

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
In the Matter of  
State Employment Relations Board,  
Complainant,

88-003

v.  
Licking County Sheriff,  
Respondent.

CASE NUMBER: 86-UPL-06-0213

ORDER  
(Opinion attached.)

Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;  
January 21, 1988.

On June 17, 1986, the Fraternal Order of Police, Lodge No. 127 (Charging Party) filed an unfair labor practice charge against Licking County Sheriff (Respondent) alleging that the Respondent had violated Ohio Revised Code (O.R.C.) §4117.11(A)(1) and (A)(5) by refusing to sign an agreement unless some language in the conciliator's award was changed.

Pursuant to O.R.C. §4117.12, the board 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. For the reasons stated in the opinion attached, incorporated by reference, the board adopts the Admissions, Findings of Fact, Conclusions of Law Nos. 1 and 2, and reverses Conclusion of Law No. 3 to read:

"The Licking County Sheriff's conduct and actions during the course of negotiations and surrounding the signing of the Memorandum of Understanding and the contract constitute an unfair labor practice in violation of O.R.C. §4117.11(A)(1) and (A)(5)."

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 Revised Code, and from refusing to bargain collectively with the exclusive representative of its employees recognized or certified pursuant to Chapter 4117 of the Revised Code and from otherwise violating §§ 4117.11(A)(1) and (A)(5).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (2) Post for sixty (60) days in all the Licking County Sheriff Office Buildings where employees in any of the Fraternal Order of Police, Lodge No. 127, work, the NOTICE TO EMPLOYEE<sup>s</sup> furnished by the SERB stating that the Licking County Sheriff shall cease and desist from the actions set fort in Paragraph (A).

It is so ordered.

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

*William P. Sheehan*  
WILLIAM P. SHEEHAN, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 5<sup>th</sup> day of April, 1988.

*Cynthia L. Spanski*  
CYNTHIA L. SPANSKI, CLERK

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 88-003

In the Matter of  
State Employment Relations Board,  
Complainant,  
and  
Licking County Sheriff,  
Respondent.

CASE NUMBER: 86-ULP-6-0213

OPINION

Sheehan, Chairman:

I

The issue in this case arises from events occurring immediately prior to the parties' signing their initial and current contract on June 12, 1986.<sup>1</sup> The parties commenced negotiations in the Spring of 1985.<sup>2</sup> Negotiations continued through 1985 and into 1986. Having reached impasse on several issues, the parties proceeded through fact finding and conciliation.<sup>3</sup> The Conciliator issued his report on March 20, 1986.<sup>4</sup> Pursuant to O.R.C. §4117.14(G)(7), the Conciliator selected an issue-by-issue basis between each of the party's final settlement offers.<sup>5</sup> On the

---

<sup>1</sup>Finding of Fact (F.F.) #2.

<sup>2</sup>F.F. #1.

<sup>3</sup>F.F. #3.

<sup>4</sup>F.F. #4.

<sup>5</sup>Ohio Revised Code §4117.14(G) provides: "(7) After hearing, the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, ..."

unresolved issue central to this dispute, that of professional liability insurance, the Conciliator determined the contract would contain the Respondent's proposal and so ordered.<sup>6</sup> He also ordered the Respondent's proposed language on sick leave conversion be placed in the contract. This was incorporated into the contract without modification.<sup>7</sup> However, prior to the signing of the contract, a Memorandum of Understanding was signed by the parties referencing the contract's Article 28, Professional Liability Insurance.<sup>8</sup>

The Charging Party charges that the Respondent would not sign the contract unless modifications were made in Article 28, Professional Liability Insurance, and Article 34, Sick Leave Conversion. (The latter was incorporated into the contract.)<sup>9</sup> The Charging Party claims that it was entitled to the language submitted to the Conciliator and as ordered by the Conciliator's report without change. It further claims that it was adamant in its insistence on the original language, but refusing to sign the Memorandum of Understanding would impose an indeterminate delay in the execution of the contract as the matter proceeded through the court. This, it wished to avoid and, therefore, acceded to the Respondent's demands under protest.

The Respondent contends the Memorandum of Understanding was only intended to provide a more detailed explanation of the meaning of Article

---

<sup>6</sup>F.F. #5.

<sup>7</sup>F.F. #7.

<sup>8</sup>F.F. #8.

<sup>9</sup>Id.

28, thus avoiding any future confusion in interpretation and in no way detracts from the benefit extended by the provision.

