

86-006

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
State Employment Relations Board,

Complainant,

v.

Donald Young,

and

Akron Board of Education,

Respondents.

CASE NUMBER: 84-UR-08-1797

ORDER
(Opinion Attached)

Before Chairman Day and Vice Chairman Sheehan; January 9, 1986.

On August 21, 1984, the Akron Education Association filed an unfair labor practice charge on behalf of one of its members, Deborah Simmons, against the Akron Board of Education (Respondent). Pursuant to Ohio Revised Code Section 4117.12, the Board conducted an investigation of the charge and found probable cause to believe that an unfair labor practice had been committed. Subsequently, a complaint was issued alleging that the Respondent had violated Ohio Revised Code Section 4117.11(A)(1), and (A)(3) by: giving Ms. Simmons an "Improvement Needed" rating in the category "V. professional qualities b. cooperation shown colleagues" in her 1983-84 year end evaluation in response to her having filed a grievance pursuant to a bargaining agreement in effect between the Akron Education Association and the Akron Board of Education. The matter was heard by a Board hearing officer.

The Board has reviewed the record, the hearing officer's recommendation, exceptions to the recommendation, and responses. For the reasons set forth in the attached Opinion, incorporated by reference, the Board approves the hearing officer's findings of fact, approves the conclusions of law except for conclusion No. 4 [the status of Donald Young as a proper party respondent], No. 7 [respondent's violation of Ohio Revised Code Section 4117.11(A)(1)], and No. 8 [respondent's violation of Ohio Revised Code Section 4117.11(A)(3)], and orders the Respondents to:

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A. Cease and desist from:

Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in Chapter 4117, and otherwise violating Ohio Revised Code Section 4117.11(A)(1) and (3).

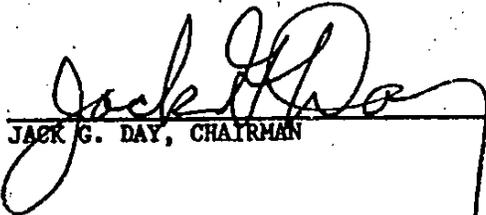
B. Take the following affirmative action:

Post for 60 days in all offices of the Akron Board of Education and Perkins Middle School the Notice to Employees furnished by the Board stating that the Respondents will cease and desist from the action set forth in Paragraph (A) and will take the affirmative action set forth in Paragraph (B) and (C).

C. Expunge from Ms. Deborah Simmon's June, 1984 "Teacher Evaluation Report" the rating "improvement needed" from the category of "Professional Qualities."

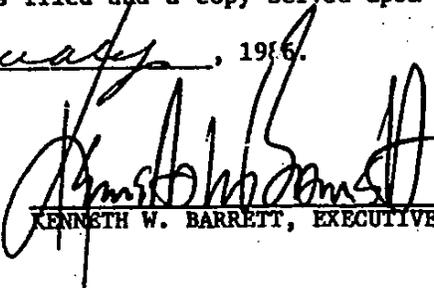
It is so ordered.

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



JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 20th day of February, 1986.



KENNETH W. BARRETT, EXECUTIVE DIRECTOR

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OPINION

Sheehan, Vice Chairman:

I

In this case, the Complainant, the State Employment Relations Board, found probable cause to believe an unfair labor practice had been committed by the Respondents, Donald Young, Principal of Perkins Middle School, and the Akron Board of Education, and issued a complaint in accordance with R.C. 4117.12(B) and O.A.C. 4117-7-07 on May 28, 1985. This followed an investigation by the Board of an unfair labor practice charge filed by Ms. Deborah Simmons, the charging party and a teacher of orchestra at the Perkins Middle School, against Mr. Donald Young. Ms. Simmons charged that as a result of a grievance she filed over a disputed "homeroom" assignment, which was subsequently adjusted in her favor, the Respondent, Mr. Donald Young gave her a lower rating in the category of "cooperation is shown

colleagues" than she had received in a number of prior evaluation reports immediately preceding the filing of the grievance.

II

The issues were:

- 1) whether Donald Young and the Akron Board of Education are proper parties to this proceeding?
- 2) whether Respondent violated R.C. 4117.11(A)(1) and 4117.11(A)(3) by giving an unsatisfactory job performance evaluation to the charging party subsequent to her filing a grievance?

III

The Board does not concur with the Hearing Officer's recommendations and finds:

- 1) Donald Young and the Akron Board of Education are proper parties in this proceeding, and
- 2) Respondents violated R.C. 4117.11(A)(1) and 4117.11(A)(3) by giving an unsatisfactory job performance evaluation to the charging party subsequent to her filing a grievance.

IV

R.C. 4117.11 provides:

"(A) It is an unfair labor practice for a public employer, its agents, or representatives to:..." [Commit listed unfair labor practices]

Mr. Young, as Principal of Perkins Middle School, is an agent of the Akron Board of Education within the meaning of 4117.11(A) (1) through (8). Moreover, the complaint was properly issued. The matter was answered and disposed of on May 28, 1985, when the Board jointly named Donald Young and the Akron Board of Education as Respondents in the complaint.

V

The chronological pattern of the claimant's good and bad "observation and appraisal" reports in relation to the proximity of the grievance, coupled with Mr. Young's testimony that the lower rating was because of her handling of "the homeroom situation" (F.F. 15) makes it difficult to accept the Respondent's claim that the filing of the grievance had nothing to do with the unsatisfactory rating.

Ms. Simmons was rated by Mr. Young on November 15, 1983. On January 12, 1984, the observation and appraisal report was given by Mr. Donald E. Smith, Assistant Unit Principal for Perkins Middle School. Subsequently, on March 12, 1984, Mr. Young again administered Ms. Simmons report (F.F. 11).

On both reports by Mr. Young, Ms. Simmons received a very good rating in the category "cooperates with colleagues." Mr. Smith, in his one report, rated her satisfactory.

On March 9, 1984, Ms. Simmons was given a letter signed by Mr. Smith criticizing her handling of the homeroom assignment. Mr. Smith testified he had informed Mr. Young in early March that he had had problems with Ms. Simmons on an ongoing basis since her assignment to a homeroom in late February. The letter was issued on March 12, 1984, three days before the "very good" rating was given by Mr. Young.

Ms. Simmons filed the grievance on March 16, 1984. Then in June, 1984, on the "Teacher Evaluation Report," Mr. Young gave her "improvement needed" in the category of Professional Qualities (F.F. 12 & 15).

Good reports in the months immediately preceding the filing of the grievance, an unfavorable one in the first report following it afford no support to the Respondent's claim that the grievance had nothing to do with the lower rating.

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It is altogether conceivable that Ms. Simmons' disposition may have suffered a change as a result of her homeroom assignment. A grievance and the period giving rise to the grievance can be a stressful experience, particularly for the grievant. Employees are required in nearly every instance to do the bidding of the employer, even when, as in the instant case, the bidding is in error, but they need not like it.

To permit recrimination at some later date against an employee for having filed a grievance would have a chilling effect on the exercise of the employee's rights provided for by O.R.C. 4117.03(A)(2).

VI

For the reasons adduced, the Board finds Respondent violated R.C. 4117.11(A)(1) and 4117.11(A)(3).

Day, Chairman, concurs. Fix, Board Member, absent.

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