STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Dayton Education Association,

Employee Organization,

and

Dayton City School District Board of Education,

Employer.

CASE NUMBER: 93-STK-03-0001

OPINION

OWENS, Chairman:

I. Procedural Background and Facts

On March 25, 1993, at 8:30 a.m., the Dayton City School District Board of Education filed a Request for Determination of Unauthorized Strike pursuant to Ohio Revised Code (O.R.C.) Sec. 4117.23. The Employer maintained that a strike begun at 5:01 a.m. on March 25, 1993, by the Dayton Education Association, was unauthorized because the Notice of Intent to Strike served by the Association around noon on March 15, 1993, did not provide the required 10-day notice, and because the Association, by filing multiple overlapping strike notices, had failed to give clear notice of its intent to strike.

In order to act within the 72-hour deadline imposed by O.R.C. Sec. 4117.23, the Board scheduled a hearing to be held at 2:00 p.m., March 25, 1993, at the Board's office. Prehearing procedures were conducted by the Board's General Counsel, and stipulations were agreed upon by the Association and the Employer. These stipulations are:

1. Dayton City School District Board of Education ("Board") is a "public employer" within the meaning of O.R.C. Sec. 4117.01(B).

2. Dayton Education Association ("Association") is an "employee organization" within the meaning of O.R.C. Sec. 4117.01(D).

3. The Association is the deemed-certified representative for a unit of all certificated personnel employed by the Board, including Youth Employment Work Training professional staff members, but excluding those individuals recited at Article 2.02 of the parties' collective bargaining agreement, referenced below in Paragraph 4. The parties so represented are in a category for whom strikes are permitted under Chapter 4117 of the Ohio Revised Code.

4. The Board and the Union have been parties to a series of collective bargaining agreements, the first of which became effective before 1984, the most recent of which was effective by its terms from April 16, 1991 through April 15, 1992. The agreement was extended by agreement of the parties to March 16, 1993. A copy of the most recent agreement is incorporated as part of these stipulations.

5. Article 50.01 of the parties' collective bargaining agreement, described above in Paragraph 4, provides, in pertinent part: That Board or the Association will serve written notice on the other of its intention to either terminate, amend

or modify this contract, not more than one hundred and twenty (120) and not less than sixty (60) days prior to the expiration date. The Board and the Association agree to utilize an alternate settlement dispute procedure through the Federal Mediation and Conciliation Service as opposed to the fact finding process contained in ORC §4117.14(C) and under Administrative Code Rule 4117-9-05(B), (C). The statutory notice requirement contained in ORC §4117.14(D)(2) will remain in effect throughout the negotiations."

6. Pursuant to Article 50.01 of the collective bargaining agreement, described above in Paragraph 4, the parties began negotiations in February, 1992.

7. In February, 1993, the parties requested the services of a federal mediator.

8. The parties negotiated with the assistance of a federal mediator on the following dates:

February 17, 1993
March 8 through 22, 1993

9. The Association served notices of intent to strike on the Board as follows:

a. A Notice was served on March 4, 1993, stating that the Association intended to strike commencing on March 17, 1993 at 5:00 a.m. (Copy attached to Request for Determination of Unauthorized Strike as Exhibit A).

b. A notice was served at approximately noon on March 15, 1993, stating that the Association intended to strike commencing March 25, 1993, at 5:00 a.m. (Copy attached to Request for Determination of Unauthorized

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Strike as Exhibit B).

c. A notice was served on March 18, 1993, stating that the Association intended to strike commencing on March 30, 1993, at 5:00 a.m. (Copy attached to Request for Determination of Unauthorized Strike as Exhibit C).

II. Issues

1. Whether the employee organization gave a 10-day prior written notice of its intent to strike, as required by O.R.C. §4117.14(D)(2).

2. Whether O.R.C. §4117.14(D)(2) permits the filing of multiple overlapping notices of intent to strike.

III. Analysis

The Employer contends that the strike at issue is unauthorized on two separate grounds: (1) that the Notice of Intent to strike, served upon it at approximately noon on March 15th, did not afford the 10 days' prior written notice required by O.R.C. §4117.14(D)(2) for a strike occurring at 5:01 a.m. on March 25th; and (2) that existence of multiple open-ended strike notices did not afford the clarity intended by the Notice provisions of Chapter 4117.

O.R.C. 4117.14(D)(2) provides, in pertinent part.:

Public employees other than those listed in division (D)(1) of this section have the right to strike under Chapter 4117 of the Revised Code <u>provided that the employee organization representing the employees has given a ten-day prior written notice of an intent to strike to the public employer and to the board</u> ....

(Emphasis added).

Likewise, O.A.C. 4117-13-01(A) provides: "A notice of intent to strike must be filed with the board and received by the employer no later than ten days prior to the anticipated strike date." (Emphasis added).

