

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SEND OPINION 92-008

In the Matter of  
Public Utilities Organization of Bowling Green,  
Employee Organization,  
and  
Employees Association of Bowling Green,  
Employee Organization,  
and  
City of Bowling Green,  
Employer.

CASE NUMBERS: 90-REP-11-0299  
90-REP-11-0300

OPINION

OWENS, Chairman:

The cases before us involve two employee organizations, each petitioning for a separate departmental unit in the city, and an employer, the City of Bowling Green, objecting to these separate units as inappropriate and arguing that one single unit combining the two departments is an appropriate unit for bargaining.

I.

The issue, as properly stated by the hearing officer in his recommended determination, was whether the bargaining units sought by the Employee Organizations herein are appropriate pursuant to the provisions of Ohio Revised Code (O.R.C) §4117.06(B).

Implicit in his recommended dismissal of the petitions is the conclusion, never actually stated, that the individual departmental units sought by the Petitioners are not appropriate. We agree and offer this comment.

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The city currently has a collective bargaining relationship with four units: two in the Police Division; one in the Fire Division; and one in the Electric Division of the Public Utilities Department. (Transcript p. 46)

The Employer testified that adding two additional units would force the city to hire an additional labor relations expert. The Employer argued that such an expense is unwarranted since there is no compelling justification for separate units. The record also shows that there is an ongoing effort by the city to integrate the Public Utilities Department with the rest of the city and that a separate public utilities bargaining unit will undermine the city's drive for integration.

Hence, in the specific situation of these cases the overriding consideration of the effects of overfragmentation, the efficiency of operations and the administrative structure of the public employer lead us to the conclusion that the petitioned-for units are inappropriate.

As noted in our opinion in OCSEA Local 11 and OCB, SERB 92-007 (6-10-92), the factors of O.R.C. §4117.06(B) must be weighed carefully to determine whether a particular unit is appropriate.

Where overfragmentation may be avoided and administrative efficiency increased through the combination of two employee groups across departmental lines, we believe that the smaller, single-department units are normally inappropriate.

## II.

As a matter of procedure, an employer who makes a showing that the petitioned-for unit is inappropriate should be asked at the hearing to propose an alternate unit which it deems appropriate and to demonstrate that

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the alternate unit is appropriate under the criteria set forth in §4117.06(B).

Further, the hearing officer should ask whether the petitioner wishes to proceed in any other unit if the unit petitioned for is found not appropriate for the purposes of collective bargaining. If the petitioner does not wish to go forward under such circumstances and the unit it seeks is found inappropriate, then it is proper for the hearing officer to recommend that the petition be dismissed outright. If the petitioned-for unit is found inappropriate and the petitioner does wish to proceed to an election in an alternative appropriate unit, then it is proper for the hearing officer to recommend that the Board direct an election in an alternative unit. If the unit is larger than that petitioned for and the petitioner's showing of interest is inadequate, then the petitioner should be given a reasonable time to submit an adequate showing. Absent the required showing, the hearing officer shall recommend dismissal of the petition to the Board.

Adherence to this practice, designed to finalize unit determinations in one proceeding, will serve to avoid numerous filings of petitions for various units and, thus, save the unnecessary expenditure of time and money by the parties and by the agency in repetitive litigation as well as frustration of public employees exercising their statutory rights.

Pottenger, Vice Chairman concurs.

SHEEHAN, Board Member concurring:

I concur with the majority's adoption of the hearing officer's recommendation but not for their reason. I concur because no exceptions were filed. Historically, where no exceptions have been filed, this Board

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has allowed the hearing officer's recommendations to stand with respect to unit and election determinations. In Re Ohio Attorney General, SERB 86-009 (3-6-86)

My disagreement with the hearing officer's recommendation in the instant case is not so much on the merits as on the direction he took in his analysis and discussion and conclusions of law. While the hearing officer properly identified the right issue, whether the petitioned-for units were appropriate units for collective bargaining, this issue was not dealt with at all in his analysis. He dealt with a completely different issue, which was whether the Employer's alternate unit was appropriate.

Moreover, there is no conclusion of law regarding the issue of this case. Nowhere does the hearing officer conclude that the petitioned-for units were either appropriate or inappropriate. There is a conclusion of law that the employer's alternate unit is appropriate but that does not include the appropriateness of the petitioned-for units. It is, therefore, unclear to me how the hearing officer's recommendations can be upheld on any grounds other than for lack of exceptions.

I concur completely with the majority's opinion concerning the proper procedure to be followed in conducting hearings to determine the appropriateness of bargaining units. However, I must stress again that the first finding in a hearing should be whether the petitioned-for unit is an appropriate unit regardless of any other possible configurations, options and alternate units. Only after a reasoned determination is made that the petitioned-for unit is not appropriate can other alternate units be discussed. This is clearly the mandate as set forth in O.R.C. §4117.06.