

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SEAB OPINION 87-017

# 140

In the Matter of  
State Employment Relations Board,  
Complainant,  
v.  
City of Strongsville,  
Respondent.

CASE NUMBER: 86-ULP-10-0389

ORDER  
(Opinion attached.)

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

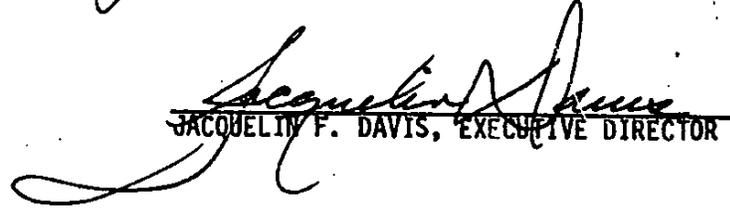
On October 20, 1986, the Strongsville Firefighters Association, Local 2882, IAFF (Charging Party) filed an unfair labor practice charge against the City of Strongsville (Respondent). Pursuant to O.R.C. §4117.12, the Board conducted an investigation of the charge and found probable cause to believe that an unfair labor practice had been committed. Subsequently, a complaint was issued alleging that the Respondent violated O.R.C. §§4117.11 (A)(1) and (A)(5) by taking steps to unilaterally to change the working hours of the firefighters from 24/48 hour shifts to 8 hours a day. 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 Charging Party's motion for leave to plead *instanter* is granted. For the reasons set forth in the opinion attached, incorporated by reference, the Board dismisses the complaint with prejudice.

It is so ordered.

  
JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party  
on this 27<sup>th</sup> day of August, 1987.

  
JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

LSI:j1b/1348b:8/21/87

52

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of  
State Employment Relations Board,  
Complainant,  
v.  
City of Strongsville,  
Respondent.

CASE NUMBER: 86-ULP-10-0389

OPINION

Day, Chairman:

This case has a novel aspect warranting a few words of explanation.

It began as an unfair labor practice case in which the single issue was:

"Whether the City [Strongsville] has violated Section[s] 4117.11(A)(1) and/or (A)(5) by stating its intent to unilaterally change the hours of firefighters."<sup>1</sup>

After the Hearing Officer's Proposed Order was ready for disposition by the State Employment Relations Board (SERB), the intervenor, Strongsville Firefighters Association, Local 2882, IAFF (Intervenor, Local 2882, or Fire Fighters), moved to plead instanter by filing "Intervenor's Response to Respondent's [Strongsville] Exceptions to Hearing Officer's Proposed Order."<sup>2</sup> The motion was granted.<sup>2</sup>

---

<sup>1</sup>Hearing Officers Proposed Order (HOPD), p. 2. Strongsville has not instituted any change in the scheduling.

<sup>2</sup>The response had been filed earlier but returned to the Intervenor by SERB's clerk because the signing of the certificate of service had been overlooked inadvertently.

The response consisted of Intervenor's original brief and the written decision of Conciliator Harry Graham, In the Matter of Conciliation Between International Association of Firefighters, Local 2882 and The City of Strongsville, Oh., SERB Case No. 86-MED-10-1009.

The significance of the conciliation award is that Local 2882's view of proper scheduling (the very issue upon which it sought to bargain) has prevailed. Thus, it is the fact that although the City failed to bargain,<sup>3</sup> the impasse procedures have resulted in a settlement through conciliation (arbitration).

SERB could not have imposed substantive terms as the conciliator's award did. The unfair labor practice remedial process could do no more than order bargaining in this strike prohibited relationship. Thus, the impasse process has accomplished a result at least as definitive as one achieved through bargaining. There is no retroactivity issue because the scheduling has not been changed. For this reason, there is no status quo to restore or consider.<sup>4</sup> And a remedial order at this point would do little, if anything, to cure the City's flawed bargaining.

Under the circumstances, there is no remedy for the refusal to bargain which has not been substantially achieved. The complaint is dismissed with prejudice. Sheehan, Vice Chairman, and Latané, Board Member, concur.

<sup>3</sup>The obligation was to bargain about the effects of the proposed scheduling changes on "wages, hours, terms and conditions of employment," R.C. 4117.09(C).

<sup>4</sup>No change in scheduling could take place because the City was under a temporary restraining order. See HOPD, p. 3, fn. 2.