

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

In the Matter of

Keith Savage,

Petitioner,

and

Teamsters Local Union No. 284,

Employee Organization,

and

Fairfield County Department of Human Services,

Employer.

Case No. 98-REP-05-0124

DIRECTIVE DISMISSING PETITION FOR DECERTIFICATION ELECTION

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich:
June 17, 1999.

On May 20, 1998, Keith Savage filed a Petition for Decertification Election seeking to decertify Teamsters Local Union No. 284 ("Employee Organization" or "Teamsters") as the exclusive representative of certain employees of the Fairfield County Department of Human Services ("Employer"). On June 5, 1998, the Employee Organization filed a motion to dismiss the petition. On June 15, 1998, the Employer filed its response to the motion to dismiss.

On January 14, 1999, the State Employment Relations Board ("Board") directed this matter to hearing for consideration of the Employee Organization's motion to dismiss and for all other relevant issues. The parties entered into Joint Stipulations of Fact in lieu of a hearing on February 24, 1999. The parties filed briefs on March 31, 1999. On April 22, 1999, the case was transferred from the Hearings Section to the Board in order to issue a decision on the merits.

After reviewing the record and all filings, including the Joint Stipulations of Fact and the briefs filed by the parties, the Board dismisses the Petition for Decertification Election as barred by contract, pursuant to O.R.C. § 4117.07(C)(6). Attached is an Opinion, incorporated by reference, that contains supporting Findings of Fact and Conclusions of Law.

It is so directed.

POHLER, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.



SUE POHLER, CHAIRMAN

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 119.12, by filing a notice of appeal with the State Employment Relations Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of the Board's directive.

I certify that this document was filed and a copy served upon each party by certified mail, return receipt requested, on this 30th day of June, 1999.



LINDA S. HARDESTY, CERTIFIED LEGAL ASSISTANT

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OPINION

GILLMOR, Vice Chairman:

This representation case come before the State Employment Relations Board ("SERB" or "Board") upon the filing of Stipulations of Fact with exhibits and briefs in lieu of an evidentiary hearing in this case. On April 22, 1999, the case was transferred from the Hearings Section to the Board for a determination on the merits. For the reasons below, we find that the Petition for Decertification Election must be dismissed as barred by contract pursuant to O.R.C. § 4117.07(C)(6).

I. FINDINGS OF FACT¹

1. The Fairfield County Department of Human Services ("Fairfield County DHS" or "Employer") is a public employer as defined by O.R.C. § 4117.01(B). (Stipulations of Fact ["Stip."] 3.).

2. The Fairfield County Board of Commissioners ("Commissioners") is the legislative body for the Fairfield County DHS.

3. The Teamsters Local Union No. 284 ("Teamsters") is an employee organization as defined by O.R.C. § 4117.01(B). (Stip. 2).

4. Keith Savage ("Petitioner") is a public employee within the meaning of O.R.C. § 4117.01 and is a member of the bargaining unit of Fairfield County DHS employees represented by the Teamsters. (Stip. 1).

5. On January 9, 1997, SERB certified the Teamsters as the exclusive representative for a bargaining unit of Fairfield County DHS employees in Case No. 95-REP-11-0195. (Stip. 4).

6. On February 5, 1997, a Notice to Negotiate was filed with SERB in Case No. 97-MED-02-0100. (Stip. 5).

7. The Employer and the Teamsters met to negotiate an initial collective bargaining agreement on April 3, 10, 14, 16, and 29, 1997, and with a SERB mediator on

¹References to the Stipulations, Joint Exhibits, and previously adopted Findings of Fact are intended for convenience only and are not intended to suggest that such references are the sole support for the Findings of Fact in this case.

May 28, June 13, and July 10, 1997. The parties reached a tentative agreement on all issues, with the exception of dues deduction/fair share fee and health insurance, by July 10, 1997. These tentative agreements were signed by the parties' representatives. (Stips. 6 and 7; Joint Exhibit ["Jt. Exh."] 3).

