

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

In the Matter of

Municipal Construction Equipment Operators' Labor Council,

Rival Employee Organization,

and

Municipal Foremen and Laborers Union, Local 1099,

Incumbent Employee Organization,

and

City of Cleveland,

Employer.

Case No. 2006-REP-12-0180

**DIRECTIVE DISMISSING PETITION FOR REPRESENTATION ELECTION**  
**(OPINION ATTACHED)**

Before Chairman Mayton and Board Member Verich: February 7, 2008.

On December 26, 2006, Municipal Construction Equipment Operators' Labor Council ("Rival Employee Organization ") filed a Petition for Representation Election under Ohio Revised Code Section 4117.07, seeking to represent a proposed bargaining unit of employees of the City of Cleveland ("Employer") that are part of a larger bargaining unit represented by Municipal Foremen and Laborers Union, Local 1099 ("Incumbent Employee Organization"). On May 22, 2007, the State Employment Relations Board ("SERB" or "the Board") directed this case to hearing to determine an appropriate bargaining unit, including whether to sever the petitioned-for bargaining-unit employees from the existing bargaining unit, and for all other relevant issues.

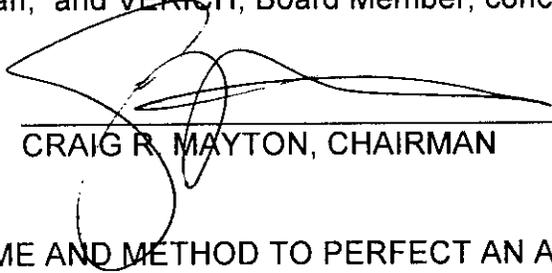
On October 3, 2007, a hearing was held before an Administrative Law Judge during which testimonial and documentary evidence was presented. The Administrative Law Judge' Recommended Determination was issued on December 10, 2007. Neither party timely filed exceptions to the Recommended Determination.

STATE EMPLOYMENT  
RELATIONS BOARD  
2008 MAR 14 P 1:18

After reviewing the record, the Recommended Determination, and all other filings in this case, the Board adopts the Findings of Fact, Analysis and Discussion, Conclusions of Law, and Recommendations in the Administrative Law Judge's Recommended Determination, finding that the standard for severance of the Real Estate Maintenance Workers from the bargaining unit of employees of the Employer represented by the Incumbent Employee Organization has not been met. As a result, the Petition for Representation Election is dismissed with prejudice.

It is so directed.

MAYTON, Chairman, and VERICH, Board Member, concur.



---

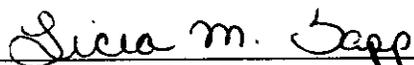
CRAIG R. MAYTON, CHAIRMAN

#### TIME AND METHOD TO PERFECT AN APPEAL

Any party desiring to appeal shall file a Notice of Appeal with the State Employment Relations Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, setting forth the order appealed from and the grounds of the party's appeal. A copy of such Notice of Appeal shall also be filed with the Court of Common Pleas of Franklin County, Ohio. Such Notices of Appeal shall be filed within fifteen (15) days after the mailing of the State Employment Relations Board's order as provided in Section 119.12 of the Ohio Revised Code.

#### PROOF OF SERVICE

I certify that a copy of this document was served upon each party and upon each party's representative by certified mail, return receipt requested, this 14<sup>th</sup> day of March, 2008.



---

LICIA M. SAPP, ADMINISTRATIVE ASSISTANT

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

<b>MUNICIPAL CONSTRUCTION EQUIPMENT OPERATORS' LABOR COUNCIL,</b>	:	<b>CASE NO. 06-REP-12-0180</b>
	:	
<b>Rival Employee Organization,</b>	:	
	:	
<b>and</b>	:	<b>BETH A. JEWELL</b>
	:	<b>Administrative Law Judge</b>
<b>MUNICIPAL FOREMEN AND LABORERS UNION, LOCAL 1099,</b>	:	
	:	
<b>Incumbent Employee Organization,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>CITY OF CLEVELAND,</b>	:	<b><u>RECOMMENDED</u></b>
	:	<b><u>DETERMINATION</u></b>
<b>Employer.</b>	:	

