STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO,

Employee Organization,

and

Montgomery County Clerk of Courts,

Employer.

CASE NUMBER: 88-REP-11-0249

DIRECTIVE

Before Chairman Sheehan and Board Member Latané: June 14, 1990.

On November 18, 1988, Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (Employee Organization) filed a Request for Recognition seeking certification of the following bargaining unit:

Included: All employees of Montgomery County Clerk of Courts, including Deputy Clerk, Account Clerk, Investigator/Deputy Clerk, and Deputy Clerk Supervisor.

Excluded: All management level employees and supervisors as defined in the Code including the Clerk of Courts, Administrative Assistant, and Secretary (one employee-confidential).

The Clerk of Courts did not file either objections or a Petition for Representation Election. Objections were filed by individual employees pursuant to the Notice of Receipt of the Request for Recognition posted on November 21, 1988. On December 8, 1988, objections were filed by the Clerk of Courts-Elect. On December 12, 1988 the Clerk of Courts-Elect filed a Petition for Representation Election. The case was directed to hearing.

The Board has reviewed the record, the hearing officer's recommended determination and exceptions. The Board adopts the hearing officer's Statement of the Case, Conclusions of Law and Recommendations. The Board amends a typographical error by changing the first occurrence of "employees," in the last sentence of the first paragraph in Section C (Substantial Evidence) of the Analysis and Discussion, to "employers." The amended Analysis and Discussion of the hearing officer, incorporated by reference, is adopted and, pursuant to Ohio Administrative Code Rule 4117-1-15 and 4117-1-17, carries the same precedential value as a Board opinion.

The petition and objections of the individual employees and the Clerk of Courts-Elect are dismissed as deficient. The Employee Organization is certified as the exclusive representative for all employees in the bargaining unit as shown above.

It is so directed.

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

William P. Sheehan.
WILLIAM P. SHEEHAN, 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 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 28th day of June, 1990.

Cynthia L. Spanski
CYNTHIA L. SPANSKI, CLERK

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HEARING OFFICER'S RECOMMENDED DETERMINATION

Mr. Ronald H. Janetzke, Esquire, Ohio Council 8, AFSCME, 741 East Broad Street, Columbus, Ohio 43205, (614) 224-5544, representative for the Employee Organization.

Mr. John F. Krumholtz, Esquire, Assistant Prosecuting Attorney, Montgomery County, 301 West Third Street, 5th Floor, Dayton, Ohio 45402, (513) 225-5757, representative for the Employer.

I. STATEMENT OF THE CASE

On November 18, 1988, Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME, Employee Organization, or Union) filed a Request for Recognition with the State Employment Relations Board (SERB). The Request seeks the following bargaining unit:

Included: All employees of Montgomery County Clerk of Courts, including Deputy Clerk, Account Clerk, Investigator/Deputy Clerk, and Deputy Clerk Supervisor.

Excluded: All management level employees and supervisors as defined in the Code including the Clerk of Courts, Administrative Assistant, and Secretary (one employee-confidential).

The Clerk of Courts, who at that time was L. Junior Norris, did not file either a Petition for Representation Election or any objections to the Request for Recognition. Instead, in fact, on November 29, 1988, an agreement between AFSCME and Norris was filed with SERB, which agreement states, basically, that none of the employees sought by the petition should

be excluded from the proposed unit as supervisors, pursuant to §4117.01(C)(10),[1] or as court employees, pursuant to §4117.01(C)(8). On December 8, 1988, Patrick F. Meyer filed objections with SERB. Meyer, at that time, was the Clerk of Courts - Elect, having prevailed over Norris in the November 8, 1988 election. Meyer's term of office commenced on January 2, 1989 (See §2303.01, Ohio Revised Code). Meyer objects on lack of majority status and inappropriate bargaining unit grounds, arguing, more specifically, that: (1) supervisory personnel under Norris solicited AFSCME authorization cards, (2) threats and coercion concerning job security were used to obtain signatures, (3) the proposed unit improperly includes "supervisors" and employees who perform a "judicial function," and (4) the solicited employees believed that they would be participating in a SERB election. On December 12, 1988, Meyer also filed a Petition for Representation Election.

