

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Communications Workers of America, Local 4501,
Employee Organization,
and
Pickaway County Department of Human Services,
Employer.

CASE NUMBER: 93-REP-06-0117

OPINION

POTTENGER, Vice Chairman:

The issue presented for review in this representation matter is whether certain former employees of the Pickaway County Children's Services Board, who became employees of the Pickaway County Department of Human Services as the result of a merger, should be added to an existing Pickaway County Department of Human Services bargaining unit. For the reasons below, we find the classifications should not be added to the existing bargaining unit since the merger creates a question concerning representation.

I. BACKGROUND

On December 19, 1986, the State Employment Relations Board ("SERB" or "Board") certified the Communications Workers of America, Local 4501 ("CWA") as the exclusive representative of certain employees of the Pickaway County Department of Human Services ("DHS" or "Employer"). On October 27, 1989, SERB approved an amendment to the certification of the unit. On July 1, 1993, the certified unit was described as follows:

INCLUDED:

All employees of the Pickaway County Department of Human Services including: Clerk 2, Clerical Specialist, Data Entry Operator 2, Income Maintenance Worker 2 & 3, Investigator 1 & 2, Social Service Worker 1 & 2, Secretary 1, Typist 2, Telephone Operator 1, Income Maintenance Aide 2, Employment Services Interviewer, and Employment Services Representative.

EXCLUDED:

All management-level employees, confidential employees, professional employees, seasonal and casual employees including: Administrator, Investigator 4, Social Service Supervisor 1, Income Maintenance Supervisor 1 & 2, and Business Service Officer 1.¹

The Pickaway County Children's Services Board ("PCCSB") voted to dissolve effective July 1, 1993. The employees' positions were transferred to DHS. The classifications and number of employees transferred to DHS from the PCCSB were: 1 Account Clerk, 1 Technical Typist, 7 Child Welfare Caseworkers (full-time), 2 Child Welfare Caseworkers (part-time), 1 Administrative Assistant, and 2 Supervisors. As a part of the transfer, the Technical Typist's title was changed to Typist 2, the full-time Child Welfare Caseworkers' titles were changed to Social Service Worker 3, one part-time Child Welfare Caseworker's title was changed to Social Service Worker 2, and the other part-time Child Welfare Caseworker's title was changed to Investigator 2.²

On June 11, 1993, the Employer and the CWA filed a Joint Petition for Amendment of Certification with the Board. The basis for the amendment was the "Consolidation of Department of Human Services and Children Services Board into one Department." The proposed amended unit is as follows:

¹Stipulations of Fact ("Stip.") Nos. 3 and 4; Joint Exhibit 2.

²Stip. Nos. 6, 7, and 8.

INCLUDED:

All employees of the Pickaway County Department of Human Services including: Clerk 2, Clerical Specialist, Data Entry Operator 2, Income Maintenance Worker 2 & 3, Investigator 1, 2 and 3, Social Service Worker 1, 2 and 3, Secretary 1, Typist 2, Telephone Operator 1, Income Maintenance Aide 2, Social Service Aide 2, Employment Services Representative, Employment Services Interviewer,³ Account Clerk 3, Administrative Assistant 1, Social Program Coordinator, Social Program Specialist.

EXCLUDED:

All management-level employees, confidential employees, professional employees, seasonal and casual employees including: Administrator, Investigator 4, Social Service Supervisor 1, Income Maintenance Supervisor 1 & 2, and Business Service Officer 1.⁴

On September 2, 1993, after a preliminary investigation, SERB construed the Joint Petition for Amendment of Certification as a Petition for Clarification of Bargaining Unit and directed the matter to hearing to determine whether the employees sought to be added to the existing unit should be included or excluded based upon the existing unit description and the duties of the employees in question.

On January 19, 1994, a Joint Submission of Stipulations and Position Statement was submitted by the parties. On March 23, 1994, an evidentiary hearing was held in the above-captioned matter. Additional information was needed to render a determination. On October 27, 1994, the parties filed a Joint Clarification Statement ("J.C.S.") and certain additional Joint Exhibits. On January 12, 1995, a Hearing Officer's Recommended Determination was issued. No exceptions were filed by the parties.