**I. INTRODUCTION**

On December 26, 2006, the Municipal Construction Equipment Operators' Labor Council ("CEO Union") filed a Petition for Representation Election under Ohio Revised Code §§ 4117.05 and 4117.07,<sup>1</sup> seeking to sever a group of employees of the City of Cleveland ("City") that are part of a larger unit represented by Municipal Foremen and Laborers Union, Local 1099 ("Local 1099"). On May 22, 2007, the State Employment Relations Board ("SERB" or "Board") denied the motion to dismiss and directed this case to hearing to determine an appropriate bargaining unit, including whether to sever the petitioned-for employees from the existing bargaining unit, and for all other relevant issues.

---

<sup>1</sup>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.

A hearing was held on October 3, 2007. The City was served with a copy of the Board's Notice of Hearing and Prehearing Order, and notified of all scheduled prehearing and hearing dates, but did not participate in the prehearing conference or evidentiary hearing. On November 15, 2007, the CEO Union and Local 1099 filed post-hearing briefs.

## II. ISSUES

1. Whether the CEO Union has demonstrated facts establishing that the severance standard set forth by the Board in In re State of Ohio, SERB 95-012 (6-30-95), and In re Cuyahoga County Human Services Dept, SERB 98-008 (4-30-98), has been met?
2. If so, whether the proposed bargaining unit is an appropriate unit for collective bargaining?

## III. FINDINGS OF FACT<sup>2</sup>

1. The City is a "public employer" as defined by § 4117.01(B).
2. Local 1099 is an "employee organization" as defined by § 4117.01(D). (S.; T. 6)
3. The CEO Union is an "employee organization" as defined by § 4117.01(D). (S.; T. 6)
4. Since 1981, Local 1099 has represented a bargaining unit of City employees including the City's Real Estate Maintenance Workers ("REMWs"). (T. 167, 237)
5. The REMWs are part of a "deemed certified" bargaining unit of Local 1099, having existed prior to the enactment of Chapter 4117. (T. 166; Exh. 1)
6. Currently, about 50 REMWs are in the bargaining unit. This number has remained relatively constant since 1981. (T. 238, 239)

---

<sup>2</sup>All references to the Joint Stipulations of Fact are indicated parenthetically by "S.," followed by the stipulation number(s). All references to Local 1099's exhibits in the record are indicated parenthetically by "Exh.," followed by the exhibit number(s). References to the record are intended for convenience only and are not intended to suggest that such references are the only support in the record for that related Finding of Fact.

7. Local 1099 and the City were parties to a collective bargaining agreement ("CBA") effective from April 1, 2004 to March 31, 2007. The parties are currently in negotiations for a successor CBA. (T. 57-58, 177-182, 218; Exh. 7)
8. The REMWs' duties include cutting grass, removing debris and trash, light mechanical repairs, cleaning vacant lots and vacant structures, moving furniture, and driving tractors. On occasion, REMWs operate end loaders and backhoes to remove debris and clean vacant lots. REMWs receive a \$3.80 per hour plus adjustment for each hour they operate an end loader or backhoe. (T. 130-132, 240, 250; Exh. 7, Article L, p. 45)
9. Seven REMWs are qualified to operate end loaders and backhoes. On average, qualified REMWs use end loaders and backhoes for about nine percent of their yearly hours worked. (T. 254, 256; Exh. 15<sup>3</sup>)
10. REMWs also operate farm tractors and use tractor attachments to cut grass. All REMWs are qualified to operate farm tractors. (T. 131, 254, 256)
11. Since the creation of the REMW classification in 1981, the duties and functions of this position have remained substantially the same. The only substantial change in the job description over the past 26 years was the change in job title from "real estate maintenance man" to the gender-neutral "real estate maintenance worker" in 2001. (T. 242, 251; Exhs. 9, 10)
12. REMWs work exclusively within two sections of the Division of Park Maintenance and Properties, which is under the City's Department of Parks, Recreation, and Properties. One section is called "Parks," and the other is called "Vacant Lots." Each section has a mission. The mission for Parks is "to provide safe and attractive parks," and the mission for Vacant Lots is "to maintain vacant lots and vacant structures throughout the City of Cleveland." For one to three decades these operations, missions, programs, and administrative categories within the City have remained the same. (T. 124-126, 128, 129, 130, 143, 238, 249-250)
13. Only two REMWs assigned to the Parks section are qualified to use end loaders, and these REMWs use end loaders significantly less than the REMWs in the Vacant Lots section. (T. 134, 156)
14. Local 1099 uses a standard operating procedure for all grievances. REMWs' grievances are handled in the same manner as those of all Local 1099 bargaining unit members. (T. 139, 233-234)