II

The issue here is whether the Respondent's conduct and action constitutes interference and/or coercion and a refusal to bargain in violation of O.R.C. §4117.11(A)(1) and (A)(5). The Hearing Officer recommended that the Respondent's action and conduct during the course of negotiations and surrounding the signing of the Memorandum of Understanding and the contract did not constitute an unfair labor practice in violation of O.R.C. §4117.11(A)(1) and (A)(5). The Board does not concur with the Hearing Officer's recommendations for the reasons adduced below.

III

There is no dispute that a Memorandum of Understanding referencing Article 28 of the contract was signed by the parties prior to the signing and execution of the collective bargaining agreement. There is no dispute that the Memorandum of Understanding was at the insistence of the Respondent. There is no dispute that the language the Respondent sought to clarify was the language it had itself submitted to the Conciliator as its final settlement offer.

The Conciliator's award is the ultimate action in the statutory dispute resolution procedures as contained in O.R.C. §4117.14. It is not a signal to renew negotiations. Nor is it a bargaining chip to be used by one party against the other. It is a mandate to the public employer and the exclusive representative to take whatever actions are necessary to implement the

award.<sup>10</sup> It is final and binding on the parties absent any mutual agreement to modify it. As events in the instant case revealed mutuality of agreement regarding the embellishment of the Conciliator's Report was not present.

The question then remains, did the Respondent refuse to sign the contract unless the proposed Memorandum of Understanding, changing the language ordered by the Conciliator, was first signed.

Mr. Paul Cox, representing the labor council (Charging Party), contends that the first indication that the Respondent was not willing to sign the contract awarded by the Conciliator was when Mr. Lucas of Clemons, Nelson and Associates, the firm representing the Respondent, notified him a week before the scheduled signing date that there was a problem.<sup>11</sup> Mr. Cox claims that later, Mr. Lucas, after a meeting with the County people, informed him that the County would refuse to sign the contract because the two sections, the sick leave conversion section and the liability insurance section, were objectionable to the County Prosecutor.<sup>12</sup> Mr. Cox further contends that he informed Mr. Lucas that they had a statutory duty to implement the contract as it was ordered by the Conciliator.<sup>13</sup>

---

<sup>10</sup>O.R.C. §4117.14 provides: "(1) The issuance of a final offer settlement award constitutes a binding mandate to the public employer and the exclusive representative to take whatever actions are necessary to implement the award."

<sup>11</sup>Transcript (T.) 13.

<sup>12</sup>T. 14.

<sup>13</sup>Id.

Mr. Cox's testimony was virtually unchallenged by the Respondent. The Respondent's two witnesses, Mr. Donald Hill, County Commissioner, and Colonel Harbary, Chief Deputy, County Sheriff's Department, were never present when the conversations concerning the Memorandum of Understanding or the signing of the contract occurred between Mr. Cox and Mr. Lucas. Consequently, neither could either confirm or deny the accuracies of Mr. Fox's representation. While much to do was made about when the contract could have been signed in scheduled meetings of the commission, nothing was raised to rebut Mr. Cox's claim of the County's refusal to sign the contract without the accompanying Memorandum of Understanding.

Mr. Lucas obviously could have provided some illumination on this point, but Mr. Lucas did not testify. The Respondent apparently elected not to controvert Mr. Cox's testimony. Therefore, we must conclude that Mr. Cox's description of events did, in fact, occur and that the Respondent did refuse to execute the contract unless the Memorandum of Understanding was first signed. (Ohio Association of Public School Employees and Northwest Local School District Board of Education, Case No. 84-RC-04-0137 (SERB Off. Rep. 84-007).<sup>14</sup>)

The remaining question is whether the signing of the Memorandum of Understanding constituted a waiver by the Charging Party.

Having determined that the Respondent acted unlawfully by refusing to sign the agreement and, by doing so, imposed upon the Charging Party an unwanted choice, a choice the Charging Party should not have had to make, an

---

<sup>14</sup> ".... when a party which could command evidence does not adduce it, the conclusion is warranted that the evidence does not exist or would tell against the party in control."

atmosphere of coercion was created by the Respondent. The Charging Party's defense of its signing the Memorandum of Understanding to avoid an indeterminate delay as the matter proceeded through the courts, and having made its protest prior to and following the signing, is persuasive. We do not find that the Charging Party's acceding to the Respondent's demands under such circumstances constitutes a waiver of the Charging Party's rights.

Therefore, we find the Respondent, by its conduct and actions, did interfere and/or coerced and did refuse to bargain in violation of §§4117.11 (A)(1) and (A)(5).

However, considering the absence of material change between the modified provision and the Conciliator's language and the presence of the Memorandum of Understanding, the modified version as set forth in the memorandum shall stand.

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