³This position was not in the Petition for Amendment of Certification when it was filed. It appears as an "inclusion" in the parties' joint position statement and is reflected as such in the joint submission of the parties. (See Joint Clarification Statement No. 5).

⁴Stip. No. 9.

II. DISCUSSION

A. Petition For Amendment Of Certification

The parties filed the Petition for Amendment of Certification seeking to have the employees at issue accreted to the existing unit. Ohio Administrative Code ("O.A.C.") Rule 4117-5-01(E) provides as follows:

(E) In the absence of a question of majority representation, a petition for clarification of an existing bargaining unit or a petition for amendment of certification may be filed by the exclusive representative or by the employer. The purposes of such petitions are:

- (1) For amendment of certification, to alter the composition of the unit by adding, deleting, or changing terminology in the unit description;
- (2) For clarification of a unit, to determine whether a particular employee or group of employees is included or excluded from the unit based upon the existing unit description and the duties of the employees in question.

Under this rule, official changes to existing units may be accomplished by either an amendment of certification or unit clarification. Regarding addition of employees to an existing unit, an amendment of certification is a ruling by SERB that a position may be added or accreted to the unit under the criteria established by SERB to prevent dilution of representation. *Ohio Council 8, Am. Fedn. of State, Cty. & Mun. Emp., AFL-CIO v. Kent State Univ.* (10th Dist. Ct. App., Franklin, 1994), 93 Ohio App.3d 728, 1994 SERB 4-9. Amendments always involve a change in the written description of the unit, representing either a technical change in terminology, or a substantive change in the unit in terms of describing what work is being performed by the bargaining unit.⁵ If a party seeks to add employees to a unit through amendment, SERB will determine whether the proposed amended unit is appropriate pursuant to O.R.C. § 4117.06.

⁵For example, a technical change in a unit description could be as routine as a change from "Aide" to "Assistant" or from "Typist" to "Typist 1." On the other hand, if a unit consisted of bus drivers, custodians and food service workers and the parties sought to add clerical employees, the parties would be seeking a substantive change in the work being performed by bargaining unit employees.

In this case, the parties filed a joint Petition for Amendment of Certification. On its face the petition seeks to add twelve employees to a bargaining unit of thirty-two employees. As a result, the petition appeared to conflict with O.A.C. Rule 4117-5-01(G), which provides:

When a petition to amend certification seeks the addition of a group of employees to the existing unit, such addition may be permitted only if the number of employees to be added is substantially smaller than the number of employees in the existing unit.

Since the number of employees to be added is not "substantially smaller" than the number of employees in the existing unit, the petition could have been dismissed as violating O.A.C. Rule 4117-5-01(G). However, in order to address the merits of the petition, SERB construed it as a Petition for Clarification of Bargaining Unit.

B. Petition For Clarification Of Bargaining Unit

The Petition for Clarification of Bargaining Unit seeks a determination of the bargaining unit status of an employee or group of employees based on the existing unit description and content, and the duties performed by the employees in question. A unit clarification is essentially a ruling by SERB that a position is already covered by the wording of the existing unit description. Clarification may involve a change in the roster of bargaining unit members, but does not involve any substantial change in the content of the unit in terms of what work is being performed by employees in the bargaining unit. Employees may be clarified into a unit if their duties are substantially similar to those performed by employees already in the unit. Clarification may involve a change in the written unit description, but only as a result of a determination that the employees in question are included or excluded based on the existing description and work content of the unit.⁹

⁹For example, if a unit is comprised of "all employees who type, including Typist 1 and Typist 2," the unit could be clarified to include the "Typist 3" classification on the basis that the Typist 3 is a public employee and typing is a significant part of the employee's work.