---

<sup>3</sup> Exhibit 15 reflects the hours REMWs operated such equipment in 2005; the number of hours of such work during that year is typical of the number of hours worked annually. (T. 133)

15. In 2007, Local 1099 bargaining unit members filed 83 grievances. Of those 83, 8 were filed by REMWs. Thus far, two have been resolved favorably, and the rest remain pending. Currently, two REMW grievances are pending arbitration. (T. 188, 226-227)
16. REMW Lee Ritterbeck testified that the REMWs take a “back seat” to other bargaining unit members. Mr. Ritterbeck complained primarily about how Local 1099 handled his grievances. Mr. Ritterbeck admitted that every grievance he has filed has been processed. He filed a grievance over not being paid for 48 hours he worked. Local 1099 processed the grievance, and Mr. Ritterbeck was paid. Mr. Ritterbeck filed another grievance over end-loader plus adjustments. This grievance is being processed and is currently in mediation. (T. 22, 28-29, 39-40, 42, 46, 136, 141, 192, 228)
17. Local 1099 has 55 stewards in the bargaining unit. Of those 55, 11 are REMWs. REMWs also sit on the labor/management committee, which meets to discuss non-negotiable items with management. REMW Lillian Ponder sits on the Local 1099 Executive Board, and as part of her duties, Ms. Ponder attends all bargaining sessions with the City. (T. 168-169, 170-171, 192-193)
18. Before Local 1099 begins contract negotiations with the City, it holds a proposal meeting open to all bargaining-unit members. All bargaining-unit members are invited to attend. Local 1099 sends a notice of the proposal meeting to each steward. Each steward is required to post the proposal-meeting notice in his or her shop. At the meeting, Local 1099 Business Manager Paul Wells reads through each article in the collective bargaining agreement out loud. He reads through the article three times, and after each reading he will ask the bargaining-unit members if they have any proposals. During the meeting, three recorders take notes on the proposals. The Executive Board reviews the notes from the proposal meeting and crafts a proposal packet to send to the City. (T. 34, 175-176, 178)
19. Currently, Local 1099 is negotiating a successor CBA with the City. This year, at least six REMWs attended the proposal meeting. REMW Ritterbeck made proposals at the meeting. Several REMW-specific proposals discussed at the meeting were sent to the City. Local 1099 presented about 150 main frame proposals—i.e., proposals that effect all bargaining unit members—and at least three proposals that specifically apply to REMWs. (T. 57-58, 177-182, 218)
20. In the past, the parties have resolved grievances that are pending during contract negotiations at the negotiating table. Local 1099 has a proposal on the negotiating table that, if agreed upon, would resolve Mr. Ritterbeck’s pending end-loader grievance. (T. 190)

#### **IV. ANALYSIS AND DISCUSSION**

##### **A. The Standard for Severing a Group of Employees from the Existing Bargaining Unit**

Determining an appropriate bargaining unit in an original action is vastly different from disturbing an existing bargaining unit that has been functioning for some years. While the former calls for consideration of community interest and other factors of the kind referenced in § 4117.06(B), the latter calls for a demonstration of extraordinary circumstances in order to overcome a presumption that the existing unit is appropriate. The policy of protecting existing bargaining units is rooted in the realization that labor relationships are as complicated and fragile as all other human relationships. Consequently, stability and predictability are keys to their success. Preserving well-functioning Board-certified units promotes orderly and constructive relationships between public employers and their employees and allows SERB to comply with the mandate of § 4117.22. The statute must be construed to promote such relationships. In re State of Ohio, SERB 95-012 (6-30-95) ("State of Ohio").

