

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SEBB OPINION 87-028

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In the Matter of  
State Employment Relations Board,  
Complainant,  
and  
Communications Workers of America, AFL-CIO,  
Intervenor,  
v.  
Pickaway County Commissioners,  
Respondent.

CASE NUMBER: 87-UPL-2-0044

ORDER

Before Chairman Day, Vice Chairman Sheehan, and Board Member Latané;  
November 5, 1987.

On February 5, 1987, the Communications Workers of America, AFL-CIO (Intervenor) filed an unfair labor practice charge against the Pickaway County Commissioners (Respondent) alleging that the Respondent had violated Ohio Revised Code (O.R.C.) §4117.11(A)(1) and (5) by refusing to bargain collectively with the exclusive representative of a bargaining unit of its employees.

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 and response. The Board adopts the Admissions, Stipulations of Fact, Findings of Fact, Conclusions of Law, Recommendations and the hearing officer's Analysis and Discussion.

The Respondent is ordered to:

a. CEASE AND DESIST FROM:

- (1) Interfering with, restraining or coercing employees in the exercise of rights guaranteed in Chapter 4117 of the Ohio Revised Code, from refusing to bargain collectively with the representative of its employees certified pursuant to Chapter 4117 of the Revised Code, and from otherwise violating O.R.C. §4117.11(A)(1) and (5).

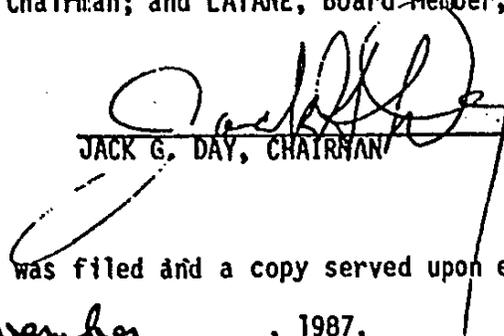
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b. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS:

- (1) Post for sixty (60) days in all Pickaway County Board of Commissioners' buildings where the employees work the Notice to Employees furnished by the Board stating that the Pickaway County Board of Commissioners shall cease and desist from the action set forth in Paragraph (a) and shall take the affirmative actions set forth in Paragraph (b).
- (2) Immediately engage in collective bargaining with the exclusive representative of its employees certified pursuant to Chapter 4117 of the Revised Code.

It is so ordered.

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

  
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JACK G. DAY, CHAIRMAN

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

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

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HEARING OFFICER'S PROPOSED ORDER

On July 20, 1987, a public hearing was held in the above-captioned matter before State Employment Relations Board (SERB) Hearing Officer William R. Dennis. The parties were represented as follows:

On behalf of the State Employment Relations Board  
(Complainant):

Loren L. Braverman, Esquire  
Assistant Attorney General  
30 East Broad Street, 29th Floor  
Columbus, Ohio 43266-0410

On behalf of the Communication Workers of America,  
AFL-CIO, (Intervenor):

Dennis R. Morgan, Esquire  
150 East Broad Street, Suite 704  
Columbus, Ohio 43215

On behalf of the Pickaway County Commissioners  
(Respondent):

James H. McCloskey, Esquire  
Clemans, Nelson & Associates, Inc.  
355 East Campus View Boulevard, Suite 200  
Columbus, Ohio 43085

I. STATEMENT OF THE CASE

On February 5, 1987, the Intervenor filed an Unfair Labor Practice Charge alleging that the Respondent had violated Ohio Revised Code (O.R.C.) §§ 4117.11(A)(1) and (5) by refusing to bargain collectively with the exclusive representative of a bargaining unit of its employees. On June 15, 1987, SERB issued a Complaint and Notice of Hearing, charging the Respondent with violating O.R.C. §§ 4117.11(A)(1) and (5). The hearing was set for June 25, 1987. On June 23, 1987, the Respondent filed its Answer to the Complaint. In the interim, the parties contacted the Hearing Officer and requested a continuance of the hearing date. The hearing date was continued by the Hearing Officer through a Procedural Order dated June 4, 1987. On June 25, 1987, the Intervenor filed its Notice of Appearance in this matter. On July 15, 1987, the Respondent filed its Prehearing Statement and on July 17, 1987, the Complainant filed its Prehearing Statement. The matter came on for hearing on July 20, 1987, and concluded on that date. All Post-hearing Briefs were filed by August 19, 1987.