A number of objections were timely filed by individual employees with SERB. These objections were filed pursuant to the Notice of Receipt of Request for Recognition posted by Norris on November 21, 1988, attached hereto as Appendix A. These objections basically mirror Meyer's objections, asserting that: (1) the unit improperly includes supervisors, (2) supervisors pressured employees into signing the cards by voicing concerns over job security, and (3) information given to employees was incomplete or misleading. Many of these objections ask that the objection not be shown to "the current Clerk of Courts or any of the current Supervisors" and evidence an intent to revoke the union authorization cards previously signed. Most of these objections were served on neither the Employee Organization nor the Employer. The largest set of objections (filed by Donna Hollingsworth) was served upon AFSCME, but not upon the Employer. None of the objections were served upon <u>both</u> the Employee Organization and the Employer.

A prehearing conference was conducted in this matter on March 20, 1990. At this prehearing, the parties raised a number of issues directly impacting upon the scope and structure of the hearing. With a mind toward clarifying the scope of the hearing, and pursuant to a Hearing Officer's Procedural Order dated April 9, 1990, I asked the parties to brief, by April 25, 1990,[2] the following issues:

(1) Whether Mr. Meyer, as the Clerk of Courts-Elect, has standing to file:

(a) a petition for representation election,

(b) objections to a request for recognition, and/or

(c) "substantial evidence" pursuant to Rule 4117-3-02, Ohio Administrative Code;

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[1] All references to statutes are to the Ohio Revised Code, Chapter 4117, unless otherwise indicated. All references to rules are to the Ohio Administrative Code, Chapter 4117.

[2] This timeline was subsequently extended to <u>noon</u> on April 30, 1990.

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(2) Whether the objections filed by individual employees in this matter are valid objections if:

(a) the objections were not served upon the parties, and

(b) the Notice of Receipt of Request for Recognition posted by Mr. Norris (the lame-duck Clerk of Courts) read only that: "Employees who object to the recognition of this employee organization may file objections with the State Employment Relations Board ... ;

AFSCME timely filed a brief in response to this Order. The current Clerk of Courts, Meyer, untimely filed a brief on May 1, 1990. Meyer was never granted, and, in fact, never requested any further extension of time (See footnote 2) within which to file his brief. On May 7, 1990, AFSCME filed a Motion to Strike the Employer's brief as untimely filed, or, in the alternative, a Motion to File a Reply Brief. I hereby GRANT AFSCME's motion as a Motion to Strike.

II. ISSUE

1. Whether AFSCME should be certified as the exclusive representative of the petitioned-for bargaining unit pursuant to the voluntary recognition procedures of Chapter 4117, Revised Code.

III. ANALYSIS AND DISCUSSION

I asked the parties to address the above issues preliminarily because they could, potentially, be dispositive of this case, and, therefore, obviate any need for further proceedings. The procedural framework governing this case is found in Sections 4117.05 and 4117.07 of the Revised Code, and Rules 4117-3-01, 4117-3-02, and 4117-3-03 of the Ohio Administrative Code. These latter rules specifically govern requests for voluntary recognition.

A. The Petition for Representation Election

Section 4117.05, Revised Code, provides in pertinent part:

(A) An employee organization becomes the exclusive representative of all the public employees in an appropriate unit ... by either;

(1) Being certified [by SERB] when a majority of the voting employees in the unit select the employee organization as their representative in a board-conducted election under Section 4117.07 of the Revised Code;

(2) Filing a request ... for recognition as an exclusive representative .... Immediately upon receipt of a request, the public employer shall either request an election under division (A)(2) of Section 4117.07 of the Revised Code, or ...

(a) Post notice ... advising employees that objections to certification must be filed with the State Employment Relations Board not later than the twenty-first day following the date of the request for recognition.... (Emphasis added.)

Section 4117.05(A)(2)(b) goes on to provide that the Board shall certify the request unless, within twenty-one days, it has received:

(i) A petition for an election from the public employer pursuant to division (A)(2) of section 4117.07 of the Revised Code;

(ii) Substantial evidence based on, and in accordance with, rules prescribed by the board demonstrating that a majority of the employees in the described bargaining unit do not wish to be represented by the employee organization filing the request for recognition;

(iii) Substantial evidence based on, and in accordance with, rules prescribed by the board from another employee organization demonstrating that at least ten per cent of the employees in the described bargaining unit wish to be represented by such other employee organization; or

(iv) Substantial evidence based on, and in accordance with, rules prescribed by the board indicating that the proposed unit is not an appropriate unit pursuant to Section 4117.06 of the Revised Code.

