

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Social Agencies Employees Union/District 1199
WV/KY/OH SEIU, AFL-CIO,

Employee Organization,

and

Cuyahoga County Board of Mental Retardation and
Developmental Disabilities,

Employer.

CASE NUMBER: 93-REP-07-C136

OPINION

POTTENGER, Vice Chairman:

On July 12, 1993, the Social Agencies Employees Union/District 1199 WV/KY/OH SEIU, AFL-CIO (SAEU, Employee Organization or Union) filed with the State Employment Relations Board (Board) a Petition for Representation Election pursuant to Section 4117.07 of the Revised Code. The SAEU sought to represent a bargaining unit of case managers and clericals employed in the Case Management/Monitoring and Evaluation Division of the Cuyahoga County Board of Mental Retardation and Developmental Disabilities (Employer or County Board). The Employer objected to the petitioned-for unit on the basis that its certification would result in SAEU representing both the case managers and certain individuals whom the case managers are statutorily required to investigate. This matter was directed to hearing before a Board Hearing Officer. The Hearing Officer recommended that the Board grant SAEU's Petition for Representation Election and direct an election within the designated bargaining unit.¹

¹The designated bargaining unit is described in Stipulation No. 3 as follows:

All full-time and regular part-time employees employed by the Cuyahoga County Board of MRDD Case Management/Monitoring and Evaluation Division, including, Chief MUI Investigator, Targeted Case Management Specialist, Intake

(continued...)

For the reasons that follow, the Board agrees with the Hearing Officer, grants SAEU's Petition for Representation Election, and directs that an election should be held in the designated bargaining unit.

I. ANALYSIS

The issue presented in this case is whether the Union's petitioned-for unit constitutes an appropriate bargaining unit under Section 4117.06(B) of the Revised Code.¹ In particular, this matter turns on whether the concerns raised by the Employer regarding its efficiency of operations and its administrative structure are sufficient to outweigh the stipulated community of interest and desires of the employees.

The Employer asserts that SAEU's representation of both Case Managers and employees of direct care providers would create an inherent conflict of interest which would destroy the state-mandated independence and impartiality required of Case Managers. The Employer argues that a Case Manager's independence is not merely the County Board's goal, but a policy mandated by Section 5126.15(B) of the Revised Code and Rule 5123:2-1-11(F)(7) of the Administrative Code. The Employer points to testimony that employees are

¹(...continued)

Specialist, Secretary-Case Management/Monitoring & Evaluation, Intake Worker, Secretary-Case Management Site Office, Case Manager, and Model Waiver Specialist, but excluding guards and supervisors as defined by the Act, Intake Psychologist and Monitoring Coordinator.

²This statute provides as follows:

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 of overfragmentation; the efficiency of operations of the public employer; the administrative structure of the public employer; and the history of collective bargaining. (Emphasis added.)

sometimes reluctant to file grievances or to testify against fellow bargaining unit members and to testimony that conflicts could arise in some of the state-mandated service areas as evidence that Case Managers would be unable to maintain their objectivity if the petitioned-for unit is approved.

Section 5126.15(B) of the Revised Code provides in pertinent part:

The county board or the agency or organization with which the board contracts for case management services shall establish a separate service unit for case management, responsible directly to the superintendent of the county board and independent of all programs whose operations case managers may be required to monitor. (Emphasis added.)

Rule 5123:2-1-11(F)(7) of the Administrative Code vests the county board with the responsibility of:

Ensuring that any person employed as a case manager shall be assigned no program duties by the county board and shall not be employed by or associated with any other agency or organization that provides programs or services to individuals who are mentally retarded or developmentally disabled. (Emphasis added.)

The foregoing statute and rule maintain a Case Manager's independence by placing Case Managers into a separate service unit which reports directly to the County Board Superintendent and by mandating that Case Managers not be employed by or associated with another organization that provides programs or services to mentally retarded or developmentally disabled clients. The Union here does not provide programs or services to mentally retarded or developmentally disabled clients. At most, the Union herein provides certain services to Case Managers, the County Board's employees.

The Employer's arguments regarding a conflict of interest are not supported by its administrative structure. The Case Managers, in addition to monitoring services and programs provided by JFSA and HELP, Inc., monitor services and programs provided directly by the County Board. Case Managers have an affirmative duty, when necessary, to report their own Employer's deficiencies, even though they know that it is the County Board that decides their continued employment status and determines their wages. Thus, whatever potential conflict of interest arising when Case Managers are placed in a bargaining unit separate from those employees directly providing services is inherent in the County Board's current plan.

The Employer has remedies for dealing with breaches of confidence or ethics, other than seeking to prevent these employees from being represented by SAEU. The record establishes that the Employer has disseminated strict codes of ethical conduct which it expects its employees to follow. The employees are well aware of these codes of conduct, embodied in the Employer's 1993 Policy Manual and in the Employer's Non-bargaining Staff Handbook. The record also establishes that the Employer has a policy of progressive discipline, ultimately ending in termination, which the Employer may invoke as necessary. The Employer already has in place adequate procedures and tools to deal with aberrant behavior, should it in fact ever occur, in order to maintain the efficiency and quality of its operations.

In In re FOP, John C. Post Lodge No. 44, SERB 93-006 (4-29-93), the Board recognized the statutory prohibition against placing rank and file members of a police department in the same unit with police department members of the rank of sergeant or above, holding:

... [S]eparate unit placement provides adequate protection ...
Voting for an employee organization as the exclusive
representative takes place on a bargaining unit basis.

In that case, the FOP represented both the "supervisors" unit and the patrolmen's bargaining unit. Even where the employer is the same, the Board has not interpreted the statutory proscription in Section 4117.06(D)(6) of the Revised Code to require the union representing rank and file employees to be different from the union representing sergeants and above, only the units need be different. These facts are analogous to those present herein.

There is no statutory impediment to the establishment of a separate bargaining unit for Case Managers. The concerns raised by Section 5126.15(B) of the Revised Code and Rule 5123:2-1-11(F)(7) are alleviated by establishing bargaining units for the Case Managers which are separate from bargaining units for direct care providers. These provisions, when read in pari materia with Section 4117.06(B) of the Revised Code, do not require that the separate bargaining units be represented by different employee organizations. To impose such a restriction under these facts would unreasonably restrain the rights of public employees, granted in Section 4117.03(A)(1) of the Revised Code, to be represented by the employee organization of their own choosing. As a result, SAEU's petitioned-for unit is an appropriate bargaining unit.

II. CONCLUSION

Based upon the record as a whole, the Board hereby adopts the Stipulations, Findings of Fact, and Conclusions of Law set forth in the Hearing Officer's Recommended Determination. Further, the Board grants SAEU's Petition for Representation Election and directs an election in the designated bargaining unit.

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