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STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of  
State Employment Relations Board,

Complainant,

and

Vandalia-Butler City School District  
Board of Education,

Respondent.

CASE NUMBER: 85-UR-04-3528

ORDER  
(Opinion Attached)

Before Chairman Day and Vice Chairman Sheehan; April 16, 1987.

On April 24, 1985, the Ohio Association of Public School Employees/AFSCME, AFL-CIO (Intervenor) filed an unfair labor practice charge against the Vandalia-Butler City School District Board of Education (Respondent). Pursuant to Ohio Revised Code (O.R.C.) Section 4117.12, the Board conducted an investigation and found probable cause to believe that an unfair labor practice has been committed. Subsequently, a complaint was issued alleging that Respondent had violated O.R.C. Sections 4117.11(A)(1) and (A)(5) by using a bargaining unit member as one of Respondent's representatives at the bargaining table over the objections of the Intervenor. The case was heard by a Board hearing officer.

The Board has reviewed the record, the hearing officer's proposed order, exceptions, and responses. For the reasons stated in the attached opinion, incorporated by reference, the Board adopts the hearing officer's findings of fact, conclusions of law, and recommendations, but not necessarily the analysis and discussion. The Respondent is ordered to:

a. CEASE AND DESIST FROM:

- 1) Interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Chapter 4117 of the Ohio Revised Code and otherwise violating O.R.C. Section 4117.11(A)(1); and
- 2) Refusing to bargain collectively with the exclusive representative of its employees and otherwise violating O.R.C. Section 4117.11A(5); and

- 3) Utilizing bargaining unit members who have an interest in the outcome of the bargaining sessions to participate on behalf of the public employer as a stenographer-observer.

b. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS:

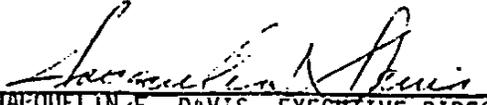
- 1) Post for sixty (60) days in all Vandalia-Butler City School District Board of Education buildings the Notice to Employees furnished by the Board stating that the Vandalia-Butler City School District Board of Education shall cease and desist from the action set forth in Paragraph (a) and shall take the following affirmative actions set forth in Paragraph (b);
- 2) To immediately engage in collective bargaining; and
- 3) To refrain from using bargaining unit members as stenographers or in other participations on behalf of the public employer in the collective bargaining process where the employee has an interest in the outcome of the bargaining.

It is so ordered.

DAY, Chairman, and SHEEHAN, Vice Chairman, 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 30<sup>th</sup> day of April, 1987.

  
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JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

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OPINION

Sheehan, Vice Chairman:

In the instant case, the single issue is whether the Respondent violated R.C. Section 4117.11(A)(1) and (5)<sup>1</sup> by having a member of the Intervenor's bargaining unit seated with Respondent's negotiating team for the purpose of taking notes of the bargaining sessions.

The Intervenor charged the Respondent with refusing to bargain in good faith by using a bargaining unit member as a member of its own bargaining

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R.C. Sec. 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;

team and is in violation of both R.C. Section 4117.11(A)(1) and (5) and R.C. 4117.20(A) and (B).<sup>2</sup>

In Central State University v. AFSCME (84-UR-08-1724), the Board dealt with the attempt by one party to dictate the choice of the other party's representative. The Board held: ". . . neither party may interfere with the other's selection of representatives. To abridge the right is to strike at the core of the democratic process. Such attempts have long been held violations of fair labor practices in the private sector. For Ohio public employees/employers that right is expressly accorded by statute. R.C. 4117.11(A)(1) prohibits interference by employer with employee organization's selection of its representatives, and R.C. 4117.11(B)(1) extends equal protection to the employer."

A novel twist, however, is introduced in the instant case. Did the Respondent violate 4117.20(B) and 4117.11(A)(1) by using a bargaining unit member ostensibly to take notes during the negotiations?

Absent any mutually agreed upon rules of procedure to the contrary, bargaining sessions are usually conducted in private<sup>3</sup> exclusively between

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2R.C. Sec. 4117.20. (A) No person who is a member of the same local, state, national, or international organization as the employee organization with which the public employer is bargaining or who has an interest in the outcome of the bargaining, which interest is in conflict with the interest of the public employer, shall participate on behalf of the public employer in the collective bargaining process except that the person may, where entitled, vote on the ratification of an agreement.

(B) The public employer shall immediately remove from his role, if any, in the collective bargaining negotiations or in any manner in connection with negotiations any person who violates division (A) of this section.

3R.C. 4117.21 mandates: "Collective bargaining meetings between public employers and employee organizations are private, and are not subject to Section 121.22 of the Revised Code."

members of the respective bargaining teams. Observers and others are present only with the consent of both parties.

If the note-taking member was merely invited for that purpose and not, as the Intervenor charged, a member of the Respondent's bargaining team then her continued presence in that role would normally depend on the Intervenor's consent or acquiescence.

If on the other hand, the note-taking member was, as the charge states, a member of Respondent's bargaining team then a violation of 4117.20(B) appears clear.

Regardless of which is an accurate portrayal, the mere presence at negotiating sessions of a member of the bargaining unit who was not chosen by the employee organization disturbs the generally held standard of relative equality that is necessary between the employer and the employees' representative. Even under ideal conditions the atmosphere at bargaining sessions can be conservatively described as sensitive. To create situations that are certain to further polarize the parties threatens the integrity of the bargaining process. The Board can place no higher priority among its responsibilities than to take steps to preserve that integrity. Notwithstanding the provisions of Section 4117.20, for an employer to insist upon a bargaining unit member at the table for whatever purpose over the objections of the employee organization risks at his own peril charges of interference and failure to bargain in good faith.

Although both parties may choose their own representatives free from interference by the other, the employer's selections are conditioned by the provisions of 4117.20.

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When the Respondent in the instant case denied the Intervenor's request to remove the bargaining unit member from the negotiating sessions, it was at once a breach of 4117.11(A)(1) and good faith bargaining pursuant to 4117.11(A)(5).

For the reasons adduced above, the Board adopts the Hearing Officer's recommendations.

Day, Chairman, concurs.