

98-005

**STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

Cleveland Building & Construction Trades Council,

Employee Organization,

and

Northeast Ohio District Council of United Brotherhood of Carpenters  
& Joiners of America,

Employee Organization,

and

Cuyahoga County Engineer,

Employer.

Case No. 96-REP-10-0239

**OPINION**

GILLMOR, Vice Chairman:

This representation case comes before the State Employment Relations Board ("Board") upon a Hearing Officer's Recommended Determination issued October 1, 1997. No exceptions were filed, and the parties waived any exceptions. For the reasons below, we grant the Joint Petition for Amendment of Certification and amend the bargaining unit to reflect the exclusion of the Carpenter and Carpenter Foreman classifications from the existing deemed-certified, multi-craft unit.

**I. BACKGROUND**<sup>1</sup>

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<sup>1</sup>Finding of Fact ("F.F.") Nos. 1-10 and 12.

The Cleveland Building and Construction Trades Council ("Council") is a federation of building and construction trade unions in the Greater Cleveland area. Until 1992, the Northeast Ohio District Council of United Brotherhood of Carpenters & Joiners of America ("Carpenters Union") was an affiliated union of the Council. In 1992, the Carpenters Union disaffiliated from the Council over a dispute regarding the payment of dues. Although the Carpenters Union disaffiliated from the Council, its members employed by the Cuyahoga County Engineer ("Employer" or "Engineer") have remained in the deemed-certified bargaining unit represented by the Council.

On October 24, 1996, the Council and the Engineer filed a Joint Petition for Amendment of Certification in accordance with Ohio Administrative Code Rule 4117-5-01(E)(1). In this petition, the Engineer and the Council jointly seek to exclude two employees, one in each of the classifications of Carpenter and Carpenter Foreman, from the existing bargaining unit. The Carpenters Union, the Council, and the Engineer all agree that the classifications of Carpenter and Carpenter Foreman should not remain in the multi-craft unit represented by the Council insofar as the Carpenters Union, whose members include the Carpenter and the Carpenter Foreman, is no longer affiliated with the Council. The Carpenter and the Carpenter Foreman also desire to be in a separate unit. The case was directed to hearing to determine which employee organization is the exclusive representative of the employees at issue, the Council or the Carpenters Union, and whether the proposed amendment is appropriate.

## II. DISCUSSION

Section 4(A) of Am.Sub.S.B. No. 133, 140 Ohio Laws, Part I, 336, 367, provides in part as follows:

Exclusive recognition through a written contract, agreement, or memorandum of understanding by a public employer to an employee organization whether specifically stated or through tradition, custom, practice, election, or negotiation the employee organization has been the only employee organization representing all employees in the unit is protected subject to the time restriction in division (B) of section 4117.05 of the Revised Code. Notwithstanding any other provision of this act, any employee organization recognized as the exclusive representative shall be deemed certified until challenged by another employee organization under the provisions of this act and the State Employment Relations Board has certified an exclusive representative.

The Recognition Clause in the collective bargaining agreement, in effect from March 28, 1984 to March 28, 1987, stated:

The Engineer agrees to recognize the Cleveland Building and Construction Trades Council as the sole and exclusive representative and bargaining agent for the purpose of collective bargaining in any and all matters relating to wages, hours or terms and other conditions of employment and the continuation, modification or deletion of an existing provision in a collective bargaining agreement.<sup>2</sup>

Thus, the Council is the deemed-certified exclusive representative of the multi-craft bargaining unit since it was so recognized by the Engineer on April 1, 1984.

Hence, the remaining issue is whether to grant the joint petition to amend the

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<sup>2</sup>F.F. No. 5.

unit by excluding the Carpenter and Carpenter Foreman classifications. The preliminary question is what standard should apply to severance cases where both the employer and the union are in agreement over the severance *and* where no question concerning representation exists. In *In re State of Ohio*, SERB 95-012 (6-30-95) ("*State of Ohio*"), we established a severance standard where a Petition for Representation Election was filed to sever a group of employees from a Board-certified bargaining unit. The circumstances of *State of Ohio* also involved a question concerning representation and a dispute among three parties whether a group of employees should be severed from an existing unit and added into another existing unit with a different exclusive representative. These circumstances are not present in the case at issue.

While we do not limit application of the *State of Ohio* standard only to its facts and circumstances,<sup>3</sup> we do not find it applicable to situations where there is no dispute between the parties. The standard in *State of Ohio* was established to balance conflicting rights when the parties are in dispute. There is no need to balance rights that do not conflict or to attempt to resolve a nonexistent dispute. Where the parties have reached their own solution to their problem, their solution is agreeable to all of the parties, and their solution is not prohibited by statute, we do not need to set or apply a standard or test. "[J]oint petitions are fully consistent with the acknowledged legislative objectives of orderly and cooperative resolution of disputes, and with the policy interest of stability in labor relationships." *State ex rel. Brecksville v. SERB*, 74 Ohio St.3d 665, 670, 1996 SERB 4-1, 4-3 (1996). Employers and unions should be warned, though, that joint petitions for amendment of certification cannot be used as a manipulative tool to exclude "undesired" employees from bargaining units; manipulative exclusions may bring about unfair labor practice charges, which the Board will carefully review.

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<sup>3</sup>The *State of Ohio* standard does apply to amendment of certification cases and to deemed-certified units, with possible modifications due to the unique structure of such units.

Employers also need to be aware that excluding employees from bargaining units may result in the creation of more bargaining units.

In the case at issue, there is nothing in O.R.C. Chapter 4117 to prohibit the Board from granting the Joint Petition for Amendment of Certification as filed by the parties. The Council is the umbrella organization for craft unions where each employee is a member of its own craft union even though the Council is the exclusive representative of all employees in the unit. The Carpenters Union disaffiliated from the Council. Under these circumstances, it is sound policy to allow the carpenters, who desire to follow their own craft union, to leave the bargaining unit represented by the Council, where doing so is not prohibited by law and where all parties are in agreement on this outcome. Since the parties are in agreement on this outcome and it is an outcome that is not prohibited by statute, the *State of Ohio* standard does not apply, and the joint petition should be granted.

### **III. CONCLUSION**

For the reasons above, we grant the Joint Petition for Amendment of Certification and amend the deemed-certified, multi-craft bargaining unit to exclude the classifications of Carpenter and Carpenter Foreman.

Pohler, Chairman, concurs; Mason, Board Member, concurs in a separate opinion.