

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

JACKSON-VINTON COMMUNITY  
ACTION, INC.

and

Case 9–CA–43026

OHIO ASSOCIATION OF PUBLIC  
SCHOOL EMPLOYEES (OAPSE)/AFSCME  
LOCAL 4, AFL-CIO

*Jonathan D. Duffey, Esq.*, for the General Counsel

*Catherine Ann Reed, Esq.*, for the Respondent

DECISION

STATEMENT OF THE CASE

Jane Vandeventer, Administrative Law Judge. This case concerns an employer's withdrawal of recognition from a union. The complaint alleges Respondent violated Section 8(a) (5) of the National Labor Relations Act (the Act) by withdrawing recognition from the Union during the term of a contract. The Respondent filed an answer denying the essential allegations in the complaint. Both parties waived a hearing in the matter, and submitted the case for decision based on a stipulated record. The motion to accept the stipulated record was granted. The parties also filed briefs which I have read.<sup>1</sup>

Based on the facts stipulated by the parties and the documentary evidence, these being the entire record, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation with an office and place of business in Jackson, Ohio, where it is engaged in the operation of head start facilities in Jackson and Vinton counties

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<sup>1</sup> Respondent's brief was submitted untimely, having been received one business day after the due date for briefs. No motion to strike the brief was filed. Respondent's brief raises basically the same defense raised by it throughout the proceeding, including within the record evidence.

in Ohio. During a representative one-year period, Respondent derived revenues in excess of \$500,000 from its operations, and received in excess of \$50,000 from the United States government. Accordingly, I find, as Respondent has stipulated, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Charging Party (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

## II. UNFAIR LABOR PRACTICES

### A. The Facts

#### 1. Background

The parties stipulated that, after an election, the Union was certified as the collective bargaining representative of the employees of Respondent on December 16, 2003.<sup>2</sup> Over the next year and a half, Respondent and the Union met and exchanged bargaining proposals, but by the summer of 2005, had agreed on only two of these proposals.<sup>3</sup> During December 2004 and January 2005, each party submitted lengthy written proposals. Respondent was represented by Catherine Reed, an attorney, Tammy Riegel, and Molly Seimetz, both supervisors. The Union was represented by Lynda Bolin and Susan Patrick.

During August 2005, as the beginning of another school year approached, the parties decided to enter into an interim agreement which would be effective until the end of July 2006.

#### 2. The Interim Agreement

On August 31, 2005, Respondent and the Union initialed a 14-page written document which was titled Interim Agreement. The title page announces the effective term of the Interim Agreement as “the 2005-2006 school year,” but a later e-mail from Respondent’s Reed states the effective dates specifically as running from date of “approval for until [sic] the end of July, 2006.” It was stipulated that the Interim Agreement was ratified on September 6, 2005. The various agreements contained in the Interim Agreement cover the subjects of wages, hours of work, benefits, paid time off, overtime, savings (i.e., a 401(k) retirement savings plan) and contribution to the savings plan, a cost-of-living increase, layoff and recall, discipline, job bidding, seniority, , and health insurance. With respect to wages, the Interim Agreement contained two different

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<sup>2</sup> The bargaining unit is as follows: All full-time and regular part-time employees in the classifications of Lead Teacher, Associate Teacher, Assistant Teacher, Bus Driver, Bus Driver Aide, Bus Monitor, Cook, Cook Aide, Cook USDA Clerk, Center Aide, Custodian I, Custodian II, Disabilities Coordinator, Family Advocate, Family Tracking Specialist, Head Start Clerk and Home Visitor, but excluding substitutes, the Office Assistant, the child care center aide, all other employees, and all confidential employees, and all guards and supervisors as defined in the Act.

<sup>3</sup> These were a section dealing with a labor-management committee and a provision dealing with Health and Safety, both agreed to and initialed by the parties on August 23, 2005.

pay proposals, both of which were acceptable to Respondent. The understanding was that the employees would choose one of the two wage proposals.

