

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

DETERMINATION

Before Chairman Owens and Board Member Sheehan: September 11, 1991.

This case comes before the State Employment Relations Board (SERB) upon the Request for Determination of Unauthorized Strike filed by the Niles City Board of Education (Employer) on September 10, 1991, at 4:11 p.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 authorized.

The parties' collective bargaining agreement contains a mutually-agreed upon alternate dispute resolution procedure (MAD) which involves timelines for negotiations and mediation upon request.

The MAD specifically states that "should a new contract not be agreed upon by the expiration date of the original contract, the terms of this procedure shall expire."

The Niles City Board of Education (Employer) argued that a MAD which provides only for mediation is faulty and cites SERB cases to support its position.

None of the cases cited by the Employer are on point. In re Mad River-Green Local Board of Ed, SERB 88-016 (9-29-88), the MAD was found faulty because its provisions rendered it virtually inexhaustible. In re City of Columbus, SERB 85-004 (2-6-85), dealt with non-striking safety forces where the requirements for MAD are very different from those for MAD for "strike permissive" employees as is in the case at issue. In Weathersfield Local Board of Education, SERB Case Number 91-STK-09-0004, the MAD was ambiguous and open to various interpretations and manipulations.

Determination  
Case Number 91-STK-09-0005  
Page 2 of 2

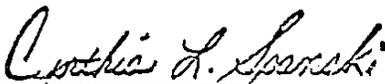
In the case at issue the MAD is clear and its exhaustion point is specific, i.e. the expiration date of the contract. The fact that mediation is the sole requirement under a MAD does not render it faulty. The parties in this case chose not to fall under the statutory dispute resolution procedure and instead to have a MAD. Both parties agreed to have only mediation in their MAD. The MAD was complied with and the strike is authorized.

It is so determined. An opinion will follow.

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 12<sup>th</sup> day of Sept, 1991.

  
\_\_\_\_\_  
CYNTHIA L. SPANSKI, CLERK

3190b

50

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 91-010

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

OPINION

SHEEHAN, Board Member:

This case comes before the State Employment Relations Board (SERB) upon the request for Determination of Unauthorized Strike filed by the Niles City Board of Education (Employer) at 4:11 p.m. on September 10, 1991, at SERB's office in Columbus, Ohio, pursuant to O.R.C. §4117.23.

The Employer and the Niles Classroom Teachers Association, NEA/OEA, (NCTA, Union or Employee Organization) entered into a collective bargaining agreement effective August 29, 1988 through August 28, 1991. The agreement contains an alternate dispute settlement procedure in Article 3 (C) which provides:<sup>1</sup>

If agreement is not reached within forty-five (45) days after the first negotiation meeting, the teams shall report back to their respective party for further advice and input. Neither party would be required to meet further, but thirty (30) days prior to contract expiration, either party may request federal mediation and the other side shall join in resumed discussions. Should a new contract not be agreed upon by the expiration date of the original contract, the terms of the procedure shall expire.

The parties on or about April 23, 1991, met for the first negotiating session and continued negotiating during sessions held on May 15th and 21st; July 12th, 19th and 26th; August 16th, 21st, 23rd, 29th, and 30th; and September 1st, 3rd, 5th, 8th and 9th.<sup>2</sup>

On August 19, 1991, the Employee Organization delivered to the Employer a Notice of Intent to Strike commencing at 12:01 a.m. on September 3, 1991.<sup>3</sup>

<sup>1</sup>Stipulation of Fact No. 4

<sup>2</sup>Stipulation of Fact No. 4

<sup>3</sup>Stipulation of Fact No. 5

In late August the Union requested mediation. Federal mediator David Thorley met with the parties on August 29, 1991, and had mediation sessions scheduled for September 4 and 6, 1991.<sup>4</sup> On September 3, 1991, the Union struck all locations of the Employer<sup>5</sup> consistent with the notice of intent.

