

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

United Electrical, Radio and Machine Workers of America,

Employee Organization,

and

Delaware City School District Board of Education,

Employer.

CASE NUMBER: 98-REP-04-0103

**DIRECTION TO ELECTION
(OPINION ATTACHED)**

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich:
February 11, 1999.

On April 29, 1998, the United Electrical, Radio and Machine Workers of America (Employee Organization) filed a Request For Recognition with the State Employment Relations Board (Board) seeking to represent all employees in the transportation, food service, custodial, and maintenance departments of the Delaware City School District Board of Education (Employer). On May 19, 1998, the Employer filed a Petition for Representation Election seeking a substantially larger bargaining unit of classified employees. Also on May 19, 1998, the Employer filed objections to the Employee Organization's Request For Recognition. On July 9, 1998, the Board directed this matter to hearing to determine an appropriate unit and for all other issues.

On November 16, 1998, a Recommended Determination was issued; the administrative law judge recommended that the Board find that the Employer's original proposed bargaining unit was not an appropriate unit, that the Employee Organization's proposed unit was an appropriate unit for collective bargaining, and that the Board direct an election in the appropriate unit. On November 30, 1998, the Employer filed exceptions to the Recommended Determination. On December 14, 1998, the Employee Organization filed a response to the exceptions. On December 31, 1998, the Employer filed a reply

memorandum.

After reviewing the Recommended Determination and the record in this matter, the Board adopts the Findings of Fact and Conclusions of Law in the Recommended Determination, incorporated by reference, and directs an election in the appropriate bargaining unit at a time and place established by the Representation Section Administrator in consultation with the parties.

The bargaining unit is described as follows:

INCLUDED: All employees performing the following services: food service, maintenance, custodial and transportation, including but not limited to the following classifications: Head Cook, Assistant Head Cook, Cook, Cashier, Cashier/Cook, Mechanical Maintenance, Maintenance Electrician, Maintenance Grounds Worker, Supply Clerk/Maintenance, Custodians, Assistant Head Custodians, Head Custodians, Bus Drivers, Bus Mechanics, Dispatcher.

EXCLUDED: Substitutes; Seasonal and Casual Employees; Students; Supervisors including but not limited to the Transportation Coordinator; Confidential Employees including Secretary to Superintendent, Secretary to the Director of Human and Material Resources; the Substitute Teacher Clerk; and all other employees.

As required by Ohio Administrative Code Rule 4117-5-07(A), no later than March 15, 1999, the Employer shall serve on the Employee Organization and shall file with the Board a numbered, alphabetized election eligibility list containing the names and home addresses of all employees eligible to vote as of the pay period ending immediately prior to February 11, 1999.

It is so directed.

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

/s/SUE POHLER
CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 5th day of March, 1999.

/s/ LINDA S. HARDESTY
CERTIFIED LEGAL ASSISTANT

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CORRECTED OPINION

VERICH, Board Member:

This representation case comes before the State Employment Relations Board ("SERB") on the exceptions and response to exceptions to the Administrative Law Judge's Recommended Determination issued November 16, 1998. We adopt the Findings of Fact and Conclusions of Law in the Recommended Determination and find: (1) the original bargaining unit proposed by the Delaware City School District Board of Education (AEmployer@) is not an appropriate unit for bargaining under Ohio Revised Code (AO.R.C.@ ' 4117.06(B); (2) the bargaining unit proposed by the United Electrical, Radio & Machine Workers of America (AEmployee Organization@) is an appropriate bargaining unit; and (3) an election should be conducted within the Employee Organization-s proposed unit. Below we explain why the Employer-s originally proposed unit was the only Employer-proposed unit that we considered.

I. BACKGROUND

On April 29, 1998, the Employee Organization filed a Request For Recognition seeking to represent approximately 78 employees of the Employer in this proposed unit: Aall employees in the following departments: Transportation, Food Service, Custodial and

Maintenance.@ On May 19, 1998, the Employer filed a Petition For Representation Election proposing a substantially larger bargaining unit of approximately 137 classified employees: AAll full-time and regular part-time employees of the Employer, limited to the following classifications: Teacher Aides, [School Age Child Care (ASACC@)] Aides, Noon Supervisors, Secretary, Typist, Clerk, Head Custodian, Custodian, Head Cook, Assistant Head Cook, Cook, Cashier, Maintenance, Supply Clerk, Electrician, Bus Driver, Mechanic, Dispatcher.@ Also on May 19, 1998, the Employer filed an Objection To Request For Recognition. On July 16, 1998, SERB issued its directive sending this case to hearing to determine an appropriate bargaining unit and for all other relevant issues.

