

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 92-009

In the Matter of

Fraternal Order of Police  
Ohio Labor Council, Inc. (FOP/OLC),

Employee Organization,

and

Ohio Civil Service Employees Association,  
Local 11, AFSCME, AFL-CIO (OCSEA),

Employee Organization,

and

State of Ohio Department of Corrections,

Employer.

CASE NUMBER: 91-REP-03-0092

OPINION

SHEEHAN, Board Member:

This case comes before the Board on a Request for Recognition, filed by the Fraternal Order of Police (FOP), which in its second amended form sought a state bargaining unit comprised of Correction Supervisor 1's.

The hearing officer found that the doctrine of collateral estoppel bars the FOP's Second Amended Request for Recognition. The hearing officer also found that the parties are estopped from relitigating the supervisory status of Correction Supervisor 1's. For the following reasons, we do not agree that the doctrine of collateral estoppel is applicable in unit determination cases and on this issue we reaffirm SERB's decision and opinion in In re State of Ohio, SERB 87-030 (12-17-87). However, under the circumstances

presented in the case at issue, we find that the petitioned-for unit is inappropriate as a matter of policy and that relitigating the supervisory status of Correction Supervisor 1's is not warranted since no showing was made in this case that job duties of Correction Supervisor 1's have substantially changed since the determination in Case No. 88-REP-02-0016 that this classification is not a supervisory one.

I

In In re State of Ohio, SERB 87-030 (12-17-87) Judge Day, then Chairman of the Board, very eloquently stated and reasoned the principle that collateral estoppel, res judicata and equitable estoppel do not have any relevance to appropriate unit determination. We agree and reaffirm that principle. A determination that a certain unit is appropriate means only that the unit at issue is an appropriate unit for bargaining and not the most appropriate unit. Thus, there can be no preclusive effect to such a determination on future determinations regarding the appropriateness of a different unit or change in this same unit.

As we have recently stressed,<sup>1</sup> the ability to change the structure of bargaining units is extremely important. Public employers must be able to respond to never-ending changes in government structure where old classifications are abolished and new ones created, and where there is always a need to accrete into units, to carve from existing units or to combine two units into one. The specific structure of a bargaining unit cannot be etched in stone.

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<sup>1</sup> See Kent, SERB 92-002 (3-20-92) and OCSEA, Local 11, SERB 92-007 (6-10-92).

SERB's original designation of 14 state bargaining units in 1985 was not set in concrete either, and does not bar by collateral estoppel the determination whether the FOP petitioned-for bargaining unit in this case is appropriate.

However, the Board finds that as a matter of policy the unit is inappropriate. Where state units are involved, particular weight will be attached to the factor of over-fragmentation above and beyond the weight given to other relevant factors for determining appropriate units listed in O.R.C. §4117.06(B).<sup>2</sup>

The Correction Supervisor 1's can appropriately belong in State Unit 3 as was determined by a SERB hearing officer in Case No. 88-REP-02-0016. As a matter of policy, whenever it is possible to include the classifications at issue within an existing state bargaining unit, the Board will utilize this option rather than create a new state unit because of the importance of avoiding over-fragmentation in state units.

Thus, the Board finds that the FOP's second amended recognition request which sought to represent a separate unit of Correction Supervisors 1's, is for an inappropriate bargaining unit, and hence we dismiss this petition. The proper place for Correction Supervisor 1's if they choose representation is State Bargaining Unit 3.

II

We agree with the hearing officer's findings that the circumstances presented here do not mandate relitigation of the "supervisory" status of the Correction Supervisor 1's. The status of Correction Supervisor 1's was

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<sup>2</sup> OCSEA, Local 11, Id.

fully litigated in Case No. 88-REP-02-0016 before a SERB hearing officer who conducted a hearing, heard witnesses, took evidence and wrote a very detailed Recommended Determination finding that Correction Supervisor 1's are not supervisors pursuant to O.R.C. §4117.01(F). The Board, after reviewing the record, the Hearing Officer's Recommended Determination, Exceptions and Response, upheld the findings of the hearing officer.

Relitigation is warranted only when the party advocating the relitigation demonstrates by affidavits and other documents that the job functions of the classification or individual at issue have been substantially altered since prior determination in such a way that the factual underpinnings of the parties' stipulations and the findings of fact as adopted by the Board no longer exist.<sup>3</sup>

This is not the case here. The Office of Collective Bargaining (OCB), which advocates relitigating the supervisory status of the Correction Supervisor 1's, demonstrated no change in job duties. OCB's argument that relitigation is in order because its lawyer in the prior litigation did not do a good job, has no merit. Losing a case can always be blamed on the lawyer or the prior administration and thus, accepting OCB's argument, litigation will never end since there is always a losing party.

It should be mentioned here, specifically regarding supervisory exclusion, that where a party advocating relitigation of supervisory status demonstrates substantial change of duties, the standard to be utilized in the new case will be the standard existing at the time of the original

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<sup>3</sup> See City of Palm Bay, 3 NPER 10-12206 (PERC, FL 1981); Keystone Central School District, 3 NPER 40-12036 (PPER, PA 1981).

litigation and not the new supervisory standard as announced in Mahoning, SERB 92-006 (6-5-92).

III

Finally, the hearing officer raised the issue of compliance with deadlines established in the Hearing Officer's Procedural Order. Specifically, the hearing officer referred to the OCB's nonchalant late filing of its brief with no attempt to request an extension of time, and OCSEA's submission of its Answer Brief to the hearing officer after the closing hours on the last due date.

We cannot overemphasize the importance of strict compliance with deadlines imposed by the Board and its agents. Let those who practice before SERB be on notice that pleadings, briefs and other similar documents filed late will be struck from the record and will not be considered, unless the SERB agent who issues the deadline grants an extension on a timely request. Parties who need an extension of time must request it from the SERB agent handling the matter and notify the opposing party(ies) before the deadline expires. We can foresee virtually no circumstances which would justify granting an extension request after a document is due.

Owens, Chairman, and Pottenger, Vice Chairman, concur.

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presented in the case at issue, we find that the petitioned-for unit is inappropriate as a matter of policy and that relitigating the supervisory status of Correction Supervisor 1's is not warranted since no showing was made in this case that job duties of Correction Supervisor 1's have substantially changed since the determination in Case No. 88-REP-02-0016 that this classification is not a supervisory one.

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Owens, Chairman, and Pottenger, Vice Chairman, concur.