

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERIALIZED OPINION 87-018

#141

In the Matter of
Pickaway County Department of Human Services,
Charging Party,

v.

Communications Workers of America/Council of Public Workers, AFL-CIO
Charged Party.

CASE NUMBER: 87-ULP-3-0102

DISMISSAL OF UNFAIR LABOR PRACTICE CHARGE
(Opinions Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Latané;
August 27, 1987.

The Pickaway County Department of Human Services (Charging Party) has filed an unfair labor practice charge against the Communications Workers of America/Council of Public Workers, AFL-CIO (Charged Party). The charge alleges that the Charged Party violated Ohio Revised Code Section 4117.11 (B)(1) when a bargaining team member threatened three other employees with physical violence and property damage.

Pursuant to Ohio Revised Code Section 4117.12, the Board conducted an investigation of this charge. For the reasons set forth in the attached majority opinion, incorporated by reference, the Board dismisses the charge.

It is so directed.

SHEEHAN, Vice Chairman, and LATANE, Board Member, concur. DAY,
Chairman; dissents.



JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party
on this 31st day of August, 1987.



JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

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OPINION

Sheehan, Vice Chairman:

In the instant case, the Pickaway County Department of Human Services has charged Communications Workers of America/Council of Public Workers, AFL-CIO, (CWA/CPW) with violation of Ohio Revised Code (O.R.C.) §4117.11(B)(1).¹ The charge asserts that Mr. Jeffrey Maxwell, an employee of the employer and, at the time of the offense, a member of the employee organization's bargaining team, threatened three other employees with physical violence and property damage in the exercise of their rights guaranteed under Chapter 4117 of the Revised Code. The charge further asserts that Mr. Maxwell's conduct has caused several employees to register

¹O.R.C. §4117.11(B)(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117 of the Revised Code. This division does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or an employer in the selection of his representative for the purpose of collective bargaining [sic] or the adjustment of grievances.

their concerns about safety of their persons and property in light of the threat of violence.

I

Mr. Maxwell admits that in anticipation of a strike, which did not occur, he had made a statement in the presence of Mr. Wesley Barton, Ms. Vickie Burgess, and Ms. Bernadetta Largent to the effect that he would go to jail before he would let anyone cross the picket line. He also claims that the statement was made on his own behalf and not CWA/CPW's or by its direction. Mr. Barton brought the matter to the attention of the charging party. All three employees signed witness statements affirming Mr. Maxwell's comment. Ms. Burgess and Ms. Largent said they felt threatened by it; Mr. Barton did not.

II

The issue is whether the employer has standing to charge Mr. Maxwell with a violation of the O.R.C. §4117.11(B)(1).

The answer is no.

In the City of Middleburg Heights v. David Bannerman (85-UU-02-2971) the Board ruled: "The employer has standing to file charges alleging violations of O.R.C. 4117.(B)(1) only if it is affected adversely. The employer does not support harm to management with credible evidence."

In the instant case, the anticipated strike did not occur nor did the charging party show that Mr. Maxwell's comment caused the school's operation to be adversely affected. Like in Middleburg Heights, the employer does not support harm to itself with credible evidence.

Furthermore, the investigation revealed nothing to implicate the Respondent with Mr. Maxwell's remark. Mr. Maxwell claims he was speaking on his own behalf and the Respondent disaffirms any association with Mr. Maxwell's comment.

Under O.R.C. §4117, an employee may be charged with an unfair labor practice².

Clearly, in the instant case, the individual parties had standing to file a charge against Mr. Maxwell and the conduct admitted to might well be unlawful had they done so. They chose not to exercise this right. Employers are not necessarily the protector of employee's individual rights, particularly when the employer is an interested party in an employer-union-employee triangle. In such circumstances, even the purest motives can become suspect.

For the reasons adduced above, the charge is dismissed.

Board Member Latané concurs.

20.R.C. 4117.11(B) provides:

"(B) It is an unfair labor practice for an employee organization, its agents, or representatives, or public employees to:

"(i) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117 of the Revised Code. This division does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances."

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OPINION

Day, Chairman, dissenting:

Respectfully I dissent. For reasons which appear below, I believe that the State Employment Relations Board (SERB) should find probable cause in order to develop the facts in a formal hearing. This is necessary because the allegations, if proven, may establish an unfair labor practice under R.C. 4117.11(B)(1) which the employer, Pickaway County Department of Human Services (employer or Pickaway), has standing to challenge.

