

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
State Employment Relations Board,
Complainant,
and
Franklin County Board of County Commissioners,
Respondent.

87-010

CASE NUMBERS: 86-ULP-3-0093
86-ULP-5-0185

ORDER
(Opinion attached.)

Before Chairman Day and Vice Chairman Sheehan; April 7, 1987.

On March 24, 1986, and on May 28, 1986, Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, (AFSCME) filed unfair labor practice charges against the Franklin County Board of County Commissioners (Respondent). Pursuant to Ohio Revised Code (O.R.C.) §4117.12, the Board investigated the charges and found probable cause to believe that unfair labor practices had been committed.

Subsequently, complaints were issued alleging violations of O.R.C. §4117.11(A)(1) and (A)(5) by the Respondent, and the matters were directed to hearing. The Board has reviewed the record, the hearing officer's proposed order, exceptions, and responses.

For the reasons stated in the opinion attached, 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. §4117.11(A)(1); and
- (2) Refusing to bargain collectively with the exclusive representative of its employees and otherwise violating O.R.C. §4117.11(A)(5).

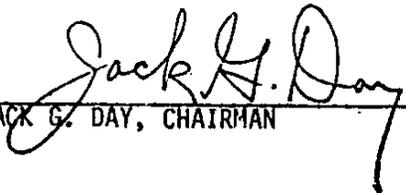
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b) Take the following affirmative action:

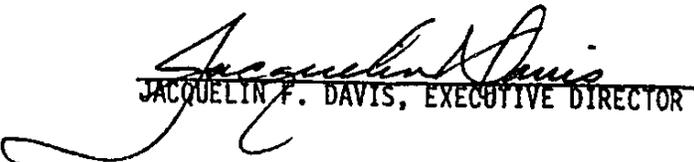
- (1) Post for sixty (60) days in all usual and normal posting locations where the bargaining unit employees work the Notice to Employees furnished by the Board stating that the Franklin County Board of County Commissioners shall cease and desist from the actions set forth in Paragraph a. and shall take the following affirmative actions:
- (2) Immediately offer to engage in collective bargaining with AFSCME with respect to wages, hours, terms and other conditions of employment including providing the information relevant to collective bargaining requested by AFSCME on March 10, 1986, and April 25, 1986.
- (3) Immediately restore paid break times to painters and make them whole with back pay for all break times worked since January 6, 1986.
- (4) Immediately restore the hours of work that existed prior to January 6, 1986 (35 hours per week).
- (5) Notify the Board within twenty (20) days of its Order of Respondent's action taken to comply with said Order.

It is so ordered.

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 21st day of May, 1987.


JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

0295B:LSI/j1b

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v.

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OPINION

Sheehan, Vice Chairman:

I

The issues in the instant case were:

1. Whether or not the Respondent had a duty to bargain with the Employee Organization.
2. Whether or not the Respondent had committed an unfair labor practice by implementing changes in wages, hours, and the conditions of employment without bargaining with the certified exclusive representative thereby violating R.C. Section 4117.11(A)(1) and (A)(5).
3. Whether or not the Respondent had committed an unfair labor practice by its refusal to furnish information necessary and relevant for the purpose of collective bargaining to the employee organization representing its employees thereby violating R.C. Section 4117.11(A)(1) and (A)(5).

II

On all three issues the Hearing Officer found in the affirmative and the Board concurs. However, some brief comments are warranted.

The Respondent argued that it had not received SERB's order certifying the bargaining unit until January 14, 1986, and, therefore, until the receipt of certification, was free to legally make changes it deemed appropriate in the wages, hours, and other conditions of employment of its employees in the bargaining unit. The Respondent also argued that its refusal to furnish information to the exclusive representative was based on its good faith doubt of the majority status of the exclusive representative.

III

The Respondent's reliance on the delayed receipt of the order of certification was indeed misplaced. With or without formal notification certifying the unit, the Respondent was well aware of SERB's procedural actions. It knew SERB had counted a previously voided ballot¹; it was notified that SERB had overruled its motion for reconsideration of the counted ballot²; and on its appeal of SERB's ballot decision to the Franklin County Court of Common Pleas had received the court's order affirming SERB's disposition of the ballot as proper. To argue that without the formal order of certification the Respondent was under no obligation to observe the representation procedures set forth in O.R.C. 4117., is simply elevating form over substance which finds no sanction with this Board. The obligation of the Respondent to bargain with the Charging Party began on

¹Correspondence with AFSCME.

²Employer's Brief, page 3, October 28, 1986

September 12, 1985, the day SERB certified the unit and the day the Respondent's good faith doubt of majority status was disallowed. Consequently, the Respondent erred by refusing to bargain with the Charging Party and to furnish it relevant information necessary to the bargaining process.

The duty to furnish information has been well settled in bargaining matters. The National Labor Relations Board has long held that, intertwined with the duty to bargain in good faith, is a duty on the part of the employer to supply the union, upon request, with sufficient information to enable it to understand and intelligently discuss the issues raised in bargaining.³

The Supreme Court gave explicit approval to the standard when it decided NLRB v. Truitt Manufacturing Co.⁴ The court reasoned:

Good faith bargaining necessarily requires that claims made by either bargainer be honest claims ... If ... an argument is important enough to present in the give and take of bargaining, it is important to require some sort of proof of its accuracy.

The Seventh Circuit in Sundstrand Heat Transfer, Inc. v. NLRB⁵ set forth the condition when the duty to furnish information exists. The Court held in affirming a NLRB decision that an employer acts at its peril if it refuses to provide requested information following a Board election, even

³Developing Labor Law, Ch. 13, Pg. 610

4350 U.S. 149 (1956), 38 LRRM 2042

538 F2d 1257, 92 LRRM 3266, (CA 7, 1976)

See also: East Coast Equip. Corp. and Steco Sales, Inc., 229 NLRB 825, 95 LRRM 1166 (1977), enf. 98 LRRM 2438 (CA 3, 1978). (Employer who contended that certified unit was not appropriate violated Act when it denied union's request for information.)

though the request is made prior to certification and while objections are pending.

These are just a few of many key decisions that have underscored the importance of the exchange of essential information in collective bargaining. The premise on which this requirement is based is that the collective bargaining process requires that the bargaining agents have adequate information about the immediate subject at issue for the process to function properly, either in bargaining or contractual administration. Disclosure of relevant information is integral to that process and necessary to the parties for the proper discharge of their duties.

While the Board is not obligated to follow the National Labor Relations Board's decisions or practices, its arguments and rationale, as well as court decisions, regarding the duty to bargain and to furnish information as they relate to the instant case are too compelling not to observe. The Respondent's duty to provide the Charging Party with relevant information occurred at the time it was in receipt of the Charging Party's request.

Day, Chairman, concurs.