

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

In the Matter of

Professionals Guild of Ohio,

Employee Organization,

and

Lucas County Correctional Treatment Facility Governing Board,

Employer.

Case No. 2007-REP-02-0036

DIRECTION TO ELECTION
(OPINION ATTACHED)

Before Chairperson Brundige, Vice Chairperson Mayton, and Board Member Verich:
August 14, 2008.

On February 20, 2007, the Professionals Guild of Ohio ("Employee Organization") filed a Request for Recognition, with the appropriate showing of interest, seeking to represent a bargaining unit of corrections officers employed by the Lucas County Correctional Treatment Facility Governing Board ("Governing Board"). On March 8, 2007, the Governing Board filed a Petition for Representation Election, Objections to the Request for Recognition, and a motion to stay the representation election.

On August 23, 2007, the State Employment Relations Board ("the Board") directed this matter to hearing to determine if the employees in question are public employees and for all other relevant issues. The parties agreed to submit joint stipulations of fact, joint exhibits, and simultaneous legal briefs directly to the Board for a decision on the merits.

After reviewing the joint stipulations of fact, joint exhibits, legal briefs, and all other filings in this case, the Board accepts the parties' Joint Stipulations; issues an opinion, incorporated by reference, with supporting Findings of Fact and Conclusions of Law, finding that the corrections officers who are the subject of the Employee Organization's Request for Recognition and the Governing Board's Petition for Representation Election are not "exempt employees of community-based correctional facilities and district community-based correctional facilities, created under Sections 2301.51 to 2301.58 of the Revised Code who were not subject to a collective bargaining agreement on June 1, 2005" under Ohio Revised Code § 4117.01(C)(18), that the corrections officers are "public employees" within the meaning of Ohio Revised Code § 4117.01(C), and that the proposed

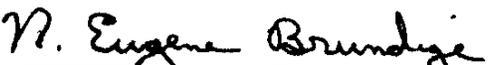
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bargaining unit is an appropriate unit under Ohio Revised Code § 4117.06. The Board also directs that an election be conducted at a date, time, and place to be determined by the Representation Section in consultation with the parties.

As required by Ohio Administrative Code Rule 4117-5-07(A), no later than September 2, 2008, the Governing Board 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 August 14, 2008.

It is so ordered.

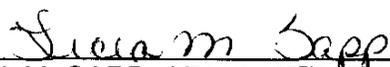
BRUNDIGE, Chairperson; MAYTON, Vice Chairperson; and VERICH, Board Member, concur.



N. EUGENE BRUNDIGE, CHAIRPERSON

PROOF OF SERVICE

I certify that a copy of this document was served upon each party by certified mail, return receipt requested, and upon each party's representative by ordinary mail, this 21st day of August, 2008.



LICIA M. SAPP, ADMINISTRATIVE ASSISTANT

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OPINION

VERICH, Board Member:

On February 20, 2007, the Professionals Guild of Ohio ("the PGO") filed a Request for Recognition, with the appropriate showing of interest, seeking to represent a bargaining unit of corrections officers employed by the Lucas County Correctional Treatment Facility Governing Board ("Governing Board"). On March 8, 2007, the Governing Board filed a Petition for Representation Election, Objections to the Request for Recognition, and a motion to stay the representation election. On August 23, 2007, the State Employment Relations Board ("SERB" or "the Board") directed this matter to hearing to determine if the employees in question are public employees and for all other relevant issues.

The parties agreed to submit joint stipulations of fact, joint exhibits, and simultaneous legal briefs directly to the Board for a decision on the merits. For the reasons below, we find that the employees of the Governing Board subject to the Request for Recognition filed by the PGO are "public employees" under Ohio Revised Code ("O.R.C.") § 4117.01(C), and that the proposed bargaining unit is an appropriate unit under O.R.C.

§ 4117.06. As a result, the Governing Board's objections to the Request for Recognition are denied, and a direction to election pursuant to the Governing Board's Petition for Representation Election shall be issued.

