

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
State Employment Relations Board,
Complainant

v.

East Palestine City School District Board of Education,
Respondent.

CASE NO. 85-UR-03-3147

ORDER
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix;
February 26, 1986.

On March 14, 1985, the East Palestine Education Association filed an unfair labor practice charge against the East Palestine City School District 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 was committed. Subsequently, a complaint was issued alleging that the Respondent had violated Ohio Revised Code Section 4117.11(A)(1) and (A)(5) by: refusing to sign a collective bargaining agreement which had been approved by the Employee Organization and submitted to Respondent after Respondent had failed to timely reject such agreement. 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 and orders the Respondent to:

A. Cease and desist from:

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

Refusing to bargaining collectively with the exclusive representative of its employees and otherwise violating Revised Code 4117.11(A)(5).

B. Take the following affirmative action:

Post for sixty (6) days in all school buildings the Notice to Employees furnished by the Board stating that the East Palestine Board of Education shall cease and desist from the actions set forth in Paragraph A and shall take the affirmative action set forth in Paragraph B.

Respondent and Intervenor shall immediately execute the collective bargaining agreement ratified by the East Palestine Education Association and presented to the Board of Education in November 1984. The agreement became effective by operation of law in January 1985.

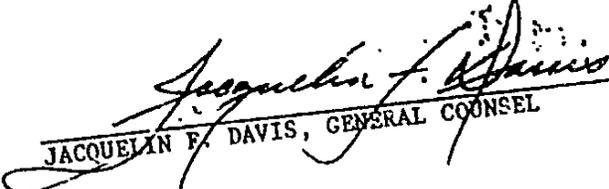
It is so ordered.

DAY, Chairman; SHEEHAN, Vice Chairman and PIX, Board Member, concur.



JACK G. DAY, CHAIRMAN

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



JACQUELIN F. DAVIS, GENERAL COUNSEL

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CASE NUMBER: 85-UR-03-3147

OPINION

Day, Chairman:

This is an unfair labor practice case. A complaint issued charging violations of R.C. 4117.11(A)(1) and (5). The hearing officer recommended that the employer be found to have violated the unfair labor practice sections as alleged. The State Employment Relations Board (SERB or Board) adopts the recommendations of the hearing officer but not necessarily the analysis in support. However, for reasons adduced below, the Board comes to the same conclusions.

I

The issues in this case are:¹

- 1) Whether or not the chief negotiator for the Board of Education (school board) had the authority to negotiate a tentative agreement?

¹The issues as stated in this opinion differ slightly from the hearing officers list on page 4 of the report and recommendation. The difference represents SERB's derivations from the facts found by the hearing officer.

- 2) Whether or not the collective bargaining agreement presented by the Superintendent of the East Palestine School District to the Board of Education on November 20, 1984, is deemed approved pursuant to R.C. Section 4117.10(B)?
 - 3) Whether or not the parties have a mutually agreed upon dispute settlement procedure which supersedes R.C. Section 4117.14 et seq?
 - 4) Whether or not the parties are now and have been in mediation since December 6, 1984?
 - 5) Whether or not since December 21, 1984, the respondent management, by refusing to execute the collective bargaining agreement, has violated R.C. Sections 4117.11(A)(1) and (A)(5)?²
- These issues will be dealt with separately and seriatim. Wherever a statement of the issue is not sufficiently clear without additional facts, facts will be added for clarification.

II

Whether or not the chief negotiator for the Board had the authority to negotiate a tentative agreement?

Whether the respondent school board had specifically vested its chief negotiator with authority to reach a tentative agreement is largely irrelevant in the light of the requirements of R.C. 4117.10(B) and (C). Either the chief negotiator, as the designated representative, must be given the authority by the school board or it is in him by law. For the lack of such authority would frustrate the statutory injunction that the "legislative body must approve or reject the submission as a whole, and the

²The tentative agreement was first submitted to the school board on November 20, 1984. Therefore, November 20, 1984, represents the date upon which the 30-day period [R.C. 4117.10(B)] begins to run.

submission shall be deemed approved if the legislative body fails to act within thirty days after the public employer submits the agreement." [R.C. 4117.10(B)].

The point becomes clear when the quoted language from R.C. 4117.10(B) is considered in conjunction with R.C. 4117.10(C). The latter provides in relevant part, "...the designated representative of the board of education of each school district, ... is responsible for negotiations in the collective bargaining process; except that the legislative body may accept or reject a proposed collective bargaining agreement."

Coupled these sections result in a policy blend which must be read to compel a school board to either clothe its representative with power to make a tentative agreement or to have that power vested by law. If this is not the correct reading of the statutory clauses, then a school board could frustrate the 30-day limit on approval or rejection by simply refusing to supply its designated representative with the power to conclude a tentative agreement. And, after that, take whatever time it felt tactically feasible to decide to accept or reject the tentative submission. A school board has no unrestrained power of this nature. Such authority would defeat the intent of the General Assembly to put a 30-day cap upon the time within which a legislative body³ could determine whether to accept or reject a proposed contract in lieu of the contract being "deemed approved."

Accordingly, it is concluded that a designated representative is always vested with the power to conclude a tentative agreement under R.C.

³A board of education has a hybrid status under the Act. It has both approval authority equivalent to that of a legislature but stands in the relation of employer to the employees in the school system. See the full text of R.C. 4117.10(B) and (C).

