

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Mad River Professional Firefighters Association, IAFF Local 2938,

Employee Organization,

and

Village of Riverside,

Employer.

CASE NUMBERS: 94-MED-01-0043

OPINION

POTTENGER, Vice Chairman:

I.

On March 22, 1994, the Village of Riverside (Employer) filed with the State Employment Relations Board a motion to intervene for a determination as to whether it is a public employer under Chapter 4117, thus subject to SERB's jurisdiction, and for a stay of negotiations pending determination of public employer status. The Mad River Professional Firefighters Association, IAFF Local 2938 (Employee Organization) filed its response on April 4, 1994. On April 14, 1994 the Board issued a directive granting the motion to intervene and the motion to stay and directing an expedited hearing before the Board. The parties filed prehearing briefs, stipulated all the facts, and waived their right to a hearing.

II.

The following facts and matters were stipulated by the parties:

Stipulation Number 1

The Employee Organization in 1984 was issued a certificate by SERB in Case No. 84-RC-04-0863, certifying it as the exclusive bargaining representative for the employees of the

Mad River Township Fire Department in a unit described as including: "all full-time firefighters, fire captains and fire inspection supervisor, including Firefighter EMT, Firefighter Paramedic, Fire Captains and Fire Prevention Bureau Supervisor, but excluding: the Fire Chief and Assistant Chief and all other employees excluded by the code". Subsequently, Fire Lieutenants were also included in the unit¹.

Stipulation Number 2

On June 3, 1991, the Employee Organization entered into a collective bargaining agreement with the Mad River Township Board of Trustees. A true and complete copy of the Agreement is marked as Joint Exhibit 1 and attached hereto².

Stipulation Number 3

Subsequent to the effective date of the Agreement identified as Joint Exhibit 1, a petition was filed pursuant to Section 709.45 of the Ohio Revised Code proposing the merger of Mad River Township with the Village of Riverside. In due course, the electors of each community voted to form a commission to draw up a statement of conditions for merger pursuant to Section 709.46 of the Ohio Revised Code.

Stipulation Number 4

The merger Commission reached agreement as to the proposed conditions of merger which were submitted to the electors of both political subdivisions for their approval or disapproval. At the election held on the 6th day of November, 1990, the electors of both Mad River Township and the Village of Riverside voted to approve the conditions of merger. A true

¹SERB's records do not show that the certified unit specifically includes Fire Lieutenants or specifically excludes "all other employees excluded by the code".

²All Joint Exhibits while in the record are not attached hereto.

copy of the Certification of Board of Elections is marked as Joint Exhibit 2 and attached hereto.

Stipulation Number 5

A true and complete copy of the Conditions of Merger between Mad River Township and the Village of Riverside as approved by the electors is marked as Joint Exhibit 3 and attached hereto.

Stipulation Number 6

In accordance with the Conditions of Merger, Mad River Township merged into the Village of Riverside effective January 1, 1994. Mad River Township ceased to exist as a separate political subdivision of the State of Ohio upon the effective date of the merger.

Stipulation Number 7

Prior to the effective date of the merger according to the last federal decennial census, the Village of Riverside had a population of 1,471 residents and Mad River Township had a population of 29,975. The current population of the newly merged Village of Riverside is approximately 32,000 people³. Parties further waive their right to a hearing in this matter.

!!!.

The issue before the Board is whether the new municipal corporation, the Village of Riverside, which was created by the merger of the Village of Riverside and Mad River

³The Board takes administrative notice that according to the 1990 federal decennial census, the Village of Riverside had a population of 1,471 residents, Mad River Township had a population of 28,724 residents, and the combined population is 30,195 people.

Township, is a public employer pursuant to O.R.C. §4117.01(B).

Ohio Revised Code (O.R.C.) §4117. 01(B) states the following:

"Public employer means the state or any political subdivision of the state located entirely within the state including, without limitation, any municipal corporation with a population of at least five thousand according to the most recent federal decennial census, county, township with a population of at least five thousand in the unincorporated area of the township according to the most recent federal decennial census, school district, state institution of higher learning, any public or special district, any state agency, authority, commission, or board, or other branch of public employment."

Pursuant to the statutory definition, where a township or a municipal corporation is involved, the size of the population is the controlling factor whether the township or the municipal corporation is public employee. The way to determine the size of the population, according to the statute, is through the most recent federal decennial census. This legislative designation of the recent federal decennial census as the only source for population data to determine the public employer status serves two purposes. First, administrative convenience is clearly achieved where a specific and unique source is designated as controlling. Second, stability is achieved where the size of the population and with it the status of public employer is determined only once in ten years. Without such decennial designation daily movements of population would have to be checked, public employer status would be gained and lost regularly and with it a chaos created in labor relations where contractual obligations are unmet, promises are undelivered and the door is wide open to manipulation. Thus, the Legislature's choice of the federal decennial census as the source for population data actually promotes labor peace and stability by fixing the public employer status at a certain point in time for the next ten years.

In the case before us two entities merged. One was a township which, according to the most recent federal decennial census, had a population of 29,975 before the merger and, hence, was a public employer under the statute. The second entity was a village with population of 1,471 before the merger and hence, was not a public employer under the statute. The question is what is the status of the new entity created by the merger. The reason this question comes up at all is that the new entity does not appear by name in the recent federal decennial census since it has been created after the recent census was completed. Thus, it may be argued that the newly merged Village of Riverside will not meet the statutory definition of a public employer until the federal decennial census is conducted in the year 2000. We reject this result as a clear elevation of form over substance⁴. We believe that the best policy in the case at issue will be made if we apply the legislative intent of fixing the public employer status in a certain point in time to safeguard stability in labor relations, using practicality and common sense in the process.

The Mad River Township was fixed by the 1990 federal decennial census as having a population of 29,975 and thus was fixed at that point in-time as a public employer pursuant to O.R.C. §4117.01(B). Whether the population of Mad River Township dropped drastically or grew greatly is immaterial since under the statutory scheme the township population and, thus public employer status is fixed until the 2000 census. Common sense dictates our finding that merging the township with the village can only enlarge the population of the merged entity beyond that of the township. Hence, we believe that since the township status was fixed by the 1990 federal census to be a public employer, the newly merged entity, which is larger in population than the original township, should have public employer status as well.

⁴While not particularly relevant to the public employer status, it is interesting to note that Article V section (6) of the Conditions of Merger approved by the voters of both Mad River Township and the "old" Village of Riverside states that the newly merged village will recognize all collective bargaining units and binding agreements. See Memorandum in support of the Village of Riverside's Motion to Intervene. Thus, it seems that stability in labor relations was also on the minds of the voters.

To summarize, where a township or municipal corporation which meets the definition of a public employer pursuant to O.R.C. §4117.01(B), merges with another entity, whether a public employer or not, the newly created entity is a public employer. We believe that such policy enhances stability in labor relations, follows the legislative intent and construes the statute sensibly. Applying all of the above to the case at issue we find that the newly merged Village of Riverside is a public employer within the definition of O.R.C. §4117.01(B).

Pohler, Chairman, and Mason, Board Member, concur.