Section 4117.07 (Election procedures) sets forth who may file petitions for an election:

(A) When a petition is filed, in accordance with rules prescribed by the state employment relations board:

(1) By any employee or group of employees, or any individual or employee organization acting in their behalf, alleging that at least thirty per cent of the employees in an appropriate unit wish to be represented for collective bargaining by an exclusive representative, or asserting that the designated exclusive representative is no longer the representative of the majority of employees in the unit ...

(2) By the employer alleging that one or more employee organizations has presented to it a claim to be recognized as the exclusive representative in an appropriate unit,... (Emphasis added).

Rule 4117-3-02 (Objections to voluntary recognition requests; petitions in response) states, in pertinent part:

> (B) On the twenty-second day following the employer's receipt of the request for recognition, the board shall certify ... the employee organization ... unless:
>
> (1) The employer has filed a petition for election pursuant to section 4117.07 of the Revised Code, in which case the board will determine whether there is a question of majority representation warranting a representation election;
>
> (2) The board receives substantial evidence as defined by rule 4117-3-03 of the Administrative Code demonstrating that a majority of the employees in the described bargaining unit do not wish to be represented by the employee organization that filed the request for recognition;
>
> (3) The board receives from another employee organization substantial evidence as defined by rule 4117-3-03 of the Administrative Code demonstrating that at least ten per cent of the employees in the described bargaining unit wish to be represented by such other employee organization; or
>
> (4) The board receives substantial evidence as defined by rule 4117-3-03 of the Administrative Code indicating that the proposed unit is not appropriate.

It is clear from the above provisions that standing to file a petition for representation election is conferred only upon an employee or group of employees, an individual or employee organization acting in their behalf, or an employer. In this sense, Chapter 4117 and its corresponding administrative rules mirror Section 102.60 of the NLRB's rules and regulations, which provides:

> (a) Petition for certification or decertification; who may file; where to file; withdrawal. A petition for investigation of a question concerning representation of employees under paragraphs (1)(A)(i) and (1)(B) of section 9(C) of the Act (hereinafter called a petition for certification) may be filed by an employee or group of employees or any individual or labor organization acting in their behalf or by an employer.

(See also, Rules and Regulations Section 102.61 and LRX:670:403 Section 4).

Considering the facts at hand in light of this statutory framework, it appears clear that Patrick Meyer, as the Clerk of Courts-Elect, had no standing to file a petition for representation election. In In re Franklin County Sheriff, SERB 86-007 (2-26-86), at 238 (see footnote 10, infra), SERB stated that "each elected county official is the sole employer of the employees in the respective offices." And it is an elemental principle of law that an incumbent officeholder remains in office during his term of office.[3] While Norris was obviously a "lame-duck" officeholder between November 8, 1988, and January 2, 1989, Norris was, undoubtedly, the employer at the time AFSCME's Request for Recognition was filed. It was, thus, Norris, not Meyer, who was empowered to file a petition for representation election pursuant to 4117.07(A)(2). While an argument might conceivably be mounted that Meyer was acting pursuant to 4117.07(A)(1) as an individual acting on the employees' behalf, the simple truth of the matter is that the petition for representation election makes no such representation.[4] Since Meyer had no standing to file a petition for representation election, that petition should be dismissed.

