board or individual conducting a proceeding, such period shall begin to run on the day following the day of the act, event, or occurrence. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, legal holiday, or a day or part of a day on which the board office in Columbus is closed, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, legal holiday, or a day or part of a day on which the board office in Columbus is closed.

The F.O.P. argued that the date of filing the Petition, December 4, 1989, was timely. By counting back correctly to November 1, 1989, as the 120th day prior to the February 28, 1990, expiration date of the contract, and then starting with November 2 as day 1 of the window period, the F.O.P. has December 2, 1989, as the last day of the window period. As December 2 fell on a Saturday, the Monday, December 4, 1989, filing is, under this calculation, within the window period.

This calculation is incorrect. Under O.A.C. Rule 4117-1-03, the "event, act, or occurrence" referred to is the expiration date of the contract, February 28, 1990. Using March 1, 1990, as "the day following the day of the act," as specified in the rule, and counting back, the 90th day was December 1, 1989, and the 120th day prior to the expiration of the contract was November 1, 1989. The clock began to run on the day following February 28th, which was March 1, 1990. Counting back 90 days, there would be included one day in March, 28 days in February, 31 days in January and 30 days in December. Thus, neither December 2, as calculated by the F.O.P., nor November 30, as calculated by the N.O.P.B.A., is correct.

The F.O.P. made a further effort to arrive at December 2 as the expiration of the window period in counting 90 days back from February 28 by counting March 1 as day 1, February 28 as day 2, etc. and reaching December 2 as day 90. Although this method seems logical at first blush, it is also incorrect. The window period included the time period commencing at 12:01 am, November 1, 1989, and ending at 12 midnight on December 1, 1989, as this Board has interpreted O.R.C. §4117.07(C)(6) to include both the 120th day and the 90th day in the window period.

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In summary:

1. The "act, event, or occurrence" from which a time calculation in a window period is determined is the expiration date of the contract. All other days are calculated from the day following the expiration date.

2. The statute is inclusive of both the 90th and the 120th days prior to the expiration of a contract in determining the computation of a window period.

3. The rule works in counting days back by going to the day following the day of the act, event, or occurrence and counting back from that day. An accurate count can not be reached by starting with the day following an act, counting back, then starting with the day following another act and counting forward.

4. The Board dismisses the Petition for Representation Election filed by the F.O.P., Lodge 67, seeking to displace the N.O.P.R.A., as filed untimely. To be timely, the petition must have been filed on any work day between November 1, 1989, and December 1, 1989, inclusive.

Sheehan, Chairman, concurs.

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