

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SEER OPINION 91-008

In the Matter of  
Ohio Civil Service Employees Association/AFSCME, AFL-CIO,  
Employee Organization,  
and  
United Food and Commercial Workers,  
Employee Organization,  
and  
State of Ohio, Office of Collective Bargaining,  
Employer.

CASE NUMBER: 89-REP-11-0235

DIRECTIVE GRANTING PETITION  
(Opinion Attached)

Before Chairman Owens, Vice Chairman Pottenger and Board Member Sheehan;  
June 27, 1991.

On November 2, 1989, the State of Ohio, Office of Collective Bargaining filed a petition for clarification of the bargaining unit seeking a determination of whether Commissary Workers should be in Unit 8 or Unit 5. The Board directed the matter to hearing.

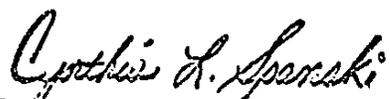
The Board has reviewed the record and the hearing officer's recommended determination. No objections were filed. The Board adopts the hearing officer's Findings of Fact, moves Recommendation No. 2 to Conclusion of Law No. 9, changes the Recommendation numbering accordingly, deletes from Recommendation No. 3 the words: "be reclassified Commissary Worker", and adopts the Conclusions of Law and Recommendations as amended.

The attached opinion is hereby incorporated. It is so directed.

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

  
DONNA OWENS, CHAIRMAN

I certify that this document was filed and a copy served upon each party  
on this 19<sup>th</sup> day of September, 1991.

  
CYNTHIA L. SPANSKI, CLERK

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SERB OPINION 91-008

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OPINION

Owens, Chairman:

This opinion establishes the proper procedure by which parties may make changes in an existing SERB certified bargaining unit.

O.R.C. 4117 entrusts the State Employment Relations Board with the sole and exclusive right to determine the make-up of bargaining units. The structure of a bargaining unit can contribute to the stability of labor relations if it is logical and cohesive; just as it can create labor strife and tension if it is arbitrary and illogical.

The structure of a bargaining unit is, thus, an important factor in establishing a labor relations policy. There is room for flexibility in the determination of units since the statute does not call for determining the appropriate bargaining unit but an appropriate bargaining unit. Moreover, even after a unit is determined a change can be made when needed by utilizing Petitions for Unit Clarification or Amendment of Certification. SERB has been in the past, and will continue to be in the future, attentive to the interests and needs of the employees, the employers and the employee organizations in structuring the bargaining units, but it is SERB, and not the parties, who determines the units.

The Legislature, in O.R.C. 4117, made SERB the ultimate arbitrator and decision-maker where bargaining units are involved. In the case at issue, the Office of Collective Bargaining and the two employee organizations

involved created elaborate schemes in order to change the structure of State Unit 5 and 8 which had been determined by SERB. The classification system was manipulated by renaming and combining classifications in the units. Employees were polled one way and then were polled again in a different way when apparently the expected results had not been achieved. The parties cut deals, manipulated the system, and agreed among themselves on changes of existing bargaining units without going through the process of SERB approval. There does, however, come a time where SERB intervention must be considered. SERB will not succumb to private deals of parties in deciding bargaining unit structure if the parties do not go through the process of SERB certification. Both employers and employee organizations are hereby put on notice that for purposes of contract bar, election bar, processing grievances, and the right to file certain unfair labor practice charges; the only bargaining unit with standing in such cases is the one certified by SERB.

Changes made by parties in private deals will not be recognized as binding on SERB with all the consequences this might entail.

In summary, if the parties want to make changes in a bargaining unit they should file with SERB either an Amendment of Certification or Petition for Unit Clarification, whichever is appropriate. As long as the changes are not illegal or contrary to sound labor policy, SERB will act and certify the changes. This is the proper procedure to be followed.

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