

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
State Employment Relations Board,

Complainant,

v.

City of Twinsburg,

Respondent.

CASE NUMBER: 86-ULP-4-0024

ORDER
(Opinion attached.)

Before Chairman Day, and Vice Chairman Sheehan; April 30, 1987.

On June 24, 1986, the Northern Ohio Patrolmen's Benevolent Association (Charging Party) filed an unfair labor practice charge against the City of Twinsburg (Respondent). Pursuant to Ohio Revised Code (O.R.C.) §4117.12, the Board conducted an investigation and found probable cause to believe that an unfair labor practice had been committed. Subsequently, a complaint was issued alleging that the Respondent had violated O.R.C. §§4117.12(A)(1), (3), and (5) by unilaterally ceasing the "pick up" and "drop off" policy for police officers. The matter was heard by a Board hearing officer. The Board has reviewed the record, the hearing officer's proposed order, exceptions, and response. 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.

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 Revised Code and otherwise violating Revised Code 4117.11(A)(1); and
 - (2) Refusing to bargain collectively with the exclusive representative of its employees and otherwise violating Revised Code 4117.11(A)(5).
- b. Take the following affirmative actions:
 - (1) Post for sixty (60) days in conspicuous locations throughout the police department the Notice to Employees furnished by the Board stating that the City of Twinsburg shall cease and desist from the actions set forth in Paragraph a and shall take the affirmative action set forth in Paragraph b.

- (2) Respondent and the Northern Ohio Patrolmen's Benevolent Association shall immediately engage in good faith collective negotiations regarding the police transportation policy.
- (3) Respondent shall immediately reinstate the police transportation policy in existence prior to June 13, 1986, until such time as an agreement is reached regarding this issue.
- (4) Respondent shall compensate its Police Officers at the rate of twenty cent (20¢) per mile (This represents the average mileage reimbursement afforded employees of the various governmental entities throughout the State of Ohio.) for round trip transportation between home and work on each day worked since June 15, 1986, where that Officer was responsible for providing his own transportation.

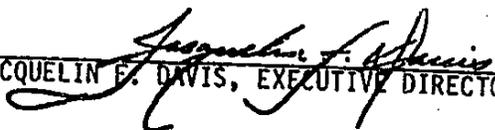
It is so ordered.

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 4th day of June, 1987.



JACQUELIN E. DAVIS, EXECUTIVE DIRECTOR

03048:LSI/j1b



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:

1. WE WILL CEASE AND DESIST FROM:

- (a) Interfering with, restraining or coercing employees in the exercise of rights guaranteed in Chapter 4117 of the Revised Code and otherwise violating Revised Code 4117.11(A)(1); and
- (b) Refusing to bargain collectively with the exclusive representative of its employees and otherwise violating Revised Code 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.

2. WE WILL TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (a) Post for sixty (60) days in conspicuous locations throughout the police department the Notice to Employees furnished by the Board stating that the City of Twinsburg shall cease and desist from the actions set forth in Paragraph 1a and b, and shall take the affirmative action set forth in Paragraph 2a and b;
- (b) Respondent and the Northern Ohio Patrolmen's Benevolent Association shall engage in good faith collective negotiations regarding the police transportation policy;
- (c) Respondent shall immediately reinstate the police transportation policy in existence prior to June 13, 1986, until such time as an agreement is reached regarding this issue; and
- (c) Respondent shall compensate its Police Officers at the rate of twenty cent (20¢) per mile for round trip transportation between home and work on each day worked since June 15, 1986, where that Officer was responsible for providing his own transportation.

CITY OF TWINSBURG - 85-ULP-4-0024

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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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 87-011

In the Matter of
State Employment Relations Board,

Complainant,

v.

City of Twinsburg,

Respondent.

CASE NUMBER: 86-ULP-4-0024

OPINION

Day, Chairman:

One issue of some novelty [at least in State Employment Relations Board (SERB or Board) practice] is in this case.

The complaint alleges that the City of Twinsburg (City or respondent) has failed to bargain in good faith.

The rare issue is whether parole evidence of a side agreement should have been admitted in the face of a completed collective bargaining agreement containing strong zipper and management rights clauses. The evidence was properly admitted.

I

The hearing officer admitted oral evidence of a claimed side agreement solely for its relevance to the question whether the City had bargained in bad faith by inducing the final agreement through oral representations it now claims irrelevant. The City offered no rebuttal. Instead, it contended the parole evidence rule rendered any oral side agreement inconsequential and inadmissible (even if it exists) because of the strong zipper and management rights provisions in the ultimate agreement.

II

An environment for good faith bargaining can be compromised in a variety of ways. One is to secure a written agreement through the inducement of an

oral side agreement and then repudiate the oral accord but block the proof of its existence by invoking the parole evidence rule. When this or a similar set of conditions occurs, conventional contract law provides defensive responses which may be available to prove the validity of the oral ancillary agreement.¹

Collective bargaining agreements do not fit squarely within ordinary contract law principles.² However, it is unnecessary to the disposition

¹For example, equitable estoppel: "The principle is, that where one party has by his representations or his conduct induced the other party to a transaction to give him an advantage which it would be against equity and good conscience for him to assert, he would not in a court of justice be permitted to avail himself of that advantage." Union Insurance Co. v. Wilkinson (1872) 80 U.S. 617, 622. And some decisions have held that an ancillary agreement can be proven by parole when it does not conflict with a specific provision of a subsequent written agreement and only a zipper clause stands in the way. See Blaha v. Schwartz (1977, Common Pleas of Cuyahoga County) 7 O.O. 3d 234, 235-237 for a discussion of this and other exceptions to the parole evidence rule.

²The Supreme Court of the United States has marked the difference between non-labor contracts and collective bargaining agreements:

"The collective bargaining agreement states the rights and duties of the parties. It is more than a contract; it is a generalized code to govern a myriad of cases which the draftsman cannot wholly anticipate.... The collective agreement covers the whole employment relationship. It calls into being a new common law--the common law of a particular industry or of a particular plant. As one observer has put it:

"... There are too many people, too many problems, too many unforeseeable contingencies to make the words of the contract the exclusive source of rights and duties. One cannot reduce all the rules governing a community like an industrial plant to fifteen or even fifty pages. Within the sphere of collective bargaining, the institutional characteristics and the governmental nature of the collective bargaining process demand a common law of the shop which implements and furnishes the context of the agreement." Id. at 578-80 (quoting from Cox, Reflections Upon Labor Arbitration, 72 Harv. L. Rev. 1482, 1498-99 (1959)).

United Steelworkers of America v. Warrior's Gulf Navigation Co. (1960) 363 U.S. 574, 578-579. See also AFC Industries, Inc. v. NLRB (Cir. 8, 1979) 100 LRRM 2710, 2715: "It is well established that collective bargaining agreements are not governed by ordinary contract law."

of this case to reach contract principles at all. For in the instant case a different and fundamental issue of labor law is involved. The issue is whether the City has bargained in good faith. The hearing officer admitted parole evidence of a side agreement solely because it reflected the quality of the bargaining faith. That was the question before him. He acted properly in ruling as he did.

III

The findings of fact by the hearing officer are adopted and incorporated in this opinion by reference. The conclusions of law and recommendations of the hearing officer are also incorporated by reference for the reasons stated here.

The Respondent did not bargain in good faith.

Sheehan, Vice Chairman, concurs.

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