

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

In the Matter of

Teamsters Local Union No. 348,

Employee Organization,

and

Clerk of Courts, Stow Municipal Court District,

Employer.

Case No. 2008-REP-03-0047

**DIRECTIVE CERTIFYING EXCLUSIVE REPRESENTATIVE**  
**(OPINION ATTACHED)**

Before Chairperson Brundige, Vice Chairperson Verich, and Board Member Spada:  
October 29, 2009.

On March 10, 2008, Teamsters Local Union No. 348 ("Union") filed a Request for Recognition under Ohio Revised Code § 4117.05, seeking to represent certain employees of the Clerk of Courts, Cuyahoga Falls Municipal Court District (nka Stow Municipal Court District) ("Clerk"). The Clerk did not file a response. On April 28, 2008, the Judges of the Cuyahoga Falls Municipal Court filed a letter with the State Employment Relations Board ("SERB"), asserting that Ohio Revised Code § 4117.01(C)(8) exempted the employees in the proposed bargaining unit from the definition of "public employee" for purposes of public sector collective bargaining. On July 31, 2008, SERB directed this matter to hearing to determine if the employees in question are "public employees" and if they are found to be, to determine an appropriate bargaining unit and for all other relevant issues.

On September 9, 2008, the Clerk filed a notice stating that she would not appear at the prehearing conference or evidentiary hearing and would not present any evidence. On September 19, 2008, the City of Stow filed a motion to intervene, and on October 1, 2008, the Court and its judges (collectively, "the Court") filed a motion to intervene. The motions were granted in accordance with Ohio Administrative Code Rule 4117-1-07.

A hearing was held on November 3, 2008. On March 25, 2009, the Administrative Law Judge issued the Recommended Determination, recommending that SERB find that the employees in the proposed bargaining unit are "public employees" within the meaning of Ohio Revised Code § 4117.01(C). The City of Stow and the Court each filed exceptions to the Recommended Determination. The Union filed a response to the exceptions.

2009 NOV 12 P 2:05  
STATE EMPLOYMENT  
RELATIONS BOARD

After reviewing the record, Recommended Determination, exceptions, response to exceptions, and all filings in this case, the State Employment Relations Board adopts the Findings of Fact and Conclusions of Law in the Administrative Law Judge's Recommended Determination and finds, for the reasons expressed in the attached Board Opinion, incorporated by reference, that the employees in the proposed bargaining unit are "public employees" within the meaning of Ohio Revised Code § 4117.01(C) and that the proposed bargaining unit in the Request for Recognition is "the unit appropriate for purposes of collective bargaining" under Ohio Revised Code § 4117.06(A). Therefore, Teamsters Local Union No. 348 is hereby certified as the exclusive representative for all of the employees in the appropriate bargaining unit.

It is so ordered.

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

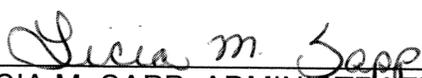
  
\_\_\_\_\_  
N. EUGENE BRUNDIGE, CHAIRPERSON

### 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 by certified mail, return receipt requested, and upon each party's representative by ordinary mail, this 12<sup>th</sup> day of November, 2009.

  
\_\_\_\_\_  
LICIA M. SAPP, ADMINISTRATIVE ASSISTANT

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

In the Matter of

Teamsters Local Union No. 348,

Employee Organization,

and

Clerk of Courts, Stow Municipal Court District,

Employer.

Case No. 2008-REP-03-0047

BRUNDIGE, Chairperson:

This matter comes before the State Employment Relations Board (“SERB” or “the Board”) upon the issuance of an Administrative Law Judge’s Recommended Determination, the filing of exceptions, and a response to the exceptions. For the reasons that follow, we find that the employees in the proposed bargaining unit are “public employees” within the meaning of Ohio Revised Code (“O.R.C.”) § 4117.01(C), and therefore, they are eligible to engage in collective bargaining under O.R.C. Chapter 4117.

**I. BACKGROUND**

On March 10, 2008, Teamsters Local Union No. 348 (“Union”) filed a Request for Recognition under O.R.C. §§ 4117.05, seeking to represent certain employees of the Clerk of Courts, Cuyahoga Falls Municipal Court District (“Clerk” or “Employer”) comprising the following proposed fourteen-member bargaining unit: eleven “Deputy Clerks of Court”; one “Secretary/Deputy Clerk”; and one “Civil Bookkeeper.” The Clerk did not file a response.