B. Meyer's Objections to the Request for Recognition

A reading of the two statutory provisions set forth above, §4117.05 and §4117.07, seems to indicate that the legislature intended that objections to certification be filed by employees. Again, Section 4117.05(2)(a) requires employers to post a notice "advising employees that objections must be filed" with SERB within twenty-one days. Rule 4117-3-01(B)(4) echoes the same requirement: Employers must "post a notice in each facility at which employees in the proposed unit are employed...advising employees that any objections to certification must be filed with the board ..." (Emphasis added). SERB's Notice of Receipt of Recognition, posted by Norris, again references employees: "Employees who object to the recognition of the employee organization may file objections ...." The statutory framework thus seems clear: under §4117.07, a public employer may attack a voluntary recognition request by filing a petition for representation election; under §4117.05, employees may attack a voluntary recognition request by filing objections to the request. As a practical matter, this Board has often accepted objections from employers filed along with a petition for representation election in response to a voluntary recognition petition. Again, however, Meyer was not then the employer. Nor was Meyer an employee of the Clerk of Courts, nor, again, was there any showing that Meyer was authorized to act in a representative capacity on behalf of the employees. Since Meyer was not acting as the employer, an employee, or a representative of employees, I find that Meyer had no standing to file objections to AFSCME's request for recognition.

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[3] Of course, the office, itself, could be discontinued, or the incumbent removed for improper performance of duties.

[4] Meyer's objections also make no such representation--in fact, Meyer's objections leave one with just the opposite impression, stating: "I am of the opinion that the employees are entitled to a fair presentation of relevant factual information..." (Emphasis added).

C. "Substantial Evidence"

As noted in Subsection (A) above, Rule 4117-3-02 provides that the Board shall certify the employee organization on the twenty-second day following the filing of the request for recognition unless the employer has filed a petition for election [(4117-3-02(B)(1)] or unless "substantial evidence" demonstrating various circumstances has been received [4117-3-02(B)(2), (B)(3) and (B)(4)]. AFSCME argues, as it did with Meyer's Petition for Representation Election and objections, that Meyer does not have standing to file "substantial evidence" under Ohio's statutory scheme. According to AFSCME, it is evident from the preceding statutory provisions that SERB (like the NLRB) recognizes that only a limited number of parties have an interest in the filing of a request for voluntary recognition--employees, individuals authorized to act on their behalf, employers, and competing employee organizations. AFSCME contends that, since no other outside parties have been given standing to attack a voluntary recognition petition by filing an election petition or objections, outside individuals should likewise be found not to have standing to file evidence with SERB attacking the petitioning union's showing of interest or the appropriateness of the bargaining unit. AFSCME concludes that to hold otherwise would be to allow an outside party to potentially force the union, the public employer, and employees to a representation election, even where none of those parties requested an election or filed objections [See 4117-3-02(E)]. AFSCME, therefore, argues that SERB, in keeping with §§4117.05 and 4117.07, should find that only employees, individuals acting on behalf of employees, employees or competing employee organizations having standing to file "substantial evidence."

AFSCME's argument has substantial merit. Accordingly, I find that Meyer does not have standing to file evidence with SERB pursuant to Rule 4117-3-02. However, even if Meyer did have standing, a review of Meyer's submission demonstrates that Meyer failed to file "substantial evidence" in accordance with Rule 4117-3-03.

Rule 4117-3-03 (Substantial evidence for purpose of voluntary recognition) reads, in pertinent part:

> (A) For the purposes of division (A)(2), (A)(2)(b)(ii), and (A)(2)(b)(iii) of Section 4117.05 of the Revised Code, and rules 4117-3-01 and 4117-3-02 of the Administrative Code, "substantial evidence" shall consist of the following documentation that shall be filed only with the board:
>
> (1) Original signed statements, with each signature dated not more than one year prior to the date of filing, including but not limited to cards and petitions, that clearly set forth the intent of the employee with respect to representation by the employee organization; or

(2) Dues deduction authorizations or employer-verified dues deduction lists in effect as of the payroll period immediately preceding the filing of the request for recognition with the board; or

(3) Current cash dues receipts.

(B) At its discretion, the board, in the interest of fairness, may waive the time limitations of paragraph (A)(1) of this rule. For the purpose of division (A)(2)(b)(iv) of Section 4117.05 of the Revised Code, "substantial evidence" shall consist of a clear and concise statement of the reason the unit is not appropriate, such statement to be supported by documentation relating to the factors set forth in section 4117.06 of the Revised Code.

