

98-011

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

Ohio Association of Public School Employees, AFSCME Local 4,  
AFL-CIO and its Local 312,

Employee Organization,

and

Groveport Madison Local School District Board of Education,

Employer.

**CASE NUMBER: 97-REP-12-0329**

**OPINION**

POHLER, Chairman:

**I. INTRODUCTION**

The Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and its Local 312 ("OAPSE Local 312" or "Employee Organization") is the deemed-certified exclusive representative of a bargaining unit of employees of the Groveport Madison Local School District Board of Education ("Employer"). On December 2, 1997, the Employee Organization filed a Request for Recognition seeking to add certain unrepresented employees to the bargaining unit. On December 18, 1997, the Employer filed a Petition for Representation Election and Objections to the Request for Recognition. On February 12, 1998, the State Employment Relations Board ("SERB" or "Board") directed this matter to hearing to determine an appropriate unit and for all other relevant issues. The parties entered into Joint Stipulations of Fact in lieu of a hearing on April 21, 1998, and filed briefs on the issue of SERB's jurisdiction regarding a unilateral petition for alteration of a deemed-certified bargaining unit. For the reasons below, we find that the composition of a deemed-certified bargaining unit

may not be altered or changed pursuant to an opposed unilateral filing by either the employer or the exclusive representative.

## II. FINDINGS OF FACT<sup>1</sup>

1. The Groveport Madison Local School District Board of Education is a "public employer" within the meaning of O.R.C. § 4117.01(B).

2. The Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and its Local 312 is an "employee organization" within the meaning of O.R.C. § 4117.01(D).

3. OAPSE Local 312 is the deemed-certified exclusive representative of the following bargaining unit:

Included:

Bus Drivers; Cafeteria Personnel, including Head Cook and Cook; Custodial, including Head Custodian and Custodian; Maintenance; Clerical I; Inter-School Delivery; and Bus Aides

Excluded:

Substitute Employees, Supervisors, Directors, Coordinators, Administrative Employees, and Confidential Employees, which are defined for purposes of the current bargaining unit to include the classifications of Secretary to the Superintendent, Secretary(ies) to the Treasurer, and All Clerical II Employees

4. In its Request for Recognition filed on December 2, 1997, OAPSE Local 312 proposed to add Educational Aides to the bargaining unit such that it would be

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<sup>1</sup>Administrative notice of SERB's records is taken in making these Findings of Fact.

described as follows:

Included:

Bus Drivers; Cafeteria Personnel, including Head Cook and Cook; Custodial, including Head Custodian and Custodian; Maintenance; Clerical I; Inter-School Delivery; Bus Aides; and Educational Aides

Excluded:

Substitute Employees, Supervisors, Directors, Coordinators, Administrative Employees, and Confidential Employees, which are defined for purposes of the bargaining unit to include the classifications of Secretary to the Superintendent, Secretary(ies) to the Treasurer, and All Clerical II Employees

5. In its Objection to Request for Recognition and Petition for Representation Election - Employer filed December 18, 1997, the Employer contended that the bargaining-unit's status quo should be maintained.

6. The Employee Organization and the Employer are parties to a collective bargaining agreement that is in effect from July 1, 1997 through June 30, 2000 ("current contract"). The bargaining unit covered by the current contract is a deemed-certified bargaining unit. (Joint Stipulation No. 1).

7. Neither the Educational Aide classification nor any employees in the Educational Aide classification is included in the bargaining unit covered by the current contract or any other certified bargaining unit. The employees in the Educational Aide classification currently are not represented and never have been represented by any employee organization under O.R.C. Chapter 4117. (Joint Stipulation No. 2).

### **III. DISCUSSION**

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

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.

Section 4(A) was examined by the Ohio Supreme Court in a case involving an employer's unilateral attempt to alter the composition of a deemed-certified bargaining unit. In *Ohio Council 8, AFSCME v. Cincinnati*, 69 Ohio St.3d 677, 1994 SERB 4-37 (1994) ("*Ohio Council 8*"), the Court struck down Ohio Administrative Code Rule 4117-5-01(F) because it authorized adjustments or alterations to deemed-certified collective bargaining units absent a challenge by another employee organization and subsequent certification of an exclusive representative, which is forbidden by Section 4(A). In addition, the 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.<sup>2</sup>

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<sup>2</sup>*Id.* at 682, 1994 SERB at 4-39.

