

139 SERB OPINION 87-016
MAM

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
State Employment Relations Board,

Complainant,

v.

City of Bedford Heights,

Respondent.

CASE NUMBER: 86-ULP-10-0403

ORDER
(Opinion attached.)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Latané;
July 9, 1987.

On October 29, 1986, the International Association of Fire Fighters, Local 1497 (Charging Party) filed an unfair labor practice charge against the City of Bedford Heights (Respondent). Pursuant to Ohio Revised Code (O.R.C.) §4117.12, the Board conducted an investigation of the charge 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) and (A)(5) by unilaterally changing the working hours of the fire fighters from 24/48 to 10/14 hour shifts. The matter was heard by a Board hearing officer.

The Board has reviewed the record, the hearing officer's proposed order, exceptions and responses. The Respondent's motion for oral argument before the Board is denied. For the reasons set forth in the attached opinion, incorporated by reference, the Board adopts the hearing officer's admissions and findings of fact but not necessarily the analysis and discussion. The Board amends the conclusions of law No. 3 to read: "The City of Bedford Heights has violated R.C. §4117.11(A)(1) by unilaterally changing the work schedules of the fire fighters during collective bargaining negotiations" and adopts the conclusions of law as amended. The Board amends the hearing officer's recommendation 2(b)(iii) to read: "Immediately engage in good faith collective bargaining with IAFF, Local 1497, the exclusive representative of the Bedford Heights fire fighters, pursuant to O.R.C. §4117.14 starting from the initial step," and adopts the hearing officer's recommendations as amended.

The Respondent is ordered to:

- (A) Cease and desist from:

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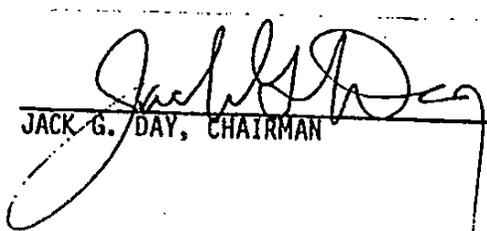
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interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Chapter 4117 of the Revised Code, and from refusing to bargain collectively with the representative of its employees recognized pursuant to Section 4(B) of Chapter 4117 of the Revised Code and from otherwise violating Ohio Revised Code §§4117.11 (A)(1) and (A)(5).

(B) Take the following affirmative action:

- (1.) Post for 60 days in the watch room of the Bedford Heights Fire Department the Notice to Employees furnished by the Board stating that the City of Bedford Heights shall cease and desist from the actions set forth in Paragraph (A) and shall take the affirmative action set forth in Paragraph (B).
- (2.) Immediately abolish the present 10/14 hour work schedule for fire fighters and immediately institute the 24 on 48 off work schedule for fire fighters.
- (3.) Immediately engage in good faith collective bargaining with IAFF Local 1497, the exclusive representative of the Bedford Heights fire fighters, pursuant to O.R.C. §4117.14 starting from the initial step.
- (4.) Notify the State Employment Relations Board in writing within twenty calendar days from the date the order becomes final of the steps that have been taken to comply with this order.

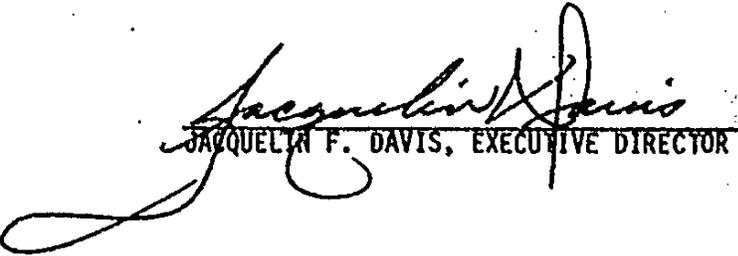
It is so ordered.



JACK G. DAY, CHAIRMAN

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JULY 9, 1987
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I certify that this document was filed and a copy served upon each party
on this 24th day of July, 1987.


JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

LSI:j1b/1346b:7/21/87



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:

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 from refusing to bargain collectively with the representative of its employees recognized pursuant to Section 4(B) of Chapter 4117 of the Revised Code and from otherwise violating Ohio Revised Code Sections 4117.11 (A)(1) and (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.

(B) TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (i) Post for 60 days in the watch room of the Bedford Heights Fire department the Notice to Employees furnished by the Board stating that the City of Bedford Heights shall cease and desist from the actions set forth in Paragraph (a) and shall take the affirmative action set forth in Paragraph (b).
- (ii) Immediately abolish the present 10/14 hour work schedule for fire fighters and immediately institute the 24 on 48 off work schedule for fire fighters.
- (iii) Immediately engage in good faith collective bargaining with IAFF Local 1497, the exclusive representative of the Bedford Heights fire fighters, pursuant to O.R.C. Section 4117.14 starting from the initial step.
- (iv) Notify the State Employment Relations Board in writing within twenty calendar days from the date the order becomes final of the steps that have been taken to comply with this order.