C. Mergers And Questions Concerning Representation

A merger occurs where a public employer divests itself of part or all of its operations and a second public employer absorbs, combines or consolidates those operations into its existing operations. Upon the filing of a proper petition, the proposed combined unit must be examined to determine whether it would be an appropriate unit after applying the criteria in O.R.C. § 4117.06. If the employees in the bargaining units before a merger have the same employee organization as the exclusive representative, a petition for amendment or clarification could be filed since there would be no question concerning representation under O.A.C. Rule 4117-5-01(E).

In the private sector, the National Labor Relations Board, acting upon a petition where both units had different exclusive representatives, would redefine a single, enlarged appropriate unit of all employees in the merged operations and conduct an election between the two exclusive representatives to determine the exclusive representative for the new unit. *See, Boston Gas Company*, 91 L.R.R.M. 1034 (1975); *Martin Marietta Chemicals*, 116 L.R.R.M. 1150 (1987). This approach is also followed by several of the states. *See, e.g., Pinellas Suncoast Transit Authority*, 11 FPER ¶ 16175 (Fla. PERC 1985); *Piscataway Township Board of Education*, 10 NJPER ¶ 15134 (NJ PERC 1984); *Illinois Department of Central Management Services*, 1 PERI ¶ 2025 (Ill. SLRB 1985).

To require an election by the entire unit does not appear to promote orderly and constructive relationships between public employers and their employees. Instead, we hold that where there are different exclusive representatives for the affected employees before a merger, or where one group has no exclusive representative, a question concerning representation exists. Consequently, both a Petition for Amendment of Certification and a Petition for Clarification of Bargaining Unit would be precluded under O.A.C. Rule 4117-5-01(E). In these situations, for the employees to be added to the existing unit, the employee organization seeking to represent them has two options. It may file a Petition for Representation Election seeking an opt-in election, in which a majority of the employees in

question may choose to be represented by the employee organization in the existing unit; or it may file a Request for Recognition with evidence of majority support, seeking an opt-in voluntary recognition, with the requisite posting of a notice to employees by the employer.

In the present matter, the parties are seeking after a merger to accrete employees into the existing DHS unit who, in their previous employment with the PCCSB, had never expressed majority support for representation by the existing unit's exclusive representative. This does raise a question concerning representation, and therefore this addition to the existing unit cannot occur without giving the former PCCSB employees an opportunity to express their desires. Consequently, the Petition for Clarification of Bargaining Unit must be denied.

D. Social Service Worker 3 Classification

The Social Service Worker 3 classification was recognized by the parties and was included in the contract recognition clauses since 1988. Employees at DHS have occupied this classification since 1987. However, this classification was not included in the Petition for Amendment of Certification filed in 1989.⁷

SERB has previously ruled that changes in bargaining unit structures made privately by the parties, and not subsequently authorized by SERB, shall not be binding upon SERB. *In re City of Gallipolis*, SERB 94-005 (2-17-94); *In re State of Ohio, Office of Collective Bargaining*, SERB 91-008 (9-19-91). Consequently, these Social Service Worker 3 positions are not a part of the certified bargaining unit.

⁷Stip. Nos. 3 and 4; Findings of Fact ("F.F.") No. 2; and Joint Clarification Statement ("J.C.S.") Nos. 8 and 11.

III. CONCLUSION

For the reasons above and based upon the entire record and the particular facts herein, construing the joint Petition for Amendment of Certification as a Petition for Clarification of the Bargaining Unit, we find the former employees of the Pickaway County Children's Services Board, who became employees of the Pickaway County Department of Human Services as the result of a merger, should not be added to an existing Pickaway County Department of Human Services bargaining unit because the merger of the Pickaway County Children's Services Board into the Pickaway County Department of Human Services creates a question concerning representation.⁸ Consequently, the Petition for Clarification of Bargaining Unit is denied and the petition is dismissed without prejudice.

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

⁸Notwithstanding our findings herein, the CWA is not precluded from filing a Request for Recognition or Petition for Representation Election seeking to represent the employees in question and to add those employees to the existing unit.