On January 2, 2009, the Municipal Court and Clerk of Courts moved to the City of Stow. The Court is now called the Stow Municipal Court District under O.R.C. § 1901.01(E).

On April 28, 2008, the Judges of the Cuyahoga Falls Municipal Court filed a letter with SERB, asserting that O.R.C. § 4117.01(C)(8) exempted the employees in the proposed bargaining unit from the definition of “public employee” for purposes of public sector collective bargaining. On July 31, 2008, SERB directed this matter to hearing to determine if the employees in question were “public employees” and, if they were found to be, to determine an appropriate bargaining unit and for all other relevant issues. On September 9, 2008, the Clerk filed a notice stating that she would not appear at the prehearing conference or evidentiary hearing and would not present any evidence. On September 19, 2008, the City of Stow filed a motion to intervene, and on October 1, 2008, the Court and its Judges (collectively, “the Court”) filed a motion to intervene. The motions were granted in accordance with Ohio Administrative Code Rule 4117-1-07.

Following a hearing on November 3, 2008, the Administrative Law Judge issued a Recommended Determination, recommending that the Board find that the employees in the proposed bargaining unit do not fall within statutory exemption in O.R.C. § 4117.01(C)(8); that they are “public employees” for purposes of public sector collective bargaining; and, consequently, that the Union be certified as the exclusive representative for the proposed bargaining unit.

## **II. DISCUSSION**

### **A. Standard to be Applied**

O.R.C. Chapter 4117 provides that all “public employees” are entitled to representation for collective bargaining purposes. According to O.R.C. § 4117.01(C), the scope of “public employee” generally includes “any person holding \* \* \* employment in the service of a public employer.” There are several exceptions, but only one is pertinent here. O.R.C. § 4117.01(C)(8) excludes “[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[.]” O.R.C. § 1901.31(H) defines the role of employees of a municipal clerk of courts who are deputy clerks:

Deputy clerks of a municipal court \* \* \* may be appointed by the clerk and shall receive the compensation, payable in either biweekly installments or semimonthly installments, as determined by the payroll administrator, out of the city treasury, that the clerk may prescribe, except that the compensation of any deputy clerk of a county-operated municipal court shall be paid out of the treasury of the county in which the court is located. \* \* \* Each deputy clerk shall take an oath of office before entering upon the duties of the deputy clerk’s office and, when so qualified, may perform the duties appertaining to the office of the clerk. The clerk may require any of the deputy clerks to give bond of not less than three thousand dollars, conditioned for the faithful performance of the deputy clerk’s duties.

Our reading of O.R.C. § 1901.31(H) leads us to conclude that nothing therein requires every deputy clerk to perform a “judicial function” that would make them automatically subject to the exemption of O.R.C. § 4117.01(C) . Instead, O.R.C. § 1.47(B) requires us to give meaning to each word used. Thus, only a subset of municipal clerks, that is, those “*who perform a judicial function,*” fall within the statutory exception. Our task therefore is to determine whether these employees perform a judicial function.

Long ago, the Ohio Supreme Court defined the proper role of the judiciary. “[A]s distinguished from ministerial duties involving no discretion,” judicial power involves “the exercise of judgment and discretion in the determination of questions of right in specific cases affecting the interests of persons or property.” *Stanton v. State Tax Commission*, 114 Ohio St. 658, 671, 151 N.E. 760, 764 (1926). This concept involves two distinct elements: (1) the nature of the decision-making capability, that is, whether it involves the exercise of judgment and discretion, and (2) the outcome of the decision, that is, whether the exercise of discretion and judgment actually affects the rights or interests of persons or property. In general, the Ohio courts have tended not to rely upon the second of these elements.