II. ISSUE

1. Whether or not Respondent has violated O.R.C. §§ 4117.11(A)(1) and (5) in refusing to bargain collectively with the exclusive representative of its employees.

III. ADMISSIONS

The following Admissions are contained in Respondent's Answer:

1. The Respondent admits the Pickaway County Board of Commissioners and the Pickaway County Department of Human Services are "public employers" as defined by O.R.C. § 4117.01(B).
2. The Respondent admits the Intervenor is an "employee organization" as defined in O.R.C. § 4117.01(D).

3. The Respondent admits that a unfair labor practice charge was filed with SERB by the Intervenor pursuant to and in accordance with O.R.C. § 4117.12(B) and Ohio Administrative Code (O.A.C.) Rule 4117-7-01 on February 5, 1987.
4. The Respondent does not dispute that SERB determined there was probable cause for believing that an unfair labor practice had been or was being committed.
5. Respondent admits SERB did, as stated in the Complaint, certify the Intervenor as the exclusive representative of Respondent's employees in the classifications so listed. However, the Respondent submits that SERB erred in certifying the Intervenor in this matter since the Respondent believes a majority of Respondent's employees at the time of certification had not expressed a desire to be represented by the Intervenor.
6. Respondent admits the Intervenor filed with SERB and served upon the Respondent a Notice to Negotiate.
7. Respondent admits it has refused to bargain collectively with the Intervenor, but asserts as a defense Respondent's good faith belief the Intervenor did not represent a majority of the employees in the bargaining unit at any time mentioned in the Complaint.

#### IV. STIPULATIONS OF FACT

The following Stipulations of Fact were presented at the hearing:

1. The employees within the bargaining unit at issue are "public employees" as defined in O.R.C. § 4117.01(C). (T. 8).'
2. Linda Ackard and Wayne Summerville were employees with the Pickaway County Department of Human Services in 1986. (T. 11).
3. On August 20, 1986, a SERB-conducted election was held at the Respondent's facility. There were 26 votes. The tally was 12 for Representation and 12 for No Representative, with 2 challenged ballots. The 2 challenged ballots belong to Linda Ackard and Wayne Summerville. (T. 11, 12).

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"T." refers to the official transcript of proceedings in this matter:

V. FINDINGS OF FACT

Based upon the entire record, this Hearing Officer recommends the following Findings of Fact:

1. Both Ackard and Summerville told Michael Melson, their supervisor, that they were leaving the Respondent's employment prior to the date of the election. Ackard notified Melson in June or July of her intentions to find other employment and Melson was notified of Summerville's obtaining a new position on August 15, 1986. (T. 12-14).<sup>2</sup>
2. The Respondent filed election objections with SERB and subsequently filed a motion to withdraw the objections. (T. 14, 15).
3. SERB subsequently ordered that the challenged ballots be opened. Both challenged ballots were "Yes" votes for the Intervenor and provided the requisite majority for certification. (T. 16).
4. Ackard and Summerville were not employees of the Respondent at the time the ballots were counted. (T. 16).
5. Ackard and Summerville were not the only people who resigned from employment with the Respondent in 1986. (T. 21).
6. Respondent and the Intervenor entered into a Consent Election Agreement in June, 1986. In this agreement an eligibility date for voters was established. The eligibility date was July 9, 1986. (T. 22-24).
7. On or about August 5, 1986, the Respondent served upon SERB and the Intervenor an election eligibility list. Ackard's and Summerville's names appeared on this list. This list was provided to SERB and the Intervenor 15 days prior to the election. (T. 24).
8. The morning of the election a pre-election conference was held with the SERB agent and the parties' representatives. At that time the Respondent did not inform the Intervenor or the SERB election agent that they were going to object to Ackard or Summerville voting. (T. 24, 25).
9. Both Ackard and Summerville were employees of the Respondent on the day of the election. (T. 26; Exhibit C-1).

<sup>2</sup>References to the Transcript and/or Exhibits is for convenience only and should not be interpreted as the sole basis for any Finding of Fact.

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USED ORDER

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V. ANALYSIS AND DISCUSSION

The Respondent admits that it has refused to bargain collectively with the Intervenor in this matter. The Respondent attempts to excuse its conduct by claiming there was a good faith doubt of the Intervenor's majority status. Considering the facts of this case, to state the Respondent's position is to refute it.