The Union held a meeting with employees on September 6, 2005, wherein the Interim Agreement was ratified, and one of the two wage proposals was selected by employees. The next morning, the Union notified Respondent of the fact that employees had ratified the Interim Agreement. Based on the stipulated facts, I find that the ratification vote constituted acceptance of the Interim Agreement by the Union and that the agreed effective dates of the Interim Agreement were therefore September 6, 2005, through July 31, 2006.

### 3. Continued Bargaining

The parties exchanged some e-mail correspondence on September 9, 2005, relative to the Interim Agreement as well as to future bargaining meetings. The Union's Bolin stated:

It is the Unions understanding we will continue to negotiate on all other proposed issues until we reach a final agreement. The non economic issues that were TA'd are part of the interim agreement and will be effective upon Approval of the Interim agreement and will become a part of the final agreement. All economic issues in the interim agreement will be included in the final agreement but will be re-opened for negotiations next year.

Respondent's Reed responded as follows:

It is our understanding that the entire Interim agreement (economic and non-economic) is effective upon approval for until the end of July, 2006. The non-economic issues are also TA's, to be part of a final agreement when it is reached. The economics will be reopened.

It was stipulated that the term "TA" signifies tentative agreement, and in the above e-mail letter refers to the two sections agreed by the parties on August 23, 2005, Labor-Management Committee and Health and Safety. In the same correspondence, the parties agreed to meet for bargaining on September 28, 2005.

Subsequently, on September 28, 2005, and February 7, 2006, the parties tentatively agreed to four more provisions which were to be included in an overall agreement, but which were not to take effect during the Interim Agreement.<sup>4</sup> The parties also agreed to a fifteen cent per hour increase in employees' wages effective January 16, 2006. This short written agreement specifically refers to the wage rates in the Interim Agreement.

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<sup>4</sup> These provisions dealt with probationary period, definitions, non-discrimination, and scope of agreement.

#### 4. Withdrawal of Recognition

On February 20, 2006, by letter, Respondent informed the Union that it was withdrawing recognition from the Union based on evidence it had received that 21 of the 41 unit employees no longer desired to be represented by the Union. Respondent cancelled future scheduled bargaining meetings, two of which had been scheduled for February 21, 2006, and March 7, 2006.

The Union responded by letter the following day, stating that Respondent was bound to continue its recognition of the Union during the effective period of the Interim Agreement. The bona fides of Respondent's good faith doubt of the Union's majority status is not in issue.

Despite its withdrawal of recognition from the Union, Respondent continued the terms and conditions of employment which were in effect under the Interim Agreement through the end July 2006. During that period, no employees were interviewed by a supervisor regarding any matter for which they could have been suspended or discharged.

As noted above, the two scheduled bargaining sessions were cancelled by Respondent's letter of February 20, 2006, and no further bargaining has taken place between the parties.

#### B. Discussion and Analysis

##### 1. Positions of the Parties

The General Counsel takes the position that the Interim Agreement bars Respondent from withdrawing recognition during its term, as it confers an irrebuttable presumption of majority status on the Union.

Respondent takes the position that the Interim Agreement is not a complete collective bargaining agreement, and therefore does not bar Respondent from withdrawing recognition from the Union when presented with evidence which justified its doubt of the Union's majority status.

##### 2. The Status of the Interim Agreement

Both parties agree that settled law requires an employer to continue to recognize a Union with which it has a collective bargaining agreement throughout the life of that agreement, as long as the term of the agreement does not exceed three years. After three years, or in the absence of a collective bargaining agreement, a union's presumption of majority status is subject to challenge. *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781 (1972).

The issue separating the parties is the status of the Interim Agreement, i.e., whether it is a contract which precludes a challenge of the Union's majority status, or

whether it is insufficient under the law to bar a challenge to that status. The General Counsel argues that the fact that the Interim Agreement covered wages, benefits, hours of work, holidays, overtime, disciplinary and layoff and recall procedures, seniority, job bidding procedures, and health insurance benefits establishes that the Interim Agreement was sufficient to be deemed a collective bargaining agreement. The Interim Agreement was in writing, had a definite term, and had been initialed by the parties. The General Counsel argues that these factors add weight to a conclusion that the Interim Agreement was an agreement which constituted a bar to Respondent's withdrawal of recognition.

