

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Roberta L. Lazenby,

Petitioner,

and

Ohio Council 8. American Federation of State,  
County and Municipal Employees, AFL-CIO,

Employee Organization,

CASE NUMBER: 90-REP-12-0315

OPINION

SHEEHAN, Board Member:

I.

Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (Employee Organization) was certified by SERB as the exclusive representative of a bargaining unit of employees of the Marion County Children's Services Board (Employer) on January 8, 1987 (Exhibit 1). On April 23, 1987, SERB amended the certification on a joint petition to amend certification as follows:

INCLUDED: All non-professional employees including Account Clerk I, Accounting Clerk 2, House Parents, Case Aide Cooks, Secretary, Daytime Care Worker, Night Watchman (not a guard according to O.R.C. 4117), Maintenance Supervisor (not a supervisor according to O.R.C. 4117).

EXCLUDED: All intermittent employees who are irregular part-time employees, all management level employees, confidential employees (one Secretary 1), Supervisors, Guards, casual and seasonal employees as defined in the act, including Administrator, Office Manager, Executive Assistant, Residential Director, Case Worker Supervisor and Child Care Provider.

The Employee Organization and the Employer thereafter negotiated a collective bargaining agreement dated December 31, 1987, which had a term commencing January 1, 1988, and terminating December 15, 1990 (Exhibit 2). Article 2, Union Recognition of this agreement, defined the unit slightly different from the amended certification by adding to the "INCLUDED" portion, Youth Leader, and adding to the "EXCLUDED" portion, Youth Leader Supervisor. These changes were never brought to SERB for action.

On August 21, 1990, a decertification petition Case No. 90-REP-08-0194 was timely filed by Roberta L. Lazenby with SERB (Stip. 8). The Employee Organization and the Employer commenced negotiations for a successor or collective bargaining agreement on August 30, 1990 (Stip. 9). On September 13, 1990, SERB dismissed the decertification petition for lack of compliance with Ohio Administrative Code (O.A.C.) Rule 4117-5-02(c)(5)(6) (Exhibit 6). The Employer and Lazenby appealed SERB's dismissal to the Franklin County Common Pleas Court Case Nos. 90-CVH-09-7441 and 90-CVH-10-8320. Both appeals were dismissed by the court. On September 20, 1990, the Employer informed the Employee Organization that it was terminating the collective bargaining agreement upon the expiration of the contract on December 15, 1990 (Exhibit 8). On November 30, 1990, following another refusal of the employer to negotiate a successor agreement on the basis of alleged good faith doubt of majority status, the Employee Organization filed an unfair labor practice charge (Case No. 90-ULP-11-0726) alleging refusal to

bargain in violation of O.R.C. §4117.11(A)(1) and (A)(5). On December 17, 1990, two days after the expiration of the contract, Lazenby filed a second petition for decertification, which is the subject of this case. The case was directed to hearing. In a directive dated February 20, 1992, the Board adopted the recommendation of the Hearing Officer to hold the processing of the Petition for Decertification Election pending the Board's final order in Case Number 90-ULP-11-0726. In an order and opinion issued in that case this date, the Board has found the Employer violated O.R.C. §4117.11(A)(1) and (5) by refusing to bargain with the Employee Organization after the initial Petition for Decertification (Case. No.90-REP-08-0194 ) had been dismissed by SERB. Thus, the representation case at issue here is ripe for disposition.

## II.

The question before the Board is whether the second Petition for Decertification should be dismissed following the finding that the Employer's refusal to bargain was an unfair labor practice in violation of O.R.C. §4117.11(A)(1) and (A)(5), or whether the Board should direct an election pursuant to the Petition for Decertification.<sup>1</sup>

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<sup>1</sup> There was another issue before the hearing officer-whether the second Petition for Decertification should be dismissed for the reason that there is a discrepancy between the unit description in the petition, which mirrors Article II in the collective bargaining agreement, and the unit description as was certified

For the reasons stated below, an election pursuant to the Petition for Decertification Election shall take place, but only after the NOTICE TO EMPLOYEES, attached to the Board Order and Opinion in Case No. 90-ULP-11-0726 is posted by the Employer for sixty (60) days.

III.

Normally, the remedy for the unfair labor practice of refusal to bargain is a bargaining order. Also, where a timely and properly filed Petition for Decertification is pending before the Board, negotiations are stayed until the representation issue is resolved.

In the case at issue, a timely and properly filed Petition for Decertification is pending before the Board but at the same time the Employer is found in violation of the duty to bargain. The Employee Organization urges us to issue a bargaining order and dismiss the petition on two grounds. First, OCS argues that the same policy considerations for extending the certification bar should apply here. We do not agree. Policy considerations warrant extending the certification year where a newly-certified bargaining agent has been deprived of the opportunity to negotiate a first contract because of an employer's refusal to bargain. There, the

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by the Board. We agree with the hearing officer that under the facts of this case the discrepancy in the unit description is not a reason to dismiss the petition. It should be noted that no exceptions were filed regarding the hearing officer's ruling on this specific issue.

newly-certified employee organization has received a fresh mandate to bargain for unit employees. Its status as bargaining representative is unquestioned.

The same policy considerations do not apply here, where the employee organization's status has been questioned and must be resolved. By delaying an election under these circumstances and ordering bargaining, we might ultimately be forcing unit employees who had properly challenged the union's status to live under still another contract negotiated by that union.

Second, the Employee Organization argued that if the Employer had bargained as it should have, there would have been a contract in existence by the time the second Decertification Petition was filed and thus the petition would have been untimely. This argument is too speculative to have merit and thus is rejected.

#### IV.

Further, we note that there is nothing in the record to establish that the Employer's refusal to bargain contributed in any substantial way to the filing of the Petition for Decertification. The first petition which was dismissed by the Board as faulty had been filed in the window period prior to the commencement of the the Employer's refusal to bargain. The second petition was filed immediately after the collective bargaining agreement expired. Weighing the equities under the specific facts of this case, we find that the wishes of the employees will be better served by directing an election pursuant to the Petition for Decertification.

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However, the Employer's unfair labor practice should not be left unremedied. Thus, we direct that a decertification election be held pursuant to the petition before us, but that the election shall take place only after the Notice to Employees remedying the Employer's unfair labor practice is posted by the Employer for sixty days.

Chairman Owens, Vice Chairman Pottenger concur.

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