The Respondent and the Intervenor voluntarily entered into a consent election agreement. In that agreement the parties agreed that anyone employed by the Respondent as of July 9, 1986, would be eligible to vote. Linda Ackard and Wayne Summerville were employees of the Respondent on that date. They were also employees of the Respondent on election day. Their names also appeared on the election eligibility list provided by the Respondent to the Intervenor and SERB. The Respondent did not object to Ackard and Summerville voting at the pre-election conference held on the day of the election.

The Hearing Officer believes any objection Respondent had is waived by its conduct. To hold otherwise, would destroy any validity and consistency given to consent election agreements and election eligibility lists under Ohio's Collective Bargaining Law. To give validity and credence to these documents, the parties must be bound by the clear and unequivocal language therein, absent a justifiable showing that the complaining party could not have found the defect through the exercise of reasonable diligence. Ohio Administrative Code Rule 4117-5-07(C) states:

"Failure to object in writing to the Board to the form or content of the election eligibility list prior to the commencement of an election shall constitute a waiver of the objection if the objecting party knew of the defect prior to the election, or through the exercise of reasonable diligence should have known."

The Respondent supplied the eligibility list. On the record the Respondent stated it had knowledge that Ackard and Summerville may not be employed by the Respondent on or after the election date. Nevertheless, the Respondent failed to object to these people being included on the eligibility list, even though they had knowledge of the same prior to the submission of the eligibility list to SERB and the Intervenor. In In re Fraternal Order of Police, Ohio Valley Lodge #112, (84-RC-05-1095, SERB June 14, 1985), it was held that the inclusion in a bargaining unit of a police lieutenant designated to act in the absence of the police chief could not be contested by the city where city officials furnished the Board with a list of eligible voters that contained the lieutenant's name. The city was found to have waived their right to object to the eligibility list after the

election pursuant to Ohio Administrative Code Rule 4117-5-07(C). From the facts of this case, the same result is warranted here as in Ohio Valley Lodge #112, supra.

Based upon the entire record herein, this Hearing Officer recommends the Board find the Respondent has violated O.R.C. §§ 4117.11(A)(1) and (5), and order the Respondent to bargain collectively with the Intervenor.

#### VI. CONCLUSIONS OF LAW

1. The Pickaway County Board of Commissioners is a "public employer" as defined in O.R.C. § 4117.01(B).
2. The Communication Workers of America, AFL-CIO, is an "employee organization" as defined in O.R.C. § 4117.01(D).
3. The Respondent's affirmative defense to the refusal to bargain charge is without merit.
4. The Respondent, by refusing to bargain collectively with the exclusive representative of its employees has:
  - a. Interfered with, restrained, or coerced public employees in the exercise of rights guaranteed by O.R.C. Chapter 4117, in violation of O.R.C. Section 4117.11(A)(1); and
  - b. Refused to bargain collectively with the exclusive representative of its employees in violation of O.R.C. Section 4117.11(A)(5).

#### VII. RECOMMENDATION

Based on the foregoing, it is respectfully recommended that:

1. The Board adopt the Findings of Fact and Conclusions of Law set forth above.
2. The State Employment Relations Board issue an ORDER, pursuant to Ohio Revised Code § 4117.12(B)(3), requiring the Respondent to:
  - a. CEASE AND DESIST FROM:
    - (1) Interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Chapter 4117 of the Ohio Revised Code, from refusing to bargain collectively with the representative of its employees certified pursuant to Chapter 4117 of the Revised Code, and from otherwise violating O.R.C. §§ 4117.11(A)(1) and (5).

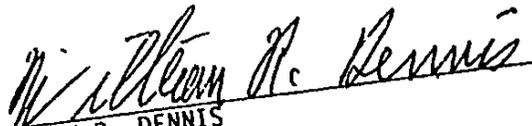
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b. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS:

(1) Post for sixty (60) days in all Pickaway County Board of Commissioners buildings where the employees work the Notice to Employees furnished by the Board stating that the Pickaway County Board of Commissioners shall cease and desist from the action set forth in Paragraph (a) and shall take the following affirmative set forth in Paragraph (b).

2) Immediately engage in collective bargaining with the exclusive representative of its employees certified pursuant to Chapter 4117 of the Revised Code.

ISSUED and SUBMITTED to the State Employment Relations Board in accordance with Ohio Administrative Code Rule 4117-1-15 and SERVED on all parties by certified mail, return receipt requested, this 18th day of September, 1987.

  
WILLIAM R. DENNIS  
Hearing Officer

WRD:cjm

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