

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SEEB OPINION 92-004

In the Matter of

Professional Association for the Training of the
Mentally Retarded (PATMR) OEA/NEA,

Employee Organization,

and

Lake County Board of Mental Retardation and
Developmental Disabilities,

Employer.

CASE NUMBER: 89-REP-05-0129

DIRECTION TO ELECTION
(Opinion Attached)

Before Chairman Owens, Vice Chairman Pottenger and Board Member Sheehan: April 16, 1992.

On May 14, 1989, the Professional Association for the Training of the Mentally Retarded (PATMR, Employee Organization) filed a Petition for Representation Election seeking an election to add certain unrepresented part-time employees of the Lake County Board of Mental Retardation and Developmental Disabilities (Employer) to the existing bargaining unit. The case was directed to hearing.

The Board has reviewed the Hearing Officer's Recommended Determination, exceptions and response.

For the reasons stated in the attached Opinion, incorporated by reference, the Board adopts the Stipulations, Findings of Fact, amends Conclusion of Law No. 3 to read: "At the time the petition was filed, the Petitioner was a 'deemed certified' bargaining representative for a unit of public employees pursuant to S.B. 133 Temporary Law Section 4A and O.A.C. Section 4117-5-01(F)," amends Conclusion of Law No. 4 to read: "The Employee Organization may seek to add unrepresented employees to a 'deemed certified' unit through a representation petition," and adopts the Conclusions of Law as amended. The Board directs an opt-in election in the following voting unit:

Included All part-time employees who are regularly scheduled to work sixty (60) hours or less in a biweekly pay period, including but not limited to Registered Nurse(s), Residence Workers and Social Workers 1.

Excluded: All certificated and non-certificated employees of the Lake County Board of Mental Retardation and Developmental Disabilities engaged in client services; and all full-time and regular part-time non-certificated employees of the Lake County Board of Mental Retardation and Developmental Disabilities engaged as custodial workers, secretarial/clerical, food service, equipment operator, and maintenance repair employees, bus drivers, bus attendants, mechanics, mechanic helpers, and similar type employees. All employees engaged in client services who are employed on a casual, day-to-day basis for the purpose of filling temporary staffing needs; all supervisory, management level, confidential, seasonal, and casual employees as defined in Ohio Revised Code Chapter 4117; and employees in the following positions: payroll coordinator, payroll clerk, personnel analyst, Sheltered Industries business office supervisor, LCBMR/DD business Office supervisor, computer program analyst, and secretary to the Director of Human Resources, secretary to the Director of Operations, secretary to the Director of Adult services, secretary to the Principal of Broadmoor School, secretary to the Director of Community Services Development, secretary to the Assistant Superintendent, and secretary to the Superintendent.

As required by Ohio Administrative Code (O.A.C.) Rule 4117-5-07(A), no later than April 30, 1992, the Employer shall serve on the Employee Organization 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 pay period ending just prior to April 16, 1992.

The place and time of the election will be determined by the Representation Administrator in consultation with the parties.

No later than May 7, 1992, both the Employer and the Employee Organization shall file with the Board by name and classification stipulations regarding the professional and non-professional status of the employees included in the above-mentioned voting unit.

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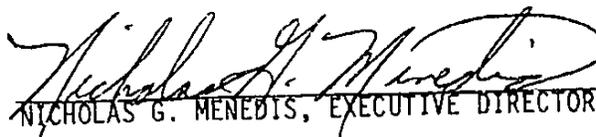
These stipulations on the professional status will not constitute a waiver of objections to the eligibility list.

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 by certified mail, return receipt requested, on this 20th day of April, 1992.


NICHOLAS G. MENE BIS, EXECUTIVE DIRECTOR

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SERB OPINION 92-004

In the Matter of

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of the Mentally Retarded (PATMR) OEA/NEA,

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CASE NUMBER: 89-REP-05-0129

OPINION

Before Chairman Owens, Vice Chairman Pottenger and Board Member
Sheehan: April 16, 1992.

) Pottenger, Vice Chairman:

The issue before us is whether SERB may conduct an election pursuant to
a petition for representation election seeking to add unrepresented
part-time employees to a deemed-certified unit where the petition is filed
by the exclusive representative in the deemed-certified unit.¹

¹ It should be mentioned that on February 26, 1992, SERB issued a
directive certifying a combined unit of professional and
non-professional employees In the Matter of Professional Association for
the Training of the Mentally Retarded OEA/NEA and Deepwood Employees
Association OEA/NEA and Lake County Board of Mental Retardation and
Developmental Disabilities, Case No. 88-REP-11-0246 and thus, at the
time of this opinion the unit the petition seeks to join is not
deemed-certified anymore but a Board-certified unit. However, this
issue as formulated and discussed in this opinion is still relevant
since at the time the petition for election was filed the unit was
deemed-certified and the validity of the petition at the time of filing
is still an issue.

