

98-008

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

In the Matter of

Union of State, County & Municipal Workers of Ohio,

Rival Employee Organization,

and

Ohio Council 8, American Federation of State, County and Municipal Employees,
AFL-CIO, Local 1746,

Incumbent Employee Organization,

and

Cuyahoga County Department of Human Services,

Employer.

Case No. 96-REP-09-0201

OPINION

POHLER, Chairman:

This representation case comes before the State Employment Relations Board (“SERB” or “Board”) upon exceptions and responses to exceptions to the Hearing Officer’s Recommended Determination issued on October 24, 1997. For the reasons below, we find that the Petition for Representation Election filed by the Union of State, County and Municipal Workers of Ohio (“USCMWO”) — seeking to sever the Social Service Worker 3s employed by the Cuyahoga County Department of Human Services, Division of Children and Family Services, from the deemed-certified bargaining unit of the department’s employees — does not constitute an appropriate challenge and must be dismissed.¹

¹The petition also sought to represent the Social Service Worker 4s, but the USCMWO subsequently indicated that it was no longer interested in representing Social Service Worker 4s.

I. BACKGROUND²

The Cuyahoga County Department of Human Services ("DHS") consists of three divisions: Children and Family Services, Entitlement/Employment Services, and Senior and Adult Services. Each division is managed by a Director who reports to the DHS Director. Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, Local 1746 ("AFSCME"), has been the deemed-certified exclusive representative of a "wall-to-wall" bargaining unit of DHS employees since at least 1971. No other employee organization currently represents DHS employees. The classification of Social Service Worker 3 ("SSW3") has been included in the bargaining unit represented by AFSCME since 1971 and exists within each of the three divisions of the DHS. DHS employs approximately 550 SSW3s: approximately 450-500 SSW3s work in the Division of Children and Family Services; approximately 31 SSW3s work in the Senior and Adult Services division, and approximately 12 SSW3s work in the Entitlement/Employment Services division.

SSW3s have served as officers and stewards of AFSCME since its inception. SSW3s employed by the DHS also have risen to become officers and department directors of Ohio Council 8, AFSCME, AFL-CIO. Since at least 1984, SSW3s have been members of AFSCME's negotiating committees and regularly have been appointed by AFSCME to serve on labor/management committees as well as internal AFSCME committees. In addition to processing numerous grievances each year on behalf of SSW3s, AFSCME has addressed concerns unique to the various DHS divisions through labor/management committees established for each of the respective divisions, as well as through the County's Office of Labor Relations. AFSCME has participated in labor/management meetings with the County's Office of Labor Relations for the purpose of dealing with issues specific to the Division of Children and Family Services. AFSCME also has engaged in discussions with the County's Office of Labor Relations concerning issues such as lateral transfers, environmental problems, and

²Finding of Fact Nos. 4-8.

safety issues which specifically impact employees within the Social Service Worker classifications. In addition, under the terms of the Labor Agreement negotiated between AFSCME and DHS, effective July 1, 1996, employees within the SSW3 classification received a 2% parity adjustment in addition to the negotiated general increase.

II. DISCUSSION

A. **Section 4(A) Does Not Prohibit Severance from a Deemed-certified Bargaining Unit.**

Section 4(A) of Am.Sub.S.B. No. 133, 140 Ohio Laws, Part I, 336, 367 [hereinafter Section 4(A)] 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.

In *Ohio Council 8, AFSCME v. City of Cincinnati*, 69 Ohio St.3d 677, 682, 1994 SERB 4-37, 4-39 (1994) ("*Ohio Council 8*") the Ohio Supreme Court held:

Section 4 of Am.Sub.S.B. No. 133, therefore, was clearly "designed to maintain the status quo in those public sector employer/employee collective bargaining relationships antedating April 1, 1984." *State Emp. Relations Bd. v. Bedford Hts.* (1987), 41 Ohio App.3d 21, 23, 534 N.E.2d 115, 117, quoting *In re Bedford Hts.* (July 24, 1987), SERB 87-016, at 3-56. "It is clear from the emphasized language of Section 4 of the Act that the legislature intended that those *bargaining*

units in existence on October 6, 1983 [the effective date of Section 4], would remain intact.” (Emphasis added \in original). *Univ of Cincinnati, Univ. Hosp. v. State Emp. Relations Bd.* (1988), 42 Ohio App.3d 78, 81, 536 N.E.2d 408, 411.