## II

The parties had a mutually agreed upon dispute resolution procedure consisting of mediation only. The Employer argued that since the alternate dispute resolution mechanism (MAD) consisted of mediation only, and terminated upon the expiration of the contract regardless of the status of mediation, the MAD was faulty. Therefore, the Employer argues that a faulty MAD cannot be exhausted and the strike should be declared unauthorized. In support of its argument the Employer contends that SERB has repeatedly found that a mediation provision alone in a contract is not a mutual dispute settlement process (MAD) that supersedes the statutory impasse procedure in O.R.C. §4117.14. The Employer contends that mediation does not compel resolution of disputes and, therefore, does not necessarily lead to a settlement as the statute intends. The Employer cites MAD River-Green Local Board of Ed. SERB 88-016 (9-29-88), City of Columbus SERB 85-004 (2-6-85), and Weathersfield Local Board of Ed., Case Number 91-STK-09-0004 (9-5-91), to support its contention.

## III

The Employer errs in both its assessment of the cases cited and its understanding of SERB's prior determinations. First, none of the cited cases are on point and are readily distinguished from the case at hand. In MAD River-Green the MAD was found faulty because its provisions rendered it virtually inexhaustible. Such is not the case here, where the language is precise and its termination point is clearly defined. City of Columbus dealt with employees who were prohibited from striking, where the requirements are very different from the strike permitted employees with which we are dealing here. In Weathersfield the MAD was ambiguous and open to various interpretations and manipulations as opposed to the clarity of the provision at issue.

Secondly, SERB has not declared a MAD deficient solely because it contained only mediation as its sole alternative dispute resolution. Quite the contrary. In Re Vandalia-Butler City School District, SERB 86-012 (3-27-86) the Board said:

The General Assembly manifestly intended more flexibility for job actions by public employees permitted to strike than those who were not. This being so, the provisions of the statute permitting parties to adopt a mutually agreeable alternative impasse procedure must be treated more liberally when "strike permissive" employees rather

---

<sup>4</sup>Stipulations of Fact Nos. 7 and 8

<sup>5</sup>Stipulation of Fact No. 10

than "strike prohibited" employees are involved. Moreover, the statutory commitment to superseding MADs reflects the legislative conclusion that the parties may do better, or may feel they can do better, for themselves than government can do for them. Thus, a broad interpretation of R.C. 4117.14(C)(1)(f) and (E) is warranted in this and similar cases. Of course, any party which feels insecure in the face of a particular MAD proposal need not agree to it; but, when agreement is reached, the MAD will be sustained absent some compelling public policy against it.

The entire intent and purpose of a MAD is to tailor a procedure to accommodate the specific needs of the parties. Thus, if the parties would prefer only mediation, then that procedure is permitted. Fact-finding or other alternate dispute resolution procedures are not required.

In the case at hand, the parties chose not to fall under the statutory dispute resolution procedures as set forth in O.R.C. §4117.14. They willingly entered into a MAD that required only mediation as its resolution procedure. The MAD was complied with and according to its terms exhausted before the strike began. Therefore, the Board concludes the strike is authorized.

One final comment. The Board cannot emphasize enough the importance of the parties' own responsibility to draft a thoughtful and proper MAD. The Board's policy is to intervene as little as possible in the contractual provisions of the alternate dispute resolution procedure. We intervened in Weathersfield<sup>6</sup> because the MAD was inoperative in that situation.

However, parties have to realize that while they are under no obligation to agree to a MAD, once they choose to adopt a MAD they have a responsibility to write one that lends to a peaceful resolution and one that has finality. The parties then have a duty to bargain in good faith and give the process a chance to work. In this case, the MAD is not faulty. The parties who voluntarily enter into a MAD are expected to be bound and obligated by their creation and should not expect SERB to let them avoid compliance with the MAD they freely and voluntarily agreed to.

OWENS, Chairman, concurs. POTTENGER, Vice Chairman, absent.

---

<sup>6</sup>Weathersfield Local Board of Ed. SERB 91-009 (11-8-91)