CITY OF BEDFORD HEIGHTS
86-ULP-10-0403

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

In the Matter of
State Employment Relations Board,
Complainant,

v.

City of Bedford Heights,
Respondent.

CASE NUMBER: 86-ULP-10-0403

OPINION

Day, Chairman:

The Hearing Officer's report in support of her proposed order stated the issues:¹

- "1. Whether or not Local 1497 is the deemed certified exclusive representative for the fire fighters of the City of Bedford Heights.
- "2. Whether or not the City violated R.C. Section 4117.11(A)(1) and (A)(5) by unilaterally changing the scheduled work hours of fire fighters from 24/48 to 10/14 hour shifts."

Treating the issues as questions, both are answered, "Yes." The reasons are adduced below.

I

In this case so much has been made of NLRB precedents and precedents from state jurisdictions other than Ohio that it is necessary to say again exactly what relationship such precedents bear to Ohio public sector labor law.

The only sources of law whose production binds the Ohio State Employment Relations Board (SERB) are the General Assembly of Ohio, Ohio courts, and the federal courts (with territorial jurisdiction) when deciding federal constitutional questions. These are the authorities to which SERB's ligaments of responsibility attach and no others. Of course, precedents from other jurisdictions are considered. And, when persuasive, may affect a SERB determination. But the point is that extra-state precedents, with the exceptions described, are not dispositive. Of course, reports and recommendations from SERB staff hearing officers are entitled to great weight. However, neither the findings of fact, conclusions of law, or supporting rationale by hearing officers constitutes any part of SERB precedent unless specifically adopted by the Board.

II

The International Association of Fire Fighters, Local 1497 (Local 1497, Fire Fighters, or IAFF) is the deemed certified exclusive representative of the fire fighters of the City of Bedford Heights (City, Management, or Respondent).

Respondent's objections² to the conclusion that Local 1497 is the exclusive representative of all the employees in the unit involved in the present case manifests a profound misapprehension of the statutory and temporary law objectives unless one is willing to accept the proposition that the legislature intended Chapter 4117 to destabilize public labor relations in Ohio. R.C. 4117.22 is the ultimate and total rebuttal of that:

"Chapter 4117. of the Revised Code shall be construed liberally for the accomplishment of the purpose of promoting

²Respondent's Exceptions to Hearing Officer's Proposed Order (HOPO), p. 4-8.

orderly and constructive relationships between all public employers and their employees."

The relevant portions of the temporary law³ are Sections 4(A) and (B). These provide:

"Section 4 (A) Exclusive recognition through a written contract, agreement, or memorandum of understanding by a public employer to an employee organization whether specifically stated or through tradition, custom, practice, election, or negotiation the employee organization has been the only employee organization representing all employees in the unit is protected subject to the time restriction in division (B) of section 4117.05 of the Revised Code. Notwithstanding any other provision⁴ of this act, an employee organization recognized as the exclusive representative shall be deemed certified until challenged by another employee organization under the provisions of this act and the State Employment Relations Board has certified an exclusive representative.

"(B) Any employee organization otherwise recognized by the public employer without a written contract, agreement, or memorandum of understanding shall continue to be recognized until challenged as provided in this act, and the board has certified an exclusive representative."

played against the backdrop of the legislative objectives and construed in the light of the transitional purpose of the temporary law the meaning of Section 4(A) and (B) is reasonably clear. The section is designed to maintain the status quo in those public sector employer/employee collective bargaining relationships antedating April 1, 1984.⁵ Taken together

³Amended Substitute Senate Bill No. 133.

⁴The "notwithstanding any other provision" language clearly indicates at least this much: whenever a bargaining representative achieves "deemed certified" status, there is only one method for change.

⁵Cf. Amended Substitute Senate Bill No. 133, Section 3: "Section 4, 5, 6, 7, and 8 of this act ... shall take effect on the effective date of this act."

April 1, 1984, is the effective date of Chapter 4117. (It should be noted that Divisions of (A), (B), and (C) of R.C. 4117.10 are not to be applied to "facts occurring before April 1, 1984." Senate Bill No. 133, Section 3.)

subsections 4(A) and (B) apparently attempt to encompass all of the predictable varieties and degrees of collective bargaining relationships predating Chapter 4117 and to vest "deemed certified" status in any union whose history with a public employer fits any one or more of the described associations. Thus, the section does not give the management a current option to recognize an employee organization's exclusive status. Rather, the section confers the status of exclusive representative when described antecedent conditions are present. "Deemed" certification follows.

It is neither the management nor SERB but the operation of law that creates a deemed certification. And this occurs when one or the other of the factual situations envisioned by Section 4(A) and (B) are present. That deemed certification is a legal effect is underlined by mandatory language in the section. The operative compelling word in both (A) and (B) is "shall." Nowhere does Section 4 posit discretion. If any of the conditions enumerated exist, the command of the statute is imperative. The language employed - "shall be deemed certified" [Section 4(A)] and "shall continue to be recognized" [Section 4(B)] - uses phrases of art in labor law and their appearance in the temporary law was not fortuitous but intended to describe a condition with consequences.

