

98-009

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

In the Matter of

Fraternal Order of Police, Ohio Labor Council, Inc.,

Employee Organization,

and

Ohio Patrolmen's Benevolent Association,

Employee Organization,

and

City of London,

Employer.

Case No. 97-REP-03-0057

OPINION

POHLER, Chairman:

This representation case comes before the State Employment Relations Board ("Board" or "SERB") upon the filing of exceptions and the response to exceptions to the Hearing Officer's Recommended Determination issued on December 12, 1997. For the reasons below, we find that the Petition for Representation Election filed by the Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP") during the window period of the collective bargaining agreement between the Ohio Patrolmen's Benevolent Association ("OPBA") and the City of London ("City") is not barred by the subsequent collective bargaining agreement entered into between the OPBA and the City. Consequently, the motions to dismiss the petition, filed by the OPBA and the City, are denied, and the matter is directed to an election.

I. BACKGROUND¹

The OPBA is the exclusive representative for all regular, full-time Patrol Officers below the rank of Sergeant employed by the City. The OPBA and the City were parties to a collective bargaining agreement, effective July 1, 1994 through June 30, 1997. On March 17, 1997, the FOP filed a Petition for Representation Election, seeking to represent the same bargaining unit. On April 14, 1997, the OPBA filed a Notice to Negotiate. The City did not file a request to stay negotiations concerning the Patrol Officers; instead, on or about May 7, 1997, the City commenced negotiations with the OPBA for a successor collective bargaining agreement. After several negotiation sessions, a tentative agreement was reached by the OPBA and the City in early June 1997. By June 19, 1997, the tentative agreement was ratified by a majority of the Patrol Officers. On June 19, 1997, London City Council approved the tentative agreement by passing Ordinance No. 173-97. This successor collective bargaining agreement between the City and the OPBA, as the exclusive representative for all full-time Patrol Officers, was executed June 26, 1997, four days before the expiration date of the previous contract. The effective dates of this successor agreement are July 1, 1997 through June 30, 2000. The OPBA and the City then filed motions to dismiss the FOP's petition. The case was directed to hearing.

II. DISCUSSION

O.R.C. § 4117.07 describes the election procedures:

(A) When a petition is filed, in accordance with rules prescribed by the state employment relations board:

¹Finding of Fact ("F.F.") Nos. 3-4, 7-8, and 10-14.

(1) By any employee or group of employees, or any individual or employee organization acting in their behalf, *alleging that at least thirty per cent of the employees in an appropriate unit wish to be represented for collective bargaining by an exclusive representative, or asserting that the designated exclusive representative is no longer the representative of the majority of employees in the unit*, the board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, provide for an appropriate hearing upon due notice to the parties;

* * *

If the board finds upon the record of a hearing that a question of representation exists, it shall direct an election and certify the results thereof. * * *

* * *

(C)(6) *The board may not conduct an election under this section in any appropriate bargaining unit within which a board-conducted election was held in the preceding twelve-month period, nor during the term of any lawful collective bargaining agreement between a public employer and an exclusive representative.*

Petitions for elections may be filed with the board no sooner than one hundred twenty days or later than ninety days before the expiration date of any collective bargaining agreement, or after the expiration date, until the public employer and exclusive representative enter into a new written agreement. (emphasis added).

There is no dispute that the FOP filed a petition with SERB “no sooner than one hundred twenty days or later than ninety days before the expiration date of any collective bargaining agreement.” This period is commonly referred to as the “window period” of the collective bargaining agreement. We determined that the FOP’s petition was supported by the 30% showing of interest required by O.R.C. § 4117.07. Thus, the FOP met the statutory requirements for filing a timely petition for representation election. Under a contract bar, as stated in O.R.C. § 4117.07(C)(6), no election may be conducted during the effective time of a lawful contract. The City argues that regardless of the proper filing, the contract bar rule does not allow an election pursuant to the FOP’s petition. We do not agree.

There are dual policy considerations behind the contract bar rule and its "window period" exception.² The contract bar rule promotes stable labor relationships between the public employer and the exclusive representative during the collective bargaining agreement's term. The "window period" exception addresses the public employees' statutory right to choose a different employee organization or to decertify the incumbent. By lifting the contract bar for the 30 days of the "window period," the Ohio Legislature ensures this statutory right by preventing a situation in which an employer and an incumbent union implement a successor agreement immediately after the expiration of the previous one and, thus, block the employees from exercising their statutory right to decertify the incumbent or to change their exclusive representative. Ironically, the function of the "window period" is exactly to prevent what the City and the OPBA are attempting to do in the case at issue, *i.e.*, to sign a successor agreement before the previous agreement expires *and*, thereby block any attempt by the employees to exercise their statutory rights to choose a different exclusive representative.

