

75-042

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

City of Lima,

Charging Party,

v.

Fraternal Order of Police, Lodge No. 21,

Charged Party.

CASE NUMBER: 85-UU-02-2849
85-UU-02-2850
85-UU-02-2920

DISMISSAL OF UNFAIR LABOR PRACTICE CHARGES
(Opinion Attached)

Before Vice Chairman Sheehan and Board Member Fix; August 8, 1985.

The City of Lima (Charging Party) has filed three unfair labor practice charges against the Fraternal Order of Police, Lodge No. 21 (Charged Party). Pursuant to Ohio Revised Code Section 4117.12, the Board conducted an investigation of the charges. For the reasons stated in the attached Opinion incorporated by reference, the Board finds that there is no probable cause to believe that the Charged Party has violated Ohio Revised Code Section 4117.11. Accordingly, the charge is dismissed.

It is so directed.

SHEEHAN, Vice Chairman and FIX, Board Member, concur. DAY, Chairman, absent.



WILLIAM P. SHEEHAN, VICE CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 17th day of September, 1985.



KENNETH W. BARRETT, EXECUTIVE DIRECTOR

701g/g1-21b

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

City of Lima,
charging party,

v.

Fraternal Order of Police,
Lodge No. 21,

charged party.

CASE NUMBER: 85-UU-02-2849
85-UU-02-2850
85-UU-02-2920

OPINION

Sheehan, Vice Chairman:

I

The City of Lima (the charging party) filed three unfair labor practice charges against Fraternal Order of Police, Lodge No. 21 (the charged party) for alleged violations either committed during negotiations or during the subsequent ratification period. The three charges will be considered together.

II

The first charge (85-UU-02-2849) filed February 1, 1985, alleges the Fraternal Order of Police engaged in unfair labor practices within the meaning of Section 4117.11(B)(1) and Section 4117.14(C)(6) of the Ohio Revised Code. Specifically, the charging party claims, "the FOP failed to bargain in good faith with the City of Lima in that the FOP through its agents publicized the fact-finding panel's recommendations prior to the City

Council having an opportunity to consider and act on such recommendations, and prior to the expiration of the seven (7) day period from the date such recommendations were mailed - such recommendations were mailed on December 29, 1984, and contents published in the Lima News on January 2, 1985, one (1) day prior to the date of the Council meeting. Such publication had an adverse impact on the Employer's and Council's ability to deliberate over such recommendations by causing undue publicity and controversy, along with interference and pressure being brought to bear on the Employer and the Council during such deliberations."

The second charge (85-UU-02-2850) was filed on February 7, 1985, and alleges the Fraternal Order of Police violated 4117.11(B)(1) of the Ohio Revised Code by failing to "bargain in good faith with the City of Lima by attempting to and submitting new and more costly economic proposals to the Employer on December 4, 1984, after the submission date for proposals, October 25, 1984, in violation of the Ground Rules for Negotiations executed by the Employer and the Fraternal Order of Police. Such submissions and repeated attempts to negotiate such proposals adversely affected negotiations and helped cause the resultant impasse between the Employer and Union."

The third charge, (85-UU-02-2920) filed on February 12, 1985, claimed the Fraternal Order of Police violated 4117.14(C)(6) of the Ohio Revised Code. The charging party states, "the Fraternal Order of Police, Lodge 21, committed an unfair labor practice by failing to conduct an election by its membership to accept or reject a fact-finder's report which is contrary to Section 4117.14(C)(6) and Rule 4117-9-05. Such failure to conduct an

"election interfered with the right granted said membership under the Law and Rules. Such election should have been conducted between December 28, 1984, and January 5, 1985."

III

The sections of the law and the rule that are alleged to have been violated are 4117.11(B)(1), 4117.14(C)(6) and 4117-9-05(K).

4117.11(B)(1) provides:

"(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."

4117.14(C)(6) provides:

"(6)Not later than seven days after the findings and recommendations are sent, the legislative body, by a three-fifths vote of its total membership, and in the case of the public employee organization, the membership, by a three-fifths vote of the total membership, may reject the recommendations; if neither rejects the recommendations, the recommendations shall be deemed agreed upon as the final resolution of the issues submitted and a collective bargaining agreement shall be executed between the parties, including the fact-finding panel's recommendations, except as otherwise modified by the parties by mutual agreement. If either the legislative body or the public employee organization rejects the recommendations, the Board shall publicize the findings of fact and recommendations of the fact-finding panel. The Board shall adopt rules governing the procedures and methods for public employees to vote on the recommendations of the fact-finding panel."

