

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
City of Gallipolis,
Employer,
and

Ohio Council 8, American Federation of State, County
and Municipal Employees, Local 1316,

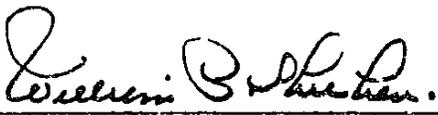
Employee Organization.

CASE NUMBER: 90-STK-09-0005

ISSUANCE OF OPINION

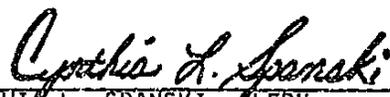
As stated in the Board's determination issued on September 7, 1990, the attached opinion sets forth the reasons for the determination. The opinion is incorporated by reference in the Board's determination that was issued on September 7, 1990.

SHEEHAN, Chairman, LATANE and POTTENGER, Board Members, concur.



WILLIAM P. SHEEHAN, CHAIRMAN

I certify that this document was filed and a copy served upon each party
on this 14th day of September, 1990.



CYNTHIA L. SPANSKI, CLERK

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 90-016

In the Matter of
City of Gallipolis,
Employer,
and

Ohio Council 8, American Federation of State, County
and Municipal Employees, Local 1316,

Employee Organization.

CASE NUMBER: 90-STK-09-0005

Determination

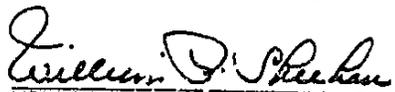
Before Chairman Sheehan, Latane and Pottenger, Board Members; September 7, 1990.

This case comes here under the auspices of Section 4117.16(A), Ohio Revised Code. The responsibility of the State Employment Relations Board is to decide whether the legal job action by the employees of the City of Gallipolis creates a clear and present danger to the health or safety of the public. If the answer is "Yes" the statute authorizes the extension of the temporary restraining order (TRO) now in place for an additional sixty (60) days. If the answer is "No" the restraining order ends on or about 5:00 p.m. September 9, 1990.

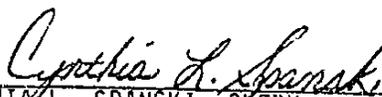
The answer is "No." The standard established in Central Ohio Transit Auth. SERB 87-001 (2-19-87) to determine whether a clear and present danger to the health and safety of the public exists has not been met. The record simply will not support the city's claim that a clear and present danger to the health and safety of the public exists as a result of the strike. Quite the contrary, the record indicates that supervisors and other city employees can adequately provide for the city's services during the work interruption.

The statutory determination necessary to authorize an extension of the restraining order is denied. Opinion to follow.

SHEEHAN, Chairman, LATANE AND POTTENGER, Board Members, concur.


WILLIAM P. SHEEHAN, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 7th day of September, 1990.


CYNTHIA L. SPANSKI, CLERK

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 90-016

In the Matter of
City of Gallipolis,

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and

Ohio Council 8, American Federation of State, County
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CASE NUMBER: 90-STK-09-0005

OPINION

Pottenger, Board Member:

The present case came before the State Employment Relations Board (SERB) on Request for Determination of Clear and Present Danger of the City of Gallipolis (Employer or City) following the issuance of a 72-hour Temporary Restraining Order (TRO) by the Gallia County Court of Common Pleas.¹

Pursuant to R.C. §4117.16(A) SERB must act within the 72-hour period of restraint and SERB's action is limited to answering one question - does the strike create a clear and present danger to the health and/or safety of the public? The answer to the question requires an assessment of the evidence. For reasons adduced below, the evidence does not support an affirmative answer.

The question is answered, "No."

The record shows that Ohio Council 8, American Federation of State, County and Municipal Employees, Local 1316 went on strike at 12:01 a.m. on September 5, 1990. It was stipulated that the strike was legal and followed a 10-day strike notice to the Employer.

¹See R.C. §4117.16(A).

