

STATE OF OHIO
STATE EMPLOYMENT RELATION BOARD

In the Matter of

Fraternal Order of Police, Ohio Labor Council, Inc.,
(Rival Employee Organization)

and

Fraternal Order of Police Lodge 43,
(Incumbent Employee Organization)

and

Boardman Township Trustees, Mahoning County,
(Employer)

CASE NUMBER: 93-REP-06-0113

OPINION

Pottenger, Vice Chairman:

The Boardman Township Trustees, Mahoning County (Employer) and the Fraternal Order of Police Lodge 43 (Incumbent Employee Organization) are parties to a collective bargaining agreement with an expiration date of September 30, 1993. Prior to the expiration of this agreement the Fraternal Order of Police, Ohio Labor Council, Inc. (Rival Employee Organization) filed a Petition for Representation Election with SERB seeking to displace the Incumbent Employee Organization. The Incumbent Employee Organization submitted notice to SERB that it disclaimed interest in representing the employees referenced in the Rival Organization's Petition for Representation Election and further, had no objections to an election being conducted prior to the expiration date of the existing contract. The Employer and Rival Employee Organization then entered into a consent election agreement seeking an August 25, 1993 election.

We cannot approve the election date agreed to by the Employer and Rival Employee Organization in this matter since the date sought for the election occurs thirty-six (36) days prior to the expiration of the existing collective bargaining agreement between the Incumbent Employee Organization and the Employer. In making this determination or any other, the Board is guided by statutory rules and procedures of the Ohio Revised Code. With respect to conducting an election during the term of an existing contract, the Code is clear and unambiguous. Specifically, section 4117.07(C)(6) provides as follows:

The board may not conduct an election under this section in any appropriate bargaining unit within which a board-conducted election was held in the preceding twelve-month period, nor during the term of any lawful collective bargaining agreement between a public employer and an exclusive representative. (Emphasis added.)

Pursuant to this provision, SERB simply does not have statutory authority to conduct an election during the lawful term of the collective bargaining agreement between the Boardman Township Trustees and the Fraternal Order of Police Lodge 43, irrespective of their desire to do otherwise. Accordingly, we decline to approve a consent election insofar as it calls for an election to take place thirty-six (36) days before the expiration of the existing contract. We are well aware that parties may legally terminate their own contractual agreements. However, SERB cannot honor such agreements unless presented with clear and unequivocal evidence of legal contract termination. Therefore, before an election with a rival employee organization can be conducted on a date during the contract term, the employer and incumbent employee organization must clearly demonstrate to this Board that the current contract has been legally terminated. A consent election agreement is both an inappropriate and insufficient means for achieving this objective as we are not willing to infer that a contract has been terminated simply because the parties have agreed to an election and/or failed to raise a question of contract bar.

In so doing, we overrule In re City of Niles, SERB 87-029 (11-25-87), in which the Board majority, ruling on a representation petition filed by a rival employee organization,

agreed to hold an election sixteen (16) days before the contract with the incumbent employee organization had expired by its terms. In that case, the majority reasoned that because the employer and incumbent employee organization had not raised a contract bar and had instead entered an agreement for an early election, they had effectively terminated their contract.

Our view is consistent with that expressed by the dissenting Board member in Niles, who declined to conclude that the contract had terminated absent a "clear manifestation of intent and agreement to do so" and went on to observe that "[h]olding an election during the term of a collective bargaining agreement for the mere convenience of the parties does not justify overriding a specific legislative prohibition."

For the reasons set forth herein, we cannot agree to hold the election as the parties have agreed, on August 25, 1993. However, the election agreement is otherwise approved, and the Representation Section is directed to set an election date after the contract has expired.

Owens, Chairman, Mason, Board Member, concurring.