The hearing officer found that an election may not be conducted in this case because the unit at issue is deemed-certified, and cited various cases to support that position.

We do not agree. For the following reasons we find that in the circumstances of this case the election should be conducted.

S.B. 133 Temporary Law Section 4(A) of the Ohio Public Employees Collective Bargaining Act (eff. 10-6-83) states:

Exclusive recognition through a written contract, agreement or memorandum of understanding by a public employer to an employee organization whether specifically stated or through tradition, custom, practice, election or negotiation the employee organization has been the only employee organization representing all employees in the unit is protected subject to the time restriction in division (B) of Section 4117.05 of the Revised Code. Notwithstanding any other provision of the act, an employee organization recognized as the exclusive representative shall be deemed certified until challenged by another employee organization under the provisions of this act and the State Employment Relations Board has certified an exclusive representative. (Emphasis added.)

The legislature, by grandfathering in the bargaining units with their representatives and collective bargaining agreements as they existed when the law was enacted, ensured stability in labor relations and avoided the inevitable chaos that would have resulted from the sudden collapse of all pre-Act units.

Over the years, however, this Board has expanded the protection accorded these grandfathered units to such an extent that not only have they been deemed certified, they have been deemed sacred and impervious to change, enjoying considerably more protection than Board-certified units. By rule,

the Board has forbidden decertification elections in deemed-certified units (O.A.C. Rule 4117-5-01(D)(2) and allowed unit certification and amendment of certification under only the most limited circumstances (O.A.C. Rule 4117-5-01(F)).

This extra protection for deemed-certified units has produced difficult results. Because decertification petitions are disallowed, where a majority of employees do not want to be represented by any employee organization, it must first transform the unit into a Board-certified unit by signing cards and voting for another employee organization, and only then can proceed to decertify this new choice.

Moreover, the near total ban on clarification and amendments of deem-certified units has undercut needed flexibility in the structure of public sector units.

It is well-established that "the General Assembly will not be presumed to have intended to enact a law producing unreasonable or absurd consequences." Canton v. Imperial Bowling Lanes, Inc., 16 Ohio St. 2d 47, 53, 242 N.E. 2d 506 (1968). The Act must be construed "to effect a just and reasonable result." Gulf Oil Corp. Kosydar, 44 Ohio St. 2d 208, 217, 339 N.E. 2d 820 (1975). Giving the grandfathered units a certified status effects a just and reasonable result. Giving them an extra protection does not.

The issue in this case, though, is not as broad as the issue of deemed-certified status in general. Before us is only the limited question of whether in a deemed-certified unit the exclusive representative may itself petition for an opt-in election.

Even if we read the statute to give extra protection to exclusive representatives in deemed-certified units, nothing precludes the exclusive representative itself from initiating unit changes. Clearly, since the exclusive representative is the one who benefits from this extra protection, it is also the one who should be able to waive its special protection. In the past, the Board has allowed a deemed-certified representative to become Board-certified, on its own initiative.

See, for example, In the matter of Princeton Association of Classroom Education, OEA/NEA and Princeton City Board of Education, SERB Case No. 85-RC-04-3431 where a deemed-certified exclusive bargaining agent filed a petition for representation election. The Board conducted an election and certified the exclusive bargaining agent. At the time the union filed the petition, it was in the midst of extended litigation in an unfair labor practice charge against the employer, which had questioned its deemed-certified status and refused to bargain. In In re Princeton City School District Bd of Ed, SERB 86-008 (2-28-86), the union relinquished the extra protection of the deemed-certified status for expedient certification leading to negotiations and ultimately a collective contract bargaining agreement.

Here, the exclusive bargaining representative in the deemed-certified unit has petitioned to change the bargaining unit. There is nothing in the law to prevent such change and it is sound policy to allow the unrepresented employees to express their wishes regarding representation in the existing unit.

However, the exclusive representative should be aware that in the event its petition results in changing the unit, it will no longer be the

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exclusive representative in a unit grandfathered in 1984 but rather will become the exclusive representative of a Board-certified unit, with the usual protections accorded units certified by the Board. To enjoy the special protection of deemed-certified status, one must be the exclusive representative of a unit as it was composed in 1984 when the law was enacted.

OWENS, Chairman, and SHEEHAN, Board Member, concur.

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