STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Fraternal Order of Police, Ohio Labor Council, Inc.,

Employee Organization,

and

Village of Granville,

Employer.

Case Nos. 2004-REP-08-0140 & 2004-REP-08-0141

DIRECTION TO ELECTION
(OPINION ATTACHED)

Before Vice Chairman Gillmor and Board Member Verich: February 16, 2006.

On August 16, 2004, the Fraternal Order of Police, Ohio Labor Council, Inc. ("Employee Organization"), filed two Requests for Recognition seeking to represent two proposed bargaining units of employees of the Village of Granville ("the Village"). On September 1, 2004, the Village filed objections and a Petition for Representation Election in response to each Request for Recognition, asserting, in part, that the Village of Granville is not a "public employer" under Ohio Revised Code ("O.R.C.") Chapter 4117. On March 3, 2005, after a preliminary investigation, the State Employment Relations Board ("the Board") consolidated the cases and directed that a hearing be held to determine whether the Village of Granville is a public employer and for all other relevant issues.

On May 24, June 14, and October 21, 2005, the parties filed joint stipulations of fact and joint exhibits and agreed to submit the cases for decision upon the joint submissions. Both parties filed simultaneous legal briefs and supplemental legal briefs as allowed by the Administrative Law Judge in accordance with Ohio Administrative Code Rule 4117-1-11. On December 20, 2005, a Recommended Determination was issued; the Administrative Law Judge recommended that the Board find that the Village of Granville has a population of 5,098 according to "the most recent federal decennial census" and is a "public employer" within the meaning of O.R.C. § 4117.01(B).

On January 5, 2006, the Village filed a "Motion to File Exceptions Instanter" and its proposed exceptions to the Recommended Determination. On January 10, 2006, the Administrative Law Judge, relying upon *In re State of Ohio Dept of Corrections*, SERB 92-009 (6-25-92), issued a Procedural Order denying the motion because the Village did not timely request an extension of time to file its exceptions. On January 11, 2006, the Employee Organization filed a response to the proposed exceptions.

After reviewing the record, the Recommended Determination, and all other filings in this case, the Board adopts the Findings of Fact, Analysis and Discussion, and Conclusions of Law in the Recommended Determination, incorporated by reference, finding that the Village of Granville has a population of 5,098 according to "the most recent federal decennial census" and is a "public employer" within the meaning of Ohio Revised Code § 4117.01(B). The Board hereby directs elections to be conducted a date, time, and place established by the Representation Section in consultation with the parties in accordance with Ohio Revised Code § 4117.07 in the following proposed bargaining units:

Case No. 2004-REP-08-0140:

INCLUDED: All full-time Police Officers.
EXCLUDED: All other employees.

Case No. 2004-REP-08-0141:

INCLUDED: All full-time Sergeants.
EXCLUDED: All other employees.

As required by Ohio Administrative Code Rule 4117-5-07(A), no later than March 3, 2006, the Village 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 16, 2006.

It is so ordered.

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

/s/ CRAIG R. MAYTON, EXECUTIVE DIRECTOR

I certify that a copy of this document was served upon each party's representative by certified mail, return receipt requested, this 21st day of February, 2006.

/s/ DONNA J. GLANTON, ADMINISTRATIVE ASSISTANT

direct\02-16-06.01

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.,	:	**CASE NOS. 04-REP-08-0140**
	:	**04-REP-08-0141**
Employee Organization,	:	
	:	
and	:	**BETH A. JEWELL**
	:	**Administrative Law Judge**
VILLAGE OF GRANVILLE,	:	
	:	**RECOMMENDED DETERMINATION**
Employer.	:	

I. INTRODUCTION

On August 16, 2004, the Fraternal Order of Police, Ohio Labor Council Inc., filed two Requests for Recognition under Ohio Revised Code § 4117.05(A)(2)[1] seeking to represent two proposed bargaining units of employees of the Village of Granville ("Village"). On September 1, 2004, the Village filed objections and a Petition for Representation Election in response to each Request for Recognition, asserting, in part, that the Village of Granville is not a "public employer" under Ohio Revised Code Chapter 4117.

On March 3, 2005, after a preliminary investigation, the State Employment Relations Board ("SERB") consolidated the cases and directed that a hearing be held to determine whether the Village of Granville is a public employer and for all other relevant issues. On May 24, June 14, and October 21, 2005, the parties filed joint stipulations of fact and joint exhibits and agreed to submit the cases for decision upon the joint submissions. Both parties filed simultaneous legal briefs and supplemental legal briefs as allowed by the Administrative Law Judge in accordance with Rule 4117-1-11.

