85-024

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

v.

City of Springfield.

CASE NUMBER: 84-UR-10-2161

ORDER

(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; May 30, 1985.

The Springfield Command Officers (Charging Party) filed an unfair labor practice charge alleging that the City of Springfield (Respondent) violated Ohio Revised Code Section 4117.11(A)(1) and (5). The Board found probable cause to believe that the law had been violated, and a complaint was issued against the Respondent. The hearing officer recommended that the Board find that the Respondent has violated Ohio Revised Code Section 4117.11(A)(1) and (5).

The Respondent filed a Motion For Oral Argument on exceptions to the hearing officer's recommendation. The Motion is denied. Also, the Respondent's Motion To Dismiss this action is denied for reasons set forth in the attached opinion, incorporated by reference.

After reviewing the facts of this action, the Board finds that the Respondent has violated Ohio Revised Code Section 4117.11(A)(1) and (5). The reasons for this conclusion are set forth in the attached opinion. The Board orders the Respondent to post the attached notice, incorporated by reference, stating that Respondent has been found to have been in violation of Ohio Revised Code Section 4117.11(A)(1) and (5) by (a) interfering with and restraining employees in the exercise of their rights under Ohio Revised Code Chapter 4117 and (b) by insisting upon adherence to a dispute resolution procedure to which the parties did not mutually agree and which did not provide the finality imposed by a neutral.

Case No. 84-UR-10-2161

It is so ordered.

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

JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 13 day of June, 1985.

KENNETH W. BARRETT, EXECUTIVE DIRECTOR

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

and

City of Springfield,

Respondent.

CASE NUMBER: 84-UR-10-2161

OPINION

Pix, Board Member:

On October 12, 1984, the Springfield Command Officer's Association (SCOA) filed an Unfair Labor Practice Charge against the City of Springfield, Ohio (City). After an investigation of the allegations of the charge, the State Employment Relations Board (SERB or Board), by resolution adopted December 19, 1984, found probable cause to believe that O.R.C. 4117.11 had been violated by the City. By order of the Board, a complaint was issued by the executive director on December 31, 1984. The complaint alleged the City had violated O.R.C. 4117.11(A)(1) and O.R.C. 4117.11(A)(5) by interfering with, restraining or coercing employees in the exercise of rights guaranteed in O.R.C. Chapter 4117 and refusing to bargain collectively with the exclusive representative of its employees. A hearing on the complaint was conducted by a SERB hearing officer January 11, 1985.

(MORE)

I

The issues before the Board are:

1. Has the City refused to bargain with an exclusive bargaining representative in violation of O.R.C. 4117.11(A)(5)?

2. Did the parties have a mutually agreed dispute resolution procedure and if not, has the City unlawfully refused to follow the dispute settlement procedures in O.R.C. 4117.14 including the final offer settlement procedure as provided in O.R.C. 4117.14(D)(a) and 4117.14(G)?

3. Has the City interfered with, restrained or coerced employees in the exercise of rights guaranteed in O.R.C. 4117.11(A)(1)?

The hearing officer's recommended determination was that the Board adopt the findings of fact and conclusions of law that:

1. The employer refused to bargain collectively with the exclusive representative of its employees.

2. No mutually agreed dispute resolution procedure has been established by the parties which would supersede the statutory impasse resolution process pursuant to O.R.C. 4117.14.

3. The employer has interfered with, restrained and coerced public employees in the exercise of the rights guaranteed by Chapter 4117 in violation of O.R.C. 4117.11(A)(1).

II

Has the City refused to bargain with an exclusive bargaining representative?

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This question is answered "yes", but the refusal to bargain is now ended. Subsequent to the SERB hearing on January 11, 1985, the City and SCOA reached accord on the terms of a collective bargaining agreement.

III

Did the parties have a mutually agreed dispute resolution procedure?

The answer is "no" for the reasons presented.

It is the hearing officer's opinion that two primary issues must be resolved in determining this question. "First, is the impasse procedure one which would lead to a final resolution of the dispute? Secondly, is the impasse procedure mutually agreed to by the parties?

The hearing officer believes that the City Commission's determination on the arbitration panel's decision is the "final action" in the process established by City Ordinance 181.09. As such, this meets the requirement of finality for a superseding alternative impasse procedure.

The Board has a different opinion.

All procedures in O.R.C. 4117 specify final settlement by a neutral. In the instant case, the City is solely responsible for establishing the terms of any new contract. It may adopt or reject the report of the arbitration panel. No further action is required after rejection. This procedure does not embody the finality imposed by a neutral contemplated by O.R.C. 4117.14.

Therefore, the Board modifies the hearing officer's conclusion and finds that the settlement procedure by not providing for a neutral determination lacks finality as construed by O.R.C. 4117.14.

(MORE)

However, the Board concurs with the hearing officer's conclusion that the parties did not mutually agree to the impasse procedure.

Evidence was submitted to show that the "arbitration" process implemented by ordinance has been in force since 1969 and that there have been several attempts by SCOA as early as 1981 to negotiate a different procedure. The evidence further revealed that the City insisted on the use of the ordinance procedure as a part of any collective bargaining agreement. There was no alternative to the impasse procedure contained in City Ordinance 181.09 despite discussion on that subject.

The Board agrees with the hearing officer in finding the arbitration procedure of the City is not mutually agreed within the meaning of O.R.C. 4117.14. Therefore, there is no superseding mutually agreed dispute resolution procedure.

The employer's refusal to abide by the statutory procedure is tantamount to a refusal to bargain and is in violation of O.R.C. 4117.11(A)(5).

V

Has the City interfered with, restrained or coerced employees in the exercise of rights guaranteed in O.R.C. 4117.11(A)(1).

The answer is "yes" to the charges of interference and restraint and "no" to coercion.

By failing to abide by the procedures or alternatives set forth in O.R.C. 4117.14, the City interfered with and restrained public employees in

(MORE)

the exercise of rights guaranteed by O.R.C. 4117 in violation of O.R.C. 4117.11(A)(1).

The Board found no evidence of coercion.

VI

The parties have negotiated an agreement thereby ending the employer's alleged actions which prompted the charges.

However the effects of these actions have not been mooted and, if not addressed by this Board, they may evade review and arise again.[1] Therefore, the Board finds the city did violate O.R.C. 4117.11(A)(1) and O.R.C. 4117.11(A)(5) and requires the city to take the actions contained in its accompanying order.

Day, Chairman, and Sheehan, Vice Chairman, concur.

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[1]See Nebraska Press Assn. v. Stuart (1976) 427 U.S. 539.

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

and

City of Springfield,

Respondent.

CASE NUMBER: 84-UR-08-1791

OPINION

Fix, Board Member:

The facts and issues in the instant case are nearly identical to those in Case No. 84-UR-10-2161 involving the City of Springfield as respondent and the State Employment Relations Board (Board or SERB) as complainant. There is one difference which will be detailed below.

On the similar facts and issues, the Board has reached a like conclusion in the instant case. For the Board's opinion see, SERB v. City of Springfield (Springfield Command Officer's Association), Case No. 84-UR-10-2161 (June 14, 1985).

The unique aspect of this case is the termination of employee benefits by the employer.

The issue is whether this unilateral act constitutes an unfair labor practice.

The answer is "yes" for the reason adduced below.

The fact that the contract between the city and the employee organization had expired did not warrant the unilateral action by the employer. A unilateral change in conditions of employment during negotiations is a violation of the duty to bargain collectively, NLRB v. Katz, 369 US 736 (1962).

The Board concurs in the accompanying order embodying the hearing officer's recommendations.

Day, Chairman, and Sheehan, Vice Chairman, concur.

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