In numerous cases, SERB has acknowledged that unit structure is not etched in stone and changes in units are inevitable and necessary. In re State of Ohio, SERB 87-030 (12-17-87); In re State of Ohio, Department of Corrections, SERB 92-009 (6-25-92); and In re Cincinnati Technical College, SERB 94-018 (10-17-94). SERB took into account changes in legislation, changes in classifications and job duties, and changes in an employer's operations or administrative structure, recognizing that these factors could cause a unit that was appropriate at its inception to turn into an inappropriate or unworkable unit infested with conflicts of interest or neglected members. Thus, in State of Ohio, supra at 3-90, SERB adopted a standard allowing the severance of a group of employees from an existing bargaining unit when changes are necessary, while at the same time protecting the stability of existing bargaining units. In order to achieve severance, a petitioner must meet at least one of the following severance standards:

1. Since the establishment of the existing unit, substantial changes have taken place in the classifications, job duties, working conditions, or other circumstances of the petitioned-for employees making the existing unit inappropriate or unworkable; or
2. Since the establishment of the existing unit, substantial changes in circumstances have taken place showing the existence of a conflict of interest between the petitioned-for employees and other employees in the unit making the existing representation inadequate; or

3. Since the establishment of the existing unit, substantial changes have taken place in the employer's operations or administrative structure making the existing unit inappropriate or unworkable; or

4. The history of collective bargaining in the existing unit shows inadequate representation of the petitioned for employees and disparity in the quality of representation provided to them as distinguished from that provided employees in the unit.

If a petitioner meets one of the foregoing standards, SERB must still determine whether the petitioned-for unit is an appropriate unit under § 4117.06, which provides as follows: "The board shall determine the appropriateness of each bargaining unit and shall consider among other relevant factors; the desires of the employees; the community of interest; wages, hours, and other working conditions of the public employees; the effect of over-fragmentation; the efficiency of operations of the public employer; the administrative structure of the public employer; and the history of collective bargaining." The CEO Union has devoted most of its post-hearing brief to an analysis of the § 4117.06 factors. However, this analysis is not reached unless one of the severance standards first has been established.

B. The CEO Union Has Not Met the Standard for Severing the REMWs from the Existing Bargaining Unit

For the reasons that follow, the CEO Union has not demonstrated that any of the severance standards exist to justify the removal of the REMWs from the existing deemed-certified bargaining unit. The CEO Union asserts in its post-hearing brief, which contains no citations to the record, that it has put forth evidence to justify severance on the basis of the second and fourth severance factors. However, the record does not support the CEO Union's contention.

In examining the second severance factor, the CEO Union concedes that no substantial or extraordinary change has taken place in the classification, job duties, working conditions, and other circumstances of the REMWs that would demonstrate a conflict of interest between the REMWs and other employees in the deemed-certified bargaining unit. Both Local 1099 and the City also confirmed that no changes have occurred, let alone a substantial change. Indeed, since the creation of the REMW classification in 1981, the most substantial alteration is the name change from "real estate maintenance man" to "real estate maintenance worker." (T. 136-137, 158, 242; Exhs. 9-10).

In examining the fourth severance factor, the record contains no evidence to support the CEO Union's claim that the history of collective bargaining demonstrates inadequate representation or disparity in the quality of representation of REMWs as compared to the rest of the bargaining unit. All of Mr. Ritterbeck's grievances have been processed by Local 1099. Edward Kral, the other REMW who testified at the hearing, complained about Local 1099's representation, but he never has filed a grievance. Moreover, Mr. Kral never has spoken at any of the union meetings he has attended, nor did he attend the proposal meeting Local 1099 held in preparation for negotiations for the successor CBA. An examination of Mr. Kral's testimony reveals that he has a habit of trying to resolve his work-related concerns on his own, rather than asking his union for help. Mr. Ritterbeck claims that the REMW end-loader plus adjustment grievance has taken a "back seat," but Local 1099's proposal to settle the grievance is part of the current contract negotiations with the City. The overwhelming evidence shows that all REMW grievances have been processed according to Local 1099's standard operating procedure, and that these grievances are processed just like any other bargaining-unit member's grievance. It is true that two REMWs have filed duty-of-fair-representation unfair labor practice charges against Local 1099. However, SERB has dismissed both charges with prejudice. (T. 234-237)