II. ISSUES

1. Whether the original Census 2000 population count of 3,167 or the corrected Census 2000 population count of 5,098 is the population of the Village of Granville according to the "most recent federal decennial census."

---

[1]All references to statutes are to the Ohio Revised Code, Chapter 4117, and all references to administrative code rules are to the Ohio Administrative Code, Chapter 4117, unless otherwise indicated.

2. Whether the Village of Granville is a "public employer" within the meaning of § 4117.01(B).

III. FINDINGS OF FACT[2]

1. The Fraternal Order of Police, Ohio Labor Council Inc. ("FOP") is an "employee organization" within the meaning of § 4117.01(B). (S. 2)

2. The Village of Granville ("Village") employs full-time Police Officers and Police Sergeants in the Granville Police Department. (S. 1)

3. The proposed bargaining units consist of full-time Police Officers (Case No. 2004-REP-08-0140) and full-time Sergeants (Case No. 2004-REP-08-0141). (S. 4)

4. On March 30, 2001, the Ohio Secretary of State issued a Proclamation stating that "according to the Federal Census of Two Thousand for the State of Ohio and its various political subdivisions, the municipality of Granville in Licking County, Ohio has a population of 3,167, and is known as a Village in accordance with Ohio Revised Code § 703.06." (Jt. Exh. 1)

5. The original 2000 Census Tabulation for the Village of Granville is 3,167. The Corrected Census 2000 Total Population for the Village of Granville is 5,098. The additional 1,931 is the Group Quarters Population of the Village of Granville. The student population of Denison University constitutes the Group Quarters Population. (S. 17; Jt. Exhs. 2, 3, 4)

6. The results of the 2000 federal decennial census were released on March 6, 2001. (S. 12; Jt. Exh. 3)

7. The results of the Count Question Resolution ("CQR") Program became official when the CQR Program concluded on September 30, 2003. (S. 13)

8. The CQR change for the Village of Granville was a data processing change due to the student population of Denison University. (S. 15)

---

[2]All references to the Joint Exhibits are indicated parenthetically by "Jt. Exh.," followed by the exhibit number. All references to the Stipulations of Fact are indicated parenthetically by "S.," followed by the stipulation number. References to the transcript and/or exhibits in the Findings of Fact are intended for convenience only and are not intended to suggest that such references are the sole support in the record for that related finding of fact.

IV. ANALYSIS AND DISCUSSION

A. Statutory Provisions

Section 4117.01(B) defines a "public employer" as follows:

> "Public employer" means the state or any political subdivision of the state located entirely within the state, including, without limitation, any municipal corporation with a population of at least five thousand according to the most recent federal decennial census; county; township with a population of at least five thousand in the unincorporated area of the township according to the most recent federal decennial census; school district; governing authority of a community school established under Chapter 3314. of the Revised Code; state institution of higher learning; public or special district; state agency, authority, commission, or board; or other branch of public employment.

Section 4117.22 provides as follows:

> Chapter 4117. of the Revised Code shall be construed liberally for the accomplishment of the purpose of promoting orderly and constructive relationships between all public employers and their employees.

B. Previous Case Decisions

Section 4117.08 obligates public employers to engage in collective bargaining. SERB may exercise jurisdiction for labor relations purposes over the Village if it is a "public employer." Ohio Historical Soc. v. State Emp. Relations Bd. (1993), 66 Ohio St.3d 466, 474. The statutory mandate to use the most recent federal decennial census to determine public employer status has been examined and applied in several cases. In In re Village of Riverside, SERB 94-010 (6-3-94) at 3-67 — 3-68, SERB discussed the statutory definition of "public employer" and stated as follows:

> Pursuant to the statutory definition, where a township or a municipal corporation is involved, the size of the population is the controlling factor whether the township or the municipal corporation is a public employer. The way to determine the size of the population, according to the statute, is through the most recent federal decennial census. This legislative designation of the recent federal decennial census as the only source for population data to determine the public employer status serves two purposes. First, administrative convenience is clearly achieved where a specific and unique source is designated as controlling. Second, stability is achieved where the size

> of the population and with it the status of public employer is determined only once in ten years. Without such decennial designation daily movements of population would have to be checked, public employer status would be gained and lost regularly and with it a chaos created in labor relations where contractual obligations are unmet, promises are undelivered and the door is wide open to manipulation. Thus, the Legislature's choice of the federal decennial census as the source for population data actually promotes labor peace and stability by fixing the public employer status at a certain point in time for the next ten years.

