

In the Matter of

Professional Association for the Training of the
Mentally Retarded (PATMR) OEA/NEA and
Deepwood Employees Association OEA/NEA,

Employee Organization,

and

Lake County Board of Mental Retardation and
Developmental Disabilities,

Employer.

CASE NUMBER: 88-REP-11-0246

DIRECTION TO SELF-DETERMINATION ELECTION
(Opinion attached.)

Before Chairman Sheehan, Vice Chairman Brundige, and Board Member
Pottenger: November 1, 1990.

On November 14, 1988, the Professional Association for the Training of the Mentally Retarded (PATMR), OEA/NEA, and Deepwood Employees Association (DEA), OEA/NEA (Employee Organization), jointly filed a Petition For Representation Election, a Petition For Amendment of Certification, and a Petition For Clarification of Bargaining Unit. All three petitions seek to consolidate the two existing bargaining units of certificated and non-certificated staff and support personnel into one unit to be represented by PATMR, OEA/NEA. On February 8, 1990, the Board dismissed the Petition for Clarification of Bargaining Unit and directed the other two petitions to hearing for determination of all relevant issues.

The Board has reviewed the record, the hearing officer's recommended determination, exceptions and response. For the reasons stated in the attached opinion, incorporated by reference, the Board amends Conclusion of Law No. 7 to read: "The PATMR and DEA units can properly be consolidated by means of a Petition For Representation Election."; adopts the Stipulations and Conclusions of Law as amended, dismisses the Petition for Amendment of Certification and directs a self-determination election to be conducted at a place, time and date to be determined by the Administrator of Representation in consultation with the parties in the following appropriate unit:

Included:

All certificated members of the Lake County Board of Mental Retardation and Developmental Disabilities; and all non-certificated employees of the Lake County Board of Mental Retardation and Developmental Disabilities engaged in client services on a full or regular part-time basis, all custodial workers, secretary/clerical, food service, equipment operators, maintenance repair employees, bus drivers, bus aides, mechanics, mechanic helpers and all similar classifications.

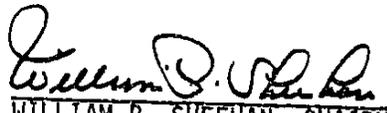
Excluded:

All certificated and non-certificated employees employed as supervisors, management level employees and confidential employees as defined in O.R.C. Chapter 4117; and seasonal and casual employees.

No later than December 29, 1990, the Employer shall serve on the Professional Association for the Training of the Mentally Retarded (PATMR) OEA/NEA and Deepwood Employees Association OEA/NEA and file with the Board, a numbered and alphabetized eligibility list stating the names and home addresses of all employees eligible to vote as of the pay period ending just prior to November 1, 1990.

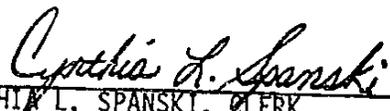
It is so directed.

SHEEHAN, Chairman, BRUNDIGE, Vice Chairperson, and POTTENGER, Board Member, concur.


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 19th day of December, 1990.


CYNTHIA L. SPANSKI, CLERK

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 90-022

In the Matter of
Professional Association for the Training of the
Mentally Retarded (PATMR) OEA/NEA and
Deepwood Employees Association OEA/NEA,
Employee Organization,
and
Lake County Board of Mental Retardation and
Developmental Disabilities,
Employer.

CASE NUMBER: 88-REP-11-0246

OPINION

Sheehan, Chairman:

I

The subject matter of this opinion arises from the filing of three petitions by the Professional Association for the Training of the Mentally Retarded (PATMR) OEA/NEA and Deepwood Employees Association (DEA) OEA/NEA. These two organizations are not rival organizations. They are OEA/NEA affiliates which had, for many years, the same designated agent, the same chief negotiator for all recent collective bargaining negotiations, the same chairman for their grievance committees and had on some occasions processed grievances together. Moreover, they had formally merged. The situation here, in regard to the two affiliates, is identical to the situation in In re Montgomery County Bd. of Ed., SERB 90-014 (8-29-90), and here, as there, the two affiliates will be treated as one employee organization and will be referred to as the Employee Organization.

The three petitions which were filed by the Employee Organization were a Petition for Representation Election, a Petition for Amendment of Certification, and a Petition for Unit Clarification. The objective of all

53

these petitions was the consolidation of two existing bargaining units of certificated and non-certificated staff and support personnel into one bargaining unit to be represented by PATMR, OEA/NEA. The Employee Organization sought a SERB-conducted determination election to ascertain whether a majority of the employees in the two bargaining units favor the establishment of a single bargaining unit. The Lake County Board of Mental Retardation and Developmental Disabilities (Employer), filed a motion to dismiss all three petitions on the grounds that SERB lacked jurisdiction to grant the petitions.

