

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

In the Matter of

International Association of Fire Fighters, Local No. 67,

Employee Organization,

and

City of Columbus,

Employer.

Case No. 98-MED-01-0046

**DIRECTIVE DENYING MOTION TO DEEM THE FACT FINDER'S REPORT
AGREED UPON AND LIFTING STAY OF CONCILIATION PROCEEDINGS
(OPINION ATTACHED)**

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich:
October 21, 1999.

On November 18, 1998, the City of Columbus ("Employer") filed a "Motion to Deem The Fact Finder's Report Agreed Upon" for negotiations with the International Association of Fire Fighters, Local No. 67 ("Employee Organization"). On December 17, 1998, the State Employment Relations Board ("SERB") granted the Employer's motion to stay conciliation proceedings pending disposition of the motion to deem the fact finder's report agreed upon, which was directed to an expedited hearing.

A hearing was held on January 12, 1999. On March 11, 1999, the Administrative Law Judge's Proposed Order was issued. On March 22, 1999, the Employee Organization filed exceptions to the proposed order. On April 5, 1999, the Employer filed its response to the exceptions. On June 30, 1999, SERB remanded this case to the Hearings Section to take additional testimony and evidence to determine: (a) whether all recruits paid an initiation fee; (b) the dates on which each recruit paid the initiation fee; (c) whether union dues deducted during the second pay period of November 1998 were for the payment of November dues; (d) when the dues were actually forwarded to the Union; (e) whether union dues were deducted in November 1998 for recruits who had not paid their initiation fees by November 20, 1998; (f) if dues were deducted despite nonpayment of an initiation fee, whether the recruits were nonetheless added to the Union roster and allowed to fully participate in the rights and privileges of Union membership.

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On August 30, 1999, the parties entered into Stipulations of Fact in lieu of a hearing. On September 17, 1999, the parties filed supplemental briefs.

Having reviewed the record and the parties' briefs and supplemental briefs, the Employer's "Motion To Deem The Fact Finder's Report Agreed Upon" is denied for the reasons set forth in the attached Opinion, incorporated by reference, and the stay of the conciliation proceedings is lifted.

It is so directed.

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



SUE POHLER, CHAIRMAN

I certify that this document was filed and a copy served upon the representative of each party on this 26th day of October, 1999.



LINDA S. HARDESTY, LEGAL ASSISTANT

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

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International Association of Fire Fighters Local No. 67,

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Case No. 98-MED-01-0046

OPINION

VERICH, Board Member:

This mediation case comes before the State Employment Relations Board ("Board") upon the filing of Joint Stipulations of Fact, Joint Exhibits, and Supplemental Trial Briefs concerning the "Motion to Deem the Fact Finder's Report Agreed Upon" filed by the City of Columbus ("City" or "Employer") on November 18, 1998. For the reasons below, we deny the Employer's motion and hereby lift the stay of the conciliation proceedings that was imposed on December 17, 1998.

I. FINDINGS OF FACT¹

1. The City and the International Association of Fire Fighters, Local No. 67 ("Local 67" or "Union") were parties to a collective bargaining agreement dated June 1, 1996 through May 31, 1998. (Stipulation ["S."] 1).

¹Finding of Fact Nos. 1-19, which were previously adopted in this matter (see SERB Opinion 99-015), are incorporated herein along with additional findings of fact.

2. In April 1998, the City and the Union entered into negotiations for a successor agreement. The City and the Union submitted their disputed issues to a fact-finding hearing before Fact Finder David Stanton on September 14, 1998. (S. 2 and 3).

3. On October 26, 1998, a class of approximately 50 recruits began working for the City, reporting to the City's Fire Division Training Academy for initial training. (S. 6).

4. On October 28, 1998, the recruits applied for membership in the Union, signing both the Applications for Membership and the Authorizations for Payroll Deduction. The recruits authorized the deduction of Union dues to begin effective November 1998. (Union Exhibit ["U. Exh."] E; City Exhibit ["C. Exh."] 4, 5; Transcript ["T."] 39, 40).

