

Before the State Employment Relations Board, State of Ohio ^{2003 APR 11 P 12: 12}

In the matter of

City of Riverside,
Employer

And

Case. No. 02-MED-09-0786

Communications Workers of America, AFL-CIO/CLC
Local 4322,
Union

Sandra Mendel Furman, Fact
finder

FACTFINDER'S REPORT

Procedural Matters

The fact finder was notified by telephone of her appointment by a SERB representative on March 25, 2003. The hearing date had been set for March 28, 2003 prior to her appointment. Pre hearing statements were received by the fact finder and served by each party upon the opposing party on March 27, 2003. The parties stipulated that there has been substantial compliance with OAC rule 4117-9-05(F).

The hearing was held on Friday, March 28, 2003 at City Council chambers, City of Riverside. Present for the Employer was: Richard Holzer, Attorney and Chief Spokesperson; Terrence Nealy, Director of Public Services; Joseph Homan, Director of Finance and Personnel; and M. Marie Davis, Human Resource Administrator. Jeff Cook, Vice President CWA Local 4322, and Kevin Miller, Union steward represented the Union. The report is submitted within statutory guidelines.

Factual Background

The parties had engaged in multiple bargaining sessions for a successor agreement prior to appointment of the fact finder. At the date of hearing, there were four issues left for determination by the fact finder: wages; duration; employer/employee share of health insurance costs; recognition clause. After the hearing, mediation sessions conducted by the fact finder resulted in settlement of three of the issues.

The fact finder's report contains a recommendation only on the unresolved issue remaining after the mediation and hearing: the recognition section- specifically, the status of the Service Director's secretary. The Employer maintains that the Secretary to the Service Director is a confidential employee and is thereby excluded from the bargaining unit. The Union maintains that the Secretary is not a confidential employee and that only SERB has the jurisdiction to define the status of the position as a confidential employee. Neither party requested to file briefs.

Issue

Whether the position of Secretary is a confidential employee within the meaning of the Act, and is thereby excluded from the bargaining unit?

Findings of Fact

1. The SERB certification states: Included: Full-time regular Truck Drivers and Equipment Operators
Excluded: Supervision, Confidential employees, Professional Employees, and all other employees excluded pursuant to the statute.
The SERB certification is found in case number 93-REP-02-0026.
2. The parties' current collective bargaining agreement defines the bargaining unit as:
Included: Full time Regular Truck Drivers and Equipment Operators
Excluded: Supervision, Confidential employees, Professional Employees and all others excluded pursuant to the statute.

The parties agree that the positions of Working Foreman and Service Department Secretary shall be included within the above -described bargaining unit.

3. The current language cited in paragraph two has been unchanged since the parties' first collective bargaining agreement.
4. The parties have not filed a petition with SERB to amend the certification.
5. There are 11 employees in the current unit. The City employs 80 persons.
6. The City employs two clerical employees, only the public service department secretary 's status is in dispute.

7. The Service Department employs a single secretary. She performs routine and usual clerical duties for the Director and for the two working foreman.
8. There has been no substantial or significant change in the secretary's duties and responsibilities since the position was first included in the unit nine years ago.
9. The Secretary has expressed a desire to remain in the bargaining unit.
10. The Director of Public Service sits on management's bargaining team and the incumbent of that position has always sat on management's bargaining team.
11. On the average, there are six days (12 half days) spent in bargaining with the Union every three years.
12. There have been approximately four grievances processed since the union was first recognized as the bargaining representative for the unit described in paragraph 2.
13. As needed, the Human Resource Director has assisted in preparation of grievance responses. The Secretary has not typed any grievance responses.
14. The Secretary has not typed any management bargaining proposals. She does not keep the Director's bargaining notes.
15. The parties agree that the position formerly known as Truck driver is now known as Maintenance Worker, and this position is properly included in the bargaining unit. (See Article 2. section 3) The parties agree to amend the recognition clause to reflect the renamed position.
16. The parties agree that the position of Working Foreman continues to be included in the bargaining unit. The parties agree to amend the recognition clause accordingly.