8. On August 6, 1997, the Employer provided to Local 284 a draft of the tentative agreements reflecting all of the articles signed off by the parties in negotiation and mediation. The issues of health insurance and dues deduction/fair share fee remained outstanding and to be submitted to fact-finding. (Stip. 8; Jt. Exh. 4).

9. On August 27, 1997, the Employer made a proposal regarding health insurance. (Stip. 16; Jt. Exh. 10).

10. Due to the parties' inability to reach agreement on the issues of health insurance and dues deduction/fair share fee, the matters were directed to fact-finding. A fact-finding hearing was held on September 22, 1997, before Jack E. McCormick. Mr. McCormick issued his report on September 29, 1997, recommending that the language proposed by Local 284 regarding both outstanding issues be adopted by the parties. The Employer rejected the fact-finder's report on September 30, 1997. (Stips. 9-11; Jt. Exhs. 5 and 6).

11. On November 11, 1997, Local 284 submitted to the Employer changes that needed to be made to the draft tentative agreements the Employer had submitted earlier to Local 284. (Stip. 12; Jt. Exh. 7).

12. On November 13, 1997, the Employer provided Local 284 with a copy of its final version of the collective bargaining agreement, including the Employer's last proposals on health insurance and dues deduction/fair share fees. Also on November 13, 1997, Local 284 voted to reject the Employer's final offer. (Stips. 13 and 14; Jt. Exh. 8).

13. On November 14, 1997, Local 284 filed a Notice of Intent to Strike or Picket, setting forth a strike date of November 25, 1997. (Stip. 15; Jt. Exh. 9).

14. The Fairfield County Board of Commissioners ("Commissioners") was directly involved with the negotiation process. All proposals or modifications to the tentative agreements had to have the Commissioners' prior approval before being offered to or accepted from Local 284. The Commissioners met regularly with the Employer's negotiation team to be kept abreast of developments and to plan the give-and-take of negotiation strategy. (*F.F.* 7).²

15. The parties met with SERB mediators on November 21 and 24, 1997. (Stip. 16; Jt. Exh. 10).

16. Local 284 did not commence a strike on November 25, 1997. The outstanding issues were not resolved through bargaining; on November 25, 1997, Local 284 filed a Notice of Intent to Strike or Picket with a strike date of December 8, 1997. (Stips. 17 and 18).

17. Mediation sessions with SERB mediators were held on December 5 and 15, 1997. The Commissioners attended these sessions. (Stip. 19; *F.F.* 7).

18. Local 284 commenced its strike on December 8, 1997. (Stip. 19).

19. On January 6, 1998, Mr. Savage filed a Petition for Decertification Election in Case No. 98-REP-01-0002. (Stip. 20; Jt. Exh. 12).

²We take administrative notice of the Findings of Fact ("*F.F.*") that we adopted on December 10, 1998, in previous cases involving these parties, *Keith Savage and Teamsters Local Union No. 284 and Fairfield County Department of Human Services*, Case No. 98-REP-01-0002 and *Teamsters Local Union No. 284 and Fairfield County Department of Human Services*, Case No. 97-MED-02-0100.

20. On January 7, 1998, Local 284 filed an unfair labor practice charge in Case No. 98-ULP-01-0007, asserting that the Employer was refusing to bargain in violation of O.R.C. §§ 4117.11(A)(1) and (A)(3). (Stip. 21; Jt. Exh. 13).

21. On January 7, 1998, the Employer filed a Motion to Stay Negotiations in Case No. 97-MED-02-0100 and notified Local 284 that it was holding its most recent contract offer "in abeyance" pending a ruling by SERB on its motion. (Stip. 22; Jt. Exh. 14).

22. By a letter dated January 7, 1998, Local 284 characterized the Employer's assertions in its January 7, 1998 letter as a unilateral stay of negotiations and filed an amended unfair labor practice charge on that basis. (Stip. 23; Jt. Exhs. 15 and 16).

23. On January 7, 1998, Local 284 held a meeting with some of the bargaining-unit members to discuss the status of negotiations and the strike; it decided to hold another ratification vote on the evening of January 8, 1998. (*F.F.* 18).