4117-9-05(K) provides:

"The exclusive representative shall make available, by posting or by other method reasonably calculated to inform the members of the employee organization in the unit, the findings, recommendations and summaries of the fact-finding panel immediately upon receipt thereof together with a notice of the dates, times, and places where the

employee organization's members in the unit may vote to approve or reject the recommendations of the fact-finding panel. A secret ballot shall be conducted by the exclusive representative at the dates, times, and places set forth in the notice. Such election shall be conducted not later than seven days after the findings, recommendations, and summaries of the fact-finding panel are served. Each member of the employee organization in the unit shall at the time and place of election be issued a ballot containing a choice of "approve" and a choice of "reject" the recommendations of the fact-finding panel. The ballots shall be tallied immediately upon the conclusion of the election. The result of the election together with the number of members of the employee organization in the unit shall be certified to the Board and to the employer within twenty-four hours after the tally of ballots. It shall be an unfair labor practice, including but not limited to a violation of Division (A)(1) or (B)(1) of Section 4117.11 of the Revised Code, to interfere with the conduct of the election."

VI

The questions raised are:

- 1) Did Fraternal Order of Police Lodge #21 commit an unfair labor practice by failing to bargain in good faith with the City of Lima, because through its agents it published the fact-finding panel's recommendations before the City Council had an opportunity to consider and act on the recommendations?
- 2) Did Fraternal Order of Police Lodge #21 commit an unfair labor practice by failing to bargain in good faith with the City of Lima, because it violated the Ground Rules for Negotiations entered into by the parties?
- 3) Did Fraternal Order of Police Lodge #21 commit an unfair labor practice by failing to conduct a ratification election by its membership?

V

The answer to questions No. 1, No. 2 and No. 3 is "no."

In respect to the issue raised in No. 1, it should be noted here that SERB, as a matter of practice, has not made public fact-finder's

recommendations until they have been accepted or rejected in compliance with 4117. However, neither the law nor SERB's rules impose an obligation on the parties to keep the report confidential or to disclose its contents. It is understandable that the charged party's actions might reasonably be construed by its opposite number as a breach of acceptable bargaining behavior, but it is not an unfair labor practice within the meaning of 4117.11(B).

The charge raised in No. 2 that the Fraternal Order of Police made repeated attempts to negotiate new proposals in violation of the "Ground Rules for Negotiations" is not supported by SERB's investigation. The introduction of new proposals at one meeting by the charged party's counsel, which was admittedly made in error, and the mention of the proposals "in passing" at the next seceding meeting hardly represents repeated attempts. Moreover, the quick withdrawal of the proposal by the offending counsel when apprised of the negotiating rules seems proper atonement for such infraction. The charges made in the two cases cannot be found among the catalogue of offenses set forth in the code. Therefore, the charges in the case No. 1 (85-UU-02-2849) and Case No. 2 (85-UU-02-2850) are dismissed for failure to allege an unfair labor practice.

In Case No. 3 (85-UU-02-2920), Ohio Administrative Code Rule 4117-9-05 is quite clear on the obligation it places on the exclusive representative. Under most circumstances the failure to conduct a ratification election would be an unfair labor practice. It is not so, however, in the instant case, because the law requires no futile act. The Fraternal Order of Police had scheduled a ratification meeting but cancelled it the day after

Opinion
Case 85-UU-02-2849
85-UU-02-2850
85-UU-02-2920
Page 9

(January 4, 1985) the City Council voted to reject the fact-finder's recommendations. The rejection of the report by the City fathers determined the fate of the proceedings regardless of whether the Fraternal Order of Police held a ratification election.

Therefore, because the Fraternal Order of Police vote could not have affected the course of the proceedings, the charge (85-UU-02-2920) is dismissed for failure to constitute an unfair labor practice for which relief can be granted.

Day, Chairman, and Fix, Board Member, concur.

JB:76B:9/12/85:f