The only evidence submitted with Meyer's objections was an attached statement. The statement claims, in part, that Meyer was approached by approximately ten employees who told Meyer that they had been promised, and that they wanted, an election. This, obviously, is not the submission of "original signed statements ... that clearly set forth the intent of the employee with respect to representation by the employee organization" such as would satisfy Rule 4117-3-03(A)(1). Moreover, even if these were original signed statements, statements from ten of the ninety-three employees petitioned for certainly does not demonstrate that a "majority" of the employees in the described bargaining unit do not wish to be represented by the employee organization that filed the request for recognition" such as would satisfy Rule 4117-3-02(B)(2) and §4117.05(A)(2)(b)(ii). Meyer certainly did not submit any evidence indicating that employees wished to be represented by another employee organization pursuant to Rule 4117-3-02(B)(3) and §4117.05(A)(2)(b)(iii), which brings us to Rule 4117-3-02(B)(4) and §4117.05(A)(2)(b)(iv) regarding evidence of the appropriateness of the bargaining unit. Rule 4117-3-03(B), as noted above, states that "substantial evidence" shall consist of a clear and concise statement of the reason the unit is not appropriate, such statement to be supported by documentation relating to the factors set forth in Section 4117.06 of the Revised Code. Meyer's statement does nothing more than make bare assertions that the bargaining unit is not appropriate because it includes "supervisors" and "employees of the Clerk of Courts who perform a judicial function." While this assertion might, arguably, state "the reason" the unit is not appropriate, it certainly does not supply any documentation (for example, job descriptions) in support. I conclude, thus, that, even if Meyer had standing to file "substantial evidence" in accordance with Rule 4117-3-02, he failed to submit any evidence satisfying the requirements of §4117.05 and Rule 4117-3-03.

D. Employee Objections

A review of SERB's file reveals that a number of employees filed objections to AFSCME's voluntary recognition request. Only one of these objections was filed on the proper form, that of Donna Hollingsworth, who objected on the basis of lack of majority status and inappropriateness of the bargaining unit. As stated in Section I above, service of this objection was apparently attempted on AFSCME,[5] but the objection was never served on Norris. None of the other objections were served on either party.

Rule 4117-3-02(A) specifically and clearly states that:

> Any objections to a request for recognition shall be filed with the board and served upon the parties not later than the twenty-first day following the employer's receipt of the request for recognition (Emphasis added).

Obviously, none of the employee objections comply with this rule. Accordingly, they are all invalid.

I note that SERB's Notice of Receipt of Request for Voluntary Recognition did not specifically apprise employees of their obligation to serve their objections on the parties. Rather, the Notice simply stated: "Employees who object to the recognition of this employee organization may file objections with the State Employment Relations Board ...." Thus, one could conceivably argue that employees reading this Notice may not have realized that they also needed to serve their objections on the parties. However, this language in the Notice only mirrors §4117.05, which, pursuant to its implementing rule, 4117-3-02(A), requires service. It is elemental that all petitions, pleadings, motions, or other documents filed with SERB should comply with SERB's rules and regulations.[6] Moreover, while Rule 4117-3-03, for example, provides the Board with authority to waive certain time limitations in the interest of fairness, Chapter 4117-3 contains no other waiver provision. There being no provision for waiver of service, I find the objections invalid.

Even if the objections had been properly served, a review of the objections demonstrates that they are all deficient. As discussed above in relation to Meyer, §4117.05 mandates the Board to certify the union, unless, within twenty-one days after the filing of the recognition request, a representation election petition is filed by the employer or "substantial

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[5] This objection contains a Certificate of Service, but was served on AFSCME at the wrong address. It was, however, served to the address AFSCME placed on its Petition, so AFSCME is not objecting to Hollingsworth's objection due to lack of service.

[6] Moreover, no compelling argument can be made that these objections are "confidential." See Franklin County Board of Mental Retardation and Developmental Disabilities v. SERB, Case No. 85-07650 (Ohio Court of Claims, October 22, 1985), where the court found objections to an election to be public records.

evidence" of certain circumstances is produced. The employees' objections, like Meyer's objections, fail here. Attached to Hollingsworth's objections are various petitions signed by employees who purport to revoke their previously signed authorization cards. These signatures, along with those of other employees who filed individually, were investigated and tallied by SERB's Administrator of Representation. Having performed this investigatory review, and having discounted all duplicate signatures, SERB's Administrator of Representation determined that the number of employees objecting fell short of a "majority of the employees" in the described unit. Thus, SERB has not received any employee objections which satisfy Rule 4117-3-02(B)(2). Some of the other employee objections question why "Deputy Clerk Supervisors" are being "included" in the bargaining unit when "Supervisors as defined in the Code" are "excluded." Again, however, these questions, or bare assertions, were not accompanied by any supporting documentation purporting to prove that any employees were, indeed, supervisors. Again, thus, the Board has not received any "substantial evidence," as required by §4117.05 and Rule 4117-3-03(B) that the proposed unit is not appropriate. I conclude, hence, that even if the objections had been properly served, no employee submitted "substantial evidence" in accordance with §4117.05 and Rule 4117-3-03.

