

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Weathersfield Teachers Association, NEA/OEA,

Employee Organization,

and

Weathersfield Local Board of Education,

Employer.

CASE NUMBER: 91-STK-09-0004

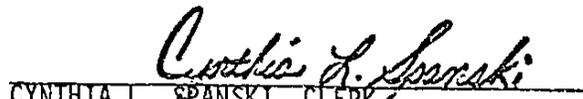
ISSUANCE OF OPINION

As stated in the Board's determination issued on September 5, 1991, 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 5, 1991.

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


DONNA OWENS, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 8th day of NOVEMBER, 1991.


CYNTHIA L. SPANSKI, CLERK

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 91-009

In the Matter of
Weathersfield Teachers Association, NEA/OEA,
Employee Organization,
and
Weathersfield Local Board of Education,
Employer.

CASE NUMBER: 91-STK-09-0004

OPINION

OWENS, Chairman:

This case comes before the State Employment Relations Board (SERB) upon the request for Determination of Unauthorized Strike filed by the Weathersfield Local Board of Education (Employer) on September 4, 1991.

I.

The Employer and the Weathersfield Teachers Association, NEA/OEA (Employee Organization) are parties to a collective bargaining agreement with an expiration date of August 24, 1991. Article II(J) of the agreement provides for a mutually-agreed upon alternate dispute resolution procedure (MAD), according to which either party may request that the unresolved contract disputes be submitted to a consulting panel of three persons.

Article II(J)(3) and (4) of the contract between the parties provides:

- (3) The consulting panel shall have the authority to schedule and conduct hearings for the purpose of hearing testimony and gathering facts relevant to the parties' disagreement. Within fifteen (15) days of the Chairman's appointment or such later date as is mutually agreed upon by the panel, it shall submit a report containing written findings of fact and recommendations, along with the reasons therefore, for the resolution of the disagreement and shall cause the same to be served on the parties. Neither the report nor its contents shall be made public except pursuant to Section 4 thereof.

- (4) In the event the parties are unable to reach agreement within ten (10) days after receiving the report of the consulting panel, said report may be made public by either party. At that point, the terms of this document and the disagreement provisions thereof shall be deemed exhausted and the matters remaining unsolved shall be subject to determination by the Board as the body corporate and politic charged by statute with management and control of the school district and with fixing the terms and conditions of employment of its employees.

II.

Ohio Revised Code Section 4117.14 has a very elaborated and specific dispute resolution procedure with precise time guidelines. In the alternative, the General Assembly provides for statutory flexibility regarding the process of solving disputes during collective bargaining in Ohio Revised Code Section 4117.14 which in relevant part states:

- (C) In the event the parties are unable to reach an agreement, they may submit, at any time prior to forty-five (45) days before the expiration date of the collective bargaining agreement, the issues in dispute to any mutually agreed upon dispute settlement procedure which supersedes the procedures contained in this section.

(1) the procedure may include:

(f) Any other dispute settlement procedure mutually agreed to by the parties.

- (E) Nothing in this section shall be construed to prohibit the parties, at any time, from voluntarily agreeing to submit any or all of the issues in dispute to any other alternative dispute settlement procedure...

The legislature in its wisdom understood that different parties in different situations might have different needs regarding the procedure to resolve bargaining disputes and thus concluded that parties may be able to negotiate a more appropriate alternate dispute resolution mechanism for themselves than what the law provided. Thus a broad interpretation of O.R.C. Section 4117.14(C)(1)(f) and (E) is warranted.¹ However, a broad interpretation

¹ In re Vandalia-Butler City School District, SERB 86-012 (3/27/86).

does not mean that every MAD will be sustained. In the past SERB took the position that a MAD will be sustained absent some compelling public policy against it.²

For example, in Mad River-Green Local Board of Education, SERB 88-016 (9/29/88) SERB refused to sustain a MAD whereby the terms rendered it virtually inexhaustible, and thus did not allow bargaining unit employees to consider exercising their statutory right to strike.

In this case SERB again finds that there is compelling public policy against sustaining the MAD contained in the collective bargaining agreement between the parties.

III.

The MAD in the case before us cannot be applied to the situation which occurred because it does not provide for a situation in which the consulting panel could not issue its report within fifteen (15) days of its creation, and the parties did not agree on an extension of time. The parties negotiated a MAD that provided for the selection of a consulting panel, the selection of a chairman by the respective party appointees, and a report with written findings of fact and recommendations. The apparent intent of the parties was that the exhaustion point of the MAD would be reached after the panel issued its report. The MAD is silent, however, regarding a situation where the panel cannot meet the contractual fifteen (15) day time period and there is no mutual agreement on an extension of time. The Employee Organization argued that the way to interpret the contractual MAD provisions in such a situation is to find the MAD exhausted and then, at that point, a strike is authorized. This interpretation is very troublesome because the Employee Organization's interpretation conflicts with the apparent contractual intention.

In addition, accepting the Employee Organization's interpretation might legitimize manipulations of the negotiation process which is clearly in opposition to any good and solid labor policy. For example, in the case at hand the Employee Organization was the party requesting the consulting panel and the Employee Organization's representative was the one requesting that the American Arbitration Association (AAA) provide a list for selection of the panel chairman. The Employee Organization, however, did not mention in its letter to AAA the time constraint of the MAD,³ and then refused to agree to an extension of time when the selected chairman could not meet within fifteen (15) calendar days. If the Board adopts the Employee Organization's position that its refusal to extend the fifteen (15) day period brought the MAD to its exhaustion point, it would allow either party to determine unilaterally and arbitrarily the point in time when the MAD is exhausted. This flies in the face of reasonableness and "good faith" when the negotiated procedure can be bypassed so easily.