24. By a letter dated January 8, 1998, the Employer reasserted its position and stated that its most recent offer was not withdrawn. (Stip. 24; Jt. Exh. 17).

25. On January 8, 1998, the bargaining-unit members ratified what Local 284 believed to be the Employer's last, best offer. By a letter dated January 9, 1998, Local 284 notified the Employer that the members had ratified the Employer's most recent contract offer and requested a meeting for the parties to sign the finalized contract. (Stip. 25; Jt. Exh. 18).

26. On January 12, 1998, the striking bargaining-unit members returned to work. (Stip. 26; *F.F.* 23).

27. By a letter dated January 13, 1998, the Employer asserted that it did “not necessarily agree that a Collective Bargaining Agreement exists” between the parties and reasserted its “abeyance” position. (Stip. 27; Jt. Exh. 19).

28. On January 14, 1998, after being advised by SERB that his initial petition appeared to be untimely, Mr. Savage filed an “Amended” Petition for Decertification Election in Case No. 98-REP-01-0002. (Stip. 28; Jt. Exh. 20; *F.F.* 25).

29. On January 16, 1998, Local 284 filed a motion to dismiss both the original and amended representation petitions in Case No. 98-REP-01-0002. On January 22, 1998, the Employer filed a motion to stay negotiations in Case No. 97-MED-02-0100. On February 26, 1998, the Board found that the first representation petition, filed on January 6, 1998, was barred by certification pursuant to Ohio Administrative Code (“O.A.C.”) Rule 4117-5-11, because it was filed less than one year from the Board certification; the Board directed Local 284’s motion to dismiss the January 14, 1998 amended representation petition and the Employer’s motion to stay negotiations to expedited hearings. (Board files for Case Nos. 98-REP-01-0002 and 97-MED-02-0100).

30. On April 8, 1998, an evidentiary hearing was held before a SERB hearing officer in Case Nos. 98-REP-01-0002 and 97-MED-02-0100. The Hearing Officer’s Recommended Determination was issued on April 30, 1998. (Stip. 29; Jt. Exh. 21).

31. On April 16, 1998, SERB determined that probable cause existed to believe that the Employer had committed an unfair labor practice in Case No. 98-ULP-01-0007. (Stip. 30).

32. On May 8, 1998, the Employer filed exceptions to the Hearing Officer’s Recommended Determination. (Stip. 31).

33. On May 14, 1998, Local 284 notified the Employer that the tentative collective bargaining agreement, which consisted of all the tentative agreements on the separate issues and the Employer's last, best offer, had been ratified by the bargaining unit and therefore was accepted. Local 284 did not forward the Collective Bargaining Agreement that it ratified to the Employer at that time. (Stip. 32; Jt. Exh. 22).

34. On May 19, 1998, Local 284 and the Employer met at SERB for a prehearing conference in Case No. 98-ULP-01-0007. On this date, the parties reached a settlement agreement pertaining to Case No. 98-ULP-01-0007. (Stip. 33; Jt. Exh. 23).

35. On May 19, 1998, Local 284 provided a draft of the Collective Bargaining Agreement to the Employer. (Stip. 34; Jt. Exh. 24).³

36. On May 20, 1998, Mr. Savage filed the Petition for Decertification Election in Case No. 98-REP-05-0124.

37. On May 21, 1998, the Employer filed a motion to withdraw its exceptions to the Hearing Officer's Recommended Determination in Case Nos. 98-REP-01-0002 and 97-MED-02-0100. (Stip. 35; Jt. Exh. 25).

38. On May 22, 1998, the Employer sent correspondence to Local 284 indicating changes to the draft of the Collective Bargaining Agreement presented by Local 284. The Employer's changes were essentially clerical changes to the draft. (Stip. 36; Jt. Exh. 26).

39. On May 27, 1998, Local 284 sent a revised version of the Collective Bargaining Agreement to the Employer. (Stip. 37; Jt. Exh. 27).

