

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Communications Workers of America and Its Local No. 4527,
Employee Organizations,
and
Jefferson County Department of Human Services,
Employer

CASE NUMBER: 92-STK-09-0002

OPINION

I.

POTTENGER, Vice Chairman:

On September 8, 1992, the Jefferson County Department of Human Services ("Employer") filed a Request for Determination of Unauthorized Strike pursuant to Ohio Revised Code (O.R.C.) §4117.23. The filing alleged that on September 8, 1992, approximately forty-seven (47) of fifty (50) Income Maintenance workers represented by Communications Workers of America, Local No. 4527 ("Union" or "CWA") never arrived at work and reported off as sick.

In order to act within the 72-hour deadline imposed by O.R.C. §4117.23, the Board scheduled a hearing to be held at 11:00 a.m., September 10, 1992, at the Board's Columbus office. Prehearing procedures were conducted by the Board's General Counsel, and stipulations were agreed upon by the Union and the Employer. These stipulations are:

1. The Employer is a "public employer" within the meaning of O.R.C. §4117.01 (B).

2. Communications Workers of America (CWA) is an "employee Organization" within the meaning of O.R.C. §4117.01 (D).
3. CWA is the Board-certified exclusive representative for a unit of approximately ninety-eight (98) full-time and part-time employees, including approximately fifty (50) employees classified as Income Maintenance workers and aides.
4. The Employer and CWA have been parties to a series of collective bargaining agreements, the first of which became effective on or about 1985. The current collective bargaining agreement between the Employer and CWA became effective on November 1, 1991, and extends through October 30, 1994. A copy of the current collective bargaining agreement is appended to these stipulations.
5. The current collective bargaining agreement between the Employer and CWA contains a clause entitled "No Strike/No Lockout" (Article 9), in which CWA agrees that neither it, its officers, agents, representatives, or members will authorize, instigate, cause, aid, condone, or participate in any strike, work stoppage, sympathy strike or any other interruption of operations of services of the Employer, by its members or other employees of the County, except as otherwise provided in Article 39, "Duration".
6. The present controversy involves employees including those classified as Income Maintenance workers and aides.
7. Since the week of August 31, 1992, the exact date being unknown, a controversy has existed over the reclassification of an employee

from Typist II to Program Analyst II.

8. On Tuesday, September 8, 1992, forty-seven (47) of the Employer's fifty (50) Income Maintenance workers and aides reported off as "sick." On Wednesday, September 9, 1992, the activity complained of by the Employer in the above-captioned case ceased.

9. At no time relevant to this proceeding was a Notice of Intent to Strike provided to the Employer by the Employee Organization.

II.

Before the Board convened to rule on the Request for Determination of Unauthorized Strike within the 72-hour deadline imposed by O.R.C. §4117.23, the alleged job action had ceased and the Board was confronted with a situation similar to that in In re Akron City School Dist Bd of Ed., SERB 89-031 (10-27-89).

The position taken by the Union in this matter is simple. It contended that the Union had not authorized a walkout or any strike and had not authorized any employee to call in sick. The Employer did not contest the Union's position and specifically noted that it was not asserting that the Union, either the international or local, was responsible for the alleged job action. The Employer acknowledged that since it had no proof otherwise, it believed the employees had engaged in concerted activity on their own.¹

¹ At the hearing, the Employer was represented by James McCloskey. The Union was represented by Local 4527 President Michael Chichick. Neither party presented witnesses.

Even though the employees had returned to work and were no longer engaged in any type of job action, the Employer still sought the Board's ruling that the activity they had previously engaged in constituted an unauthorized strike. In addition, the Employer sought to have SERB set aside Board precedent set forth in In re Akron, supra, because the remedy under the unfair labor practice procedure would be inadequate. In pertinent part, this opinion states:

"...the extraordinary procedures and relief available under O.R.C. §4117.23 apply only to live, continuing conduct. Once the employees have returned to work, the urgency for action is lost, and adequate redress and remedy for such action are then available through unfair labor practice proceedings."

The Board also held in Akron that in instances where it is apparent that there is a risk of reoccurrence, repeated action, or continuing harassment through alleged strike activity, the process of O.R.C. §4117.23 may remain available. In the present case, however, not only has the alleged job action ceased, the record evidence fails to support that there is a risk of reoccurrence of the activity in question or any other alleged strike activity.

The Employer asks SERB to review, modify or perhaps overturn

the In re Akron decision in light of the Board's more recent ruling in In re Summit County Child Support Agency and Summit County Human Services Dept., SERB 91-006 (7-18-91), which held that intermittent strikes are illegal per se. The Employer argues that if the Board does not find the alleged strike unauthorized, there's nothing to prevent the employees from resuming it. This, it maintains, would be tantamount to sanctioning an unauthorized or intermittent strike. Second, the Employer argues that while utilizing the unfair labor practice procedure under Akron does provide a remedy, the remedy is so far removed from the action that it loses a great deal of its effect.² Finally, the Employer argues that it has met the burden of showing that there might be a reoccurrence of the alleged job action inasmuch as the parties' contract allows either party, during October 1992, to request that wage negotiations be reopened (Joint Ex. 2, Article 34, "Wages.").

The Employer's arguments with respect to either modifying or overturning the Akron decision in order to protect against intermittent strikes are without merit. If there is an apparent risk that the alleged job action will recur, then the O.R.C.

² With respect to the Employer's concerns about the adequacy of unfair labor practice remedies in strike cases, we reaffirm the Akron Board in its observation that "the remedies possible under O.R.C. §4117.12 are significant and may be fashioned in a way to achieve the deterrent effect sought by the Employer, if the unfair labor practice is proven."

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§4117.23 procedures are still available even under Akron. Although the Employer is correct that there is nothing to prevent employees from again engaging in the alleged job action after it has ceased, there is no evidence in this case that would lead us to believe it may recur.

The Employer presented no evidence that employees had threatened not to report for work, nor any circumstantial evidence which would tend to show that they anticipated calling off work en masse on some other occasion.

Neither are we persuaded by the Employer's speculation that the work stoppage was somehow connected to the wage reopener language of the contract. It is true that the parties' contract contains wage reopener language, but a request by either party to reopen the contract cannot be entertained until October 1, 1992. At the hearing, the Union took the position that as far as it knew, the wage reopener had nothing to do with the alleged work stoppage. The Employer acknowledged under questioning by the Board that management had not received any statements by Union representatives, employees or anybody else regarding the wage reopener.

In sum, the Employer has not provided us with a reasonable basis for believing that the alleged work stoppage may recur. It is inadequate to support such an argument with mere speculation, without direct or circumstantial evidence, as the Employer has

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attempted to do here.

In future determinations, where employers seek relief under O.R.C. §4117.23 for alleged strikes which have ceased, the Board shall require affidavit evidence establishing facts upon which it can reasonably conclude that the alleged strike may recur. In the absence of such evidence, the employer's request may be dismissed.

In this matter, since the Employer has failed to demonstrate live, continuing conduct or any urgency warranting the extraordinary procedures and relief under O.R.C. §4117.23, the unfair labor practice procedure is the appropriate forum for having this matter addressed. Therefore the Request for Determination of Unauthorized Strike Determination is dismissed.

Chairman Owens, Board Member Sheehan concur.