² id
³ Exhibit E

The Employer's interpretation of the contract language is that the MAD had not been exhausted when the Employee Organization refused to extend the fifteen (15) day period. The Employer argued that even though the contractual language allows for an extension of time by mutual consent, in reality, a fifteen (15) day time period is so short and impractical that the extension of time is almost always necessary. This argument is troublesome as well. First, the negotiated language is very clear. The fifteen (15) day time period and sound labor policy clearly call for expedited negotiations. The language in question seeks a quick solution in the sometimes difficult and laborious collective bargaining process.

Secondly, even if we build into the contract a reasonableness standard, (i.e., that even though the contract specifies a fifteen (15) day time period a reasonable extension should not be refused) in the case at hand, a three (3) month extension does not fall into the category of a reasonable extension. Thus, the Employer's interpretation is rejected as well.

In summary, the contractual language is insufficient to deal with the situation at hand and the only way to remedy the situation is to rewrite the contract, a task which is not within the functions or authority of this Board.

The MAD is clearly faulty. It is inoperative to resolve the situation at hand. The parties to a collective bargaining agreement are not required to adopt a MAD in their contract. They can utilize the statutory dispute resolution procedure of 4117.14. However, if parties choose to adopt a MAD, they have a responsibility to write one that lends to the possibility of resolution and one that has finality. The parties then have a "good faith" duty to give the process a chance to work.

The Board finds the strike to be unauthorized because the parties never exhausted the alternate dispute resolution procedure which lacked the necessary element of finality. Therefore, the Board rules that absent a valid MAD, O.R.C. Section 4117.14 applies. The parties will be placed in the statutory fact-finding procedure to avoid any further delays.

SHEEHAN, Board Member, concurs. POTTENGER, Vice Chairman, absent.

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 91-009

In the Matter of
Weathersfield Teachers Association, NEA-OEA,
Employee Organization,
and
Weathersfield Local Board of Education,
Employer.

CASE NUMBER: 91-STK-09-0004

DETERMINATION

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

This case comes before the State Employment Relations Board (SERB) upon the Request for Determination of Unauthorized Strike filed by the Weathersfield Local Board of Education (Employer) on September 4, 1991, at 9:54 a.m. SERB is required, pursuant to Ohio Revised Code (O.R.C.) §4117.23, to issue its determination within seventy-two (72) hours.

Upon consideration of the original filings, stipulations, exhibits and arguments of counsel, SERB concludes that the strike is unauthorized.

The parties stipulated that they have a mutually-agreed upon alternate dispute resolution procedure (MAD). However, the Board finds this MAD faulty. The MAD is silent with regard to a situation where the consulting panel does not issue its report within 15 days and the parties do not agree on an extension of time. The Employee Organization's interpretation that at this point the MAD is exhausted and a strike is authorized conflicts with the apparent intention of the MAD which includes a fact-finding panel and with the whole concept of dispute resolution procedures, where resolution is sought and all possible peaceful negotiations are exhausted before a strike commences.

The Employer's interpretation conflicts with the MAD's strict timelines and with the need for a speedy resolution of contract negotiations. Since the MAD is faulty, no dispute settlement procedure has been exhausted and thus, the strike is unauthorized. In the absence of an effective contractual impasse resolution procedure, O.R.C. Section 4117.14 applies. The Board recognizes that bargaining has occurred between the parties. Therefore, the Board now sets negotiations at the point of fact-finding under the statutory dispute resolution procedure.

Attached to this determination is a list of five potential members of the fact-finding panel. Under Ohio Administrative Code Rule 4117-9-05(B) and (C) the parties must mutually select one member or a three-member panel. If the parties cannot agree and notify SERB of their selection by September 12, 1991, SERB will appoint a fact-finder.

43

Determination
Case No. 91-STK-09-0004
September 5, 1991
Page 2 of 2

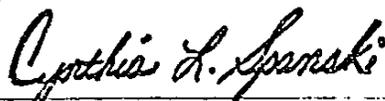
An opinion will follow.

It is so directed.

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


DONNA OWENS, CHAIRMAN

I certify that this document was filed and a copy served upon each party
by certified mail on this 5th day of September, 1991.


CYNTHIA L. SPANSKI, CLERK

3182b-2

44

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

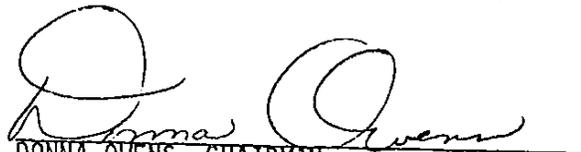
In the Matter of
Niles Classroom Teachers Association, NEA/OEA
Employee Organization,
and
Niles City Board of Education,
Employer.

CASE NUMBER: 91-STK-09-0005

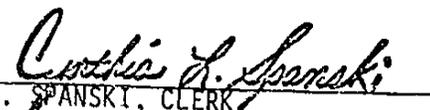
ISSUANCE OF OPINION

As stated in the Board's determination issued on September 10, 1991, 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 10, 1991.

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


DONNA OWENS, CHAIRMAN

I certify that this document was filed and a copy served upon each party
on this 8th day of NOVEMBER, 1991.


CYNTHIA L. SPANSKI, CLERK