Respondent argues that the Interim Agreement did not contain the material and substantive terms needed to achieve the status of a collective bargaining agreement, that it was tantamount to a place-holding arrangement, a convenient means to get through the 2006-2007 school year, and allow the parties time to complete their negotiations for a complete collective bargaining agreement. Respondent contends that it should not carry with it the irrebuttable presumption of majority status, as does a full-fledged agreement. Respondent relies almost entirely on *Transit Services Corp.*, 312 NLRB 477 (1992). In that case, the Board held that a meeting of the minds had not been reached on the term, or on the effective dates of the contract, and hence that a complete agreement had not been reached. The Board viewed the term and effective date as material to the formation of the contract.

It is useful to reiterate that an important policy of the Act is to promote collective bargaining between parties as a means to achieve industrial peace, and thereby to further economic stability. The policy approved by the Supreme Court in *Auciello Iron Works*, above, is one means to promote stability. Where parties agree to be bound for a specific period of time, they can get on with their economic business without doubts about representation issues for that period of time. The Board has applied the bright line rule of that case to numerous situations over the years. In *St. Mary's Hospital*, 317 NLRB 89, 90 (1995), the Board found that a contract bar existed where tentative agreements had been reduced to writing and initialed, and the terms contained in these agreements had been implemented. In a situation closely parallel to the instant case, in *A & M Trucking*, 314 NLRB 991, 992 (1994), the Board found that a memorandum of understanding, despite being "short and crude," included provisions dealing with wages, seniority, withholdings, how employee problems and disputes would be handled, a fixed duration, reopening, management rights, and a seniority list, and was therefore sufficient to be deemed a contract. The Board wrote:

The memorandum, although brief, is a valid agreement with a fixed duration, reduced to writing, and executed by the parties. Further, the memorandum contains sufficient terms and conditions of employment to stabilize the bargaining relationship between the parties.

In viewing the facts of the instant case, it is clear that the Interim Agreement contains even more terms and conditions of employment than the agreement in *A & M Trucking*. The Interim Agreement contained, in addition to wages, seniority, and a fixed duration, provisions concerning health insurance, a 401(k) plan, job bidding, overtime,

hours of work, paid time off, layoff and recall, and discipline. Most importantly, however, the essential elements were present: it had a fixed duration (ratification date of September 6, 2005, through July 31, 2006), it was in writing, and it was executed by the parties. It has been held by the Board in a number of cases that initialing of tentative agreements signals the parties' agreement and fulfills the requirement of execution. *Television Station WVTM*, 250 NLRB 198 (1990). See also, *St. Mary's Hospital*, above. Adding weight to these facts, the record reflects that Respondent and the Union not only put into effect and observed the terms of the Interim Agreement throughout the agreed period, they even agreed to a mid-term modification, a wage increase in January 2006. It is worthy of note that the mid-term wage increase was also in writing and executed by the parties.

Respondent's reliance on *Transit Services Corp.* is misplaced. In that case, the Board found there was no agreement on a fixed duration for the agreement, a material term. Here by contrast, there was a clear agreement that the Interim Agreement would be in effect from the ratification date (September 6, 2005) through the end of July 2006. Respondent's own e-mail states that term explicitly. In addition, the agreement in the instant case was put into effect and continued in effect for approximately half its term before Respondent withdrew recognition from the Union.

