85-057

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

v.

Ohio State University,

Respondent.

CASE NUMBER: 84-UR-05-1130

ORDER
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; September 12, 1985.

Pursuant to an unfair labor practice charge filed by Pamela S. Riedinger (Charging Party) against the Ohio State University (Respondent), the Board found probable cause to believe that the Respondent had violated Ohio Revised Code Section 4117.11 in taking certain actions related to Charging Party's employment. A complaint issued and a hearing was held pursuant to Ohio Revised Code Section 4117.12.

The Board has reviewed the record, the hearing officer's recommendation, the exceptions and responses. The Board approves the hearing officer's conclusions law and recommendations as modified. The jurisdictional question is addressed in the attached opinion, incorporated by reference.

The Board orders the Respondent to:

1. Cease and desist from:

   (a) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in Chapter 4117, of the Revised Code and otherwise violating Ohio Revised Code Section 4117.11(A)(1); and

   (b) Discriminating in regard to tenure of employment and terms and conditions of employment on the basis of the Charing Party's exercise of rights guaranteed by Chapter 4117 of the Revised Code, and otherwise violating Ohio Revised Code Section 4117.11(A)(3).

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2. Take the following affirmative action:

(a) Post for sixty (60) days in all University buildings the Notice to Employees furnished by the Board stating that the University shall cease and desist from the actions set forth in Paragraph 1 and shall take the affirmative action set forth in Paragraph 2;

(b) Immediately offer to reinstate the Charging Party in a Secretary I classification in a university department at her same level of compensation - ($7.58/hour) adjusted by any pay increases to which she would have been entitled had illicit termination not occurred;

(c) Immediately pay the Charging Party back wages at the rate of $7.58 per hour adjusted by any pay increases to which she is entitled from February 14, 1984 to the present exclusive of those periods of time for which she was both unavailable for work due to physical or mental inability and not entitled to compensation;

(d) Notify the Board within twenty (20) days of its Order of Respondent's actions taken to comply with this order.

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 30th day of October, 1985.

KENNETH W. BARRETT, EXECUTIVE DIRECTOR

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OPINION

Day, Chairman:

This case fairly bristles with issues. The Hearing Officer's recommendations are adopted for all of them. However, one phase of the jurisdictional question is important enough, and has such portent for future adjudications, that the view of the State Employment Relations Board (Board or SERB) on the issue warrants expansion.

I

In question and answer form, the single issue to be attended is:

"Does any agency of state government in Ohio, other than SERB, have the authority to resolve any issue[1] on terms which ultimately and conclusively determine an unfair labor practice?"

The question is answered "No."

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[1]The question is limited to decisions involving original jurisdiction and first instance. Such determinations are subject to judicial review. See O.R.C. 4117.13(D).

II

SERB is the only agency of state government with first instance jurisdiction to entertain and decide whether an unfair labor practice has been committed. No other state agency has the authority and therefore the competence to determine such an issue directly or indirectly. Accordingly, there is no theory of collateral estoppel, issue preclusion or res judicata[2] which forecloses Board consideration of an unfair labor practice claim. This is so whether or not another agency has jurisdiction of an intertwined or related phase of the claim (e.g., whether a separation from a job was a discharge for cause or a voluntary quit) and has decided that issue.

Of course circumstances may arise in which the final and binding decision of an arbitrator rendered pursuant to agreement may provide the occasion for the Board's declining to intervene either on a theory of

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[2]Ohio Courts have indicated that preclusive dispositions require jurisdiction of the subject matter as one element in the authority to dispose. Thus, in another context but persuasive by way of analogous principle, the Tenth District Court of Appeals in Horovitz v. Shafer (1950) 43 Ohio Op. 233 at 234 refuted an attack upon a judgment in these significant words:

> "This ... constitutes a collateral attack upon the judgment. The nature of the attack the plaintiff may maintain depends upon the character of the judgment. If it is void a collateral attack may be maintained; otherwise, not. But the judgment is not void, for there is no allegation of any lack of jurisdiction of the subject matter or of the parties, and it is not contended that any fraud was practiced upon the court..." (Emphasis added.)

The Supreme Court of Ohio in La Barbera v. Batsch (1967) 10 Ohio St. 2d 106, 109 cited Horovitz v. Shafer with approval saying:

> "It is not contended that the judgment in the prior action was void because of some defect relating to the jurisdiction, of either court therein, in which case the judgment could not operate as an estoppel as to a particular fact or issue; nor could it operate as res judicata as to a cause of action. Horovitz v. Shafer (1950), 57 Ohio Law Abs. 341, 43 O.O. 233, 94 N.E. (2d) 201;..." (Emphasis added.)

deference or waiver.[3] What SERB may do in these particulars in the future is not at issue and must await a controversy which raises them.

In the instant case, the Personnel Board of Review (PBR) has found that the charging party voluntarily resigned. SERB has no authority to review or change that decision or challenge the authority of PBR to make it.

On the other hand, neither PBR, nor any other administrative agency, has any authority to preclude SERB's examination and decision of an unfair labor practice claim.

SERB's decision is to act on the claim involved here and resolve it as its Hearing Officer has recommended.

The Board's order will reflect these conclusions.

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

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[3]See Edwards, H.T., Deferral To Arbitration and Waiver of The Duty To Bargain: A Possible Way Out of Everlasting Confusion at the NLRB, 46 Ohio St. L.J. 23, 27-32.

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