

98-012

**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 513,

Employee Organization,

and

Urbana City School District Board of Education,

Employer.

**CASE NUMBER: 97-REP-12-0328**

**OPINION**

POHLER, Chairman:

**I. INTRODUCTION**

The Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and its Local 513 ("OAPSE Local 513" or "Employee Organization") is the deemed-certified exclusive representative of a bargaining unit of employees of the Urbana City 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 17, 1997, the Employer filed Objections to the Request for Recognition. On February 26, 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 May 4, 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 Urbana City School District Board of Education is a "public employer" within the meaning of O.R.C. § 4117.01(B). (Joint Stipulation ["Jt.Stip."] No. 1).

2. The Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and its Local 513 is an "employee organization" within the meaning of O.R.C. § 4117.01(D). (Jt.Stip. No. 2).

3. OAPSE Local 513 is the deemed-certified exclusive representative of the following bargaining unit:

Included:

All Non-Supervisory, Non-Administrative regular full-time and regular short hour classified employees in the following classifications: Custodial, Pupil Transportation, Cafeteria, Non-Central Office Secretarial, Associates, and Library Associates

Excluded:

All Supervisory, Administrative, Central Office, and Confidential Personnel

4. OAPSE Local 513 and the Employer are parties to a collective bargaining agreement that is in effect from July 1, 1995 through June 30, 1998 ("current contract").

OAPSE Local 513 is the deemed-certified exclusive representative of the bargaining unit covered by the current contract. (Jt.Stip. Nos. 3 and 4).

5. Sign Language Interpreters and/or Hearing Impaired Interpreters are employees of the Employer and are "public employees" under O.R.C. § 4117.01(C). (Jt.Stip. No. 5).

6. OAPSE Local 513 filed a Request for Recognition on December 2, 1997,

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

proposing to add Sign Language Interpreters and/or Hearing Impaired Interpreters to the existing deemed-certified bargaining unit. (Jt.Stip. No. 6).

7. OAPSE Local 513 and the Employer did not file a joint petition for recognition. (Jt.Stip. No. 7).

8. In its Objection to Request for Recognition filed December 17, 1997, the Employer contended that the Request for Recognition is proposing an amendment of a deemed-certified bargaining unit, that a joint petition is required for such a filing, and that such a filing has not been made.

### 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.

In *Ohio Council 8, AFSCME v. Cincinnati*, 69 Ohio St.3d 677, 1994 SERB 4-37 (1994) ("*Ohio Council 8*"), the Ohio Supreme Court rejected an employer's unilateral attempt to alter the composition of a deemed-certified bargaining unit. 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 *State ex rel. Brecksville Ed. Assn. v. SERB*, 74 Ohio St.3d 665, 1996 SERB 4-1 (1996) ("*Brecksville*"), the Ohio Supreme Court found that *Ohio Council 8* applied only to unilateral employer petitions. The Court also 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:

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>2</sup>

In *In re Groveport Madison Local School Dist Bd of Ed*, SERB 98-011 (07-23-98) ("*Groveport Madison*"), we were faced with a unilateral filing by the deemed-certified exclusive representative that was opposed by the employer, and we held:

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<sup>2</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>3</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 the present case, we are again faced with a unilateral filing by a deemed-certified exclusive representative that is opposed by the employer. Under our holding in *Groveport Madison*, we must again dismiss the opposed Request for Recognition because the filing is contrary to the express objective of Section 4(A) of Am.Sub.S.B. No. 133, 140 Ohio Laws, Part I, 336, 367.

#### IV. CONCLUSIONS OF LAW

1. The Urbana City 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 513 is an "employee organization" within the meaning of O.R.C. § 4117.01(D).

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<sup>3</sup>*Id.*

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); *In re Groveport Madison Local School Dist Bd of Ed*, SERB 98-011 (07-23-98).

#### **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 513 and opposed by the Urbana City School District Board of Education.

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