The City and the OPBA base their positions on the first paragraph of O.R.C. § 4117.07(C)(6), which establishes the contract bar rule, and conveniently ignore the second paragraph, which establishes the "window period" exception to the contract bar rule. Moreover, it is axiomatic that the meaning to be given to a statutory provision must not lead to an absurd result that would defeat the statutory purpose behind the enactment of which it is a part.³ An interpretation that bars all elections during contracts entered into after the filing of a timely petition may lead to a situation in which

²*In re Montgomery County Bd. of Ed.*, SERB 90-014 (8-29-90).

³*Id.*

public employees would be deprived of the right to be represented in collective bargaining by the union of their choice as provided for in O.R.C. § 4117.03(A)(1).

The language prohibiting elections during the term of a lawful collective bargaining agreement was intended to permit an incumbent and an employer to properly carry out their obligations on the remaining 90-120 days left on the existing contract at the time a representation petition is filed with SERB. It was not intended to create an agency in perpetuity. A reading of all the relevant statutory provisions together leads to the conclusion that the legislature intended for public employees to have at least a thirty-day period within the effective dates of any collective bargaining agreement in which to file, if they wish, a petition to switch union agents or to forego union representation altogether. If such a proper petition is filed during the "window period," an election must take place and the voice of the employees will not be silenced by any action of the incumbent and the employer.

The OPBA and the City claim that a majority of employees in the unit ratified the new contract and that the City did not have good faith doubt whether OPBA had majority support among the employees in the unit. Both these claims are irrelevant. SERB's interpretation of O.R.C. Chapter 4117 requires only that a contract be ratified according to the constitution and bylaws of an employee organization, which may or may not involve employee ratification; even ratification by the employees may be limited to union members only.⁴ As for the City's good faith doubt issue, allowing an employer to act on its "good faith doubt" without Board action leads to an irresolvable conflict, which does not encourage good and sensible public policy.⁵ Thus, the City's good

⁴*In re Worthington Classified Assn.*, SERB 96-009 (6-27-96); *In re Perrysburg Ed. Assn.*, SERB 96-010 (6-27-96).

⁵*SERB v. Miami University*, 71 Ohio St.3d 351, 1995 SERB 4-1, 4-4 (1994); *In re Marion Cty. Children's Services Bd.*, SERB 92-017 (10-1-92).

faith doubt, or lack thereof, by itself cannot create legal obligations or consequences.

SERB does not prohibit an employer and an incumbent union from continuing to negotiate and enter into a collective bargaining agreement before an election under these circumstances, nor does SERB require it.⁶ But the filing of a representation election petition with SERB during the “window period” puts all parties on notice that the continued agency of the incumbent union has been called into doubt and that such doubt can be resolved only by SERB’s disposition of the petition, either through certification of election results or through dismissal. This interpretation best carries out the full intent of all of the O.R.C. Chapter 4117 provisions.

The cases cited by the City, in which petitions for election were dismissed under the contract bar rule, do not support the City’s position and, on the contrary, support this public policy. The petitions in the cases cited by the City were dismissed under the contract bar rule exactly because they were not filed during the “window period”⁷ or because the petition had to be filed inside the “window period” as well as outside the election bar period.⁸

III. CONCLUSION

For the reasons above, we find that the Petition for Representation Election filed by the Fraternal Order of Police, Ohio Labor Council, Inc. during the window period of the collective bargaining agreement between the Ohio Patrolmen’s Benevolent

⁶*In re Franklin County Sheriff*, SERB 90-019 (10-23-90).

⁷*City of Lake Mary*, ¶16 NPER FL25138 (FL PERC, 1994).

⁸*South Dearborn Community School Corporation*, ¶17 NPER IN-26000 (IN EERB, 1994).

Association and the City of London is not barred by the subsequent collective bargaining agreement entered into between the OPBA and the City. The motions to dismiss the petition are denied. An election will be conducted at a place and time established by the Representation Administrator in consultation with the parties.

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