

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SEB OPINION 93-018

In the Matter of

Stark County Educators Association for the Training of Retarded Persons/OEA
Employee Organization,

and

Stark County MR/DD Support Staff Association/OEA,
Employee Organization,

and

Stark County Board of Mental Retardation and Developmental Disabilities,
Employer.

CASE NUMBER: 92-REP-07-0145

OPINION

POTTENGER, Vice Chairman:

The sole issue before the Board is whether the merger of the two separate bargaining units represented by Stark County Educators Association for the Training of Retarded Persons/OEA (SCEATRP) and Stark County MR/DD Support Staff Association/OEA (SSA) is appropriate. For the reasons stated below, the Board finds that the merging of the two units does constitute an appropriate bargaining unit, and therefore directs a unit-determination election.

I.

When a Petition for Representation Election is filed the Board must review the factors set out in Ohio Revised Code (O.R.C.) §4117.06(B) to determine whether the petitioned-for unit is appropriate. A review of these factors leads us to conclude that the proposed merged unit is appropriate.

O.R.C. §4117.06(B) states:

"The Board shall determine the appropriateness of each bargaining unit and shall consider among other relevant factors: the desires of the employees; the community of interest; wages, hours and other working conditions of the public employees; the effect over-fragmentation; the efficiency of operations of the public employer, the administrative structure of the public employer; and the history of collective bargaining."

In the instant controversy, the desires of the employees are evidenced by the filing a Petition For Representation Election, supported by a sufficient showing of interest, seeking a unit determination election to combine the two existing bargaining units. Likewise, a community of interest is demonstrated by the fact that the employees work at identical geographic locations¹ and experience common supervision² with the common goal of servicing the needs of the mentally retarded and developmentally disabled clients in Stark County. Wages are higher for members of the SCEATRP unit, but hours and other working conditions, as set forth in the existing contracts, are extremely similar. Specifically, provisions governing strikes, holidays, no pay-earned-days, promotional vacancy and transfers, corrective action, keeping of personnel files, calamity days and procedures for reporting off and processing grievances are virtually identical.³ The two organizations are both represented by the same parent organization with the same constitution and bylaws.⁴ Any effects of over-fragmentation will be combatted by merging the two units. Neither party has offered evidence that the merger would have an adverse effect on the efficiency of the Employer's operations or its administrative structure. Therefore, with the characteristics of the two units possessing strong indications of appropriateness under the factors of O.R.C. §4117.06(B), we conclude that the proposed unit is an appropriate one for the purpose of collective bargaining.

¹Joint Stipulation 24.

²Joint Exhibit 11.

³Joint Exhibits 2 and 3.

⁴Joint Stipulation 11; Joint Exhibits 4 and 5.

The Employer in its post-hearing brief, which is incorporated in its exceptions, lists a number of differences in wages, benefits, hours and working conditions of the two units that allegedly makes merger inappropriate. A closer inspection of these listed differences demonstrates that this list is not as impressive as it first appears.

First, many of the cited differences are so technical or de minimis in nature that they are basically irrelevant. For example, one difference listed is that the SCEATRP unit is granted listed holidays plus those given by the general assembly and the SSA unit is granted listed holidays plus those granted by the MR/DD Board. This is not a difference at all, because the holidays for both units turn out to be the same days. The calculation of personal days provides another poignant example. For SCEATRP one personal day is granted for working thirty (30) or more hours per week, and one personal day is granted upon completion of fifty (50) consecutive workdays without absence. SSA members earn two personal days upon completion of fifty (50) consecutive workdays without an absence. The effect of this difference is minimal since all full-time employees will earn two personal days after fifty (50) days without an absence. These differences are so technical, and so slight in nature that they offer little, if any support to the conclusion that the proposed merger of the two units is inappropriate, and are outweighed by the factors that indicate the proposed merged unit would be appropriate.

The second type of cited differences exist because SCEATRP is a professional unit, and SSA consists of non-professional members. Since SCEATRP is a professional unit they are provided set client ratios, which is unnecessary for the SSA members who are not assigned specific clients. SCEATRP members, because of their duties, do not need to meet with facility managers and building representatives like the members of SSA. SCEATRP members are granted two professional days, which SSA members would have no use for. Consistent with most professionals, SCEATRP members are salaried, while the non-professional SSA members work on an hourly basis. SCEATRP members must report off at 7:30 and SSA members must report off 1/2 hour before their shift, SCEATRP members work 7 1/2 hour days while SSA

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members work 8 hour days, and both units have virtually identical provisions for no-pay-earned days, but SCEATRP members have a restrictions on how they can use these days for a honeymoon. Finally, due to their professional duties and training SCEATRP members do not require a uniform allowance, provision of tools or Red Cross training that SSA members are granted. Chapter 4117 clearly contemplates units containing these professional/nonprofessional differences. O.R.C. §4117.06(D)(1) provides:

"In addition, in determining the appropriate unit, the board shall not: Decide that any unit is appropriate if the unit includes both professional and nonprofessional employees, unless a majority of the professional employees and a majority of the nonprofessional employees first vote for inclusion in the unit."

Thus, differences of this nature do not go to appropriateness, for they are dealt with through the election process. As authorized by the statute, the employees in both units are given the opportunity to disregard these known differences.⁵

This is not the first time the Board has been faced with the issues involved in the instant controversy. Through the exercise of its adjudicatory powers the Board has determined that when two existing bargaining units desire to merge the appropriate procedure is to file a petition for election, and if the unit is appropriate the Board will direct a unit-determination election. In re Lake County Board of Mental Retardation and Developmental Disabilities, SERB 90-022 (12-19-90), In re Montgomery County Bd. of Ed., SERB 90-014 (8-29-90). It is also relevant to note that the Board has repeatedly found appropriate the

⁵The other main objection asserted by the Employer in its exceptions is that the hearing officer based his determination upon facts which were not in evidence. However, Joint Exhibits 4 and 5 list both employee organization's constitution and by-laws as that of OEA. The parties in Joint Stipulation 23 agree that both units are uncontested units. Finally, Joint Exhibit 11 shows significant overlap of individuals in the two different bargaining units under a common supervisor, therefore their duties must overlap and complement each other. These facts plainly in the record answer the specific objections of the Employer that the hearing officer relied on facts not in evidence.

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merging of professional and non-professional units at mental retardation and developmental disabilities agencies. Lake County MR/DD, supra, Ashland County MR/DD Education Association/OEA/NEA and Ashland County Board of MR/DD, Case No. 90-REP-03-0091 (Decided July 12, 1990; Issued July 18, 1990), Geauga County MR/DD Employees Association/OEA/NEA and Geauga County MR/DD, Case No. 91-REP-05-0149 (Decided December 5, 1991; Issued December 10, 1991). The combined units approved in each of these instances were extremely similar to the combined unit proposed by the employee organizations here.

Therefore, since the proposed merged unit is an appropriate one for the purpose of collective bargaining and consistent with Board precedent, the Board directs that a unit-determination election be held to determine if the employees desire to be included in a single unit.

OWENS, Chairman, MASON, Board Member, concur.