In In re Fitzpatrick, SERB 86-035 (9-10-86) ("Fitzpatrick"), the Board identified the threshold question as whether the Village of Ada had a population of "'at least five thousand according to the most recent federal decennial census'? If it does, it is clearly within the definition of public employer in R.C. 4117.01(B) and covered by Chapter 4117 of the Ohio Revised Code."

In holding that the population of the Village of Ada did exceed 5,000 according to the applicable census, SERB contrasted the Ohio Revised Code sections dealing with determination of village status with SERB's mandate under Chapter 4117.

> The question answered in this case arose only because the federal decennial figures for Ada are in conflict with those in the "Ohio Population Report" published by the Secretary of State. The federal figure is 5,669. The population report puts Ada's population at 3,005. This difference results from the operation of Ohio Revised Code Section 703.01. That section governs the "Ohio Population Report" and provides in pertinent part:
>
> > [V]illages, which, at any federal census, have a population of five thousand or more, shall become cities. No municipal corporation shall have its classification as a village changed to that of a city by virtue of there being counted, in determining the population of such municipal corporation, college or university students in attendance at an educational institution within the municipal corporation where the residential addresses of such students when not in attendance at the educational institution, or the residential addresses of the guardians of such students, as determined by the records of the institution kept by its registrar, are at a place other than the municipal corporation wherein such institution is located. After each decennial census the secretary of state shall issue a proclamation certifying the number of permanent residents

> in such municipal corporation and the number of students attending a college or university therein.

The Secretary issued a proclamation for the Village of Ada in response to the duties imposed by R.C. 703.01. That document proclaimed that Ada, Hardin County, Ohio "... according to the Federal Census of Nineteen Hundred and Eighty has a population of 5,699, which population includes 2,664 students at an educational institution within the municipality who have residential addresses at places outside the municipality; and that in accordance with Section 703.01 of the Revised Code of Ohio said municipality shall retain its classification as a village."

It is apparent the Secretary of State's proclamation responds to a statute designed to regulate village status. Ohio Revised Code, Section 4117.01(B), on the other hand, represents legislative implementation of the coverage and exemptions of Ohio's public sector collective bargaining law.

The two statutes have a common interest in determining the population of Ohio villages. But that is where community ends. For the statutory objectives are entirely different.

There is always a risk of misapprehending legislative intent when meanings are transported from one statute to another. But never is the hazard more obvious than when, as here, the statutory objectives are widely divergent. Moreover, the General Assembly could have used the same population standard in both statutes had it chosen to do so. That it did not is significant. Finally, it is a truism of construction that plain meanings do not require interpretation. R.C. 4117.01(B) could hardly have said more plainly in the English language that the source for population data to determine village status is the "most recent federal decennial census." Thus, the relevant census must guide the Board when population data is crucial to decision.

C. Determination of the Population of the Village of Granville According to the Most Recent Federal Decennial Census

1. The release of Census 2000 numbers

On March 6, 2001, the results of the 2000 federal decennial census were released. This release indicated that the total population of the Village was 3,167. (F.F. 6; Jt. Exh. 3) On September 30, 2003, the Census Bureau issued the Corrected Census 2000 Total Population, Group Quarters Population, Total Housing Unit, and Vacant Housing Unit

Counts for Governmental Units, indicating that the revised official population of the Village was 5,098. The difference in the two total population counts is 1,931. This number represents the Group Quarters Population of the Village. The corrected count was issued as a result of the CQR Program. (F.F. 5) The Group Quarters Population of the Village is comprised of college students attending Denison University. (F.F. 5, 8)

2. The CQR Program

On July 6, 2001, the Census Bureau published a notice entitled "The Census 2000 Count Question Resolution Program" in the Federal Register, 66 Fed. Reg. 35,588 (2001) ("Notice") (copy attached to the Village's post-hearing brief). The Notice explained that the CQR program procedures would "include researching challenges and, as appropriate, making corrections and issuing revised official population and housing unit counts, which also will be used for the Census Bureau's Postcensal Estimates program." Corrected CQR counts issued would be based on the housing unit and population counts as of April 1, 2000, and "may be used by governmental entities for all programs requiring official Census 2000 data." The Notice also stated that "[t]he CQR program is not a mechanism or process to challenge the March 6, 2001, decision of the Secretary of Commerce to release unadjusted numbers from Census 2000 for redistricting purposes; nor is it a mechanism or process to challenge or revise the numbers sent to the President on December 28, 2000, to be used to apportion the U.S. House of Representatives." Id.

