

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

86-0171

In the Matter of
State Employment Relations Board,

Complainant,

v.

City of Sidney,

Respondent.

CASE NUMBERS: 85-UR-02-2872
85-UU-02-2891

DIRECTION OF REMAND
(Opinion Attached)

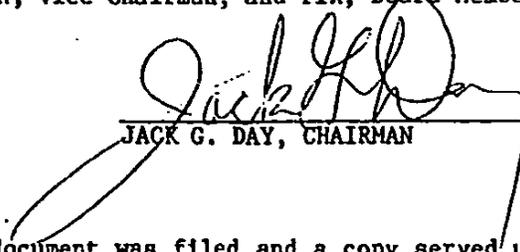
Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; April 17, 1986.

The instant case involves two unfair labor practice charges. The City of Sidney filed a charge against the Sidney Firefighters Local 912, IAFF alleging that Local 912 violated Ohio Revised Code Section 4117.11(B)3) by refusing to execute a collective bargaining agreement with the City of Sidney. The Sidney Firefighters Local 912, IAFF, filed a charge alleging that the City of Sidney violated Ohio Revised Code Section 4117.11(A)(1) and (5) by refusing to execute a collective bargaining agreement with Local 912. After investigation, probable cause was found in both cases. The cases were consolidated and 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 remands the matter to hearing officer for reconsideration and application of the standard of proof provided by Ohio Revised Code Section 4117.12(B)(3).

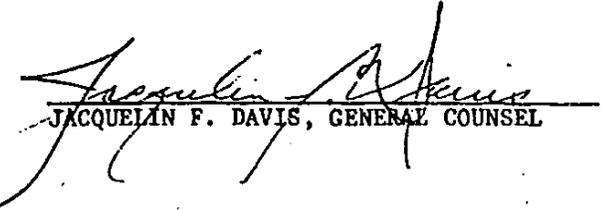
It is so directed.

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 23 day of April, 1986.



JACQUELIN F. DAVIS, GENERAL COUNSEL

JES:ems/1202g

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OPINION

Day, Chairman:

The disposition of this case turns upon whether the parties agreed to a modification of the fact-finder's report and then accepted it as modified. Both refused to execute a contract incorporating the report. Complaints alleging refusal to bargain issued against both. Management claimed a modification of the fact-finding report on a point crucial to it. The union conceded that it had agreed to modifications but only on minor concerns including the correction of typographical errors.

If management is correct and it refused to execute, it has not (but the union has) committed an unfair labor practice. If the union is correct and refused to execute, it has not (but the management has) committed an unfair labor practice.

At bottom, the issue is one of credibility resolution. The hearing officer believed the union and exonerated it. He did not credit the management's version of the agreement and found that its refusal to execute a contract constituted a refusal to bargain. However, the hearing officer

reached his conclusions applying a "clear and convincing" standard of proof. This is an improper standard for an unfair labor practice determination. The proper standard under the statute is set by R.C. 4117.12(B)(3). The test is whether the party with the burden of proof has made its case by a "preponderance of the evidence". Thus, the test applied in this case was erroneous.

The case is remanded to the hearing officer with instructions to consider the evidence in both cases in the light of the required statutory standard of proof. That can be done on the present record. Therefore, it will not be necessary to reconvene the parties for further hearing. However, it will be necessary to serve them with the hearing officer's recommendation after reconsideration. Each of them will have the right to except and respond within the time limits set by statute [R.C. 4117.12(B)(2)] and rule [Adm. Code 4117-1-13].

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

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