It is significant that both (A) and (B) of Section 4 make "certification" the result of recognition. Certification contemplates representation for "all" employees,⁶ but it is important to understand

⁶Section 4(D) is concerned with non-exclusive representation and treats it differently from exclusive recognition. This is a distinction that obviously intends a difference between exclusive and non-exclusive.

that it is not a pre-condition of certification or recognition that membership in the employee organization be total.⁷

III

The City violated R.C. 4117.11(A)(1) and (2) by unilaterally changing the scheduled work hours of fire fighters from 24/48 to 10/14 hour shifts.

A whole range of pre-April 1, 1984, activities establishes Local 1497 as the "deemed certified" representative of the fire fighting employees of the City of Bedford Heights. A course of dealings between the City and the Local began at least as early as 1969.⁸ Negotiations for wages, hours, terms, and conditions⁹ have taken place every two years.¹⁰ Grievances have been presented without management objections.¹¹ Before 1984, agreements were reflected in ordinances.¹² And the City has deducted union dues from Local 1497 members' paychecks for "at least the last seven (7) years."¹³

⁷Perhaps subsection (B) is not as clear on this point as subsection (A), but there is no discernible alternative meaning to "recognition." Moreover, that interpretation is the only construction which is consonant with the language "shall continue to be recognized until challenged as provided in this Act, and the Board has certified an exclusive representative." This reference seems ineluctably linked to the last sentence in subsection (A) and, therefore, bears the same meaning.

⁸Hearing Officer's Proposed Order, Finding of Fact (FF) No. 3.

⁹Id.

¹⁰Id.

¹¹FF No. 5.

¹²FF No. 6.

¹³FF No. 4. Twenty-three of the City's twenty-five member fire department have been Local 1497 members for the last ten (10) years. Id.

In the January 1984 negotiations, the City's Labor Relations Administrator indicated that if the union negotiators, members of the fire department, represented Local 1497, he, the administrator, would not deal with them. Formal recognition was not made an issue and a memorandum of understanding was reached. It remained in effect from January of 1984 until December of 1985. City Council passed ordinances reflecting the understanding.¹⁴

The relationship between the City and Local 1497 described in the last two paragraphs abundantly demonstrates those conditions from which "deemed certified" status derives.¹⁵

IV

There is no dispute over the fact that the City changed the scheduled work hours of the fire fighters from 24/48 to 10/14 hour shifts. The City made the change and did it unilaterally.¹⁶

R.C. 4117.08(C) provides in relevant part:

"Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117, of the Revised Code impairs the right and responsibility of each public employer to:

14FF No. 7.

¹⁵All the Findings of Fact in the Hearing Officer's Proposed Order are incorporated by reference as though fully rewritten. Given the course of conduct the findings summarize, it is apparent that provisions of either (A) or (B) of Section 4, or both, are quickened by it. The two filings for voluntary recognition are not consequential to decision. The filing vacillations here represent no more, under the circumstances, than a reaction to the point-counterpoint of negotiations and change nothing with respect to the "deemed" certification imposed by law.

¹⁶HOPD Adm. No. 3, p. 3:

"The City of Bedford Heights unilaterally changed the hours worked by fire fighters from 24 on, 48 off to 10 hour (day) and 14 hour (night)." (Sic.)

* * *

"(5) Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;

* * *

"The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. A public employee or exclusive representative may raise a legitimate complaint or file a grievance based on the collective bargaining agreement." (Emphasis supplied.)

Whatever differences in meaning there may be between the words "hour" and "schedule" considered abstractly, the statute clearly provides for the possibility that "scheduling" may "affect ... hours."¹⁷ And when it does or appears that it may, the scheduling employer has a duty to bargain with the exclusive representative of the employees about resulting effects.¹⁸

The conceded facts in this case provide a dramatic example of employer scheduling action affecting hours. For it is hardly debatable that a change from 24 on, 48 off to a 10 hour (day) and 14 hour (night) has a substantial effect on the hours of employment. Hence the unilateral change was a violation R.C. 4117.11(A)(1) and (5).

¹⁷Cf. also the plurality opinion in Meat Cutter v. Jewel Tea Co., (1965), 381 U.S. 676, 59 LRRM 2376, 2381:

"we think that the particular hours of the day and the particular days of the week during which employees shall be required to work are subjects well within the realm of 'wages, hours, and other terms and conditions of employment' about which employers and unions must bargain."

¹⁸See In re Wilmington City School District Board of Education (1987), SERB 87-005 at 3-11 to 3-15.

V

The admissions of the parties and the Hearing Officer's findings of fact are incorporated by reference as though fully rewritten. The Hearing Officer's conclusions of law are amended by striking the words, "and during the pendency of the union's petition for Voluntary Recognition" from the third conclusion. The conclusion as amended and the Hearing Officer's recommendations are adopted.¹⁹

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

¹⁹The parties must avail themselves of the impasse procedures in R.C. 4117.14 (unless they mutually agree on an alternative procedure), but in any event, are subject to the strictures of subsection (D)(1) of R.C. 4117.14.