

87-008 137

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Richard Sycks,

Charging Party,

v.

Ohio Civil Service Employees Association/AFSCME, Local 11, AFL-CIO,

Charged Party.

CASE NUMBER: 86-ULP-8-0282

and

Richard Sycks,

Charging Party,

v.

Ohio Civil Service Employees Association/AFSCME, Local 11, AFL-CIO,

Charged Party.

CASE NUMBER: 86-EORC-11-0001

DIRECTIVE DISMISSING UNFAIR LABOR PRACTICE CHARGE AND DIRECTING  
COMPLAINT TO AN INVESTIGATIVE HEARING  
(OPINION ATTACHED)

Before Chairman Day and Vice Chairman Sheehan; April 23, 1987.

On August 1, 1986, Richard Sycks (Charging Party) filed an Unfair Labor Practice Charge against the Ohio Civil Service Employees Association/AFSCME, Local #11, AFL-CIO (Charged Party). The Charge alleges that Charged Party violated Ohio Revised Code Section 4117.11(B)(1) by restraining Charging Party in the exercise of his right to seek union office as guaranteed by Section 4117.19(C)(4); by permitting the election of union officers by delegates rather than total union membership; and by generally failing to comply with the requirements of Section 4117.19(C)(4). The Charging Party also filed a complaint pursuant to Section 4117.19(E).

The Board conducted an investigation of the unfair labor practice charge and complaint. For the reasons set forth in the attached opinion incorporated by reference, the Board dismisses the Charge and directs the complaint to an investigative hearing. All parties shall be permitted to provide all evidence relevant to the issue to the hearing officer.

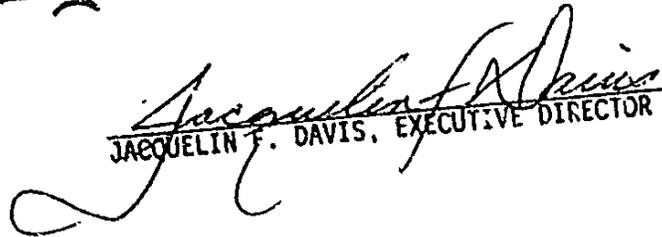
DIRECTIVE DISMISSING UNFAIR LABOR PRACTICE CHARGE  
AND DIRECTING COMPLAINT TO AN INVESTIGATIVE HEARING  
CASE NOS. 86-ULP-8-0282 and 86-EORC-11-0C01  
MAY 7, 1987  
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It is so directed.

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 15<sup>th</sup> day of May, 1987.

  
\_\_\_\_\_  
JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

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OPINION

Day, Chairman:

These cases state two claims based on the same facts. The substance of the contentions is this: the Ohio Civil Service Employees Association/AFSCME, Local 11, AFL-CIO (Local 11, Charged Party, Respondent) has committed an unfair labor practice in violation of R.C. 4117.11(B)(1)<sup>1</sup> and

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<sup>1</sup>R.C. Sec. 4117.11:

(B) It is an unfair labor practice for an employee organization, its agents, or representatives, or public employees to:

(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117, of the Revised Code. This division does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances.

violated R.C. 4117.19(C)(4)<sup>2</sup> by denying Richard Sycks (Sycks or Charging Party) the right to seek the office of President of Local 11 and by willfully failing to comply with other requirements of R.C. 4117.19(C)(4).

For procedural reasons assessed below, the State Employment Relations Board (SERB or Board) will (1) dismiss the unfair labor practice charge (86-ULP-8-0282) and (2) direct the claim of violation of R.C. 4117.19(C)(4) to investigative hearing on the complaint of Sycks, the Charging Party.

I

R.C. 4117.19(E) provides a special remedy for violations of Section 19:

(E) The board may withhold certification of an employee organization that willfully refuses to register or file an annual report, or that willfully refuses to comply with other provisions of this section. The board may revoke a certification of an employee organization for willfully failing to comply with this section. The board may enforce the prohibitions contained in this section by petitioning the court of common pleas of the county in which the violation occurs for an injunction. Persons complaining of violation of this section shall file the complaint with the board. (Emphasis supplied.)

The allegations in the present cases are primarily grounded upon claims of violations of Section 4117.19. It is arguable that the facts asserted would, if proven, also support a contention that Section 4117.11(B)(1) has been violated. However, the essence of the claim is rooted in Section 4117.19. Accordingly, only the special remedies provided in Section 4117.19(E) apply.

2R.C. Sec. 4117.19:

(C) The constitution or bylaws of every employee organization shall:  
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(4) Require periodic elections of officers by secret ballot subject to recognized safeguards concerning the equal right of all members to nominate, seek office, and vote in the elections, the right of individual members to participate in the affairs of the organization, and fair and equitable procedures in disciplinary actions.

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II

An investigative hearing is ordered to determine whether the Sycks' complaint that R.C. 4117.19(C)(4) has been violated is supported by facts sufficient to warrant Board action under R.C. 4117.19(E). All parties will present evidence to the investigating agent.

Sheehan, Vice Chairman, concurs.

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