

97-008

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Fraternal Order of Police, Kettering FOP Lodge No. 92 ,
Employee Organization,
and
City of Kettering,
Employer.

CASE NUMBER: 96-MED-12-1131

OPINION

MASON, Board Member:

This mediation case comes before the State Employment Relations Board ("SERB") on the Motion to Reverse Fact Finder's Ruling filed by the City of Kettering ("City") on April 14, 1997. For the reasons below, we deny the City's motion to reverse the fact finder's ruling.

I. FINDINGS OF FACT¹

The City and the Fraternal Order of Police, Kettering FOP Lodge No. 92 ("FOP") were negotiating a successor agreement to the collective bargaining agreement that was to expire March 2, 1997. There were no fact-finding hearings before April 8, 1997. The City retained a court reporter at its own expense to make a transcript of the

¹Stipulation Nos. 1-5 and 7-11.

fact-finding hearing. On April 8, 1997, at the beginning of the fact-finding hearing, the FOP objected to the City's use of the court reporter to make a transcript of the hearing. Fact Finder Keenan sustained the FOP's objection to the taking of a stenographic record; the hearing was adjourned so the City could file a motion to reverse the fact finder's ruling.

On April 13, 1997, the City filed its Motion to Reverse the Fact Finder's Ruling and Memorandum in Support. On April 17, 1997, the City filed supplemental authority with SERB. On April 18, 1997, the FOP filed its Reply Brief to the City's Motion and Memorandum in Support. On April 24, 1997, the Board directed the City's motion to an expedited hearing. On May 6, 1997, the parties stipulated the facts and waived the hearing.

II. DISCUSSION

The issue presented in this case is whether one party in a fact-finding hearing has a right to utilize a court reporter at its own expense to make a transcript of the fact-finding hearing over the objections of the other party. The determinative question here is whether the fact-finding process is a part of collective bargaining negotiations.

In *In re Bryan City Board of Education*, SERB 97-003 (2-20-97) ("*Bryan*"). we held that the insistence on tape recording grievance meetings over the objections of the other party is an unfair labor practice.² Grievance meetings are both an extension and an inherent part of the collective bargaining process and "tape recording of grievance meetings, or *contractual negotiations*, may have a chilling effect on the free exchange of proposals and ideas and the give-and-take process that is encouraged during these meetings." *Id.* at 3-13 (emphasis added).

The fact-finding process is not just an extension of the collective bargaining process, like a grievance procedure; it *is* collective bargaining. At the fact-finding

²Recording in this context includes the use of a stenographer or any other verbatim record taking.

stage the parties are still negotiating.³ Thus, the same policy reasons that mandate privacy in collective bargaining negotiations apply to the fact-finding process and specifically to the fact-finding hearing.

Ohio Revised Code ("O. R. C. ") § 4117.21 states: "Collective bargaining meetings between public employers and employee organizations are private, and are not subject to section 121.22 of the Revised Code." O. R. C. § 4117.14(C)(4)(b) states: "The fact-finding panel shall conduct the hearing pursuant to rules established by the board."

SERB has established various rules regarding how fact-finding hearings should be conducted. Ohio Administrative Code ("O. A. C. ") Rule 4117-9-05(H) states in relevant part:

The fact-finding panel must hold an evidential hearing except that the parties may stipulate facts and waive hearing. For purposes of hearing, the fact-finding panel shall have the power to regulate the time, place, course, and conduct of the hearing. * * *

SERB has also established additional guidelines in the *State Employment Relations Board Fact-Finding Guidebook*. The relevant guidelines are as follows:

CLOSED HEARING

Fact-finding hearings are not open to the public. They are viewed as part of the negotiation process. Attendance by individuals other than the participants should not be encouraged and must be approved by the parties.

HEARING RECORD

³For employees who are not allowed to strike, like the employees in this case, the collective bargaining negotiations process continues even further, into the conciliation process.

The fact finder is responsible for the record of the hearing. The taking of notes on the part of the fact finder is considered sufficient. The costs of a stenographer are the responsibility of the requesting party or parties. The SERB does not consider a stenographic record as a necessary expense of fact-finding. * * *

The specific language of these statutes, administrative rules, and existing SERB guidelines compel us to conclude that fact-finding is private. Recording of these proceedings by a party could have a chilling effect on negotiations and, as a result, may be detrimental to any part of the negotiations process, including the fact-finding hearing. Hence, recording cannot be forced by one side over the objections of the other party. This does not preclude the parties and the fact finder from agreeing to record these proceedings as contemplated by the *State Employment Relations Board Fact-Finding Guidebook*.

The City raised various arguments in an attempt to demonstrate how beneficial transcribing the fact-finding hearing can be. For example, the transcript from a fact-finding hearing can be used to help resolve issues in future disputes about the interpretation of the contract and the intention of the parties. Well-documented bargaining history can be useful in disputes over the meaning of certain contractual provisions. But a hearing transcript is not the only means available for achieving this "benefit"; for example, the notes taken by the fact finder and other persons attending the fact-finding hearing can provide this information. The "benefit" of a verbatim record does not outweigh the importance of privacy and an open atmosphere toward concluding the negotiation process with an agreed-upon collective bargaining contract.

III. CONCLUSION

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For the reasons above, no party may insist upon recording the fact-finding proceedings over the objections of the other party. The City of Kettering's Motion to Reverse Fact Finder's Ruling is denied.

Pohler, Chairman, and McGee, Vice Chairman, concur.