

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 91-007

In the Matter of

Erie County Board of MR/DD Employees Association/OEA/NEA,

Employee Organization,

and

Erie County Board of Mental Retardation and  
Developmental Disabilities,

Employer.

CASE NUMBER: 91-REP-03-0060

DIRECTIVE AND OPINION

Before Chairman Owens and Board Member Sheehan: September 5, 1991.

Owens, Chairman:

This case comes before the State Employment Relations Board (SERB) on an amended consent election agreement executed by the parties to this case, the Erie County Board of Mental Retardation and Developmental Disabilities (Employer) and the Erie County Board of Mental Retardation and Developmental Disabilities Employees Association (Employee Organization).

The amended consent election agreement provides for a combined unit of both professional and nonprofessional employees and for the required two question ballot consisting of the unit or self-determination question and the representation question. The issue in this case is the order of the two questions on the ballot and, ultimately, the order in which the two questions will be tallied.

The first question in the amended consent election agreement is the representation question - "Do you wish to be represented for purposes of collective bargaining by: Erie Co. Bd. of MR/DD Employees Assoc./OEA/NEA?" or "no representative?" The second question on the ballot is the unit determination question, which for professional employees is phrased: "Do you wish to be included with nonprofessional employees in a single unit for the purposes of collective bargaining?"; and for nonprofessional employees is phrased: "Do you wish to be included with professional employees in a single unit for the purposes of collective bargaining?"

For the following reasons the order of the questions on the ballot shall be reversed and the first question shall be the unit determination question while the second question shall be the representation question.

At first blush it seems reasonable to first find whether the employees want to be represented at all, and only if they do to find whether they want to be included in a combined unit or whether they want two separate units. However, like in many other situations what might seem reasonable at first blush is not necessarily logical or sensible once it is considered more thoroughly.

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It is obvious that the determination of a bargaining unit is a prerequisite for conducting a representation election in that bargaining unit. Clearly in the absence of a description of the bargaining unit no representation election can take place since the determination of who is eligible to vote and whose vote should be counted is based on the description of the bargaining unit. As a matter of fact in all single unit elections SERB first determines the bargaining unit and only then are elections conducted. When SERB directs elections pursuant to a consent election agreement the unit is described in the consent agreement. When SERB directs an election pursuant to a hearing officer's recommended determination the appropriate bargaining unit is described in SERB's direction to election.

Ohio Administrative Code Rule 4117-5-06 states:

A. Whenever an election is to be conducted, the board shall issue and serve upon the parties a notice of election which shall contain the following information:

(i) A description of the bargaining unit;....

Thus, prior to conducting an election there has to exist a description of the bargaining unit. In other words, the determination of the bargaining unit must precede the representation vote.

If it is so simple then why is there confusion? The reason is that in a situation where the proposed unit includes both professional and nonprofessional employees Ohio Revised Code Section 4117.06 mandates that the process of determining the appropriate bargaining unit involves a unit determination vote by the employees. The employees themselves participate in the determination of the unit by voting on the issue of whether professional and nonprofessional employees want to be included in the same bargaining unit or in separate units.

Under the principles stated above, the unit description has to be determined first. So, a vote should first be taken to determine whether the appropriate unit(s) is (are) the combined unit or two separate units. Only once the description of the bargaining unit(s) is (are) determined should SERB go on to conduct the representation election.

However, to conduct two separate elections is expensive both in terms of money and working time of the employees involved as well as SERB's staff. Thus the most efficient way to conduct these elections (both administratively and financially) is to combine them on the same ballot. Having both questions -- the unit determination question and the representation question -- on the same ballot, though, does not alter the above-stated principle that the determination of the bargaining unit has to precede the representation election. The way we achieve both the efficiency needed and the proper procedure is by having the two questions on the ballot but making sure that the order of the tallying is such that a bargaining unit is determined before the representation vote is counted.

In short, where the employees vote on whether to include professional and nonprofessional employees in the same unit as well as the question of representation, the order of tallying the ballots is to first count the inclusions and exclusions and second, once the unit is determined, to count the representation vote. The order of the questions on the ballot should correspond to the order in which they are tallied.

In the case at issue, SERB directs an election to be conducted on September 27, 1991, pursuant to the terms of the Amended Consent Election Agreement except that the order of the questions on the ballot shall be reversed for the reasons stated above and also, the election shall be conducted at times and places to be determined by the Acting Administrator of Representation in consultation with the parties so as to require the presence of only one SERB agent.

As required by Ohio Administrative Code Rule 4117-5-07(A), no later than September 17, 1991, the Erie County Board of Mental Retardation and Developmental Disabilities shall serve on the Erie County Board of MR/DD Employees Association/OEA/NEA and file with the Board a numbered, alphabetized election eligibility list containing the names and home addresses of all employees eligible to vote as of September 1, 1991.

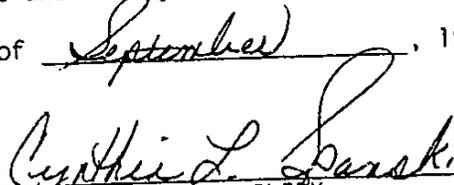
It is so directed.

OWENS, Chairman, and SHEEHAN, Board Member, concur. POTTENGER, Vice Chairman, absent.

  
DONNA OWENS, CHAIRMAN

While not conceding that Ohio Revised Code Section 119.12 applies in this instance, the Board hereby notifies you 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 by certified mail on this 12<sup>th</sup> day of September, 1991.

  
CYNTHIA L. SPANSKI, CLERK