E. Conclusion

Based on the foregoing analysis, I conclude the following. Patrick Meyer, not being the public employer at the time AFSCME's request for recognition was filed, had no standing to file a Petition For Representation Election, objections to the request for voluntary recognition, or "substantial evidence" under Ohio's statutory scheme. Even if Meyer did have standing to file "substantial evidence," Meyer's statement as attached to his objections, does not constitute "substantial evidence" as contemplated by §4117.05 or Rule 4117-3-03.

None of the individual employee objections were properly served upon the parties in accordance with Rule 4117-3-02(A). Even if the objections had been properly served, they are all deficient because they are not supported by "substantial evidence in support of ... the ... objections" [See 4117-3-02(D)].

Rule 4117-3-02(D) reads:

> In the event the employer does not file a Petition For Representation Election pursuant to sections 4117.05 and 4117.07 of the Revised Code; the board shall determine whether or not the employee organization is entitled to certification pursuant to section 4117.05 of the Revised

> Code and Chapter 4117.03 of the Administrative Code. The board may conduct inquiries, investigations, and hearings for the purpose of determining whether it has received substantial evidence in support of either the request for recognition or objections. The board shall notify the employee organization and employer of its determination.

Here, the employer, Norris, did not file a Petition for Representation Election (and Meyer had no standing to file one). The Board is, therefore, empowered to "conduct inquiries, investigations, and hearings" to determine whether "it has received substantial evidence in support of either the request for recognition or objections." SERB, through its Administrator of Representation, initially investigated AFSCME's request for recognition and administratively determined that AFSCME had filed "substantial evidence... that a majority of the employees in the bargaining unit" wished to be represented by AFSCME. After the objections were filed, the Administrator of Representation again reviewed the file and determined that the number of employees filing objections did not constitute a majority. I have now administratively reviewed the objections and determined that there is no "substantial evidence"[7] that the unit is not appropriate. Thus, pursuant to §4117.05, the Board should certify AFSCME as the exclusive representative of the proposed unit because it <u>has not</u>, pursuant to §4117.05(A)(2)(b), received any election petition, objections, or substantial evidence which would preclude certification.[8]

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[7] No one has even suggested that the unit, as proposed, contains a combination of employees prohibited by §4117.06.

[8] The Board may wish to review the Hearing Officer's Recommended Determination in Case Nos. 84-VR-11-0240 and 84-RC-11-2364 (October 4, 1985), the cases underlying the Board's Opinion in SERB 86-007, cited <u>supra</u>. In those cases, AFSCME filed a Request for Voluntary Recognition seeking to represent certain employees of the Franklin County Sheriff's Department. The Sheriff filed neither an election petition or objections; however, the Franklin County Commissioners (FCC) filed an election petition, alleging that they were "joint employers" with the Sheriff. The FCC also alleged that the proposed unit was inappropriate (since some of the employees were supervisors), and that a supervisor's coercive activities tainted AFSCME's authorization cards, thereby negating AFSCME's showing of interest. The Hearing Officer concluded that the Sheriff, alone, was the public employer, and that the FCC's election petition should, therefore, be dismissed by the Board (See Conclusion of Law No. 3). Moreover, the Hearing Officer found, at page 10, that the Sheriff did not file objections to AFSCME's petition, and that "(w)ith no objections to the Voluntary Recognition...<u>properly filed</u> in this matter, <u>AFSCME is entitled to certification</u>..." (Emphasis added; see Conclusion of Law No. 9). The Board adopted the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendations,