Thus, the Interim Agreement in the instant case clearly falls within the Board's category of contracts such as those described above in *Auciello Iron Works* and *A & M Trucking*, which stabilize the bargaining relationship between the parties, and further an important policy. In August 2005, the parties realized they would be unable to work out a collective bargaining agreement as comprehensive as they had envisioned earlier in 2005. The 2005-2006 school year was drawing closer, and they were not within reach of working out the comprehensive agreement. They were, however, able to agree on important basic economic and non-economic provisions for a specific period of time. The Interim Agreement they reached would permit them to continue a stable collective bargaining relationship during the 2005-2006 school year. I find that the Interim Agreement was a collective bargaining agreement which carried with it an irrebuttable presumption of majority status during its term.

The fact that bargaining continued on several occasions during the 2005-2006 school year does not undermine the status of the Interim Agreement as a legitimate contract. It appears from the record evidence, including the proposals, the e-mail letters exchanged by the parties, the conduct of the parties, and the Interim Agreement itself, that it was contemplated by both parties that their continuing negotiations looked forward to a more comprehensive agreement which would be effective following the end of the Interim Agreement.

Thus, I find that by withdrawing recognition from the Union on February 20, 2006, and thereafter failing and refusing to continue bargaining with the Union, Respondent has failed in its duty to bargain and has violated Section 8(a)(5) of the Act.

## CONCLUSIONS OF LAW

1. By withdrawing recognition from the Union and thereafter failing and refusing to continue bargaining with the Union, Respondent has violated Section 8(a)(1) and (5) of the Act.
2. The violation set forth above is an unfair labor practice affecting commerce within the meaning of the Act.

## THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

I shall recommend that Respondent be ordered to recognize the Union and, upon request, to meet and bargain collectively with the Union concerning the employees in the unit described below.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>5</sup>

## ORDER

The Respondent, Jackson-Vinton Community Action, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from
  - (a) Withdrawing recognition from the Union, the Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO, and thereafter failing and refusing to continue bargaining with the Union.
  - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
  - (a) Recognize the Union as the collective bargaining representative of its employees in the following bargaining unit: All full-time and regular part-time

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<sup>5</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

employees in the classifications of Lead Teacher, Associate Teacher, Assistant Teacher, Bus Driver, Bus Driver Aide, Bus Monitor, Cook, Cook Aide, Cook USDA Clerk, Center Aide, Custodian I, Custodian II, Disabilities Coordinator, Family Advocate, Family Tracking Specialist, Head Start Clerk and Home Visitor, but excluding substitutes, the Office Assistant, the child care center aide, all other employees, and all confidential employees, and all guards and supervisors as defined in the Act.

(b) Upon request, bargain collectively with the Union in the unit set forth above for the period required in *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962).

(c) Within 14 days after service by the Region, post at its head start locations copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 20, 2005.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated at Washington D.C., April 16, 2007.

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**Jane Vandeventer**  
**Administrative Law Judge**

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

**WE WILL NOT** withdraw recognition from the Ohio Association of Public School Employees (OAPSE)/AFSCME LOCAL 4, AFL-CIO (the Union) as the exclusive collective bargaining representative of our employees in the following appropriate unit:

All full-time and regular part-time employees in the classifications of Lead Teacher, Associate Teacher, Assistant Teacher, Bus Driver, Bus Driver Aide, Bus Monitor, Cook, Cook Aide, Cook USDA Clerk, Center Aide, Custodian I, Custodian II, Disabilities Coordinator, Family Advocate, Family Tracking Specialist, Head Start Clerk and Home Visitor, but excluding substitutes, the Office Assistant, the child care center aide, all other employees, and all confidential employees, and all guards and supervisors as defined in the Act.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL** recognize the Union as the collective bargaining representative of our employees in the unit set forth above.

**WE WILL**, upon request, bargain collectively with the Union, in the unit set forth above.

JACKSON-VINTON COMMUNITY  
ACTION, INC.

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

550 Main Street, Federal Office Building, Room 3003

Cincinnati, Ohio 45202-3271

Hours: 8:30 a.m. to 5 p.m.

513-684-3686.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND  
MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS  
CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE  
REGIONAL OFFICE'S COMPLIANCE OFFICER, 513-684-3750.