In *Ohio Council 8*, the Ohio Supreme Court did not discuss whether deemed-certified bargaining units could ever be altered or amended. When asked whether Section 4(A) deprived SERB of jurisdiction to consider a jointly filed petition to amend the composition of a deemed-certified bargaining unit, the Court held:

[W]e note that the language of Section 4(A) of Am.Sub.S.B. No. 133 does not expressly protect the composition of the bargaining unit. Section 4(A) provides that the deemed certified unit shall remain deemed certified until challenged by another organization. * * *

Though it is reasonable to conclude, as we did in *Ohio Council 8*, that the General Assembly intended to protect preexisting collective bargaining relationships *from unilateral attack by employers*, it does not necessarily follow that the General Assembly intended to forever freeze the composition of units extant on October 6, 1983. On the contrary, it is clear that Am.Sub.S.B. No. 133 and R.C. Chapter 4117 were passed in response to a widely perceived need to 'bring stability and clarity to an area where there had been none,' and to remove public employees from a position of 'second-class citizenship' by placing them on an equal footing with private employees. *State ex rel. Dayton Fraternal Order of Police, Lodge No. 44 v. State Emp. Relations Bd.* (1986), 22 Ohio St.3d 1, 5, 22 OBR 1, 4, 488 N.E.2d 181, 185.

* * *

* * * There is no indication, however, either in our opinions or in the legislative history of Am.Sub.S.B. No. 133, that the intent of the legislature was slavish adherence to the 1983 status quo.

State ex rel. Brecksville Ed. Assn. v. SERB, 74 Ohio St.3d 665, 670, 1996 SERB 4-1, 4-3 (1996) ("*Brecksville*") (emphasis added).

In *Brecksville*, the Court found that the protections given to deemed-certified bargaining units were put in place in order to protect the preexisting collective bargaining relationships from unilateral attack by employers. Section 4(A) and Court

precedents are silent as to whether a group of employees could be severed from a deemed-certified bargaining unit by another employee organization. There must be a mechanism whereby a change in bargaining units can take place when circumstances so dictate. Such a mechanism is consistent with the Court's stated purpose of placing public employees on an equal footing with private employees.³ If a severance is granted, the original bargaining unit will continue as a deemed-certified unit, just as the unit remains deemed-certified when a joint petition to amend is granted.

B. The Proper Standard for Severing a Group of Employees from an Existing Deemed-certified Unit.

The applicable standard by which to evaluate a severance petition is the standard set forth in *In re State of Ohio*, SERB 95-012 (6-30-95) ("*State of Ohio*"). In *State of Ohio, supra* at 3-92, we noted that unit structures are not etched in stone and that changes in units are inevitable and necessary. To that end, we adopted the following standard "for *all* severance cases" without making any distinction between whether the existing unit is Board-certified or deemed-certified:

Where a petition for election is filed to sever a group of employees from an existing bargaining unit, the Board will allow such severance only if the petitioner proves that:

1. Since the establishment of the existing unit, substantial changes have taken place in the classifications, job duties, working conditions, or other circumstances of the petitioned-for employees making the existing unit inappropriate or unworkable; or
2. Since the establishment of the existing unit, substantial changes in circumstances have taken place showing the existence of a conflict of interest between the petitioned-for

³Severance elections are permitted in the private sector in limited situations. See, e.g., *Los Angeles Bonaventure Hotel*, 235 NLRB 96, 97 L.R.R.M. 1453 (1978); *NLRB v. Catalytic Indus. Maintenance Co. (CIMCO)*, 964 F.2d 513, 140 L.R.R.M. 2817 (5th Cir. 1992).

employees and other employees in the unit making the existing representation inadequate; or

3. Since the establishment of the existing unit, substantial changes have taken place in the employer's operations or administrative structure making the existing unit inappropriate or unworkable; or
4. The history of collective bargaining in the existing unit shows inadequate representation of the petitioned-for employees and disparity in the quality of representation provided to them as distinguished from that provided to the other employees in the unit.⁴

C. The Standard for Severing a Group of Employees from the Existing Bargaining Unit Has Not Been Met.

In this case, the deemed-certified bargaining unit is a wall-to-wall unit of DHS employees. The USCMWO has petitioned for an election by only the SSW3s employed in the Division of Children and Family Services. If we construe the USCMWO's Petition for Representation Election as a severance petition, the petition cannot be granted.

⁴*Id.* at 3-87. (emphasis added).

The record does not contain any evidence that the requisite "substantial changes" have occurred or that the history of collective bargaining in the unit shows inadequate or disparate representation.⁵ The relationship between AFSCME, on behalf of SSW3s, and DHS has been constructive, orderly, and mutually beneficial. SSW3s have served as officers and stewards of AFSCME since its inception. In addition, since at least 1984, SSW3s have been members of AFSCME's negotiating committees and regularly have been appointed to serve on labor/management committees as well as internal AFSCME committees. AFSCME has filed and resolved numerous grievances on behalf of SSW3s. AFSCME also has engaged in discussions with the County's Office of Labor Relations concerning issues specifically impacting on employees within the Social Service Worker classification.

III. CONCLUSION

For the reasons above, we find that the Union of State, County and Municipal Workers of Ohio's Petition for Representation Election does not constitute an appropriate challenge to Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, Local 1746, the deemed-certified incumbent exclusive representative. Therefore, the petition must be dismissed.

Gillmor, Vice Chairman, and Mason, Board Member, concur.

⁵USCMWO stipulated that it could not meet its burden of proof under this standard. (Transcript, p. 6).