86-040 III

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

v.

New Miami School District Board of Education,

Respondent.

CASE NUMBER: 85-UR-01-2709

ORDER
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix; September 11, 1986.

The Ohio Association of Public School Employees Chapter 762 (OAPSE) filed an unfair labor practice charge against the New Miami Local 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 has been committed. Subsequently, a complaint was issued alleging that Respondent had violated Ohio Revised Code Section 4117.11(A)(1) and (A)(5) by withdrawing recognition of OAPSE and ceasing the deduction of OAPSE dues from the bargaining unit employees' wages. 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, but not the conclusions of law or the recommendations. The Respondent is found to have violated Ohio Revised Code Section 4117.11(A)(1) and (A)(5). The Board orders the Respondent to cease and desist from refusing to bargain with OAPSE, to immediately resume negotiations with OAPSE, to immediately resume deductions of dues and to deduct from the employees' paychecks and pay to OAPSE the dues back-dated to January 11, 1985, in an equitable manner and during a reasonable period pursuant to an arrangement to be agreed between OAPSE and the Respondent. The Respondent shall post the enclosed Notice to Employees immediately for sixty (60) days.

It is so ordered.

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 26th day of September, 1986.

JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

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and

Ohio Association of Public School Employees,

Charging Party,

and

New Miami Local School District Board of Education,

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CASE NUMBER: 85-UR-01-2709

OPINION

Fix, Board Member:

In the instant case the State Employment Relations Board (Board or SERB) approves the hearing officer's findings of fact but not his conclusions of law or recommendations.

Careful review of the facts as related to Chapter 4117 brings the Board to the opposite conclusions. The Board finds that the employer has committed unfair labor practices in violation of R.C. Section 4117.11(A)(1) and (A)(5) by:

1. Refusing to continue to bargain with the employee organization after a Decertification Petition was filed,
2. Ceasing dues deduction after expiration of the labor agreement.

The Board reached these conclusions for reasons adduced below.

I

The employer bases its refusal to bargain on a good faith doubt pursuant to the Cleveland Board of Education and OAPSE, and West Carrollton City School District and OAPSE cases.[1]

However, neither case supports the employer's position because the facts are different. In the Cleveland School Board case, the employee organization was not deemed certified. In the West Carrollton case, the unit was deemed certified but the decertification petition was timely filed by an employee organization, pursuant to Section 4(A) (4(A)) temporary language of Amended Substitute Senate Bill 133 of the 115th General Assembly, rather than by an individual employee.[2] In a case involving the same parties as the instant case, a decertification petition was filed by an individual employee. The Board ruled in John C. Cole/OAPSE/AFSCME and New Miami Local Schools, Case 85-RC-02-2973, that "only an employee organization may challenge a deemed certified unit."[3]

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[1]See Cleveland Board of Education and OAPSE, Case 84-UR-05-1151, SERB opinion 2/1/85; West Carrollton City School District and OAPSE, Cases 85-UR-11-4785, 85-MF-10-4583, 86-MED-4-0449, SERB opinion 6/4/86.

[2]Section 4(A) Am. Sub. S.B. 133, 115th General Assembly:
"Exclusive recognition through a written contract, agreement, or memorandum of understanding by a public employer to an employee organization whether specifically stated or through tradition, custom, practice, election, or negotiation the employee organization has been the only employee organization representing all employees in the unit is protected subject to the time restriction in division (B) of section 4117.05 of the Revised Code. Notwithstanding any other provision of this act, an employee organization recognized as the exclusive representative shall be deemed certified until challenged by another employee organization under the provisions of this act and the State Employment Relations Board has certified an exclusive representative."

[3]Id.

The Board ruled: "By the same token, under O.R.C. Section 4117.07, John Cole, as a public employee would have standing to challenge a certified unit. The difference in these two sections of the statute indicates that the legislature intended to afford additional protection from challenges to deemed certified units."[4]

The hearing officer expressed the opinion that notwithstanding the invalidity of the decertification petition, a good faith doubt exists as to majority status of the incumbent employee organization and the employer was warranted in withdrawing recognition of the employee organization and refusing to bargain.

However, pursuant to 4(A), the issue is not good faith doubt but "additional protection from challenges to deemed certified units."[5] It was for this reason that the Board ruled invalid the decertification petition of an individual. To recognize the employer's good faith doubt based on an invalid petition would render meaningless the decision in John Cole and would violate the legislative intent of 4(A).

II

The employer committed an unfair labor practice by refusing to bargain after an invalid Decertification Petition was filed.

III

The employer claims it has no duty to deduct dues after the labor agreement has expired. In the private sector, it is well established that

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[4]John Cole, supra.

[5]Id.

an employer's duty to check off union dues ceases upon the expiration of the collective bargaining agreement which created that duty. However, this Board is governed in this situation by Section 4(C) temporary language of Amended Substitute Senate Bill 133 of the 115th General Assembly, which states that the duty to deduct dues continues after the expiration of the contract.[6]

IV

Therefore, the Board finds the employer has committed an unfair labor practice by failing to deduct dues in compliance with Section 4(C).

V

In summary, the Board finds the employer has committed unfair labor practices in violations of O.R.C. Sections 4117.11(A)(1) and (A)(5).

The Board's remedy for the situation is set forth in the accompanying order.

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[6]Section 4(C), Am. Sub. S.B. 133, 115th General Assembly:
"Nothing in this act shall be construed to permit an employer to terminate or refuse to make payroll deductions of dues, fees, or assessments to any employee organization pursuant to written authorization; except that the deductions may not continue to be made after another employee organization has been certified under this act by the board."

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NOTICE TO EMPLOYEES

FROM THE STATE EMPLOYMENT RELATIONS BOARD

POSTED PURSUANT TO AN ORDER OF THE
STATE EMPLOYMENT RELATIONS BOARD
AN AGENCY OF THE STATE OF OHIO

After a hearing in which all parties had an opportunity to present evidence, the State Employment Relations Board has determined that we have violated the law and has ordered us to post this Notice. We intend to carry out the order of the Board and abide by the following:

WE WILL 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 from otherwise violating Revised Code 4117.11(A)(1) and 4117.11(A)(5).

WE WILL NOT in any like or related matter, interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them under Chapter 4117 of the Revised Code.

WE WILL TAKE THE FOLLOWING AFFIRMATIVE ACTION:

1. Immediately engage in collective bargaining negotiations pursuant to Chapter 4117 of the Ohio Revised Code with OAPSE, the bargaining representative of the non-teaching employees.

2. Immediately resume deduction of OAPSE dues from the wages of the non-teaching employees as specified in the terms of the 1984 contract.

3. Deduct from the unit employees' paychecks and pay to OAPSE dues, retroactive to January 11, 1985, in an equitable manner and during a reasonable period pursuant to an arrangement to be agreed between OAPSE and the School District.

NEW MIAMI LOCAL SCHOOL DISTRICT
BOARD OF EDUCATION

DATE _____ BY _____ TITLE _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board.

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85-UR-01-2709