

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 87-014

In the Matter of  
State Employment Relations Board,  
Complainant,  
and  
Hamilton County Department of Human Services,  
Respondent.

CASE NUMBER: 86-ULP-7-0262

ORDER  
(Opinion attached.)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Latané; May 28, 1987.

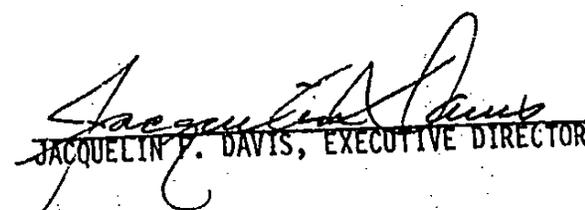
On July 21, 1986, the Ohio Civil Service Employees Association, Local 11, AFSCME, AFL-CIO, (charging party) filed an unfair labor practice charge against the Hamilton County Department of Human Services (Respondent). Pursuant to Ohio Revised Code (O.R.C.) §4117.12, the Board conducted an investigation 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. §4117.11(A)(1) by failing to comply with the provisions of the Board's May 1986 direction of re-run election prior to June 10, 1986. The matter was heard by a Board hearing officer. The Board has reviewed the hearing officer's proposed order, exceptions, and responses. The Board adopts the stipulations of fact. For the reasons stated in the attached opinion, incorporated by reference, the complaint is dismissed.

It is so ordered.

DAY, Chairman, SHEEHAN, Vice Chairman, and Latané, Board Member, concur.

  
\_\_\_\_\_  
JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 16<sup>th</sup> day of June, 1987.

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

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 87-014

In the Matter of  
State Employment Relations Board,  
Complainant,

and

Hamilton County Department of Human Services,  
Respondent.

CASE NUMBER: 86-ULP-7-0262

OPINION

Day, Chairman:

The Hearing Officer in this case described the single issue:

"Whether or not Respondent violated Ohio Revised Code Section 4117.11(A)(1) by failing to comply with the provisions of the Board's May 1986 direction of rerun election prior to June 10, 1986, at which time a court stay was entered relieving Respondent of the obligation to comply with SERB's<sup>1</sup> pre-election orders."

Refining this description by adding the date that the failure to comply began (June 2, 1986),<sup>2</sup> the basic question is exposed. That question is-- does an eight day compliance flaw constitute an unfair labor practice?<sup>3</sup>

The question is answered, "Yes."<sup>4</sup> But, for reasons adduced below, a cease and desist order will not issue and the complaint will be dismissed.

---

<sup>1</sup>State Employment Relations Board (SERB or Board).

<sup>2</sup>The relevant facts are not in dispute. The June 2, 1986, is the date the Board's pre-election orders became final.

<sup>3</sup>See §4117.11(A)(1) of the Revised Code.

<sup>4</sup>The Hearing Officer recommended dismissal.

I

Remedial orders are designed to effect the objectives of Chapter 4117, Ohio Revised Code. The objectives include the protection of public employees in the exercise of the rights detailed in §4117.03(A) (1)-(5) of the Revised Code.<sup>5</sup>

There is considerable tenability in the argument that any violation of §4117.03(a)(1)-(5) rights, however slight, should result in a remedial order. This, it is argued, is a necessary reminder to violators and reassurance to victims, in this case employees, that unfair labor practices of any dimension will not pass without remedy. In the usual case, SERB would agree. However, the circumstances here are unique and warrant a distinctive disposition.

5§4117.03 provides:

(A) Public employees have the right to:

(1) Form, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in, except as otherwise provided in Chapter 4117. of the Revised Code, any employee organization of their own choosing;

(2) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection;

(3) Representation by an employee organization;

(4) Bargain collectively with their public employers to determine wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, and enter into collective bargaining agreements;

(5) Present grievances and have them adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and as long as the bargaining representatives have the opportunity to be present at the adjustment.

II

A replay of the scenario of this case through and including the bargaining representatives clear victory in the re-run election would serve no purpose. The details are well known to the parties. If the hot contest of issues (both before SERB and in the Courts) has not thoroughly alerted both the management and the working force to the existence of employee rights and the hazards of violating them, it is unlikely that the usual "cease and desist" procedure could add anything. Despite the strife and turmoil generated, the employees seeking representation have prevailed. And, unless and until a fresh refusal to bargain occurs, there is little purpose to stacking another order on top of those various directives from SERB which already have resulted in a free choice.

This is not to say that in no case will a small sized dereliction evoke a cease and desist order. The decision here does not rest on de minimis. Rather it is grounded principally on two facts, 1) the unfair labor practice alleged has ended long since thus making current compelled compliance moot, and 2) whatever warning to the violators and reassurance to the violated is contributed by a cease and desist order has been satisfied overwhelmingly by events.

III

The Board adopts the Hearing Officer's findings of fact<sup>6</sup> and incorporates them by reference. The Respondent committed an 8(A)(1) unfair labor practice for eight days. However, a coupling of the turbulent history

---

<sup>6</sup>See §4117.12(B)(1)-(3) of the Revised Code.

of this case with the vintage of the present infraction and the fact that it is a minim, leads to the conclusion that a cease and desist order would be both fatuous and contrary to the legislative injunction that the statute be "construed liberally for ... the purpose of promoting orderly and constructive relationships between all public employers and their employees."<sup>7</sup>

Accordingly, the complaint is dismissed.

Sheehan, Vice Chairman, and Latané, Board Member, concur.

---

See §4117.22 of the Revised Code.

0302B:d/b:6/12/87:f