For whatever reason, the courts have taken a diametric approach in applying this definition. Essentially, they define judicial functions exclusively as those duties that involve the exercise of discretion and judgment, leaving all other duties not involving independent judgment or discretion as ministerial or clerical. *Hocking Valley Railway Co. v. Cluster Coal & Feed Co.* (1918), 97 Ohio St. 140. The proper distinction in defining a judicial function is between discretionary and nondiscretionary or ministerial functions.” *Blankenship v. Enright*, 67 Ohio App.3d 303 (10<sup>th</sup> Dist Ct App, Franklin, 1990).

Up to this point, neither SERB nor the Ohio courts have provided significant guidance in explaining what constitutes independent judgment and discretion in the context of judicial functions as related to the exemption noted in O.R.C. § 4117.01(C). SERB has had occasion to articulate the meaning of independent judgment in the context of another exemption from collective bargaining. The “supervisor” exemption excludes those employees who use independent judgment and discretion in exercising their authority with regard to supervisory decisions such as hiring, discharging, and disciplining other employees. O.R.C. § 4117.01(F).

In *Twinsburg Firefighters Local 3630 v. SERB*, 2001 SERB 4-19 (CP, Franklin, 10-23-01), the Fire Captains exercised independent judgment and, thus, were excluded from collective bargaining because their job duties required them to use “discretion and ma[ke] decisions or recommendations without consulting their superior” and, furthermore, “their decisions were routinely upheld and their recommendations followed[.]” *Id.* Thus, the term discretion and independent judgment does not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review.

Instead, just as the National Labor Relations Board has also held, the employee “must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data” in order to exercise independent judgment. *Oakwood Healthcare Center*, 348 NLRB 686, 693 (2006). If the proper standard was confined solely to a determination of independent judgment and discretion, however, there would be nothing to distinguish a judicial function from a

supervisory function or an administrative function, which also require independent judgment and discretion.

The Ohio courts have usually incorporated an additional, substantive component to their judicial-function analysis by finding that an act is a judicial function only when it involves the “determination of a fact or legal principle affecting the rights of the parties.” *Bombardier Capital, Inc. v. W.W. Cycles, Inc.*, 155 Ohio App.3d 484, 2003-Ohio-6716 (7<sup>th</sup> Dist Ct App, Mahoning, 2003); in this case, the Seventh District Court of Appeals was confronted with whether an administrator’s action in extending the deadline for filing a brief is a judicial function. Even though such action involves independent judgment and discretion in determining whether to extend the deadline, the court held that the act is not a judicial function, reasoning that the administrator “did not determine a fact or legal principle. Instead, he [the administrator] simply performed his duty in setting the dates for the certain items on the court's docket.” *Id* at 491, 2003-Ohio-6716 at ¶ 32.

Similarly, in *Hocking Valley Railway Co. v. Cluster Coal & Feed Co.*, *supra*, the Ohio Supreme Court held that the act of the clerk in entering judicial findings in a record did not constitute a judicial function. The Court stated that because categorizing an action as a judicial function “presupposes the use of mental processes in the determination of law or fact,” the act of entering judicial findings “can by no possibility be construed as a judicial function;” rather, such action is “purely ministerial.” *Id* at 142. “Any determination of a fact or legal principle upon which the rights of one or more of the parties before the court is decided is an exercise of the judicial power which may not be delegated to the clerk.” *State v. Wilson*, 102 Ohio App.3d 467, 472 (2d Dist Ct App, Montgomery, 1995) citing *Hocking Valley Railway Co. v. Cluster Coal & Feed Co.*, *supra*.

Thus, we conclude that the proper test must ask not only whether the function involved independent judgment and discretion, but whether it involved the determination of a fact or legal principle affecting the rights of one or more parties. Such a test, we recognize, will likely result in very few judicial functions, if any, being delegated to clerk employees without running afoul of the Ohio Constitution, which prohibits a judge from delegating “any determination of a fact or legal principle upon which the rights of one or

more of the parties before the court.” *Bombardier Capital, Inc. v. W.W. Cycles, Inc.*, supra at 491, 2003-Ohio-6716 at ¶ 32. Nevertheless, this construction of the statute is compelled in light of contemporary case law. Whether the delegation of such duties violates the Ohio Constitution is a matter for the Ohio courts, not SERB, to decide.