While it is true that ten 24-hour periods did not elapse between the March 15th filing of the notice and the commencement of the March 25 strike, Chapter 4117 does not require 24-hour periods when the statute references "days.." Rather, O.R.C. §4117.01(P) states: "'Day'" means calendar day." Chapter 4117 uses the term "hours" when hours were meant, and "days" when days were meant. For example, O.R.C .§4117.23 requires a 72-hour determination by the Board, not simply a determination in three calendar days. We are compelled, therefore, to follow the definition section of the Act and conclude that the ten-day notice requirement of O.R.C. §4117.14(D)(2) refers to calendar days.[1]

Further, we find that the March 15th Notice of Intent to Strike was filed in the required ten calendar days as computed under OAC 4117-1-03.[2] Here, the Notice of Intent to Strike

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[1]We will, of course be compelled to apply the statutory definition with uniformity. For example,O. R.C. §4117.23(B)(1) permits an employer to remove or suspend employees who one day after notification that their strike is unauthorized, continue to engage in it. The employer need not wait a full 24 hours after notification to act. It may act on the next calendar day after notification.

[2]OAC 4117-1-03(A) provides, in pertinent part: In computing any time period prescribed by or allowed by Chapter 4117 of the Revised Code and Chapters §4117-1 to 4117-25 of the Administrative Code...such period shall begin to run on the day following the day of the act, event or occurrence. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, legal holiday, or a day or part of a day on which the board office in

was served on March 15th. Under the Rule, counting begins on the next day, March 16th, and concludes with the 10th day on March 25th, the first day of the strike.[3] Accordingly, we conclude that the Notice of Intent to Strike was filed timely.

However, the Employer further argues that the existence of multiple overlapping strike notices so obscured the Association's intentions, that it was not effectively placed on notice of the intended date of a strike.

It is undisputed that by the time of the strike in question, the Association had filed three strike notices. A notice served March 4, 1993, stated that the Association would strike commencing on March 17, 1993. A notice filed March 15th, two days before a strike could have been called under the original notice, stated that a strike would commence at 5:00 a.m. on March 25th, and another filed March 18th, stated that a strike would commence at 5:00 a.m. on March 30th. The Association did not strike on March 17th.

Accordingly, as the Employer's counsel aptly observed at hearing, the Dayton schools had no way of knowing from March 15th forward, whether they were facing a strike on Wednesday, March 17th, Thursday, March 25th, or on Tuesday, March 30th.

Columbus is closed, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, legal holiday, or a day or part of a day on which the board office in Columbus is closed.

[3]This calculation is consistent also with SERB's calculation of counting backwards under the Rule, essentially counting the event, or the strike, as the first day of computation, and the day after the notice, as the 10th day. See In re Garfield Heights, SERB 90-008 (6-18-90).

The purpose of a strike notice is "to put management in a position to know that a job action was contemplated, and when, and to take whatever defensive actions would be appropriate." In re Summit County Dept of Human Services, SERB 85-013 (4-5-85).

At the hearing, the Employer's counsel cited certain difficulties an employer encounters in taking these defensive actions in the face of multiple overlapping strike notices. Specifically, he cited the need to arrange for security but the impossibility of keeping a security firm on hold for two or three weeks until the strike date was resolved. Also noted were the need to arrange other contract services, line up volunteers, notify parents, notify students and the business community, and arrange transportation for students.

The legal effect of overlapping, multiple notices is one which the Board has not yet addressed. O.R.C. §4117.14(D)(2) specifically permits public employees to strike if the employee organization has filed a ten-day prior written notice of intent to strike. Here we have concluded that the March 25th strike was in fact preceded by a ten-day prior written notice. The statute, and our rules, are silent as to the impact of additional, conflicting notices. We conclude, however, that the purpose of a strike notice is achieved by allowing a later-filed notice to supersede the earlier-filed one(s).[4]

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[4]By determining that the later notice supersedes the earlier one(s), we make no judgment as to whether the later notice will ultimately be found valid or invalid, if later challenged in a proper proceeding. OAC 4117-13-01(C) states: "The board will not make a determination as to the sufficiency of a notice of intent to strike except in response to a request for determination of an unauthorized strike or in the contoxt of an unfair labor practice charge."

Further, allowing the later filing to supersede earlier one(s) under these circumstances is consistent with O.R.C. §4117.22, which provides that Chapter 4117 "shall be construed liberally for the accomplishment of the purpose of promoting orderly and constructive relationships between all public employers and their employees."

Accordingly, in the future, we shall interpret the language of O.R.C. §4117.14(D)(2), which references "a ten-day prior written notice of intent to strike" (emphasis added) to contemplate the existence of only one notice announcing a strike during a given period of time.

Therefore, henceforth, when overlapping notices of intent to strike are filed, the later-filed notice will be deemed to have superseded the earlier one(s), without regard to the good or bad faith of the filer.

In this case, we find that prospective application of our treatment of multiple, overlapping notices is appropriate because the law until this point has been undefined on the effect of such filings, and there is evidence that in this particular matter the Association filed the second notice, stating an intent to strike March 30th, in order to preserve its right to strike in the event the notice at issue here was found defective.[5]

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[5]The Association's counsel stated upon filing the notice of intent to strike March 25th, he had been correctly informed by a SERB staff member that the precise issue of timeliness presented by the notice had not yet been ruled upon by the Board.

Accordingly, in this matter, since we find that the notice of intent to strike was both timely and effective, we find the strike to be authorized.

Pottenger, Vice Chairman, concurs. Mason, Board Member, absent.

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