

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SEAB OPINION 92-003

In the Matter of
District 1199, National Union of Hospital and Health Care Employees,
Employee Organization,
and
Montgomery County Combined Health District,
Employer.

CASE NUMBER: 89-REP-08-0196

DIRECTIVE AND OPINION

Before Chairman Owens, Vice Chairman Pottenger and Board Member Sheehan: April 2, 1992.

On March 12, 1992, the Employer filed a Motion to Direct Voter Eligibility in this matter, in which we ordered a rerun election on January 9, 1992. For the reasons set forth below, the motion is granted as to the Employer's request for a new eligibility date but denied as to the request that the April 10, 1992 election date be preserved.

Owens, Chairman:

The unique circumstances of this case lead us to depart from our usual policy and set a new eligibility date for voting in the rerun election.

By its closing words, Rule 4117-05-10(B) allows us this discretion. The Rule provides, in pertinent part:

(B)...Only employees who were eligible to vote in the first election and who remain eligible on the date of the rerun election shall be eligible to vote in the rerun election unless the Board directs otherwise. (Emphasis added.)

Here, where the original voting list would serve to disenfranchise as much as one-third of the bargaining unit, it is appropriate for us to exercise this discretion.

In so doing, we are mindful that the Board has in the past resisted any deviation from the original eligibility list for rerun elections.¹ This resistance has stemmed from a desire to "protect the electoral process against either tactical flooding or procedural delay." In re South Community. SERB 86-003 (2-10-86).²

In the instant case, we have no evidence that either of these motives was at work. There is no evidence the Employer attempted to pack the unit with voters favorable to its own position, nor that it has engaged in conduct designed to delay the rerun election. No unfair labor practice charges have been filed over the Employer's job actions since the original election. Accordingly, it appears that the mere passage of time, rather

¹ Although SERB has historically required that rerun elections proceed from the original eligibility list, we note that the National Labor Relations Board's policy is to direct rerun elections with the eligibility period being the payroll period that immediately precedes the issuance of the regional director's order or notice of rerun election. Interlake Steamship Co., a Division of Pickands Mather & Co., 178 NLRB 128, 72 LRRM 1008 (1969).

² At the time the South Community decision was issued, there was no specific rule governing eligibility for rerun elections. The Board relied instead upon a Rule (OAC 4117-05-09(B)) which required the use of the original eligibility list for runoff elections. It is notable that the rule relied upon the Board in South Community did not contain the language we rely on, i.e., "...unless the Board directs otherwise."

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than any improper motive, led to the hiring of some 106 employees since the last eligibility date more than two years ago. Under these circumstances, a new voter eligibility date is warranted.

We hereby direct that all employees who were employed as of the payroll period ending just prior to January 9, 1992, shall be eligible to vote. No further showing of interest shall be required.

We further direct that the April 10, 1992, election date be cancelled and the date of the rerun election shall be determined by the Administrator of Representation in consultation with the parties. Although we are mindful of the Employer's request that the election be held on April 10, 1992, this schedule would not allow the Employee Organization adequate time to review the new eligibility list as required by Rule 4117-5-07(A)(1) and (2), nor would it allow the minimum ten-day notice posting required by Rule 4117-5-06(B).

As required by Ohio Administrative Code Rule 4117-5-07(A), no later than April 17, 1992, the Montgomery County Combined Health District shall serve on the District 1199, National Union of Hospital and Health Care Employees 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 the last payroll period prior to January 9, 1992.

It is so directed.

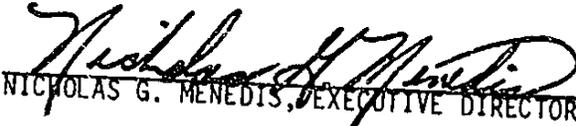
POTTENGER, Vice Chairman and SHEEHAN, Board Member, concur.


DONNA OWENS, CHAIRMAN

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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 by certified mail upon each party on this 8th day of April, 1992.


NICHOLAS G. MENEDIS, EXECUTIVE DIRECTOR

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