³The handwritten notes on Jt. Exh. 24 were not on the document when it was provided to the Employer on May 19, 1998.

40. On June 5, 1998, Local 284 filed a motion to dismiss the Petition for Decertification Election in Case No. 98-REP-05-0124.

41. On June 15, 1998, the Employer filed its response to Local 284's motion to dismiss the Petition for Decertification Election in Case No. 98-REP-05-0124.

42. On June 11, 1998, SERB approved the settlement agreement in Case No. 98-ULP-01-0007. The directive documenting this action was mailed to the parties on June 18, 1999. (Stip. 40; Jt. Exh. 30).

43. On July 7, 1998, the Commissioners passed a resolution approving the Collective Bargaining Agreement. (Stip. 42; Jt. Exh. 32).

44. On December 17, 1998, SERB granted the Employer's motion to withdraw its exceptions to the Hearing Officer's Recommended Determination in Case Nos. 98-REP-01-0002 and 97-MED-02-0100, adopted the Findings of Fact and Conclusions of Law in the Hearing Officer's Recommended Determination in Case Nos. 98-REP-01-0002 and 97-MED-02-0100, denied the motion to stay negotiations in Case No. 97-MED-02-0100 since no viable representation petition was pending at the time the motion was filed and dismissed the Petition for Decertification Election in Case No. 98-REP-01-0002 as barred by certification. (Stip. 44; Jt. Exhs. 34 and 35).

45. On January 14, 1999, SERB directed Case No. 98-REP-05-0124 to hearing for consideration of Local 284's motion to dismiss and for all other relevant issues.

II. DISCUSSION

A. *The Petition for Decertification Election Is Barred by Contract*

Under O.R.C. § 4117.07(C)(6), SERB may not conduct an election in a bargaining unit during the term of a lawful collective bargaining agreement. The question presented by Local 284 is whether a collective bargaining agreement was in existence between Fairfield County DHS and Local 284 when the Petition for Decertification Election was filed on May 20, 1998. If a contract existed, then the petition is not timely filed because a lawful contract bars SERB from conducting an election (a contract bar).

O.R.C. § 4117.10(C) specifies in pertinent part the requirements for a collective bargaining agreement to be binding:

When the matters about which there is agreement are reduced to writing and approved by the employee organization and the legislative body, the agreement is binding upon the legislative body, the employer, and the employee organization and employees covered by the agreement.

Under O.R.C. Chapter 4117, the signing of a collective bargaining agreement is a ministerial act where the parties have ratified a collective bargaining agreement. *In re New Lexington Ed Assn/Ohio Federation of Teachers*, SERB 95-009 (6-26-95). While O.R.C. § 4117.09 requires that a collective bargaining agreement be executed by the parties and a failure to execute may constitute an unfair labor practice for refusal to bargain under O.R.C. §§ 4117.11(A)(5) or (B)(3), the failure to execute does not void the agreement. *In re Fort Jennings Bd of Ed*, SERB 86-014 (4-11-86). Thus, the keys to the existence of a collective bargaining agreement are (1) the approval of a tentative agreement by the employee organization and the employer and (2) the approval of the employer's submission by the legislative body, either through its active assent or by operation of law. See O.R.C. § 4117.10(C).

On May 14, 1998, Local 284 notified the Employer of its approval by ratification vote of the tentative collective bargaining agreement, which consisted of all the tentative agreements on the separate issues and the Employer's most recent contract offer. The Employer did not submit to the legislative body, the Fairfield County Board of Commissioners, a funding request for implementing the tentative agreement along with any other matters requiring legislative approval, under O.R.C. § 4117.10(B), until June 19, 1998. The Commissioners passed a resolution approving the agreement, in accordance with O.R.C. § 4117.10(C), on July 7, 1998.

O.R.C. § 4117.10(B) distinguishes between the roles of the public employer and the legislative body in order to keep legislative bodies out of the give-and-take of the negotiation process. As the Seventh District Court of Appeals stated in *SERB v. Martins Ferry*, 1991 SERB 4-62 (7th Dist Ct App, Belmont, 6-6-91):

Pursuant to R.C. 4117.10(C), the public employer's chief executive officer or his designated representative is responsible for negotiations. The legislative body may accept or reject a proposed collective bargaining agreement but has no other function in the bargaining process. The acceptance or rejection must be made in whole.

