84-004

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

John Bowles, et al.,

Charging Parties,

v.

American Federation of State, County and Municipal Employees, Ohio Council 8, Local 1543,

Charged Party.

CASE NO: 84-UU-04-0783
Consolidated With Case Nos:

84-UU-04-0736	84-UU-04-0679
84-UU-04-0677	84-UU-04-0755
84-UU-04-0739	84-UU-04-0670
84-UU-04-0675	84-UU-04-0885
84-UU-04-0732	84-UU-04-0788
84-UU-04-0882	84-UU-04-0738
84-UU-05-1250	84-UU-04-0737
84-UU-05-0951	84-UU-04-0734
84-UU-04-0671	84-UU-04-0735
84-UU-04-0916	84-UU-04-0779
84-UU-04-0904	84-UU-04-0731
84-UU-04-0754	84-UU-05-0936
84-UU-04-0741	84-UU-07-1620
84-UU-07-1614	84-UU-07-1610
84-UU-07-1615	84-UU-07-1618
84-UU-07-1619	84-UU-07-1613
84-UU-07-1612	84-UU-07-1617
84-UU-07-1616	84-UU-07-1611
84-UU-07-1600	84-UU-07-1569
84-UU-07-1527	84-UU-07-1524

ORDER

Before Chairman Day and Board Member Fix; August 28, 1984.

The Charging Parties have failed to state a claim that is actionable in this type of proceeding. The Board finds that there is no probable cause for

6/28/84

(2)

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OPINION

Day, Chairman:

Forty-one cases are consolidated for this disposition. All involve the same generic issue — attacks upon the rebate process of R.C. 4117.09(C) — by way of unfair labor practice charges under R.C. 4117.11(B)(1) and (6)[1].

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1. R.C. 4117.11:

(B) It is an unfair labor practice for an employee organization, its agents, or representatives or public employees to:

(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code. This division does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances.

* * *

(6) Fail to fairly represent all public employees [illegible]

7

One or the other of two local unions are involved in each case. These are Local 1543 and 243, Ohio Council 8, the American Federation of State, County and Municipal Employees (AFSCME).

The typicality of the charges and sameness of supporting theories make possible a decision disposing of all the cases in a single opinion. The case brought by John Bowles ("Bowles" or "charging party") is chosen as the representative case.

For reasons adduced below none of the charges is founded on sufficient facts to raise probable cause. No complaints will issue. The charges are dismissed.

I

Bowles' charge was filed on April 24, 1984. He alleges dues deductions beginning April 7, 1984 by Local 1543. He also alleges expenditures by AFSCME for political, social and ideological aims which are not his. Bowles says that the union expenditures constitute a breach of its fiduciary duty to represent all employees in the bargaining unit fairly. In addition, he contends that the fair representation obligation is debased by a "biased" and "non-neutral" rebate system. And he denies sufficient notice of the rebate system from Local 1543. Finally, he attacks the constitutionality of the "fair share" provisions of the statute[2].

He lodged objections to the dues deductions with various representatives of his employer, the City of Cincinnati, Department of Water Works (City) and asserts that he filed a "letter of objections" with the President of Local 1543. He does not give the date of that letter.

A memorandum in support of the charges presents constitutional arguments to buttress the claims made in the charging document and adds another claimed flaw to fault the process -- that is, the failure to determine the appropriate rebate before making the dues deduction.

II

The constitutional objections invite the Board to issue a death notice for part of the responsibility placed upon it by the Ohio Legislature. Even if otherwise authorized (which it is not) the Board declines to even consider the invitation because a sufficient basis for disposition is available

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2. R.C. 4117.09(C)

without reaching the constitutional claims[3]. The "sufficient basis" here is procedural and obviates the necessity for deciding any claimed issue except whether the charging party has alleged facts sufficient to support probable cause for issuing a complaint for violations of R.C. 4117(B)(1) and (6).

III

R.C. 4117.09(C) provides a particular procedure for determining rebates of union dues when a union expends money on political, social or ideological causes which the dues payor opposes. Upon timely demand, the payor may have recourse to an internal rebate process to be provided by the union pursuant to statutory command.

The charging party has not demonstrated that he has followed any union process for a rebate remedy. Neither has he provided evidence that no internal union procedure exists or, if in existence, has operated in a fashion to arbitrarily or capriciously discriminate against him. Consequently, there is no factual basis for reaching the rebate claim even were it procedurally proper.

Perhaps it is conceivable that a factually and procedurally effective rebate claim would also support a charge of union unfair labor practice [unfair representation R.C. 4117.11(B)(1) and (6)]. But in no event will rebate unfairness constitute a per se violation of the duty of fair representation. If a complaint is to issue, based on claimed unfair labor practices, facts have to be adduced to support the charge.

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3. Ohio courts (and therefore, obviously, Ohio administrative tribunals) presume a regularly enacted statute to be constitutional and will not declare a legislative act unconstitutional unless it appears so beyond a reasonable doubt, State ex rel. Dickman v. Defenbacher (1955) 164 Ohio St. 142, 147-149; any doubt is resolved in favor of validity, id. Moreover, constitutional issues are avoided if other avenues of disposition are available, Machinists v. Street (1960) 367 U.S. 740, 749.

It seems likely that Ohio and federal constitutional doctrines are the same on the agency shop. If so, federal cases illuminate Ohio probabilities. Thus when the Supreme Court of the United States upheld the union shop in Railway Employees Dept, AFL v. Hanson (1956) 351 U.S. 225, 233-234, 100 L. ed. 1112, inferentially, the lesser union security provided by the agency shop was sustained. This conclusion is reinforced by the clear implication of the recent decision in Ellis v. Railway, Clerks', (1984) _____ U.S._____, 80 L. Ed. 2d, 428, 441-442.

IV

There is still another essential which needs emphasis. The schema of the statute envisions separate proceedings for the very different rebate and unfair practice remedies. The choice of one remedy does not warrant by-passing or ignoring the other unless, of course, a claimant chooses to treat one of them as either a more desirable alternative or one more susceptible to proof. Such a tactical choice may alter the nature of the requisite evidence. It will not dispense with the need for it.

V

The charging party has simply recited legal principles to support his claim of probable cause. This course neither amounts to an evidential showing nor substitutes for it. Probable cause has not been demonstrated.

VI

The charges are dismissed.

Board Member Fix concurs, Vice-Chairman Sheehan absent.

RESOLUTION

BE IT HEREBY RESOLVED this 28th day of August, 1984, that the following Unfair Labor Practice charges, hereby consolidated for efficiency of consideration, be dismissed for the reasons which will appear in the requisite order and opinion.

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Day -
Sheehan - Absent
Fix -

JACK G. DAY, CHAIRMAN

CERTIFICATION

The State of Ohio, State Employment Relations Board, ss:

I, the undersigned clerk of the State Employment Relations Board, hereby certify that the foregoing is (the original/a true copy of the original) order, resolution, or minutes of the State Employment Relations Board as entered upon the Board's journal this date, the _____ day of August, 1984.

CLERK

12:1.7