REMWs sit on the Executive Board of Local 1099, sit on the negotiating committee, and serve as stewards for Local 1099. REMWs sit on the labor/management committee. REMWs have specific contractual provisions applicable to them in the collective bargaining agreement. They are paid more when they perform skilled craft work and end loader work. Article L of the CBA is entitled "Special Rates." REMWs are entitled to a \$3.80/hour plus adjustment for operating an end loader or backhoe. They also are entitled to 80 percent of the skilled craft rate when performing skilled craft work.<sup>4</sup> REMWs receive the same wage increases as other members of the bargaining-unit. (T. 55, 138)

Local 1099 holds proposal meetings before each new contract negotiation with the City of Cleveland. All bargaining unit members are invited to attend. Local 1099 sends a notice of the proposal meeting to each steward. Each steward is required to post the proposal-meeting notice in his or her shop. At the meeting, Business Manager Wells reads through each article in the collective bargaining agreement out loud. He reads through the article three times, and after each reading he will ask the bargaining-unit members whether they have any proposals. Three recorders take notes on each proposal. The Executive Board reviews the notes from the proposal meeting, and crafts a proposal packet to send to the City. This year, three REMW-specific proposals were sent to the City, along with nearly 150 across-the-board proposals.

The parties agree that Mr. Wells did say to CEO Union President Frank Madonia, in reference to the pending petition at issue herein, words to the effect of "we can settle this

---

<sup>4</sup> Exh. 7, p. 45, ¶¶ 158, 160.

the normal way or the ghetto way.” (T. 27, 76, 98) The record reflects that Mr. Wells directed this statement toward Mr. Madonia, and what he meant by the “ghetto way” was to “have a hollering, cussing-out match.” (T. 77-78, 197) Mr. Wells did not direct this statement to the Local 1099 bargaining-unit members who were present, about 4 people according to Mr. Madonia’s recollection. (T. 78-79) Mr. Madonia understood the statement to refer not to Local 1099’s bargaining-unit members but to the CEO Union, which filed the severance petition. (T. 78)

The CEO Union can provide no evidence suggesting either an extraordinary change in circumstances or a history of collective bargaining that demonstrates inadequate or disparate representation. Therefore, the standard for severance of the REMWs from Local 1099, has not been met. The CEO Union’s Petition for Representation Election should be dismissed, with prejudice.

#### **V. CONCLUSIONS OF LAW**

1. The City of Cleveland is a “public employer” as defined by § 4117.01(B).
2. Municipal Foremen and Laborers Union Local 1099 is an “employee organization” as defined by § 4117.01(D).
3. Municipal Construction Equipment Operators’ Labor Council is an “employee organization” as defined by § 4117.01(D).
4. Municipal Construction Equipment Operators’ Labor Council has not met the severance standard.

#### **VI. RECOMMENDATIONS**

Based upon the foregoing, the following is respectfully recommended:

1. The State Employment Relations Board adopt the Findings of Fact and Conclusions of Law set forth above.
2. The State Employment Relations Board dismiss the Petition for Representation Election with prejudice.

# SERB

"Promoting Orderly and Constructive  
Labor Relations Since 1984"

**State  
Employment  
Relations  
Board**



65 East State Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215-4213  
Phone 614.644.8573  
Fax 614.466.3074  
[www.serb.state.oh.us](http://www.serb.state.oh.us)

Craig R. Mayton, J.D., Chairman  
Michael G. Verich, J.D., Board Member

Ted Strickland, Governor

## CERTIFICATION

I, the undersigned General Counsel/Acting Executive Director for the State Employment Relations Board, hereby certify that the attached document is a true and exact reproduction of the original Directive Dismissing Petition for Representation Election of the State Employment Relations Board entered on its journal, on the 14<sup>th</sup> day of March, 2008.

\_\_\_\_\_  
J. Russell Keith  
General Counsel/Acting Executive Director