The separation of powers must be construed as the legislature's way of maintaining the relationship between the legislative bodies, particularly their fiscal authority, and the powers of the executive and administrative offices.

The separation also has a very practical application because it places the legislative body, who must accept or reject the collective bargaining agreement, above the fray of the often emotionally charged bargaining process. Thus legislative bodies, which are elected by the populace, are removed from the rigors and direct political pressures that can generate in a bargaining confrontation.

If the legislative body voluntarily becomes involved before the process reaches this step, it takes on a new role — the *employer's* role. Under such circumstances, the

legislative body cannot be permitted to accept an agreement in the role of employer and then to reject it in the role of legislative body. See, e.g., *In re City of Saratoga Springs*, 20 PERB ¶ 3031, (NY PERB, 6/2/87). The legislative body is not “involved” in the process by merely being briefed as to the status of negotiations. When the legislative body is so involved in the negotiation process that it has final authority on what proposals are offered or accepted, however, it has stepped into the role of employer.⁴ At that point in time, whatever the legislative body offers or accepts when it acts as the employer, it must approve when it formally acts as the legislative body. *Id.*

Once the separation of roles between employer and legislative body contemplated by O.R.C. § 4117.10(B) has been broken, and the legislative body has already approved everything in an employer’s last, best offer, the O.R.C. § 4117.10(C) requirement for approval by the legislative body has been met. The required act by the legislative body under O.R.C. § 4117.10(B) to accept or reject the employer’s entire submission becomes a ministerial formality. Under the circumstances in this case, the agreement was binding on the parties as of May 14, 1998, when the employee organization notified the employer that the agreement had been accepted.

In the present case, the Commissioners were directly involved in the negotiations. Even without considering the mediation sessions that they were mandated to attend by SERB under O.R.C. § 4117.14, the Commissioners played an active and controlling role in the negotiation process. Not only did the negotiation team regularly keep the Commissioners abreast of the process, it sought and received prior authorization on any proposal it made or any offer it accepted. Unquestionably, the Commissioners became involved in the process before the employer’s submission to the legislative body for

⁴A different conclusion may result when the Board, pursuant to its authority under O.R.C. §§ 4117.02(G), 4117.14(D)(2), and 4117.22 and O.A.C. Rule 4117-1-19(A), directs the legislative body to attend a mediation session with the employer because of a pending strike notice.

approval. Since every section in the tentative agreement was either offered or accepted with the Commissioners' full knowledge and approval, we find that the legislative body had approved the Employer's last, best offer for purposes of determining whether a binding agreement existed under O.R.C. § 4117.10(C).⁵ As a result, the petition was not timely filed because a lawful contract barred SERB from conducting an election.

III. CONCLUSIONS OF LAW

1. The Fairfield County Department of Human Services is a "public employer" as defined by O.R.C. § 4117.01(B).
2. The Teamsters Local Union No. 284 is an "employee organization" as defined by O.R.C. § 4117.01(D).
3. The Petition for Decertification Election filed by Keith Savage on May 20, 1998, was barred by contract pursuant to O.R.C. § 4117.07(C)(6).

IV. DETERMINATION

For the reasons above, the Petition for Decertification Election filed by Keith Savage on May 20, 1998, is dismissed because it is barred by contract pursuant to O.R.C. § 4117.07(C)(6).

Pohler, Chairman, and Verich, Board Member, concur.

⁵In this case, we are not asked to address whether a legislative body commits an unfair labor practice when it interjects itself into negotiations with a public employer that is a separate legal entity. See, e.g., *Stark County Educators Assn For The Training of Retarded Persons v SERB*, 1989 SERB 4-119, 5th Dist Ct App, Stark, 10-10-89) (legislative body exceeded its authority in attempting to intervene in the bargaining process between the employer and its employees).