

86-018

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
State Employment Relations Board,
Complainant,
and
Thomas A. Ballish, Principal, Lorain City High School,
and
Lorain City School District Board of Education,
Respondents.

CASE NUMBER: 84-UR-06-1343

DEFERRAL TO ARBITRATION
(Opinions Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; April 10, 1986.

On June 6, 1984, the Lorain Education Association (LEA), filed an unfair labor practice charge against Thomas A. Ballish, Principal of Lorain High School and against the Lorain City School District Board of Education (Respondents). 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 Respondents had violated Ohio Revised Code Section 4117.11 (A)(1) and (A)(2) by refusing to allow an LEA consultant to meet with the president of the LEA during the president's teacher conference time. The matter was heard by a Board hearing officer.

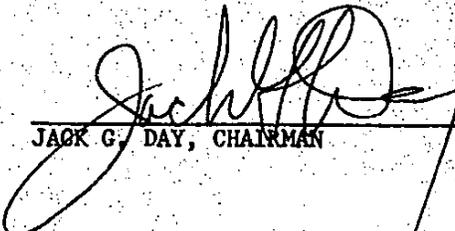
The Board has reviewed the record, the hearing officer's recommendations, exceptions to the recommendation, and responses. For the reasons set forth in the attached opinions, incorporated by reference, the Board defers this case to arbitration pursuant to the collective bargaining agreement between the parties. The Board retains jurisdiction pursuant to option number one (1) of the decision in Miamisburg School District Board of Education, Case Numbers 85-UR-08-4018, 85-UR-08-4021 and 85-MF-06-3806 (Dismissal and opinion issued January 15, 1986).

46

Board Order Re:
Case No. 84-UR-06-1343
April 25, 1986
Page -2-

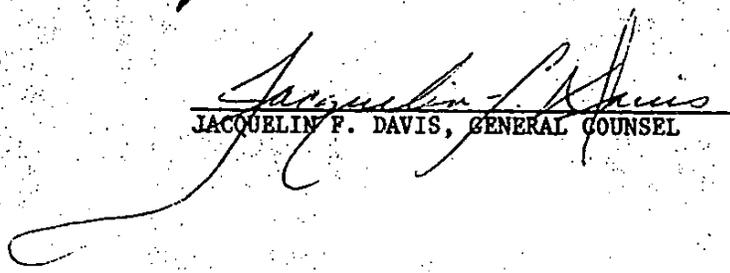
It is so directed.

DAY, Chairman and FIX, Board Member, concur. SHEEHAN, Vice Chairman,
dissenting.



JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party
on this 1st day of May, 1986.



JACQUELIN F. DAVIS, GENERAL COUNSEL

JES:lrt/0052j

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OPINION

Fix, Board Member:

While three issues were addressed in the instant case, this opinion is confined to a single issue:

Whether the State Employment Relations Board (SERB or Board) should defer to the contractual grievance arbitration procedure contained in the collective bargaining agreement between the parties before proceeding in this complaint.

The answer is affirmative for reasons adduced below.

I
An unfair labor practice charge filed by the teachers association against the school principal alleges that the principal denied the union's representative access to the building and asked him to leave. After reviewing the investigator's report, SERB found probable cause to believe an unfair labor practice had been committed and issued a complaint alleging the charged party violated R.C. Sections 4117.11(A)(1) and (A)(2).

The hearing officer found that the charged party had committed an unfair labor practice in violation of 4117.11 (A)(1) and (A)(2).

The hearing officer recommended that the Board apply Option 4 of the Miamisburg doctrine.¹ This course would invoke the statutory unfair labor practice process without deferring to the grievance procedure.

The hearing officer argues against deferral to arbitration because the access of the bargaining representative to the unit employees at the work place is a critical policy issue.

II

The Board concurs that access of the union representatives to unit employees is an important issue.

However, the contract between the parties provides for a grievance procedure capped by arbitration.

The contract also states in pertinent part:

"The Association may conduct association business on school property if such business does not interfere with or interrupt normal school operation."

This language along with the grievance procedure provides ample opportunity for settlement of the grievance.