A few final points should be discussed before closing. First, much of what is apparently troubling Meyer is the fact that he may, in fact, end up being bound (and unionized) by his predecessor's actions (or inactions) in office. This is, quite simply, a commonplace political reality, generally speaking. More specifically, in the public sector, there are decisions which hold newly elected officials to certain obligations assumed by their predecessors. For example, In 43rd Judicial District, Ferndale Division, 5 NPER 23-13142 (MI 08/03/82), the Michigan Employment Relations Commission (MERC) considered among other questions, whether a collective bargaining agreement executed by then District Judge Hunt bound his successor Judge Voss. Respondent, the 43rd District Court, had argued that Judge Hunt had no authority to enter into the agreement because at the time the agreement was signed, Hunt was a "lame duck," having lost the judgeship election to Voss. MERC rejected this argument, stating, at page 3, that: "the fact that Judge Hunt was a "lame duck" judge at the time he signed the agreement had no effect on the agreement's validity. Judge Hunt, although defeated in the election, remained the presiding judge and retained all the authority granted by statute to his position." MERC, thus, found that the District Court violated its bargaining obligation by refusing to abide by the agreement negotiated by Hunt.[9] In Lake County Sheriff, 3 NPER 23-12033 (MI 01/08/81), the MERC found that a newly elected sheriff, who was a co-employer along with the County Commissioners, was bound by an agreement negotiated by the deputies' union and the commissioners, even though the former sheriff had not attended every negotiating session and even though he

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[8] Cont'd.

but did not adopt the analysis. I have not relied upon, or cited, this decision in my analysis. I do this not because this case lacks relevance (since it has very obvious parallels), but because of Rule 4119-1-17(B), and SERB's admonition in In re Office of Collective Bargaining (State Highway Patrol), SERB 89-016 (7-13-89), that hearing officers' recommendations not be cited as authority for any principle unless the hearing officer's analysis has been expressly adopted by SERB. See also Perry County Sheriff, 1 OPER Para. 1475 (SERB, December 12, 1984). In that case, the FOP filed a request for voluntary recognition with the Perry County Sheriff, and the Sheriff filed an election petition, but did not do so within twenty-one days. The Board did not waive this defect, but instead proceeded to certify the FOP as the exclusive employee representative.

[9] MERC also found that these circumstances raised no "successorship" problems, because the 43rd Judicial District was the employing entity, and, as such, there was no change in the employer. While this is one possible basis for distinction, it really becomes relevant when a contract is involved. Here, no contract has yet been executed, and the issue is whether the successor employer is bound to recognize the union, not whether he is bound by the substantive provisions of a collective bargaining agreement. This is a vital distinction.

did not specifically agree to be bound by the agreement. MERC plainly stated, in language directly relevant here, that: "a mere change in public officials does not raise a successorship problem. This is especially true here, where there is a substantial continuity of the identity in the operational structure, practices and employees." Id., at 3, emphasis added. Accordingly, MERC found that the newly elected sheriff's failure to comply with the grievance arbitration procedure contained in the agreement constituted an unlawful refusal to bargain. Finally, in the private sector, "[i]t has been consistently held that a mere change of employers or of ownership in the employing industry is not such an 'unusual circumstance' as to affect the force of the Board's certification within the normal operative period if a majority of employees after the change of ownership or management were employed by the preceding employer."[10] NLRB v. Burns International Security Service, 406 U.S. 272, 80 LRRM 2225, at 2227 (1972). Thus, while in the private sector, successor employers may not necessarily be bound by the substantive provisions of a collective bargaining contract negotiated by their predecessors but not agreed to or assumed by them, successor employers may nonetheless be bound to recognize and bargain with the union. Id., 80 LRRM, at 2229, cf. footnote 10, supra.

Second, it should be noted that if, in fact, Meyer's worst fears are justified, the employees herein are not without recourse. If, and when, a majority of employees in the bargaining unit no longer support the union, they may file a Petition For Decertification with SERB. At this point, however, the Union has satisfied its burden of showing a card majority, and there are no valid, countervailing objections or evidence which defeats this show.

Consistent with the findings made herein, I conclude that no further proceedings are necessary, or appropriate, in this case. I have, therefore, cancelled both the second prehearing conference, scheduled for May 4, 1990, and the hearing, scheduled for May 10-11, 1990.