I. FINDINGS OF FACT¹

1. On October 12, 2006, Amended Substitute House Bill 162, 126th General Assembly ("HB 162") became effective. HB 162 transferred from courts of common pleas to counties the authority to establish a community-based correctional facility ("CBCF"). In addition, HB 162 eliminated judicial corrections boards and designated Facility Governing Boards as the employers of CBCF employees. (Stipulation ["Stip.,"] 1)

2. Prior to the enactment of HB 162, the Lucas County Correctional Treatment Facility ("Lucas County CTF") was governed by a Judicial Corrections Board composed of the Judges of the Lucas County Court of Common Pleas ("Judges"). (Stip. 2).

3. Lucas County CTF is one of eighteen "community-based correctional facilities" ("CBCF") in Ohio, and was a CBCF on and before June 1, 2005. (Stip. 3 and 14).

4. With the enactment of HB 162, Lucas County established a Facility Governing Board ("Employer"), composed of members appointed by the County Commissioners and Judges, to govern Lucas County CTF. (Stip. 4).

5. The Employer is responsible for administering the operations of the Lucas County CTF pursuant to O.R.C. §§ 2301.51 through 2301.58. (Stip. 5).

¹All references to the joint stipulations of fact filed on November 1, 2007, are indicated parenthetically by "Stip." followed by the stipulation number. References to the joint stipulations in the Findings of Fact are for convenience only and are not intended to suggest that such reference is the sole support for that related finding of fact.

6. HB 162 amended O.R.C. § 4117.01. Specifically, O.R.C. § 4117.01(C)(18), as amended, provides:

“Public employee” means any person holding a position by appointment or employment in the service of public employer...except;

* * *

(18) Employees of community-based corrections facilities and district-based correctional facilities created under Sections 2301.51 to 2301.58 of the Revised Code who are not subject to a collective bargaining agreement on June 1, 2005.

(Stip. 6).

7. A provision in the uncodified law, Section 4 of HB 162, provides:

The amendment of Section 4117.01 of the Revised Code by this act preserves the nonexempt collective bargaining status of employees of community-based correctional facilities and programs and district community based correctional facilities and programs who are covered by a collective bargaining agreement existing on June 1, 2005. These employees shall maintain their non-exempt status beyond the termination date of the existing collective bargaining agreement. All employees of community-based correctional facilities and programs and district-based correctional facilities and programs who are not covered by a collective bargaining agreement on June 1, 2005, shall be exempt from collective bargaining rights under Chapter 4117 of the Revised Code.

(Stip. 7).

8. The Employer is a “public employer” as the term is defined in O.R.C. § 4117.01(B.) (Stip. 8).

9. Corrections officers working at Lucas County CTF are employees of the Lucas County Facility Governing Board. (Stip. 9).

10. Since January 1999, the Judges believed they were operating under the permissive authority provided by O.R.C. § 4117.03(C); the Judges recognized the PGO as the exclusive representative of corrections officers employed at Lucas County CTF and entered into collective bargaining agreements covering these corrections officers with the PGO. Since January 1999, the PGO and the Judges entered into multiple successive collective bargaining agreements. (Stip. 10).

11. On June 1, 2005, corrections officers at Lucas County CTF were subject to a collective bargaining agreement that had become effective on January 1, 2005, and subsequently expired on December 31, 2006. (Stip. 11).

12. The Employer and PGO stipulate that, other than Lucas County CTF, no Ohio correctional treatment facilities were subject to a collective bargaining agreement on June 1, 2005. (Stip. 12).

13. Before HB 162 became effective, the Employer and the PGO considered and treated the corrections officers employed at the Lucas County CTF as being excluded from the definition of "public employees" under the exception for court employees found in O.R.C. § 4117.01(C)(8). The Employer and the PGO had not presented the issue to SERB for a determination of the status of the corrections officers. (Stip. 13).

14. The Employer and the PGO stipulate that the proposed bargaining unit is appropriate and is defined as corrections officers, excluding probationary employees, employed by the Employer at the Lucas County CTF. (Stip. 15).

15. The Employer and the PGO stipulate to the admissibility of all documents contained in their joint exhibits. These documents are titled "Organizational Chart"; "PGO Union Contract"; "Corrections Officers Job Description"; "CTF Handbook"; "Benefits";

“Employment”; “Ethics”; “General”; “Leaves”; “Safety and Emergency”; and “Affidavits.” (Stip. 16).