5. The City deducted regular monthly Union dues for all Union members, including the recruits, from the pay period beginning November 15, 1998 and ending November 28, 1998. The dues were sent to the Union on or after December 4, 1998. (S. 7).

6. Fact Finder Stanton submitted his report and recommendations to the parties on November 4, 1998. (C. Exh. 1; S. 4).

7. The Union's vote on the Fact Finder's Report was held November 7 and 8, 1998. The Union filed its Employee Organization Certification of Fact Finding Vote with SERB on November 9, 1998. The Union certified that 1,397 Union members were in the bargaining unit, and that the members voted to reject the Fact Finder's Report by a vote of 844-141. (C. Exh. 2; S. 5; T. 50).

8. The Union did not include the recruits in the total number of Union members listed in its Employee Organization Certification of Fact Finding Vote filed with SERB. (S. 9).

9. The Union constitution at Article III, Section 1 provides:

Any member of good moral character who at the time of making application is engaged in service within the jurisdiction of this local as given in Article II, will be eligible for active membership. Anyone eligible for membership in this Local shall not be refused membership or be discriminated against because of race, creed, national origin, gender or by reason of disability.

(C. Exh. 7).

10. For at least the last 11 years, the Union never investigated the moral character of any recruit for membership and did not investigate the moral character of the recruits. The recruits were engaged in service within the jurisdiction of the Union as of their date of hire, October 26, 1998. (T. 64-66).

11. The Union conducted its internal election of officers from November 2 through November 18, 1998. The recruits were not permitted to vote in this election. (T. 102-106).

12. The Union held its regular monthly membership meeting on November 11, 1998. No recruits were sworn in or even in attendance, and no action was taken with respect to their Union membership applications. (T. 99-100).

13. On November 13, 1998, counsel for the Union, William Moul, hand-delivered a letter to counsel for the City, Ronald Linville, which claimed that the recruits were not Union members because their dues had not been paid, they had not been sworn in, and their applications for membership had not been accepted until the Executive Board's meeting on November 11, 1998. (U. Exh. D).

14. The Union constitution at Article III, Section 6 provides:

I, _____, of my own free will, do sincerely promise:

To abide by the Constitution and By-Laws of this Local and the International Association of Fire Fighters;

That I will never knowingly wrong a brother or sister or see them wronged if it is within my power to prevent it;

I will faithfully perform all the duties assigned to me, to the best of my ability and skill;

I will not divulge or make public any of the private proceedings of this Local.

The Union constitution does not state when, or even if each recruit must take the oath before becoming a member. (C. Exh. 7; U. Exh. A).

15. The Union constitution at Article IV, Section 8 provides:

Section 8. ORDER OF BUSINESS

1. Call to Order.
2. Pledge of Allegiance to the Flag.
3. Invocation (optional).
4. Roll Call of Officers.
5. Applications for Membership.
6. Voting on Application for Membership
7. Initiation of Candidates.
8. Reading of Minutes from Previous Meeting.
9. Treasurer's Report, Communications, and Bills.
10. Reports: (Officers, Executive Committees, Delegates, etc.).
11. Unfinished Business.
12. New Business.
13. Good & Welfare.
14. Benediction (optional).
15. Adjournment.

Other than the general reference to voting on the application for membership as part of the Order of Business for a general membership meeting in Article IV, Section 8, nothing in the

Union constitution specifically requires the Union Executive Board to take action to approve or disapprove an application for membership. Before this class of recruits, the Union Executive Board had never taken any action to approve or disapprove an applicant or an entire recruit class's application for membership. This action was done pursuant to advice of counsel. (C. Exh. 7; T. 48-57).

16. Other than the existence of an oath in Article III, Section 6, nothing in the Union constitution requires the swearing-in of new members. Not all fire fighters were sworn in with the oath before voting for officers in the November 1998 election. (C. Exh. 7-9; U. Exh. A).

17. The Union does not have any procedures in place to ensure that all new recruits are sworn in at the same time. (T. 77-79, 89).

18. At the November 11, 1998 Union Executive Board Meeting, the Executive Board recommended and "accepted the 50 new recruits into the Local." (U. Exh. B).

