

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 90-010

In the Matter of
State Employment Relations Board,
Complainant,

v.

Paulding Exempted Village School District
Board of Education,

Respondent.

CASE NUMBER: 88-ULP-11-0588

ORDER AND OPINION

Before Chairman Sheehan and Board Member Latané: May 17, 1990.

On November 4, 1988, the Ohio Association of Public School Employees/AFSCME, AFL-CIO (Charging Party) filed an unfair labor practice charge against the Paulding Exempted Village School District Board of Education (Respondent). Pursuant to Ohio Revised Code (O.R.C.) §4117.12, the Board conducted an investigation and found probable cause to believe that an unfair labor practice had been committed. Subsequently, a complaint was issued alleging that the Respondent had violated O.R.C. §4117.11(A)(1) and (A)(5) by refusing to bargain over the filling of the position of head cook.

The case was heard by a Board hearing officer. The Board has reviewed the record and the hearing officer's proposed order. No exceptions were filed and, thus, pursuant to O.R.C. §4117.12(B)(2), the Hearing Officer's Proposed Order becomes the order of the Board.

In addition, the Board, in this case, adopts the Hearing Officer's Analysis and Discussion, incorporated here by reference, which, pursuant to Ohio Administrative Code Rules 4117-1-15 and 4117-1-17, carries the same precedential value as a Board opinion. One comment must be made. No assumption should be made from Conclusion of Law No. 4 that SERB has deviated from its ruling in Central State University, SERB 89-027 (10-5-89). In this case, the Board anchored in an opinion the approach it has consistently held that the 90-day limitation period is not jurisdictional but a statute of limitations, which is an affirmative defense that may be waived. The Board's ruling that the 90-day period of O.R.C. §4117.12(B) is subject to equitable tolling derived from its interpretation that this time period is a statute of limitations and not one of jurisdiction.

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Moreover, the Analysis and Discussion of the hearing officer in the case at hand, which is adopted by the Board as its opinion, also clearly relies on the Board's precedent as outlined in Central State University. In short, to clear up any possible misunderstanding, the 90-day limitation period for filing an unfair labor practice charge is not jurisdictional but rather a statute of limitations and Central State University holds.

The complaint is dismissed.

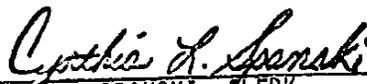
It is so ordered.

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


WILLIAM P. SHEEHAN, CHAIRMAN

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 4117.13(D), by filing a notice of appeal with the Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and common pleas court in the county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or transacts business, 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 22nd day of June, 1990.


CYNTHIA L. SPANSKI, CLERK

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