

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of  
Billy R. Williams,  
Charging Party,

1985-059

v.

Dayton Public Service Union Local #101/AFSCME,  
Charged Party.

CASE NUMBER: 85-UU-04-3406

DISMISSAL OF UNFAIR LABOR PRACTICE CHARGE  
(Opinion Attached)

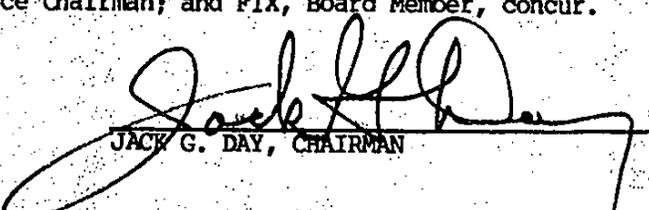
Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix,  
October 21, 1985.

Billy R. Williams (Charging Party) has filed an unfair labor practice charge against the Dayton Public Service Union Local #101/AFSCME (Charged Party). The charge alleges that the Charged Party violated Ohio Revised Code Section 4117.11 by failing to adopt the Charging Party's view in settling his grievance.

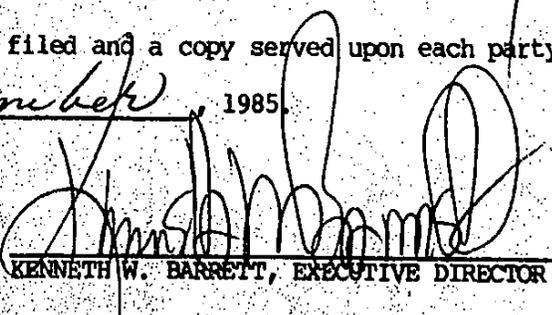
Pursuant to Ohio Revised Code Section 4117.12, the Board conducted an investigation of this charge. The investigation reveals that there is no probable cause to believe that the Charged Party has violated Ohio Revised Code Section 4117.11. Accordingly, for the reasons stated in the attached opinion, incorporated by reference, the charge is dismissed.

It is so directed.

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 7<sup>th</sup> day of November, 1985.

  
KENNETH W. BARRETT, EXECUTIVE DIRECTOR

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OPINION

Day, Chairman:

The cases coming to the State Employment Relations Board (Board or SERB) have not yet posed the issues necessary to develop a full concept of the duty of fair representation. However, this case presents an opportunity to begin the delineation.

I

The grievor (charging party) asserts that, under his interpretation of the collective bargaining agreement, Article XXIII<sup>1</sup> requires application

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<sup>1</sup>Article XXIII, Transfers:

"A. An employee shall have the right to exercise his/her job classification seniority to transfer to available vacant positions within the same classification with a different work reporting location and/or shift within the same division if he/she is able to perform the physical and/or specialized requirements of the work involved and such transfer can be made without substantially impairing the efficiency of his/her present division. Only one transfer to another shift or another work reporting location shall be permitted in any twelve (12) month period. An employee who desires such a transfer shall make a written request therefore (sic) and deliver the same to his/her Superintendent and the Union.

B. With the mutual agreement of two (2) employees and subject to their respective supervisor's approval, said employees may trade shifts for not less than one (1) nor more than five (5) eight (8) hour shifts in any calendar year. Temporary trades for more than five (5) days for educational purposes may also be granted subject to approval of their respective supervisors. Such a trade shall not result in any exchange in shift differential pay for either party under Article VIII, Section 6, of this agreement. Such a trade shall not be the basis for overtime pay unless the employee is otherwise entitled to overtime under the agreement."

of citywide seniority in the selection of shifts, off-days and vacation schedules. The union does not agree.

The grievor alleges breach of the duty of fair representation<sup>2</sup> because the union did not adopt his view in settling this grievance. The Board finds that the facts here do not demonstrate the breach. A fundamental point is implicit in the Board's conclusion. This opinion will attempt to make that point explicit and provide some guidance for future claimants.

## II

A union's failure to adopt a grievor's view of contract meaning may or may not constitute a breach of the duty of fair representation. Whether there is a breach is dependent upon the facts.

It is impossible to anticipate all the conditions which may constitute a violation of the duty. It is easy to state one condition that is not. A disagreement between the grievor and the union does not demonstrate, per se, a violation of the duty. To hold otherwise would equate disagreement with unfairness - an obviously illogical conclusion.

## III

The charge is dismissed for lack of probable cause.

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

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<sup>2</sup>Ohio Revised Code, Section 4117.11(b)(6).