19. The Union has a membership roster that contains the names of all but ten employees. These ten employees are fair-share fee payers. This roster is used by the Union to mail out ballots for elections, like the November 1998 election of officers. The Union does not check to see whether the members on the list have been sworn in before mailing the ballots. (T. 88-90).

20. Of the fifty members of the recruit class in question, thirty recruits paid their initiation fees to Local No. 67 on October 28, 1998; fourteen recruits paid their initiation fees on November 20, 1998; one recruit paid his initiation fee on December 9, 1998; one recruit paid his initiation fee on December 21, 1998; two recruits paid their initiation fees on January 4, 1999; and two recruits were not required to pay initiation fees because they

were existing members of the International Association of Fire Fighters (“the International”) and were transferring from sister local unions. (Joint Stipulations of Fact [“Jt. Stip.”] No. 1).

21. The union dues deducted from the second pay period of November 1998 were forwarded to Local 67 after December 4, 1998, consistent with the City’s practice of forwarding union dues to Local 67 during the first week of the month succeeding the month in which the dues were withheld. (Jt. Stip. No. 2)

22. Union dues were deducted in November 1998 for recruits who had not paid their initiation fees by November 20, 1998. (Jt. Stip. No. 3).

23. Shortly after December 4, 1998, Tina Sloan, a secretary for Local 67, received the City’s December 4, 1998 payroll-system report, along with the City’s check (payable to Local 67) for union dues withheld from the November 15, 1998 through November 28, 1998 pay period. She deposited the check promptly upon receipt into Local 67’s bank account. On or about December 21, 1998, Local 67 prepared and forwarded to the International its “Per Capita Report For Month Of December 1998” along with a check (payable to the International); this report is the only record maintained by Local 67 with respect to the payment of dues, either local or international. (Jt. Stip. No. 4; Union Exhibits F and J).

24. Local 67 maintains a computer database that contains identifying information such as name, address, and station assignment for all members of the Division of Fire, including those who are not members of Local 67. The recruits were added to this database at a date at least two weeks after the October 28, 1998 meeting at which membership applications were first received. The exact date cannot be specified because the additions to the database were made by keystroke, the date not recorded, and no record exists showing the exact date. Ms. Sloan modified the database in the normal

course of her duties; she remembers it being at least several weeks following October 28, 1998. Local 67 has no set schedule for when data are added to the database; such new data are added when Ms. Sloan receives change of address forms, promotional announcements and transfer lists, as well as information from union officers and members. Ms. Sloan received the data on the new recruits within a few days of the October 28, 1998 meeting and could have added the data at that point, but did not add the data to the database until sometime later due to her busy workload. (Jt. Stip. No. 5).

25. The information in Local 67's database bears no relevance whatsoever to when union dues are deducted, as dues were deducted by the City according to the dues authorization cards signed at least one week before the date of the November 7 and 8, 1998 vote on the fact-finder's recommendations; this printed list was submitted to the accounting firm that oversaw the fact-finding vote. When Ms. Sloan sent the list to the accounting firm, she had not yet added the new recruits to the database. Consequently, the new recruits were not on the list. (Jt. Stip. No. 5).

26. The following chart accurately reflects the date of the last union dues deduction for certain employees who have since separated from their employment with the Division of Fire, as well as the dates of all payroll periods in 1998 during which union dues were deducted. The chart demonstrates that union dues were deducted in the same month that the employee was separated, but the chart is unclear whether such dues were kept or refunded by Local 67. This chart represents a summary of information compiled from City payroll records that are kept by the City in the normal course of business. (Jt. Stip. No. 6).

