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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

and

City of Bedford Heights,

Respondent.

CASE NUMBER: 86-ULP-10-0403

DIRECTIVE DENYING MOTION FOR RECONSIDERATION

Before Chairman Day and Vice Chairman Sheehan; March 5, 1987.

On November 8, 1986, the International Association of Fire Fighters, Local #1497 (Charging Party) filed a motion requesting that the Board seek injunctive relief. This motion was denied by the Board in a directive issued on January 8, 1987.

On January 9, 1987, the Charging Party filed a motion for reconsideration and for oral argument. In a directive issued on January 22, 1987, the Board granted the motion for oral argument. A hearing before the Board took place on January 29, 1987.

For the reasons stated in the attached opinion incorporated by reference the motion for reconsideration is denied.

It is so directed.

DAY, Chairman, and SHEEHAN, Vice Chairman, concur.

JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 5th day of March, 1987.

JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

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22

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CASE NUMBER: 86-ULP-10-0403

OPINION
(On Motion For Reconsideration)

Day, Chairman:

In this case the State Employment Relations Board (SERB) is asked to reconsider a prior refusal to seek an injunction under the provenance of R.C. 4117.12(C).[1] The request travels on the assumption that the action the complaint in this case describes will inflict irreparable damages on

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[1]SERB denied the request for injunctive relief in a directive issued on January 8, 1987, stating that the request fails to establish that the charge raises questions of irreparable injury without an adequate remedy at law.

R.C. 4117.12(C) provides:

"Whenever a complaint alleges that a person has engaged in an unfair labor practice and that the complainant will suffer substantial and irreparable injury if not granted temporary relief, the board may petition the court of common pleas for any county wherein the alleged unfair labor practice in question occurs, or wherein any person charged with the commission of any unfair labor practice resides or transacts business for appropriate injunctive relief, pending the final adjudication by the board with respect to the matter. Upon the filing of any petition, the court shall cause notice thereof to be served upon the parties, and thereupon has jurisdiction to grant the temporary relief or restraining order it considers just and proper."

SERB, on the members of the Bedford Heights Fire Department and on the Bedford Heights community. The action alleged to have such substantial and irreparable consequences is said to result from a unilateral modification of fire fighters' schedules by Bedford Heights (City).[2]

For reasons recited below, SERB overrules the motion for reconsideration.

I

After a complaint has issued in an unfair labor practice case, SERB is empowered, in certain circumscribed circumstances, to seek a temporary court order to enjoin the alleged conduct before adjudicating its lawfulness. The limiting circumstances in the statute have some echoes from the traditional principles of equity. Thus, to warrant SERB's asking a court to intervene after a probable cause finding but before decision on the merits, it must appear that the "complainant" will suffer "substantial and irreparable injury."[3]

A literal reading of R.C. 4117.12(C) indicates that the injury to be guarded against is injury to SERB. For SERB is the "complainant". However, the Movant would expand the beneficiaries of the statutory protection to include the charging party and the community of Bedford Heights. If these are statutory objectives, they lurk somewhere out of sight in the recesses of the language. For they cannot be discerned from the words. But even if the movant's contentions were correct it would make no difference. This is so, because the change in schedule (at worst) does not compel the conclusion

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[2]The former schedule was 24 hours on and 48 hours off duty. The current schedule is reflected in Exhibit "A" attached to the stipulation of the parties entered for purposes of the hearing on the instant Motion for Reconsideration.

[3]See fn. 2, supra.

of substantial injury to SERB's interest or to any other. And certainly irreparability is not established. For if an unfair labor practice is demonstrated after a decision on the merits, SERB has broad statutory authority to fashion a remedial order.[4] There is no reason to believe that a schedule change will cause consequences that cannot be rectified if, after final adjudication, rectification is needed.

Sheehan, Vice Chairman, concurs.

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[4]R.C. 4117.12(B)(3) provides:

"If upon the preponderance of the evidence taken, the board believes that any person named in the complaint has engaged in any unfair labor practice, the board shall state its findings of fact and issue and cause to be served on the person an order requiring that he cease and desist from these unfair labor practices, and take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of Chapter 4117. of the Revised Code. If upon a preponderance of the evidence taken, the board believes that a person named in the complaint has not engaged in an unfair labor practice it shall state its findings of fact and issue an order dismissing the complaint." (Emphasis added.)

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