The Board dismissed the Petition for Clarification of Bargaining Unit and directed the Petition for Amendment of Certification and the Petition for Representation Election to hearing.

The hearing officer recommended dismissal of both petitions because neither was found to be the proper vehicle to effectuate consolidation of the two units. The Board disagrees for the reasons adduced below.

II

At the outset it should be noted that In re Montgomery County Bd. of Ed., SERB 90-014 (8-29-90), which was issued after the instant case was directed to hearing, is controlling to a great extent. Both cases involved a request to consolidate by election two bargaining units represented by two organizations that, for all intents and purposes, were the same employee organization. The ruling in Montgomery, supra, as well as with the case at hand, is that the election for consolidation (self-determination election) does not involve questions of representation. No person who, prior to the self-determination election, had bargaining rights will lose them as a

result of the election, and no person who did not have such rights before will have them later. The exclusive bargaining agent will not change either.

SERB's "Petition for Representation Election" form was designed for representation elections for the purpose of deciding questions of representation. Consequently, the form, on its face, is inappropriate for a self-determination election where a question of representation is not involved.¹

However, as the Board noted in Montgomery, supra, the "Petition for Election" is the only form SERB presently has for conducting elections and, thus, necessity dictates its adequacy for consolidation purposes. (A new form is being developed for elections when no representation issues are involved.) Therefore, until such form is developed, the "Petition for Representation Election" form is proper for the purpose of achieving self-determination elections. See the analysis in Montgomery, supra.

A second issue raised which was treated in Montgomery, supra, and perhaps can be put to rest here, is the application of contract bar rules to self-determination elections. In Montgomery, supra, at 3-95, the dual policy consideration behind the contract bar rule and the "window period" specification was analyzed.

¹Consolidating units of professionals and non-professional employees, as in the case at issue, warrants elections by law. According to O.R.C. §4117.06(D)(1), a majority of both professional and non-professional employees must vote for inclusion in one unit. In re Mercer County Joint Twp. Community Hospital, SERB 86-041 (10-2-86), the Board ruled that this vote for inclusion (or self-determination election) must be done by election, which has to be conducted by SERB election procedure. See Montgomery, supra, 3-93, 3-94.

... The contract bar rule intends to protect the exclusive representation status of the employee organization from attacks by rival employee organizations and by decertification attempts for the limited time of the contract period, which cannot exceed three years. Furthermore, this rule promotes stable labor relationships between the exclusive representative and the public employer for the period of the contract. However, in order to ensure the statutory right of employees to choose a different employee organization or to decertify the incumbent one, the "window period" has been established. The lifting of the contract bar rule for the "window period" guards against a situation where an employer and a union implement a successor collective bargaining agreement immediately following the expiration of the previous one and, thus, successfully bar any attempt of decertification or changing of bargaining agent by the employees.

Thus, contract bar and "window period" do not apply to situations where no representation issues are involved. While a petition for election has to be filed during the window period or after the contract expired when a representation election is pursued, such is not the case when the pursued intent is a self-determination election where no representation issues are involved. Thus, when consolidation of two bargaining units is requested by self-determination election and, where there is no change of bargaining representative, contract bar and window period are neither relevant nor applicable.

The difference between the case at issue and Montgomery, supra, is that one of the units here is a deemed-certified unit.

We do not find this difference significant. The Legislature clearly afforded deemed-certified units a special consideration for the purpose of promoting labor relations stability. The Board has paid proper deference to this special protection by holding that any tampering of a deemed-certified unit should be minimal in scope. The Board allows a separate unit to be

carved from a deemed-certified unit, even when a change of the representation of the carved part is involved, when the classifications carved were those proscribed in O.R.C. §4117.06(D). The Board balanced the protection of deemed-certified units on one hand with the statutory policy in §4117.06(D) on the other and, in this specific situation, allowed a minor alteration of the deemed-certified unit.

In the case at issue the consolidation of the two bargaining units is only minimal tampering. As was noted earlier, the consolidation does not involve any change in the bargaining representative. Nor does it add non-bargaining employees to the bargaining unit or delete bargaining unit members from the unit. Moreover, allowing the consolidation will enable employees to exercise their statutory rights by having a unit of their choice. On balance, where no representation issues are involved, the consolidation of the two units, even when it is a deemed-certified unit, is a reasonable policy in the spirit of O.R.C. 4117.

The Board dismisses the Petition for Amendment of Certification and directs self-determination election.

Brundige, Vice Chairperson, and Pottenger, Board Member, concur.