IAFF MEMBERS SEPARATED FROM SERVICE

NAME	TERMINATION DATE	LAST MONTH DUES DEDUCTED	PAY PERIOD ENDING DATE
Teal, James W.	1/24/98	January	1/24/98
Cheney, Barry D.	1/28/98	January	1/24/98
Celler, Larnel	2/21/98	February	2/21/98
Parker, Daniel C.	6/25/98	June	6/27/98
Ingram, Myron E.	6/27/98	June	6/27/98
Weaver, Doyle A.	6/25/98	June	6/27/98
Rinehart, Jeffrey S.	7/31/98	July	7/25/98

PAY PERIOD DATES OF 1998 UNION DEDUCTIONS

1998 #2 01/11/98 - 01/24/98
1998 #4 02/08/98 - 02/21/98
1998 #6 03/08/98 - 03/21/98
1998 #8 04/05/98 - 04/18/98
1998 #10 05/03/98 - 05/16/98
1998 #12 06/14/98 - 06/27/98
1998 #14 07/12/98 - 07/25/98
1998 #16 08/09/98 - 08/22/98
1998 #18 09/06/98 - 09/19/98
1998 #20 10/04/98 - 10/17/98
1998 #22 11/15/98 - 11/28/98
1998 #24 12/13/98 - 12/26/98

II. DISCUSSION

Ohio Revised Code § 4117.14(C)(6) states in part as follows:

Not later than seven days after the findings and recommendations are sent, the legislative body, by a three-fifths vote of its total membership, and in the case of the public employee organization, the membership, by a three-

fifths vote of the total membership, may reject the recommendations; if neither rejects the recommendations, the recommendations shall be deemed agreed upon as the final resolution of the issues submitted and a collective bargaining agreement shall be executed between the parties, including the fact-finding panel's recommendations, except as otherwise modified by the parties by mutual agreement.

The Employer contends that Local 67's Certification of Fact-Finding Vote is in error as to the number of members that belong to Local 67. The union did not include the fifty recruits hired by the Employer on October 26, 1998, as union members in calculating the number of eligible members when it certified the fact-finding vote. The Employer alleges that the fifty recruits were Local 67 members on the date of the fact-finding vote. If the recruits were Local 67 members as of the date of the fact-finding vote, the Union did not reject the Fact Finder's Report by the three-fifths vote required by O.R.C. § 4117.14(C)(6). If the recruits were not union members as of the date of the fact-finding vote, as Local 67 asserts, then Local 67 rejected the Fact Finder's Report by the requisite three-fifths vote.

As the party that filed the "Motion to Deem the Fact Finder's Report Agreed Upon", the City bears the burden of persuasion. *See, e.g., AAAA Enterprises, Inc. v. River Place Community Development Corp.* (1990), 50 Ohio St.3d 157; *Hoyt, Inc. v. Gordon and Assoc., Inc.* (8th Dist Ct App, Cuyahoga, 1995), 104 Ohio App.3d 598. The burden placed upon the City is one of providing evidence that clearly establishes that the fifty recruits were union members at the time of the fact-finding vote. The City has failed to carry that burden of persuasion.

In our review of when union dues and initiation fees were received by Local 67 along with the City's and Local 67's inconsistent treatment of the new recruits as union members, the evidence is equally compelling for the City's argument that the recruits were union members at the time of the fact-finding vote and for Local 67's argument that the recruits were not members until December 1998. Thus, the evidence is inconclusive as to whether

these individuals were Local 67 members at the time of the fact-finding vote. Since the City has failed to supply the necessary evidence to meet its burden in support of its motion and establish that the recruits were union members at the time that the fact-finding vote was taken, the recruits did not have to be included as union members on the date of the fact-finding vote. In accordance with O.R.C. § 4117.14(C)(6), Local 67 did reject the Fact Finder's Report by the required three-fifths vote.

III. CONCLUSIONS OF LAW

1. The City of Columbus is a "public employer" as defined in O.R.C. § 4117.01(B).

2. The International Association of Fire Fighters, Local No. 67 is an "employee organization" as defined in O.R.C. § 4117.01(D).

3. Since the recruits did not have to be included as Local 67 members on the date of the fact-finding vote, the Union rejected the Fact Finder's Report by the three-fifths vote required by O.R.C. § 4117.14(C)(6).

IV. DETERMINATION

For the above reasons, we deny the City of Columbus' "Motion to Deem the Fact Finder's Report Agreed Upon." The stay of the conciliation proceedings imposed on December 17, 1998, is hereby lifted.

Pohler, Chairman, and Gillmor, Vice Chairman, concur.