16. The PGO and the Employer stipulate that they waive an evidentiary hearing and submit the issue directly to the Board for determination. (Stip. 17).

17. On October 13, 2006, the Employee Organization filed a Notice to Negotiate with SERB in Case No. 2006-MED-10-1239, seeking to bargain with the Employer regarding the corrections officers at the Lucas County CTF. (Stip. 18).

18. On February 6, 2007, SERB dismissed the Notice to Negotiate on the ground that the PGO had hitherto not been certified as the exclusive representative of corrections officers at the Lucas County CTF. (Stip. 19).

19. On February 20, 2007, the PGO filed a Request for Recognition with SERB concerning corrections officers at the Lucas County CTF. (Stip. 20).

20. On or about March 8, 2007, the Employer filed with SERB objections to the PGO’s Request for Recognition, a Petition for Representation Election, and a motion to stay the representation election. (Stip. 21).

21. On or about August 23, 2007, SERB directed the case to hearing to determine if the corrections officers employed at the Lucas County CTF are public employees and for all other relevant issues. (Stip. 22).

II. DISCUSSION

O.R.C. § 4117.03(C) provides in relevant part:

[N]othing in Chapter 4117. of the Revised Code prohibits public employers from electing to engage in collective bargaining, to meet and confer, to hold discussions, or to engage in any other form of collective negotiations with public employees who are not subject to Chapter 4117. of the Revised Code pursuant to division (C) of section 4117.01 of the Revised Code.

Believing they were operating under the authority provided by O.R.C. § 4117.03(C), the Judges have voluntarily recognized and collectively bargained with the PGO as the exclusive representative of corrections officers employed at Lucas County CTF. The Judges and the PGO have entered into multiple successive collective bargaining agreements covering these employees since January 1999.

O.R.C. § 4117.01(C)(18) specified that employees of community-based correctional facilities created under O.R.C. §§ 2301.51 to 2301.58, who were not subject to a collective bargaining agreement on June 1, 2005, were exempt from the definition of “public employee” for purposes of public-sector collective bargaining. On June 1, 2005, the corrections officers at Lucas County CTF were subject to a collective bargaining agreement that had become effective on January 1, 2005, and subsequently expired on December 31, 2006. The petitioned-for employees were subject to a collective bargaining agreement on June 1, 2005.

Under Section 4 of HB 162, the amendment of O.R.C. § 4117.01 “by this act preserves the nonexempt collective bargaining status of employees of community-based correctional facilities and programs and district community based correctional facilities and programs who are covered by a collective bargaining agreement existing on June 1, 2005.” These employees maintain their non-exempt status beyond the effective date of HB 162 and the termination date of the existing collective bargaining agreement.

The Employer asserts that the language used in O.R.C. § 4117.01(C)(18) is ambiguous. The uncodified law in Section 4 of HB 162 states that the act “preserves the

nonexempt collective bargaining status” of the employees at issue. Assuming for the sake of argument that the Employer is correct about an ambiguity in the language in O.R.C. § 4117.01(C)(18), the uncodified portion of the act clearly removes this confusion. Further, the Employer’s secondary argument that the non-legislative drafters of the act expressed their intent to “preserve the status quo” attempts to create an ambiguity where none existed with the Ohio General Assembly, especially since neither the codified nor the uncodified portions of the act uses the phrase “preserve the status quo.”

The Employer contends that the phrase “preserves the nonexempt collective bargaining status of employees of community-based correctional facilities and programs and district community based correctional facilities and programs who are covered by a collective bargaining agreement existing on June 1, 2005,” somehow conveys discretionary authority for the public employer to recognize and bargain with the employees’ representative.

“When the meaning of the statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary.” *State ex rel Moorehead v. Indus. Comm.*, 112 Ohio St.3d 27, 2006-Ohio-6364, ¶ 18 citing *State ex rel Savarese v. Buckeye Local School Dist Bd of Edn* (1996), 74 Ohio St.3d 543, 545, 660 N.E.2d 463, 1996-Ohio-291. We find that the language used in O.R.C. § 4117.01(C)(18) is unambiguous and definite.