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The strike involved a unit of 26 city employees including laborers, a custodian, truck drivers, water meter readers, a mechanic, a carpenter, a street maintenance person, a parks maintenance person as well as employees in the water treatment plant and in the waste water treatment plant.

The Employer's main argument why SERB should determine the strike to be a clear and present danger to the public health or safety involved the employees in the water treatment plant and in the waste water treatment plant. To summarize briefly, the Employer's concerns were on two levels - first, with regard to the waste water treatment plant, the possibility that during a heavy storm the system gets flooded and with no employees around to get the system going, the sewer will back up in houses and creates a health hazard. Second, with regard to the water treatment plant, the possibility that a pump might fail or a serious leak occur and, again, with no employees around to take care of the problem, the water pressure might decrease and create a fire protection problem.

The Employer's concerns are serious. However, the preponderance of the evidence does not support the finding of clear and present danger.

Strikes in water plants are not per se clear and present danger strikes. As SERB pointed out In re Central Ohio Transit Auth., SERB 87-001 (2-19-87) (COTA), the statutory language does not declare a condition per se hazardous by providing special treatment for "clear and present danger" strikes. SERB reasoned that when the General Assembly addressed per se public dangers, it proscribed job actions all together as demonstrated by the prohibition of strikes by safety forces. Thus, the facts in each case

are crucial to the determination of clear and present danger. In COTA SERB set the following legal standard for the determination of what constitutes a "clear and present danger to the health or safety of the public":

... [t]he statutory "clear and present danger" contemplates a powerful life, body or property threatening condition both obvious and imminent. And the threat must imperil a broad and substantial range of persons in the community [i]t must involve a magnitude that is more than random individual hardship and more than mere inconvenience. Id. at 3-3. (Emphasis added.)

In the case at issue, the facts do not meet the COTA standard. There are five (5) employees in the waste water treatment plant - 3 unit employees and 2 supervisors. During a strike the two supervisors can take care of emergencies when such occur. If a heavy storm occurs and the system gets flooded, as the Employer's scenario runs, there is an automatic rotating dialing system which calls the employees at home. Both supervisors are on the dialing system. Moreover, hitting a switch is all the corrective measure needed to get the system going. Clearly the two supervisors can handle such emergencies.

In the water treatment plant there are four (4) employees, one of whom is a supervisor. The supervisor is licensed to do the chemical and bacterial testing of the drinking water. Again, if a pump fails for some reason, a flip of a switch, which can be done by the supervisor will activate another pump to get the system working. Moreover, there are seven supervisors in the departments involved in the strike apart from the City Engineer and the City Manager, all of whom can help to repair leaks or to deal with emergencies, as happened the second day of the strike.

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Obviously, operating the plants with only supervisors or temporary help might cause some individual hardship and great inconvenience. However, the standard of clear and present danger as specified in COTA above is more than random individual hardship and mere inconvenience. It has to involve an obvious and powerful life, body or property threatening condition to a broad and substantial range of persons in the community and must be imminent. This is not the case here.

One more point should be made with regard to the fire protection problem. The Employer raised this problem in connection to diminishing water pressure under various disastrous scenarios. The record shows that the City of Gallipolis has mutual aid agreements with nine neighboring communities for fire protection. While some of the communities are farther and smaller than others, the closest one, across the Ohio River, is the same size as Gallipolis. The fire trucks² in the City, as well as in the neighboring communities, have water tanks and are not solely dependent on the water pressure in the City.

The combination of enough manpower in the City to handle emergencies, in spite of the strike, plus the availability of fire protection for the City in case of emergency, points in the direction of a possibility of hardship and inconvenience, but not in the direction of an obvious and imminent powerful threat to life, body or property.

²Apart from the Chief, the fire department of the City consists of volunteers and has not been affected by the strike.

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The strike does not create a clear and present danger to the health or safety of the public.

Sheehan, Chairman, and Latané, Board Member, concur.

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