In *State ex rel. Brecksville Ed. Assn. v. SERB*, 74 Ohio St.3d 665, 1996 SERB 4-1 (1996) ("*Brecksville*"), the Ohio Supreme Court held that Section 4(A) does not deprive SERB of jurisdiction to consider a petition jointly filed by an employer and an exclusive bargaining representative requesting SERB to amend the composition of a deemed-certified bargaining unit. The Court also held:

The issue of a joint petition for amended certification of a bargaining unit was not before the court in *Ohio Council 8*. Rather, that case involved the conflict between Section 4(A) of the Act and the language of Ohio Adm. Code 4117-5-01(F) that authorized unilateral employer petitions. Because we find the distinction between unilateral employer petitions and joint petitions to be critical, and because we find *Ohio Council 8* applicable only to unilateral employer petitions, we confine the holding of *Ohio Council 8* to those particular facts.

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First and foremost, we 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. [emphasis in original]. Section 4(A) provides that the deemed certified unit shall remain deemed certified until challenged by another organization. It does not exclude, expressly or otherwise, SERB jurisdiction under the facts of this case; nor does it preclude the addition of a group of employees to an existing bargaining unit *where no one opposes the action*. [emphasis added].<sup>3</sup>

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<sup>3</sup>*Id.* at 667, 1996 SERB at 4-3.

In light of *Ohio Council 8* and *Brecksville*, we decline to act favorably on a unilateral attempt by either the employer or the exclusive representative to alter the composition of a deemed-certified bargaining unit when such an attempt is opposed by the other party. In *Brecksville*, the Court declared that cooperative solutions are the express objective of Ohio's Public Employee Collective Bargaining Law.<sup>4</sup> To allow an exclusive representative to unilaterally initiate alterations to the composition of a deemed-certified bargaining unit over an employer's objections would not promote cooperative solutions and would be contrary to Section 4(A)'s express objective. Further, since *Ohio Council 8* already prevents an employer from unilaterally initiating changes in a bargaining-unit's composition to which it previously agreed, then allowing an exclusive representative to do so is inherently inconsistent and would create an imbalance in these bargaining relationships. Consequently, the Request for Recognition in the present case must be dismissed. Of course, the dismissal of this Request for Recognition does not prevent the Employee Organization from representing these employees in a separate bargaining unit.

In its Objection to Request for Recognition and Petition for Representation Election, the Employer challenged the appropriateness of the proposed bargaining unit because the Educational Aides' terms and conditions of employment were substantially different from those of the bargaining-unit members. The Employer also contended it was entitled to a representation election in this matter because the bargaining-unit employees were misled by the Employee Organization as to the reasons for obtaining their signatures and the Employee Organization has not demonstrated "substantial evidence" that a majority of the employees in the proposed bargaining unit wish to be represented by the Employee Organization. Since we find that the Request for Recognition must be dismissed for the reasons set forth above, we do not need to

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<sup>4</sup>*Id.*

address these remaining issues.

#### IV. CONCLUSIONS OF LAW

1. The Groveport Madison Local School District Board of Education is a “public employer” within the meaning of O.R.C. § 4117.01(B).

2. The Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and its Local 312 is an “employee organization” within the meaning of O.R.C. § 4117.01(D).

3. An exclusive representative’s unilateral filing through which it seeks to alter the composition of a deemed-certified bargaining unit, and to which the employer objects, must be denied as contrary to the express objective of Section 4(A) of Am.Sub.S.B. No. 133, 140 Ohio Laws, Part I, 336, 367. See *State ex rel. Brecksville Ed. Assn. v. SERB*, 74 Ohio St.3d 665, 1996 SERB 4-1 (1996).

#### V. DETERMINATION

For the reasons above, we find that the composition of a deemed-certified bargaining unit may not be altered pursuant to an opposed unilateral filing by either the employer or the exclusive representative. Accordingly, we dismiss the Request for Recognition filed by the Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and its Local 312 and opposed by the Groveport Madison Local School District Board of Education.

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