In applying the foregoing analysis, we conclude, for the purposes of O.R.C. Chapter 4117, that a judicial function is performed when the act in question involves the exercise of independent judgment and discretion in the determination of a fact or legal principle affecting the rights of one or more of the parties. Because this standard constitutes an exemption that precludes public employees from exercising their otherwise guaranteed statutory right to collective bargaining, especially as it must be “construed liberally for the accomplishment of the purpose of promoting orderly and constructive relationships between all public employers and their employees” through O.R.C. § 4117.22, it is to be construed broadly in favor of the employee.

Finally, we address the frequency with which one must perform an act that is otherwise determined to fit our definition of a judicial function. To be sure, the plain language of O.R.C. § 4117.01(C)(8) does not require a minimum quantum with which one must perform a judicial function. But the purpose of O.R.C. Chapter 4117, especially as it must be viewed through O.R.C. § 4117.22, is to grant collective bargaining rights to *all* public employees, subject only to certain limited exceptions.

Even if it is concluded that certain judicial functions can be delegated, to deny those rights for the mere de minimis performance of a single judicial function would turn the statute on its head; it would open up the possibility of endless abuse by employers who sparingly delegate an occasional judicial function to each of their employees. We cannot construe the exception so broadly. Therefore, we find that an employee must perform a judicial function on a substantial and regular basis. As with all public-employee determinations, such a determination necessarily involves a case-by-case inquiry that the finder of fact should examine in light of all the surrounding circumstances.

B. Application of the Standard

A review of the duties that the municipal clerks of court actually perform reveals that most are simply ministerial and not judicial in nature. First, the Court and the City of Stow contend that the municipal clerks of court perform judicial functions and thus are included in the O.R.C. § 4117.01(C) exemption when they administer oaths and issue subpoenas. The Ohio Supreme Court, however, has already held that both administering oaths and issuing subpoenas are not judicial functions. The power to administer oaths is a “ministerial \* \* \* not a judicial” duty. *Warwick v. State*, 25 Ohio St. 21 (Ohio 1874). “Issuing subpoenas is a ministerial, not a judicial function.” *State v. Warner* (1990), 55 Ohio St.3d 31. Therefore, this act is not a judicial function.

Second, the Court and the City of Stow argue that the clerks perform a judicial function because they grant continuances of up to one week in minor misdemeanor traffic matters. We disagree. Instead, we agree with the Seventh District Court of Appeals that granting continuances, like extending filing deadlines, is a ministerial function. Although it may involve even significant judgment and discretion, it does not involve the determination of a fact or legal principle. Therefore, this act is not a judicial function.

Finally, the Court and the City of Stow argue that the employees in this case perform a judicial function when they sign arrest warrants that accompany criminal complaints filed by police officers. Even if this Board determined that the signing of arrest warrants was a judicial instead of a ministerial function, which we have not, it fails to meet the “regular and substantial” test. In this case, the Administrative Law Judge found that the Municipal Clerks of Court only performed this function as a small percentage (2-5%) of their duties. Although this performance might have occurred on a “regular” basis, such a small percentage does not constitute the performance of a judicial function on a “substantial” basis under these circumstances. Therefore, these employees do not perform a judicial function on a “regular and substantial basis” such that they are excluded as public employees from the right to engage in collective bargaining under O.R.C. Chapter 4117.

### **III. CONCLUSION**

For the reasons stated above, the State Employment Relations Board finds that the employees of the Clerk of Courts of the Stow Municipal Court District in the proposed bargaining unit are “public employees” within the meaning of Ohio Revised Code § 4117.01(C). Therefore, these employees are eligible to engage in collective bargaining under Ohio Revised Code Chapter 4117.

Verich, Vice Chairperson, and Spada, Board Member, concur.



Ted Strickland, Governor

N. Eugene Brundige, Chairperson  
Michael G. Verich, Vice Chairperson  
Robert F. Spada, Board Member

Sherrie J. Passmore Executive Director

Case No. 2008-REP-03-0047

## CERTIFICATION

I, the undersigned General Counsel and Assistant Executive Director for the State Employment Relations Board, hereby certify that the attached document is a true and exact reproduction of the original Directive Certifying Exclusive Representative of the State Employment Relations Board entered on its journal on the 12<sup>th</sup> day of November, 2009.

J. Russell Keith  
General Counsel and Assistant Executive Director  
November 10, 2009