4117.10(B) and (C). When a school board does not or will not provide the power, the statute supplies the authority. This avoids frustrating the capping purposes of the law.

III

Whether or not the collective bargaining agreement presented by the Superintendent of the East Palestine School District to the Board of Education on November 20, 1984, is deemed approved pursuant to R.C. Section 4117.10(B)?

After considerable negotiation, the employee organization and the school board representative had resolved all their differences except a definition of seniority. Several sessions were held to discuss this subject. It was at last resolved between the negotiators and included in a submission which was ratified by the employee organization and sent to the superintendent of schools for presentation to the school board.⁴ The school board met and decided not to act on the submission until some typographical errors had been corrected and an omission supplied.⁵ When these matters were rectified,⁶ there was still time to turn down the total submission within the 30-day limit set by R.C. 4117.10(B). The school board did not act.⁷ It chose to do nothing and to argue in justification for inaction that no agreement had been submitted to it for approval. For the reasons which have been stated under the first issue, the objectives of the statute [R.C. 4117.10(B) and (C)] could not be satisfied if the school board were allowed to implement this interpretation of its obligations under the law.

⁴ Hearing Officer's Finding of Fact Nos. 4-14.

⁵ Id. No. 16.

⁶ Id. Nos. 17-18.

⁷ Id. Nos. 19-22.

employees who have transferred from other Ohio governmental entities;¹⁵ pays state workers compensation premiums,¹⁶ has state unemployment insurance,¹⁷ and CMHA employees are covered by the Public Employees Retirement System (PERS).¹⁸ And it has been noted that CMHA governing board is appointed by local elected officials.¹⁹ If one were to sum up the thrust of the factual and legal characteristics of CMHA which square with status as a political subdivision of the State of Ohio, it would amount to this -- the agency has, in some measure, many if not all of the stigmata of state characteristics except fiscal control.²⁰

IV

The contract with HUD makes CMHA dependent on HUD for part of its financial support. The contract provides the fulcrum for HUD's leverage to force CMHA to submit to some procedures and policies in response to HUD's interest and HUD's notion of efficient operation. The power is exercised directly but, in the final analysis, is negotiable because contractual.

¹⁵FF No. 10; T. 788-789.

¹⁶T. 138.

¹⁷T. 138.

¹⁸FF No. 8; R.C. Section 145.01.

¹⁹See fn. 9 in I, supra.

²⁰See Southeast Ohio Regional Resource Center Education Association and Southeastern Ohio Voluntary Education Cooperative (1985) 84-VR-08-1721 and 84-RC-08-1871, 2 OPER Sec. 2653, p. VII 467 dealing with "at least four crucial characteristics."

OPINION

Cases 84-VR-04-0226, 84-VR-04-0233,
84-VR-04-0308 & 84-RC-04-0449

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HUD is not a legislative body as defined in the statute.²¹ Characteristically, such bodies have total fiscal control of agencies within their jurisdictions. Their authority also includes the power to approve or disapprove submissions of public sector collective bargaining agreements. Approval or disapproval cannot be partial but must affect the whole submission.²² However, the difference between this power and HUD's contractual power approximates the difference between the power to order and the power to powerfully persuade.

In any event, the difference does not readily support the idea that the housing authority is either not a state agency or one with such unusual features that its employees are not entitled to the benefits of the state's collective bargaining policy.

One might argue that the federal funds flowing from the HUD contract with the concomitant power the funds generate provide evidence negating Ohio public employer status for CMHA. The argument limps. Logic argues against

²¹See R.C. 4117.10(B) for a statutory definition of legislative body as used in R.C. 4117.10: "As used in this section, 'legislative body' includes the general assembly, the governing board of a municipal corporation, school district, college or university, village, township, or board of county commissioners or any other body that has authority to approve the budget of their public jurisdiction."

²²R.C. 4117.10(B) and (C); see also SERB v. East Palestine School District Board of Education (1986) Case No. 85-UR-03-3147.

the federal contract²³ stripping CMHA of its essential character as a political subdivision of the State of Ohio. For federal dollars infuse a variety of state activities without changing the nature of the function from a state to a federal enterprise. Were this not the case, federal subsidies could obliterate the states for all practical purposes.

It is concluded that CMHA is a political subdivision of the State of Ohio for the purposes of the Ohio Public Employee Collective Bargaining Act.

Accordingly, the Motion For Reconsideration of SERB's previous action directing an election in the unit appropriate for Cincinnati Metropolitan Housing Authority is overruled.

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

²³See Cuyahoga Met. Housing Authority v. City of Cleveland, supra, at p. 259, where the court discussed the status and nature of HUD agreements with Metropolitan housing authorities as federal law pursuant to the Supremacy Clause of the United States Constitution (Art. VI, CL. 2) and indicated the difficulty in repudiating a cooperation agreement between a municipality and HUD:

"...a cooperation Agreement may not be abrogated, changed or modified without the consent of the government so long as there exists an Annual Contribution Contract between the government and the local authority."

However, the case did not reach the collective bargaining rights of state employees nor attempt to limit the status of the employees of the housing authority as public employees of an Ohio political sub-division. Of course, Chapter 4117 could not have been a factor. It was not in existence.