

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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In the Matter of
State Employment Relations Board,
Complainant,

v.

Pickaway/Ross Joint Vocational School District Board of Education,
Respondent.

CASE NUMBER: 86-ULP-2-0043

ORDER
(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Latané;
August 13, 1987.

On February 12, 1986, the Pickaway/Ross Educational Association (Charging Party) filed an unfair labor practice charge against the Pickaway/Ross Joint Vocational School District Board of Education (Respondent) alleging that the Respondent had violated Ohio Revised Code (O.R.C.) §4117.11(A)(5) and (1) by unilaterally lengthening the school day on November 19, 1985.

Pursuant to O.R.C. §4117.12 the Board had conducted an investigation and found probable cause to believe that an unfair labor practice had been committed. Subsequently a complaint was issued and the case was heard by a Board hearing officer.

The Board has reviewed the record, the hearing officer's proposed order, exceptions, cross-exceptions and responses. For the reasons stated in the attached opinion, incorporated by reference, the Board adopts the Admissions, Findings of Fact, Conclusions of Law No. 1 and 2, amends Conclusions of Law No. 3 and No. 4 to read:

3. The Pickaway/Ross County Joint Vocational School District Board of Education did not violate O.R.C. §4117.11(A)(5).
4. The Pickaway/Ross Educational Association did not waive its rights to bargain on the November 19, 1986, joint kick-off meeting; it merely slept on it rights."

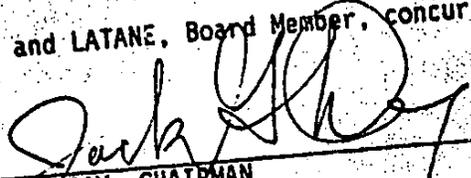
and adopts the Conclusions of Law as amended.

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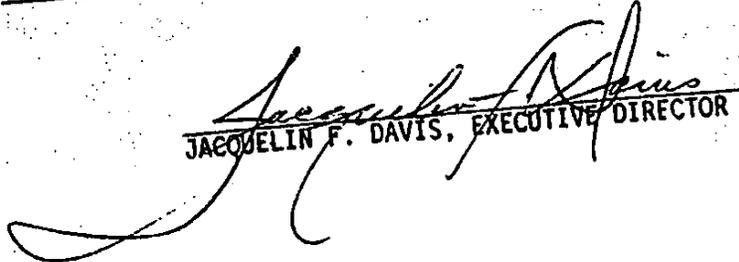
The Board finds no violation of O.R.C. §4117.11(A)(1). The Board adopts Recommendations No. 2 and dismisses the complaint and the charge.

It is so ordered.

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


JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 19th day of November, 1987.


JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

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OPINION

Sheehan, Vice Chairman:

I

The issues in the instant case arose when the Pickaway/Ross Joint Vocational School District Board of Education scheduled a joint kick-off meeting of all advisory committees¹ contrary to prior practice. Advisory committees are required by federal and state law as well as by the Respondent's Board policy.² In previous years, the scheduling of advisory meetings and the forming of advisory committees were the responsibility of individual vocational instructors and is incorporated in the instructors'³ job descriptions. This change in procedure was prompted when several vocational instructors, prior to the 1985-86 school year, requested of the administration to hold a joint kick-off meeting for the advisory

1F.F. 13.

2F.F. 3.

3F.F. 4.

committees.⁴ At a faculty meeting on October 2, 1985, the scheduling of the joint kick-off advisory committee was discussed and November 19, 1985, was the date selected. The Charging Party's vice president was present at the meeting and its president learned of the scheduling the following day.⁵

On February 12, 1986, the Charging Party filed a charge against the Respondent alleging that an unfair labor practice had been committed.⁶ A complaint was subsequently issued and the case was assigned to Hearing Officer Janice White. A hearing was held on December 5, 1986.

II

The issues were:

- 1) Whether or not the Respondent violated O.R.C. §4117.11(A)(5) by unilaterally lengthening the school day on November 19, 1985.
- 2) Whether or not the Union waived its right to bargain on the November 19, 1985, joint kick-off advisory meeting.
- 3) Whether or not the Respondent interfered with, restrained, or coerced its employees in violation of O.R.C. §4117.11(A)(1).

Hearing Officer White found in the affirmative on issues No. 1 and No. 2 and in the negative on No. 3 but also recommended dismissal of the complaint and the underlying charge.

III

The Board concurs with Hearing Officer White's findings on Issue No. 3 and with her recommendation of dismissal of the complaint and the underlying charge but differs with her on Issues No. 1 and No. 2.

⁴F.F. 12.

⁵F.F. 13.

⁶Specifically, the charge alleged the Respondent did not bargain the assignment of the meeting which was a violation of Article XIII of the Collective Bargaining Agreement. The assignment was also a violation of O.R.C. §4117.11(A)(5).

IV

A refusal to bargain charge cannot be sustained in the instant case. Notwithstanding the overwhelming probability that such a charge would ordinarily ensue when a bargainable condition is unilaterally changed, the circumstances here mitigate against it. The Charging Party's reaction, or its lack of reaction, to the announced procedural change in scheduling the advisory committee meeting was sufficient to confuse the Respondent's obligations to bargain. Acquiescence with the altered procedure, at the very least, was signaled by the Charging Party. Moreover, it is axiomatic in labor/management relations that when one party fails to comply with statutory mandates, past practices or contractual commitments, through innocence or indifference, the responsibility for initiative action toward compliance is vested in the other party. Neither party, in the instant case, ever requested bargaining.⁷ The charge against the Respondent of violating O.R.C. §4117.11(A)(5) is without merit.

V

The Board does not agree that the Charging Party waived its right to bargain. It merely failed to exercise it. While this may appear to be a small distinction, it is, albeit, a significant one. In Dublin (84-VR-04-0761),⁸ the Board ruled that an exemption from a bargaining obligation can be voluntarily, deliberately, and affirmatively surrendered, but it cannot be waived by mere inaction. A waiver of a statutory right must be clear and unmistakable. None of the elements were present in the

⁷Village of Dublin v. FOP, Capital City Lodge No. 9.

⁸F.F. 13.

instant case. The Charging Party did not challenge the Respondent's October 2 decision to schedule a joint advisory kick-off meeting which was contrary to past practice. Nor was a challenge made when the union president sought clarification as to whether instructors attendance at the joint meeting was mandatory. Not once, from the time of the announcement on October 2 through the day of the meeting on November 19, did the union voice objections or request bargaining. This is not a waiver of rights, it is simply sitting on one's rights too long.

Therefore, the Conclusions of Law No. 3 and No. 4 are amended as follows:

3. The Pickaway/Ross County Joint Vocational School District Board of Education did not violate O.R.C. §4117.11(A)(5).
4. The Pickaway/Ross Educational Association did not waive its rights to bargain on the November 19, 1986, joint kick-off meeting; it merely slept on its rights.

The Board adopts the Hearing Officer's Findings of Fact, the Conclusions of Law as amended, and the Recommendations.

Day, Chairman, and Latané, Board Member, concur.