The Board considers the contractual grievance procedure an important tool in settling disputes. Its application should be encouraged rather than by-passed in favor of SERB action.

¹See Miamisburg Classroom Teachers Association vs. Miamisburg School District Board of Education, Cases 85-UR-08-4018, 85-UR-08-4021 and 85-MF-06-3806 (Jan. 15, 1986).

III

The Board therefore modifies the hearing officer's recommendation and applies Option 1 of the Miamisburg doctrine.

Under this option, SERB defers the dispute to the contractual grievance procedure and retains jurisdiction. If the grievance is not settled, or the unfair labor practice charge not withdrawn, the Board can provide a limited review of the arbitration decision to determine if the unfair labor practice issues were considered and decided in conformity with law. If the review discloses that the arbitration process has not provided procedural or substantive due process, the Board will process the unfair labor practice. Otherwise the unfair labor practice will be dismissed.

Day, Chairman, concurs. Sheehan, Vice Chairman, dissents.

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OPINION

Sheehan, Vice Chairman, dissenting:

I

The Board's majority, in the instant case, ruled to defer the issue to the grievance arbitration procedure contained in the collective bargaining agreement between the parties before proceeding in this complaint. The majority opted to apply Option 1 of the Miamisburg doctrine.¹

1Miamisburg doctrine:

Option 1) retain jurisdiction of a pending ULP/grievances until the grievance procedure is exhausted or the parties terminate it. Should the grievance not be settled or the ULP not be withdrawn, the Board can provide a limited review of the arbitration decision under its retention of jurisdiction to determine whether the ULP issues were considered and decided in conformity with Due Process of law in the arbitration proceeding.⁴ If the review discloses that the arbitration process has not provided procedural or substantive Due Process, the Board will process the ULP. Otherwise the ULP will be dismissed; Substantive Due Process requires notice and fair hearing. Substantive Due Process implicates a fair and accurate application of statutory and substantive constitutional rights.

The Hearing Officer recommended that the issue be decided under the statutory Unfair Labor Practice process without deferring to the grievance procedure, applying Option 4² of the Miamisburg Doctrine.

II

Although normally holding with the view that the use of the grievance procedure, when available, should be encouraged, I do not believe this to be the proper disposition in the instant case. Therefore, I concur with the Hearing Officer's recommendation and respectfully dissent from the majority decision for the reasons adduced below.

1. Work place access to unit employees by the bargaining representative is fundamental and basic to the application of the statute. Denial of access, or unreasonable barriers to access, effectively undermines employees exercise of their statutory rights pursuant to O.R.C. 4117.03(A).³ When

²Miamisburg Doctrine:

Option 4) go immediately to the statutory ULP process without deferring to the grievance procedure when a critical policy issue is raised by the ULP/grievance;

³O.R.C. 4117.03(A):

"Public employees have the right to:

(1) Form, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in, except as otherwise provided in Chapter 4117. of the Revised Code, any employee organization of their own choosing;

(2) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection;

(3) Representation by an employee organization;

(4) Bargain collectively with their public employers to determine wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, and enter into collective bargaining agreements;

(5) Present grievances and have them adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and as long as the bargaining representatives have the opportunity to be present at the adjustment."

issues of such a critical nature come before the Board, in the opinion of the dissenter, they should be dealt with forthwith.

2. Deferring to the grievance procedure can only delay resolution of this issue which has now been in the statutory process nearly two years.⁴ The time points set forth in the bargained grievance procedure have long passed, so the parties, to use it, must select, or the Board must order, some point where they will now enter. This has potential for further delay and, even greater delay, if the agreement, or order, calls for observance of all steps of the procedure. If final disposition cannot be achieved before arbitration, then the arbitrator will decide the issue. His (her) considerations must be confined to the terms of the bargained agreement without concern or regard for the statutory provisions central to the issue. Should the arbitrator's decision fail to satisfy the provisions of the statute, the Board then will exercise its jurisdiction. All in all, a lengthy exercise causing indeterminate protraction to a case that should be resolved now.

⁴Charging party filed unfair labor practice charges with the State Employment Relations Board against Thomas A. Ballish, Principal of Lorain City High School and the Lorain City School District Board of Education on June 6, 1984.