Recommendation

The fact finder has taken into consideration relevant factors set forth in R.C. 4117.14 (G)(7)(a-f), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K).

The past collective bargaining agreements all include recognition of the position of the position of Secretary to the Public Service Director. There has been no change in duties of the position during the past nine years.

According to the Union, in the City of Beavercreek, a city of comparable size to Riverside, the secretary to the Department of Public Works and the secretary to the Street superintendent are both included in the bargaining unit. CWA represents certain employees of Beavercreek.

The statute requires that exclusions to the unit should be narrowly construed. In re University of Cincinnati SERB 86-023 (6-5-86). The burden of proof for exclusion is on

the party seeking exclusion. In re: Poland Township Mahoning County SERB 2002-001 (1-25-02). In the recent case of In re: Ohio Department of Administrative Services, SERB 2002-002 (3-14-02) SERB held that an office assistant whose connection to papers relating to collective bargaining is limited to possibly making photocopies has too tenuous a connection to such matters to be considered a confidential employee. There was no evidence that the office assistant opened mail addressed "personal " or "confidential"; no evidence regarding her involvement in letter writing; no evidence regarding her access to the Director's e mail; no evidence regarding her attendance at senior staff or management meetings. SERB stated that the record failed to establish that the Office Assistant 2 position could act as a conduit of confidential collective bargaining information to an employee organization. (That case arose as an AC petition filed by the Employer, the State of Ohio).

A similar lack of evidence exists in the current case. There was insufficient evidence presented to show that the secretary works in a close continuing relationship with the Public Service Director. There was evidence that she did not prepare correspondence relating to labor relations or collective bargaining. There was no evidence that she attended senior staff or management staff meetings. There was no testimony that she had access to confidential or personal correspondence of the Director. The record is silent as to her access to the Director's email.

The fact finder finds that the interests and welfare of the public and the ability of the public employer to administer the contract will not be harmed or adversely affected by the continued recognition of the secretary position as a position within the bargaining unit.

The fact finder recommends that **Article 2 Section 1 Recognition state: The Employer recognizes the Union as the sole and exclusive bargaining representative in all matters pertaining to wages, hours, terms and other conditions of employment during the term of this agreement, and any continuation or modification thereof, for the employees in the Riverside City Service Department in the bargaining unit set forth below:**

Included: full time maintenance workers, equipment operators, working foremen, and Service Department secretary

Excluded: supervisors, confidential employees, professional employees, and all others excluded pursuant to the statute.

The parties will jointly petition SERB to seek to amend certification in case no. 93-REP-02-0026 in accordance with the above language.

The Employer will not recognize any other person as the collective bargaining representative for any employees within the bargaining unit referenced above.

(All other language in the current agreement Article 2 shall remain unchanged).

Respectfully submitted,



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Certificate of Service

An original and true copies of the forgoing were sent by ordinary US mail on the State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215; on Jeff Cook, CWA, 5030 Linden Avenue, Dayton, Ohio 45432-1899; and on Attorney Richard Holzer, 2251 Charleston Way Dayton, Ohio 45431.



Sandra Mendel Furman, Esq.

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STATE EMPLOYMENT
RELATIONS BOARD

2003 APR 11 P 12:12

Mary Robertson,
Bureau of Mediation
State Employment Relations Board
65 East State Street 12th Floor
Columbus, Ohio 43215

Re : 02-MED-09-0786

Dear Ms. Robertson:

Enclosed please find my decision and my invoice for services will follow in the above matter. It will reflect two days of services @\$550 /day and mileage. I appreciated the opportunity to serve as fact finder.

Very truly yours,



Sandra Mendel Furman

Enc.

cc : Jeff Cook
Richard Holzer

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