The Notice explained that the Census Bureau would only accept challenges from officials of state, local, and tribal governments or those representing them or acting on their behalf. All corrections would be made on the basis of appropriate documentation provided by the challenging entities and a thorough research and review of the official Census 2000 records by the Census Bureau. No additional data would be collected as part of the CQR program. Only data already collected would be used. The corrected counts would be reflected in the Census Bureau's decennial file modified for use in making postcensal estimates that would be released on a flow basis beginning in December 2002. An inventory of corrections also would be available on the American FactFinder Internet Data Access System and updated periodically. Base files for the Census 2000 would remain unrevised so that none of the standard Census 2000 data products reflect the corrections. The Notice stated that the CQR program would become effective on June 30, 2001, and end on September 30, 2003.

3. Resolution of the Question Presented

A review of the stipulated facts of this case and the Notice leads to the conclusion that as of April 1, 2000, the collected census data for the Village included the group quarters population of Denison University, but the group quarters population was erroneously omitted from the March 6, 2001 release. The Notice states that corrected CQR counts are based on the housing unit and population counts as of April 1, 2000. The parties have stipulated that the CQR change to the Village's population was a data

processing change. With respect to data processing corrections, the Notice states as follows:

> Data Processing corrections--This category includes data on specific living quarters and persons residing therein that were identified and collected during the Census 2000 process but erroneously included or excluded due to processing errors.

Essentially, the question presented is whether, in determining the population of the Village "according to the most recent federal decennial census," SERB should refer to the March 6, 2001 release of the results of the 2000 federal decennial census, indicating that the Village has a population of 3,167, or to the September 30, 2003 release of the "revised official" population count of the Village, indicating that the Village has a population of 5,098. The fact that the additional population is comprised of college students is not relevant. SERB's Fitzpatrick decision stands for the proposition that, for purposes of Chapter 4117, college students are considered part of the population of the municipality when the student population is included in the most recent federal decennial census.

The Village argues that the March 6, 2001 release constitutes the most recent federal decennial census figure for the Village, and that because that number is less than 5,000, the Village is not a "public employer" within the coverage of Chapter 4117. The Village argues that the Ohio Revised Code requires public employers and employee organizations to adhere to the results of the most recent federal decennial census for 10 years, and that its population for "public employer" status cannot be changed until 2010. The Village points out that establishing a certain point in time to determine "public employer" status fosters orderly and constructive labor relationships. The Village argues that altering "public employer" status during the course of a decade creates confusion and lack of stability, contrary to the mandate of § 4117.22. Yet, another concern is whether it is orderly and constructive to bind Ohio's public employers and employee organizations for 10 years to clearly erroneous population counts.

Setting policy considerations aside, the overriding question in this case is which population figure actually represents the "most recent federal decennial census" figure. The record reveals that, in this case, the population of the Village according to the most recent federal decennial census is 5,098. This conclusion is reached from an examination of the facts in the record and an analysis of the Census Bureau's CQR Program. While the Village argues that a CQR change does not constitute the most recent federal decennial census, the Census Bureau does describe a CQR change as a "revised official" population and housing unit count, which "may be used by governmental entities for all programs requiring official Census 2000 data." The only exceptions are redistricting and apportionment for the United States House of Representatives. Neither exception is applicable here. Furthermore, the "revised official" population of the Village did not result from the collection of any additional data. Rather, it includes only data that the Census Bureau had collected as of April 1, 2000. The Census Bureau made a mistake in

processing the Census 2000 data it already had collected for the Village, and the CQR Program resulted in the correction of this mistake. Accordingly, it follows that the population of the Village is 5,098 according to the most recent federal decennial census. Therefore, the Village is a "public employer" within the meaning of § 4117.01(B). In each of these consolidated cases, SERB should direct an election in the proposed bargaining unit identified in the Petition for Representation Election-Employer.

V. CONCLUSIONS OF LAW

1. The Fraternal Order of Police, Ohio Labor Council Inc., is an "employee organization" within the meaning of § 4117.01(D).

2. The Village of Granville has a population of 5,098 according to "the most recent federal decennial census" and is a "public employer" within the meaning of § 4117.01(B).

VI. RECOMMENDATIONS

It is respectfully recommended that:

1. The State Employment Relations Board adopt the Findings of Fact and Conclusions of Law set forth above.

2. The State Employment Relations Board direct representation elections be held in accordance with § 4117.07 in the following proposed bargaining units:

   Case No. 04-REP-08-0140

   INCLUDED: All full-time Police Officers.
   EXCLUDED: All other employees.

   Case No. 04-REP-08-0141

   INCLUDED: All full-time Sergeants.
   EXCLUDED: All other employees.