

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SEAB OPINION 90-019

In the Matter of
Fraternal Order of Police, Capital City Lodge No. 9,
Employee Organization,
and
Franklin County Sheriff/Franklin County Commissioners,
Employer.

CASE NUMBERS: 90-MED-09-0778
90-MED-09-0779

DIRECTIVE GRANTING MOTION TO SUBMIT REPLY BRIEF
AND DENYING MOTION TO STAY THE NOTICES TO NEGOTIATE
(Opinion attached.)

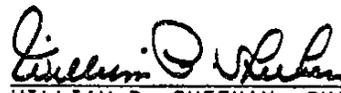
Before Chairman Sheehan and Board Members Brundige and Pottenger:
October 18, 1990.

On September 20, 1990, the Franklin County Sheriff's Department (Department) filed a motion to stay the notices to negotiate which were filed by the Fraternal Order of Police, Capital City Lodge No. 9, on September 7, 1990. The Department subsequently filed a motion to submit reply brief.

The motion to submit reply brief is granted. For the reasons stated in the attached opinion, incorporated by reference, the Department's motion to stay the notices to negotiate is denied.

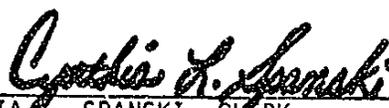
It is so directed.

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


WILLIAM P. SHEEHAN, CHAIRMAN

If this directive is appealable pursuant to O.R.C. Section 119.12, please be notified that an appeal may be perfected 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 23rd day of October, 1990.


CYNTHIA L. SPANSKI, CLERK

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OPINION

Brundige, Board Member:

This case comes before the State Employment Relations Board (Board or SERB) on a motion filed by the Franklin County Sheriff's Department (Department or Employer) on September 20, 1990, to stay the Notices to Negotiate, which had been filed by the Fraternal Order of Police, Capital City Lodge No. 9 (FOP or Incumbent Organization) on September 7, 1990.

The Department and the FOP are parties to two collective bargaining agreements, both expire on November 11, 1990.

In January 1988, the Franklin County Law Enforcement Association (FCLEA or Rival Organization) filed a Petition for Representation Election. Subsequently, the FOP filed unfair labor practice charges against the Department alleging unlawful support for the FCLEA. The representation case involving the FCLEA petition for election was stayed by SERB pending the resolution of the related unfair labor practice charges.

On August 15, 1989, in different unfair labor practice cases (87-ULP-10-0452 and 87-ULP-05-0232) involving the same parties, the Department signed a settlement agreement which, in Paragraph 1, recognizes the FOP as the exclusive representative of employees in the two bargaining units at issue here and specifically stated that this recognition is extended to the FOP by the Department notwithstanding the Petition for Representation Election filed by the FCLEA. In Paragraph 4 of this agreement, the Department specifically agreed to negotiate with the FOP as to successor collective bargaining agreements regardless of any issue which might arise as to the involvement of any other interested party in these negotiations.

The Department, in its motion to stay the FOP's Notices to Negotiate, argued that pursuant to SERB law the filing of the petition for election by the FCLEA creates enough basis for the Department to have good faith doubt of the Incumbent Organization's majority support and, thus, the Department will be committing an unfair labor practice in violation of O.R.C. §4117.11(A)(2) if it engages in negotiations with the FOP. Therefore, argues the Department, SERB must stay the FOP's Notices to Negotiate until the representation matter regarding the FCLEA petition is resolved.

For the reason listed below, SERB denies the motion to stay.

In re Cleveland City School District, Bd. of Ed., SERB 85-003 (2-1-85), SERB adopted the principle that a Petition for Representation Election alone entitles one to conclude that an employer has a bona fide doubt of

continuing majority status absent some clear indication that the petition is frivolous. That doubt warrants a strictly neutral stance on the employer's part until the representation dispute is decided. As a result it is appropriate for an employer to refrain from negotiating with an incumbent union.

In re Summit County Bd. of Mental Retardation and Developmental Disabilities, SERB 85-014 (4-18-85), SERB elaborated on Cleveland by refusing to entertain an unfair labor practice charge filed by a rival employee organization when an employer continued to bargain with an incumbent union, notwithstanding the rival organization's petition for representation election. SERB ruled in Summit that in the absence of an admission or revelatory action, the employer is the principal and sole witness to its state of mind. In other words, a petition for representation election filed by a rival organization does not by itself require a strictly neutral stance on the employer's part and the stoppage of negotiations with the incumbent union unless the employer, in good faith, has reason to doubt the continued majority status of the incumbent organization.

If this were all there was to the story the Employer's motion to stay would be well taken. However, the Sheriff and the Fraternal Order of Police signed a settlement agreement on or about August 15, 1989, in which the Department specifically recognized the Incumbent Organization as the exclusive representative of its employees regardless of any pending representation issues.

The issue at hand is a very narrow one. Summit said that the employer is the judge of its own mind. The Employer in this case stated its mind by freely entering into the settlement agreement aforementioned. Thus, the same Employer cannot now come before this Board to stay negotiations without clear evidence of what facts have caused the Employer to now feel differently about the issue of majority status than it felt when the settlement agreement was executed.

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

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