On September 8, 1998, the Employee Organization filed a motion to dismiss the Employer's Petition For Representation Election. The Employee Organization contended that the Employer's proposed unit, as identified in pretrial communications between the parties in response to discovery requests, had grown to a wall-to-wall unit of all classified employees. The Employee Organization argued that the Employer's requested bargaining unit at the time of the prehearing and the hearing was substantially different than the one it described in its Petition For Representation Election, even though no formal attempt to amend the petition had been made.

On September 9, 1998, the Employer filed a motion to amend its proposed unit to remove the Noon Supervisors from the unit it originally proposed because they are casual employees. Thus, the Employer's proposed unit had changed from a unit of approximately 137 employees in the Employer's original petition, to a wall-to-wall unit of all classified employees totaling approximately 172 during the parties' pretrial communications, to a wall-to-wall unit of classified employees excluding the 13 Noon Supervisors who the Employer later claimed were casual employees. The Employer claimed that its position was not a change to its original unit because the term ATeachers Aides@was meant to refer to Classroom Aides, Special Needs Aides, and LMC [Library] Aides collectively; and because ASecretary@ was meant to include both the Secretaries and the Receptionist classifications. Likewise, the Employer claimed that AClerk@was meant to include both the Attendance Clerk and the Substitute Teacher Clerk.

II. DISCUSSION

Ohio Revised Code ' 4117.05(A)(2)(b) sets forth the deadline for filing a petition for election by an employer.¹ A petition can be amended at any time during this twenty-one day period. But after that period, the Board will allow amendments to a petition to be made only if the change is of a mere technical nature not amounting to a substantive change.

The Employer originally proposed a unit of approximately 137 employees on May 19, 1998. In its pretrial communications, the Employer's first revised bargaining unit description C which includes the SACC Team Leaders, SACC Assistant Team Leaders, the SACC Fiscal Employee and the SACC Arts and Crafts Specialist C totaled approximately 172 employees. Consequently, the Employer's first revised proposal represented an increase of approximately 25% in the number of employees in the proposed unit. The second revised proposal, as found in the Employer's motion to amend filed on September 9, 1998, would result in a bargaining unit of approximately 159 employees if the Noon Supervisors were found to be casual employees. This

¹O.R.C. ' 4117.05(A)(2)(b) provides in relevant part:

The state employment relations board shall certify the employee organization filing the request for recognition on the twenty-second day following the filing of the request for recognition, unless by the twenty-first day following the filing of the request for recognition it receives:

(i) A petition for an election from the public employer pursuant to division (A)(2) of section 4117.07 of the Revised Code;

(ii) Substantial evidence based on, and in accordance with, rules prescribed by the board demonstrating that a majority of the employees in the described bargaining unit do not wish to be represented by the employee organization filing the request for recognition;

(iii) Substantial evidence based on, and in accordance with, rules prescribed by the board from another employee organization demonstrating that at least ten per cent of the employees in the described bargaining unit wish to be represented by such other employee organization; or

(iv) Substantial evidence based on, and in accordance with, rules prescribed by the board indicating that the proposed unit is not an appropriate unit pursuant to section 4117.06 of the Revised Code.

proposal is still an increase of approximately 16% over the original estimate.

Neither of the Employer's revised proposals presented merely technical changes in the unit's description. Both of the revised proposals were submitted beyond the twenty-one day deadline imposed by O.R.C. ' 4117.05(A)(2). It is not reasonable to think that the Employer simply overlooked 25% of its classified employees. Regardless whether the Employer expanded its proposed unit significantly through its revisions or had initially proposed an ambiguous unit description, we are restricted by statute to looking only at the unit proposed within twenty-one days of service of the Request for Recognition. Thus, we could only review for appropriateness the unit proposed by the Employer in its original Petition For Representation Election.

III. CONCLUSION

For the reasons above, the Delaware City School District Board of Education's revised proposals were not merely technical changes in its proposed bargaining unit. Both of the revised proposals were submitted beyond the twenty-one day deadline imposed by O.R.C. ' 4117.05(A)(2). Thus, only the unit proposed by the Employer in its original Petition For Representation Election could be reviewed for appropriateness. Also, as stated earlier, we adopt the Findings of Fact and Conclusions of Law in the Administrative Law Judge's Recommended Determination. We direct an election in the bargaining unit described in Conclusion of Law No. 4, at a time and place established by the Representation Section Administrator in consultation with the parties.

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