

86-022 14

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

State Employment Relations Board,

Complainant,

v.

New Richmond Exempted Village School District Board of Education,

Respondent,

CASE NUMBER: 85-UR-02-2945

ORDER  
(Opinion Attached)

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

In February 1985 the Ohio Association of Public School Employees (OAPSE) filed an unfair labor practice charge against the New Richmond Exempted Village 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 had been 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 give the exclusive representative an opportunity to be present at the adjustment of certain employees' grievances and by refusing to bargain collectively with the exclusive representative. The matter was heard by a Board hearing officer.

The Board has reviewed the record, the hearing officer's recommendations, the exceptions to the recommendations, and responses. For reasons stated 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 their rights guaranteed in Chapter 4117 or refusing to bargain collectively with the employees' representative, and otherwise violating Ohio Revised Code Section 4117.11(A)(1) and (5).

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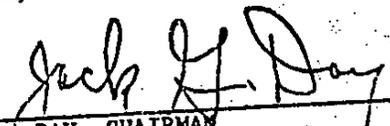
B. Take the following affirmative action:

Post for 60 days in all City of New Richmond Exempted Village School District Board of Education offices the Notice To Employees furnished by the Board stating that the Respondent shall cease and desist from the action set forth in Paragraph A and shall take the affirmative actions in Paragraphs B and C.

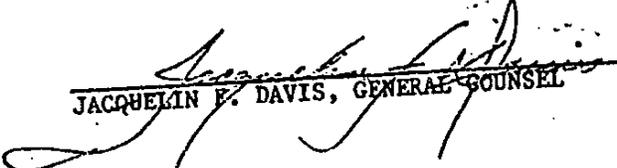
C. Cease and desist from adjusting employees' grievances without properly notifying the designated representative of OAPSE Local 267 of pending grievances.

It is so ordered.

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

  
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JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 4th day of June, 1987.  
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JACQUELIN F. DAVIS, GENERAL COUNSEL

43

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of  
State Employment Relations Board,  
Complainant,

and

New Richmond Exempted Village School District  
Board of Education,

Respondent.

CASE NUMBER: 85-UR-02-2945<sup>1</sup>

OPINION

Sheehan, Vice Chairman:

I

The charging party, Ohio Association of Public School Employees (OAPSE), filed an unfair labor practice charge alleging that the New Richmond Exempted Village School District Board of Education (Respondent) violated O.R.C. Section 4117.11(A)(1) and (A)(5).<sup>1</sup>

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<sup>1</sup>O.R.C. Section 4117.11:

"(A) It is an unfair labor practice for a public employer, its agents, or representatives to:

(1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances;....

(5) Refuse to bargain collectively with the representative of his employees recognized as the exclusive representative or certified pursuant to Chapter 4117. of the Revised Code;..."

II

The issue, in the instant case, is whether the Respondent failed to give the employee organization(s) an opportunity to be present at the adjustment of certain employees' grievance pursuant to O.R.C. 4117.03(A)(5).<sup>2</sup>

III

The matter giving rise to the charge arose when six bus driver-employees of the Respondent filed a grievance asking for the same back pay certain other drivers had earlier received from the settlement of a law suit. The six had not been named plaintiffs in the suit. In the grievance, they specifically expressed their desire not to be represented by OAPSE, although OAPSE was the exclusive representative of the bargaining unit to which they belonged.

The grievance proceeded through the steps of the grievance procedure in accordance with the terms of the collective bargaining agreement, and without the presence of the designated OAPSE representative. At the fourth and final step, the Respondent dismissed the grievance but then voted to pay the grievants according to their request.<sup>3</sup>

IV

The Respondent's answers to the charges essentially were:

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<sup>2</sup>O.R.C. 4117.03:

"(A) Public employees have the right to: ...

(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."

<sup>3</sup>Finding of Fact No. 3.

1) That although the Respondent's administrator did not consider the matter being grieved to be a grievable matter within the meaning or the terms of the collective bargaining agreement, the grievance was processed in accordance with the procedures established in the agreement. Thus, it was not a grievance. It was dismissed and, consequently, there was no adjustment.