We are left asking what the General Assembly was preserving through this statutory change. The legislature excluded from the definition of “public employee” in O.R.C. § 4117.01(C)(8) “[e]mployees and officers of the courts, assistants to the attorney general, assistant prosecuting attorneys, and employees of the clerks of courts who perform a judicial function.” Were the corrections officers working at Lucas County CTF court employees? In *Five-County Joint Juvenile Detention Center v SERB*, 1989 SERB 4-81, 4-

84 (10th Dist Ct App, Franklin, 7-18-89), the Tenth District Court of Appeals looked at a similar situation, and it observed:

The employees of JDC [Five-County Joint Juvenile Detention Center] are responsible for the supervision, education and care of the juveniles placed in the facility; however, they have no independent decision-making authority as to the disposition of those juveniles. While the court may consider the recommendations of JDC staff and rely on their day-to-day observations of a child's behavior, such recommendations are only that and have no binding effect. Thus, it is clear that employees of JDC are not officers of the court.

The court also looked at whether such employees were "employees of the court":

While there is no doubt the juvenile court judges have daily contact with employees of JDC and are consulted on a regular basis by the board of trustees as to management procedures and policies, the juvenile court judges do not exercise that degree of control necessary to make employees of JDC court employees. All decisions regarding employees are made by the superintendent and the board of trustees. The interaction between the court and detention center employees required by Juv. R. 7 [Juvenile Rule 7] is not sufficient to make them employees of the court. The judges have no authority to hire, discipline or discharge JDC employees, do not assign job duties and do not direct the manner in which job duties are performed.

Id.

In the facts before us, we cannot reach a different conclusion as to these employees, especially when looking at the legislature's language that the amendment "preserves the nonexempt collective bargaining status" of these employees. If they were already excluded from the definition of "public employee," there would not be any "nonexempt collective bargaining status" to preserve.

Accordingly, the corrections officers who are the subject of the PGO's Request for Recognition and the Employer's Petition for Representation Election meet the definition of

“public employee” under O.R.C. § 4117.01(C). They were employees of a community-based correctional facility created under O.R.C. §§ 2301.51 to 2301.58 who were subject to a collective bargaining agreement on June 1, 2005. Because the proposed bargaining unit consists wholly of employees who were “public employees” with non-exempt status described in O.R.C. § 4117.01(C)(18), a representation election should be conducted pursuant to the Employer’s Petition for Representation Election.

III. CONCLUSIONS OF LAW

1. The corrections officers employed by the Lucas County Correctional Treatment Facility Governing Board are not exempt employees of community-based correctional facilities and district community-based correctional facilities, created under O.R.C. §§ 2301.51 to 2301.58, who were not subject to a collective bargaining agreement on June 1, 2005, under O.R.C. § 4117.01(C)(18).

2. The corrections officers who are the subject of the Request for Recognition and the Petition for Representation Election are “public employees” within the meaning of O.R.C. § 4117.01(C).

3. The Professionals Guild of Ohio is an “employee organization” within the meaning of O.R.C. § 4117.01(D).

4. The Lucas County Correctional Treatment Facility Governing Board is a “public employer” within the meaning of O.R.C. § 4117.01(B).

5. The bargaining unit proposed in the Request for Recognition is appropriate and is defined as follows:

- Included: Corrections Officers employed at the Lucas County Correctional Treatment Facility
Excluded: Probationary employees employed at the Lucas County Correctional Treatment Facility

IV. DETERMINATION

For the reasons above, we find that the employees of the Lucas County Correctional Treatment Facility Governing Board subject to the Request for Recognition filed by the Professionals Guild of Ohio are "public employees" under Ohio Revised Code § 4117.01(C), and that the proposed bargaining unit is an appropriate unit under O.R.C. § 4117.06. As a result, the Governing Board's objections to the Request for Recognition are denied, and a direction to election, pursuant to the Lucas County Correctional Treatment Facility Governing Board's Petition for Representation Election, shall be issued.

Brundige, Chairperson, and Mayton, Vice Chairperson, concur.