

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Ohio Association of Public School Employees,

Employee Organization,

and

Cuyahoga County Community Mental Health Board,

Employer.

CASE NUMBER: 94-REP-02-0016

OPINION

MASON, Board Member:

I.

This case comes before the Board on a Petition for Representation Election filed by the Ohio Association of Public School Employees (OAPSE, Employee Organization) seeking a unit determination election to combine a unit of professional employees with a unit of nonprofessional employees. For the reasons stated below, we find that a showing of interest of at least thirty per cent in each of the existing units, properly signed and dated, must support a petition for a unit-determination election.

II.

On August 5, 1993, the Board certified OAPSE as the exclusive representative of two units of employees of the Cuyahoga County Community Mental Health Board (Employer), one consisting of approximately twenty-eight professional employees and one consisting of approximately nine nonprofessional employees. On February 3, 1994, OAPSE filed the above-mentioned Petition for Representation Election requesting to consolidate the two units into a single bargaining unit. With the petition, the Employee Organization filed signed statements

as a showing of interest, some dated and some without dates. Out of the fourteen statements filed in the professional unit, five were dated. Out of the three statements filed in the nonprofessional unit, none were dated.

III.

Ohio Revised Code (O.R.C.) § 4117.07(A)(1) requires, in pertinent part, the following:

(A) When a petition is filed, in accordance with rules prescribed by the state employment relations board:

(1) By any employee or group of employees, or any individual or employee organization acting in their behalf, alleging that at least thirty per cent of the employees in an appropriate unit wish to be represented for collective bargaining by an exclusive representative....

Ohio Administrative Code (O.A.C.) Rule 4117-5-02(A)(6) specifies that petitions for representation election must be accompanied by evidence of this asserted thirty per cent support and lists as possible evidence: "(a) Original signed and dated statements, with each signature dated and signed not more than one year prior to the date of filing, including but not limited to cards and petitions, that clearly set forth the intent of the employees with respect to representation...." (Emphasis added).

Under these provisions, when an employee organization files a petition for representation election, the Board requires that the petition be supported by evidence that at least thirty per cent of the employees in the unit where the election is sought, wish to be represented by the petitioning organization. Similarly, when an initial representation petition is filed, which seeks an election to determine whether professional and nonprofessional employees wish to be represented and if so, whether they wish to be included in a single unit, the Board requires a showing that at least thirty per cent of the total number of individuals sought to be represented, desire representation.

The instant petition did not seek an initial representation election but rather sought only a pure unit determination, i.e., to allow employees to vote on whether to combine two existing represented units pursuant to O.R.C. §4117.06(D)(1)¹. Since the issue presented by such a petition is whether a majority of employees in each unit wishes to be represented in a combined unit, and since a Board election is required², it is only logical that a showing of interest of thirty per cent of the employees in each unit should be required.

The application of a showing of interest requirement is consistent with Board precedent regarding the nature of unit-determination votes and the policy rationale for requiring showings. It is well-established that SERB election procedures are invoked when professional employees and nonprofessional employees vote on whether to be included in a single unit. This is so even though a so-called "unit-determination election" is not specifically contemplated as a separate petition by the statute or rules.³

Further, the traditional policy reasons for requiring a showing of interest are just as applicable to pure unit-determination elections as to initial representation elections. As the National Labor Relations Board has explained its administrative requirement for a showing: "The purpose ... is to prevent the process and the time and effort of employees as well as employers from being dissipated and wasted by proceedings instituted by organizations that have little or no chance of being designated as the exclusive representatives by the

¹ O.R.C. §4117.06(D)(1) provides in relevant part that the Board shall not: (1) Decide that any unit is appropriate if the unit includes both professional and nonprofessional employees, unless a majority of the professional employees and majority of the nonprofessional employees first vote for inclusion in the unit;...(Emphasis added.)

²In re Mercer County Joint Twp Community Hospital, SERB 86-041(10-2-86). See also In re Montgomery County Bd of Ed, SERB 90-014 (8-29-90), noting that there is statutory authority to conduct unit-determination elections under Chapter 4117.

³See footnote 2.

employees." NLRB, Eighth Annual Report, P.44 (1943)⁴. The same rationale has been offered in the public sector. In Illinois, the Education Labor Board noted that its thirty per cent showing of interest requirement "assures that a genuine representation question exists and prevents persons with little or no stake in a bargaining unit from abusing an agency's processes." Dacatur School District 61, 6 PERI ¶ 1014 (Ed IL 1989). In New Jersey, the same policy was explained as "... ensuring that sufficient interest exists among employees on behalf of the petitioner to warrant the expenditure of Commission resources in processing the petition." In re Jersey City Medical Center, NJPER ¶ 13308 (1982).

This legitimate administrative need, to monitor the use of agency resources, is triggered by any election process, whether representation, decertification, or unit-determination. Any of these proceedings, not properly regulated, can be abused and lead to waste of government time, effort and funds.

The Ohio Legislature, by specifically requiring a showing of interest before a representation election may be conducted, clearly demonstrated its intent to ensure that there exists sufficient interest among employees to warrant the expenditure of SERB's resources. It would make no sense to apply this policy to one kind of election and not to another.

Accordingly, the Board requires that a petition for unit-determination election be supported by a showing of interest from at least thirty per cent of the employees in each

⁴See also O.D. Jennings & Co., 68 NLRB 41, 18 LRRM 1133 (1946) where the NLRB stated regarding showing of interest reports: "We have repeatedly pointed out that such reports are administrative expedients only, adopted to enable the Board to determine for itself whether or not further proceedings are warranted, and to avoid needless dissipation of the Government's time, effort, and funds." Also, in Intertape Co. v. NLRB, 401 F.2d 411, 413 (4th Cir. 1968), cert. denied, 393 U.S. 1049 (1969), the Court said: "The requirement of showing of interest serves a limited purpose of enabling the Board to determine whether the surrounding circumstances justify an election, thereby screening out obviously frivolous petitions."

existing unit, and that such showing of interest consist of original signed and dated statements, with each signature signed and dated not more than one year prior to the date of filing, including but not limited to cards and petitions, that clearly state that the signing employees, if professional, wish to be included with nonprofessional employees in a single unit for purposes of collective bargaining; or, if nonprofessional, wish to be included with professional employees in a single unit for purposes of collective bargaining.

In the case at issue, the Petition for Representation Election is dismissed without prejudice since it is not supported by a proper showing of interest.

POTTENGER, Vice Chairman, concurs.