IV. CONCLUSIONS OF LAW

1. Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, is an "employee organization" as defined by O.R.C. §4117.01(D).

2. The Montgomery County Clerk of Courts is a "public employer," as defined by O.R.C. §4117.01(B).

3. L. Junior Norris was the Montgomery County Clerk of Courts at the time that AFSCME filed its Request for Voluntary Recognition, and, as such, was the "public employer."

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[10] There is no assertion here that operational structure, practices, or employees have changed significantly.

4. Patrick Meyer was the Clerk of Courts-Elect at the time that AFSCME filed its Request for Voluntary Recognition, and as such, was not the "public employer." Nor was Meyer an employee, an individual acting on behalf of employees, or a rival employee organization. Meyer, thus, did not have standing to file a Petition for Representation Election, objections, or other evidence in an attempt to defeat the Request for Voluntary Recognition. In addition, Meyer's submissions did not constitute "substantial evidence" as contemplated by O.R.C. §4117.05 or Rule 4117-3-03.

5. None of the individual employee objections were properly served upon the parties in accordance with Rule 4117-3-02(A). In addition, the individual employee objections are deficient because they are not supported by "substantial evidence" in support of the objections pursuant to Rule 4117-3-02(D).

6. The proposed bargaining unit is not prohibited by O.R.C. §4117.06, and there has been no valid showing that the unit is inappropriate.

7. There being no valid petition for representation election, objections, or "substantial evidence" filed in this case, and there being no facial invalidities in the bargaining unit, AFSCME is entitled to certification as the exclusive representative of employees in the proposed bargaining unit pursuant to O.R.C. §4117.05 and Rule 4117-3-02(B).

V. RECOMMENDATIONS

1. The Board adopt the Conclusions of Law set forth above.

2. The Board issue an Order dismissing Patrick Meyer's Petition for Representation Election, objections, and "evidence" as deficient.

3. The Board dismiss the individual employee objections as deficient.

4. The Board issue an Order pursuant to O.R.C. §4117.05, certifying AFSCME as the exclusive representative of the employees in the proposed bargaining unit.

ISSUED and SUBMITTED to the State Employment Relations Board in accordance with Ohio Administrative Code Rule 4117-1-15 and SERVED on all parties by certified mail, return receipt requested, this 10th day of May, 1990.

Leigh Anne Reardon
LEIGH ANNE REARDON
Hearing Officer

LAR:fek/
5764x

State of Ohio
STATE EMPLOYMENT RELATIONS BOARD
65 East State Street
Columbus, Ohio 43215

APPENDIX
~~EXHIBIT~~ A

Notice of Receipt of Request for Recognition

Date Request For Recognition Received: Nov. 21, 1988

INSTRUCTIONS TO EMPLOYER

- Within three days of receipt of a Request for Recognition pursuant to Section 4117.05 of the Revised Code, the employer must post this Notice unless a Petition for Election is filed with the Board.
- This Notice must be posted in conspicuous locations where employees will be reasonably apprised of its contents. The Notice must not be altered, defaced, or covered.
- Upon posting, submit three (3) copies of this Notice plus a Certificate of Posting to the State Employment Relations Board.

Name of Employer			Address (No. & Street)	
Montgomery County Clerk of Courts			41 North Perry St. Dayton, Ohio 45422	
City Dayton	State OH.	Zip Code 45422	Received By: L. Junior Norris	Title Clerk of Courts

Employee Organization
AFSCME Ohio Council 8, AFL-CIO

The above named Employee Organization requested recognition as the exclusive representative for the purposes of collective bargaining for employees in the following unit:

INCLUDED: Deputy Clerk, Account Clerk, Investigator/Deputy Clerk, Deputy Clerk Supervisor

EXCLUDED: All management level employees and supervisors as defined in the Code including the Clerk of Courts, Administrative Assistant and Secretary (one employee-confidential)

Employees who object to the recognition of this employee organization may file objections with the State Employment Relations Board, 34 North High Street, Columbus, Ohio, 43215, no later than the twenty-first (21st) day following the date, set forth above, of receipt of the Request for Recognition.

L. Junior Norris 11/21/88
Authorized Official of Employer *Date*

Objections must be filed by: Dec. 12, 1988

ERB 2006

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