

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Keith A. Elliot,

Petitioner,

and

Fraternal Order of Police, Ohio Labor Council, Inc.,

Employee Organization,

and

City of Gallipolis,

Employer.

CASE NUMBER: 93-REP-01-0003

OPINION

POTTENGER, Vice Chairman:

I.

This case comes before the Board on objections from a hearing officer's recommended determination. The issue before the hearing officer was whether Michael Tucker is a member of the Sergeants bargaining unit, and therefore, whether the challenged ballot cast by him in the Sergeants bargaining unit should be opened and counted.

The hearing officer, in a directed verdict procedure, recommended to the Board that Michael Tucker is not a member of the Sergeants bargaining unit and, therefore, his challenged ballot, cast in that unit, should not be opened and counted. While we agree with the hearing officer, a few short comments are warranted.

II.

At the outset, we take this opportunity to emphasize again that changes in the structure of bargaining units, even by agreement of all parties, can have no effect if they are not authorized by the State Employment Relations Board. Exclusions from bargaining units, additions to bargaining units, combining bargaining units, or splitting bargaining units must be approved by SERB before they can be recognized.¹ The issue in this case is determined by this policy.

On September 1985, the Fraternal Order of Police, Ohio Labor Council, Inc. (Employee Organization) filed a Request for Recognition for a unit of "Sergeants and above, including Sergeants and Detective" and excluding "Chief of Police, Patrol Officers, Dispatchers, All other employees." The Employee Organization also filed separate Requests for Recognition for units of dispatchers and patrolmen. The City of Gallipolis (Employer) filed Petitions for Representation Election in response to these Requests for Recognition, and thus, elections were conducted for all the units. (Joint Ex. 1).

However, the elections for Sergeants and Detectives were eventually conducted not in the petitioned-for unit, which combined the Sergeant and the Detective classifications, but in two separate units: a Sergeants unit, which at the time of the election included 4 Sergeants (3 of them eventually resigned), and a Detectives unit, which at the time of the election included one person, Michael Tucker. The election results were certified by the Board at its public meeting on June 26, 1986, and served on the parties on July 2, 1986. On June 26, 1986, Paul J. Knotts, Interim City Manager, issued a "To whom it may concern" letter where he announced, "be it known that Michael Tucker holds the position of Detective Sergeant with the City of Gallipolis, Ohio, Police Department." The letter went on to announce that Michael Tucker is in the same salary range as Police Sergeant. (Joint Ex. 3). Michael Tucker

¹See In re State of Ohio, Office of Collective Bargaining, SERB 91-008 (9-19-91).

represented the Employee Organization during collective bargaining negotiations with the Employer for both the Sergeants and the Detectives units which negotiated together. (Tr. 18, 27, 33). On January 13, 1993, a Petition for Decertification Election for the Sergeants unit was properly filed by Keith A. Elliot (Petitioner), who was the only Patrol Sergeant left in the Sergeants unit. Michael Tucker voted by challenged ballot in the election, and his ballot is clearly a determinative ballot.

The hearing officer disposed of this case in a directed verdict procedure. The Employee Organization objected to the directed verdict ruling and requested that the Board remand the case to the hearing officer to continue with the hearing and specifically to allow the testimony of Paul Knotts, the former city manager who issued the above-mentioned letter. While we believe that as a rule, representation cases, unlike unfair labor practice cases, are not proper candidates for directed verdict procedure, we find no reason in this case to remand the case to hearing.² Under our standard for directed verdict we first have to construe the evidence most strongly in favor of the party against whom the motion is directed.³

Construing the evidence most strongly in favor of the Employee Organization in the case at issue can at most raise an argument that while SERB certified two separate units for Sergeants and Detectives, with Michael Tucker in the Detective unit, somehow during the years, by practice and by agreement of both union and management, a change in the bargaining units occurred where either both units merged, or the classification of Detective or Detective Sergeant was added to the Sergeants unit and thus, Michael Tucker became a

²Because representation proceedings are non-adversarial and fact-finding in nature, it is generally incumbent on the hearing officer to develop a full record for purposes of determining unit and eligibility issues. This case represents the rare instance where the undisputed evidence, produced during the objecting party's case, resolves a representation issue without further testimony.

³See In re Ohio Association of Public School Employees, SERB 93-021 (12-21-93).

member of the Sergeants unit⁴.

However, whatever leg such argument has to stand on, there is no factual dispute that the "alleged change" in the units structure was ever authorized by SERB. Thus, under In re State of Ohio, Office of Collective Bargaining⁵, no recognized change had occurred in the original bargaining units and Michael Tucker remains in the Detectives unit and may not vote in the Sergeants unit. If both the Employee Organization and the Employer wished to add Michael Tucker's classification of a Detective or even of a Detective Sergeant to the Sergeants unit the proper way to do so would have been to file a joint Petition for such change with SERB and wait for Board action.

No such change in the original bargaining units was ever brought up before the Board. Moreover, the decertification process is clearly not the appropriate vehicle for making unit changes. To the contrary, allowing unit changes through decertification would open a wide door to manipulation and abuse. Thus, under In re State of Ohio, Office of Collective Bargaining,⁶ Michael Tucker's unit designation has not changed from the time SERB established the units in the Police Department of Gallipolis. This determinative fact will remain unchanged, regardless of what further evidence could be adduced through a hearing on remand.

⁴The other way to include Michael Tucker in the Sergeants unit is to reclassify him as a Sergeant. However, this did not happen. The record clearly shows that Michael Tucker's duties have never changed from the time he was included in the Detectives unit.(F.F.2&3). The record also shows that he did not pass the civil service examination for Patrol Sergeant.(F.F.4).The assignment of the title of Detective Sergeant to Tucker's position (F.F.5, Jt. Exh.3) does not amount to reclassification without an appropriate change of duties. This change of duties never occurred.

⁵See footnote 1

⁶Id. at Footnote 1

Accordingly, based on the foregoing and the record as a whole, we find the directed verdict ruling proper and certify the election results with Michael Tucker's ballot unopened.⁷

Mason, Board Member, concurs.

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⁷We decline to sanction the Employee Organization as urged by the hearing officer. If the Petitioner believes his rights under Chapter 4117 were violated by efforts to have Michael Tucker vote in the election, the appropriate means of redress would be to file an unfair labor practice charge.