2) And even if it is determined to be a grievance, it did nothing more than process a grievance in accordance with a grievance procedure which provides for, and allows, an individual employee to file and process a grievance without representation by, or notification to, the union.

3) O.R.C. 4117.03(A)(5) does not require notification. It only requires the union be given the opportunity to be present at the adjustment of a grievance.

V

The Hearing Officer found that the Respondent committed an unfair labor practice in violation of O.R.C. Section 4117.11(A)(5) and (A)(1) by adjusting a grievance of individual employees without promptly notifying the designated representative of the employee organization about the filing of the grievance and, thus, did not allow the bargaining agent the opportunity to be present at the adjustment of the grievance.

VI

The Board unanimously concurs with the Hearing Officer's determination. The arguments by the Respondent shall be treated separately.

That the matter was not grievable within the meaning or terms of the collective bargaining agreement is not persuasive. The agreement existing between the parties defines a grievance as "an alleged violation of a specific article or section of the agreement or the alleged misapplication or the misinterpretation of existing policies."<sup>4</sup> The grievance filed by the six bus driver-employees fulfills the definition of the grievance in that it called for an interpretation of the agreement and it questioned the Respondent's policy determination. Moreover, without evidence that the Respondent raised any objections as to the grievability of the matter at the outset, and then after mutually assisting the progression of the grievance through the successive steps of the procedure, the Respondent waived claim to that defense. There are a number of elements which may constitute and/or legitimize a grievance. Mutual recognition by the parties must be included in that number.

The thrust of the Respondent's claim that it did nothing more than process a grievance in accordance with the grievance procedure which provides for, and allows, any individual employee to file and process a grievance without representation by the union loses its force when the language of the statute and that of the collective bargaining agreement is examined together. The contractual language does not prohibit the presence of the union's representatives. It simply allows an individual to choose whether he/she wishes to be represented by the union. It does not prohibit the union's presence. On the other hand, the statute is quite explicit -

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<sup>4</sup>Joint Ex. 2, pg. 5.

14  
"...as long as the bargaining representatives have the opportunity to be present at the adjustment."<sup>5</sup> It is worth noting that both the terms of the contract and the provisions of the statute, in the instant case, could have been observed without conflict of one with the other. The Respondent erred by applying the terms of the contract while ignoring the requirements of the statute.

That O.R.C. Section 4117.03(A)(5) does not require notification is without merit. Again, the provision is explicit in providing the bargaining representatives the opportunity to be present at the adjustment. If bargaining representatives do not know a meeting is held, how can they be present? Notification is essential to affording the opportunity required under this section.

Now to the central issue, whether the Respondent failed to give the union an opportunity to be present at the adjustment. There was no claim made, nor evidence submitted, that Mr. Ralph Eckhardt, the designated union representative of record, was ever notified of the grievance as it progressed through the steps of the procedure. The Superintendent and the Director of Auxiliary Services<sup>6</sup> did testify that discussions were held with the local president and vice president prior to November 19, 1984.<sup>7</sup> However, this was denied by the two officers who testified they had no knowledge whatsoever of the grievance until the evening of the

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<sup>5</sup>See fn. 2.

<sup>6</sup>T. 123-126, 130, 134-136, 140-142, 187-191, 194-195.

<sup>7</sup>The date of the meeting when the Respondent dismissed the grievance and voted back pay to the drivers.

nineteenth.<sup>8</sup> Whatever discussions were held or not held relative to the grievance, it was undisputed that the designated representative was not notified and, consequently, was not afforded an opportunity to be present at the adjustment of the grievance.

Finally, what constitutes proper notification for the application of O.R.C. 4117.03(A)(5)? The bargaining representatives of record must be given sufficient notice by the employer, so by the exercise of reasonable diligence, they can avail themselves of the opportunity to be present. The notice must contain the date, time, and place the meeting will be held and such notice must be given for each successive meeting. Since the potential for settlement or adjustment of the grievance is present at any step of the procedure, notification must be provided prior to the first step meeting.

For these reasons, the Board unanimously upholds the Hearing Officer's recommended determinations.

Day, Chairman, and Fix, Board Member, concur.

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<sup>8</sup> T. 99, 214, 225.