I

The charging party asserts that an official of the Communications Workers of America (CWA or union) threatened three of its employees with physical violence and property damage to induce support of a nascent strike. The official admits making the statements but claims that he spoke not as an official of CWA nor on CWA's behalf. Rather, the statements were his own and he spoke only for himself.¹

¹The claims inherent in this description of the charge and response are to be taken as true only for the purpose of determining probable cause. A probable cause determination does not amount to a finding of guilt. The consequence of it is the issuance of a complaint and a hearing to determine guilt or innocence.

II

There is no debatable question that the described charge, if proven, would constitute an unfair labor practice remediable under Chapter 4117 on a charge brought by the threatened employees. Their standing is beyond cavil. The crucial question is whether Pickaway has stated a claim of rights impairment under R.C. §4117.11(B)(1) which entitles it, the employer, to seek redress. The inquiry has three aspects: (1) does the broadly defined category of persons or entities with standing to file charges under R.C. §4117.12(B) have no restrictive qualifications, (2) must a charging party establish standing by showing some invasion or imminently threatening invasion of the filing party's own rights, and (3) assuming the facts charged in the present case are true, do they, as a matter of law, describe infractions hurting or threatening to hurt Pickaway?

III

The relevant statutory sections provide in pertinent part:

R.C. §4117.11:

* * *

"(B) It is an unfair labor practice for an employee organization, its agents, or representatives, or public employees to:

"(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code."

R.C. §4117.12.:

"(A)Whoever violates section 4117.11 of the Revised Code is guilty of an unfair labor practice remediable by the State Employment Relations Board as specified in this section.

"(B)When anyone files a charge with the board alleging that an unfair labor practice has been committed, the board or its designated agent shall investigate the charge. If the board has probable cause for believing that a violation has occurred, the board shall issue a complaint and shall conduct a hearing concerning the charge." (Emphasis added.)

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R.C. 4117.12(B), on its face, could be deemed to authorize unlimited access to charging status. "Anyone" is a term of breadth. Yet it is hardly credible that the General Assembly meant to vest standing in total strangers to a labor relations situation in which a charge arises. To hold that it did would vest standing in a potentially vast number of officious intermeddlers with power to bring enforcement processes to a standstill by overloading the system with specious charges. One should not infer an intention to produce this impractical result simply from the legislative use of an admittedly broad term. A more reasonable conclusion is one which imputes the qualification that "anyone" means "anyone with standing." And standing exists only when the charging party can establish some nexus to a statutorily protected labor relationship either as an employer, a rank and file worker or an exclusive representative, current or aspiring. Furthermore, it is not reasonable to assume that standing matures without a deprivation of a Chapter 4117 right growing out of the labor relationship.

Applying these propositions to public employers engaged in collective bargaining, it is clear that a public employer can achieve standing to file certain charges under R.C. 4117.11(B).² Development of the evidence underlying the present charge may produce facts to support employer standing for redress of one or more R.C. 4117.11(B) rights.

The answers to the first two questions in II above are embodied in a conclusion that the "anyone" language in R.C. §4117.12(B)(1) does not obviate the necessity for establishing standing by demonstrating the

²See R.C. §§4117.11(B)(2), (3), (4), (5), (7) and (8). These illustrate clear substantive rights a public employer has standing to enforce.

charging party's relationship to a protected collective bargaining relationship coupled with a demonstrated impingement on the party's Chapter 4117 rights. All three questions necessitate a hearing. That process will determine standing. And if standing is established, further hearing will develop the facts required for the appropriate legal conclusion.

IV

When employees are threatened by a union officer, are there any circumstances under which their employer suffers a loss of rights under Chapter 4117 and gains standing to file charges under R.C. §4117.11(B)(1) or any other subsection of .11(B)? This may be a matter of considerable doubt.³ However, a clear and definitive answer requires a finding of probable cause in order to provide a hearing. There the facts can be developed sufficiently to allow an informed judgment on this troubling issue. Accordingly, I would find probable cause.

³The doubt is not dispelled by Middleburg Heights v. David Bannerman, Case No. 85-UU-02-2971. The charge in that case (1) claimed that Bannerman appeared at a union meeting and allegedly interfered with its conduct by insisting the union not retreat from a dollar amount bargaining position, (2) attempted to persuade a second union to repudiate a tentative agreement reached between it and the city, and (3) called individual members of the second union to urge rejection of the tentative agreement. These activities are a far cry from intimidation or threats and implicated Bannerman's First Amendment rights. Management's lack of standing in Bannerman is obvious and so different from the present case that it has no applicable precedential value.