85-006

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

City of Dayton (1985) Case No. 84-UR-05-1211

OPINION

Day, Chairman:

The issue in this case is whether the respondent, City of Dayton (City or respondent), is guilty of an unfair labor practice by refusing to bargain under a wage reopener in the City's collective bargaining agreement with the American Federation of State, County and Municipal Employees (AFSCME) unless the negotiations are conducted in Public.

Local law in Dayton requires public bargaining, while R.C. 4117.21 provides that "collective bargaining meetings...are private, and are not subject to Section 122.22 of the Revised Code."[1]

The respondent insists that either (1) the R.C. 4117.21 is an unconstitutional usurpation of local law, or (2) the municipal law constitutionally prevails despite R.C. 4117.21.

The first point invites the Board to mutilate the statute under which it exists and works. The invitation is declined both for lack of authority and lack of inclination.

The response to the second contention is determined by the Board's view that R.C. 4117 is an exercise of the police power and is a statute of general application.[2] The consequence is that it displaces local law on the same subject. All that remains is to decide what the statute requires.

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[1]R.C. 122.22 is a "sunshine" section.

[2]See City of Kettering v. State Employment Relations Board (C.P. Montgomery County, Ohio 1984), Case No. 84-1089 (pp. 4-6).

(MORE)

The command could hardly be more plainly stated in English. Bargaining is to be private.[3]

The respondent violated R.C. 4117.11(1) and (5) in refusing to bargain privately.

Sheehan, Vice Chairman; Fix, Board Member, concur.

JACK G. DAY, CHAIRMAN

I hereby certify that this document was filed and a copy served upon each party on this 14th day of March, 1985.

By
KENNETH W. BARRETT
EXECUTIVE DIRECTOR

[3]When the legislature intended to allow an option for public or private bargaining, it clearly knew the combination of words to create it. For under the "clear and present danger" section of the Act [R.C. 4117.16], the mediator assisting bargaining after an injunction issues is given discretion to "require that the parties collectively bargain in public or private...."

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of:

The City of Dayton, Ohio (1985)

Case No. 84-UR-05-1211

ORDER

Before Chairman Day, Vice Chairman Sheehan and Board Member Fix; February 13, 1984.

On May 23, 1984, the American Federation of State, County and Municipal Employees, Ohio Council 8 and the Dayton Public Services Union Local No. 101 ("AFSCME") brought an unfair labor practice charge against the the City of Dayton ("City"). After investigation of the charge, the Board found probable cause for believing that the City had violated Section 4117.11 of the Ohio Revised Code. A complaint was issued and an evidential hearing was conducted by a Board hearing officer. The hearing officer has recommended that the City be found in violation of Sections 4117.11(A)(1) and (5) of the Revised Code because the City refused to bargain with AFSCME under a wage reopener in the city's collective bargaining agreement with AFSCME unless the negotiations were conducted in public.

The hearing officer's conclusion is approved for the reasons stated in the attached opinion, incorporated in this order by reference. The hearing officer's recommended findings of fact also are incorporated in this order by reference.

The City, therefore, is ordered to:

a. Cease and desist from:

(1) Interfering with, restraining or coercing employees in the exercise of rights guaranteed in Chapter 4117 of the Ohio Revised Code, or refusing to bargain collectively with the employeee representative, and from otherwise violating Ohio Revised Code Section 4117.11(A)(1) and (5).

b. Take the following affirmative action:

(1) Post for sixty days in all City of Dayton buildings where the affected employees work the Notice To Employees furnished by the Board stating that the City shall cease and desist from the actions set forth in Paragraph (a) and shall take the affirmative action set forth in Paragraph (b).

(2) Immediately offer to negotiate with the exclusive bargaining representative in private sessions regarding wages and medical insurance.

(3) Pay the affected employees any increase in wages agreed to in negotiations retroactive to July 8, 1984, together with simple interest at the rate of 8% per annum from the dates when they would have normally received their increases had those increases commenced as of July 8, 1984.

(4) Notify the State Employment Relations Board in writing within twenty calendar days from the date of issuance of this order of the steps that have been taken to comply the order.

State of Ohio

(2) All Petitions and Requests for Voluntary Recognition filed in this action are dismissed. Employee organizations wishing to represent a unit may file a Petition or Request for the specific bargaining unit;

(3) Showing of interest and substantial evidence documents for dismissed Petitions and Requests will be returned to the proper parties on request.

Because no proper exceptions have been filed, the need for oral argument on this matter is obviated. Therefore, the Board's Order of February 28, 1985, setting oral argument for April 11 and 12, 1985, is rescinded and the oral arguments are cancelled.

It is so directed.

DAY, Chairman; SHEEHAN, Vice-Chairman, FIX, Board Member; concur.

JACK G. DAY, CHAIRMAN

I hereby certify that this document was filed and a copy served upon each party on this 27th day of March, 1985.

KENNETH W. BARRETT
EXECUTIVE DIRECTOR

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