

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
State Employment Relations Board,

Complainant,

v.

Belmont County Engineer,

Respondent.

CASE NUMBER: 85-UR-12-4808

ORDER
(Opinion attached.)

Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;
April 7, 1988.

On December 17, 1985, the American Federation of State, County and Municipal Employees, Ohio Council 8 (Charging Party) filed an unfair labor practice charge against the Belmont County Engineer (Respondent). Pursuant to Ohio Revised Code (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 alleging that the Respondent had violated O.R.C. §4117.11(A)(1) by laying off and failing to reinstate certain employees. 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, Recommendations, amends the Conclusions of Law by adding Conclusion of Law No. 4 to read: "4. The Respondent's conduct and actions in laying off and failing to reinstate Robert Mass and John Taffe were motivated by anti-union animus," and adopts the Conclusions of Law as amended.

The Respondent is ordered to:

A. CEASE AND DESIST FROM:

- (i) Interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Chapter 4117 of the Revised Code, and from otherwise violating §4117.11(A)(1).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (i) Post for sixty (60) days in all Belmont County Engineer buildings where the Respondent's employees work, the NOTICE TO EMPLOYEES furnished by SERB stating that the Belmont County Engineer shall cease and desist from the actions set forth in Paragraph (A) and shall take the affirmative action set forth in Paragraph (B).
- (ii) Immediately offer reinstatement to Robert Mass and John Taffe to the positions they formerly held or to positions substantially equivalent thereto.
- (iii) Pay each of these employees back pay from September 20, 1985, until the effective date of the offer of reinstatement, together with interest at 8% per annum, less unemployment compensation benefits and any other earnings which were, or reasonably should have been, earned as mitigation of damages.
- (iv) Make these employees whole in seniority, pension contributions and other benefits which would have accrued to them in the ordinary course had they remained continuously employed since September 20, 1985, to the effective date of the offer of reinstatement.
- (v) Notify SERB in writing within twenty (20) calendar days from the date the Order becomes final of the steps that have been taken to comply therewith.

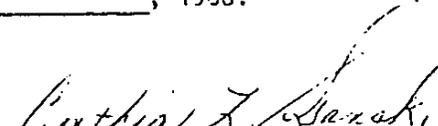
It is so ordered.

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



WILLIAM P. SHEEHAN, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 22nd day of July, 1988.


CYNTHIA L. SPANSKI, CLERK

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and
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CASE NUMBER: 85-UR-12-4808

OPINION

Sheehan, Chairman:

The matter giving rise to the issue at hand occurred when the Respondent laid off Robert Mass and John Taffe, employees of considerable seniority,¹ on September 20, 1985, and failed to rehire them when openings in the Belmont County Engineer's Department came into existence.

The single issue before the Hearing Officer was whether the Respondent's conduct and actions in laying off, and failing to reinstate, Robert Mass and John Taffe constitute interference, restraint, or coercion in violation of Ohio Revised Code (O.R.C.) §4117.11(A)(1).

II

The Intervenor filed a petition with SERB in April 1984, seeking voluntary recognition as exclusive representative of the employees of the Respondent. Respondent objected and a representation election was

¹Findings of Fact (F.F.) #1, John Taffe - 23 years with the Engineer's Department.
F.F. #5, Robert Mass employed by the Engineer's Department since December 1976.

ultimately scheduled. The election was held in December 1984 with "no representative" receiving the majority of votes.² Subsequently, the Intervenor filed timely objections to the conduct of the election. A hearing on the matter was held and, on August 9, 1985, the Hearing Officer issued his report to the parties in which he recommended that the results of the election be set aside and a new election held. On September 19, 1985, SERB adopted the Hearing Officer's recommendation and directed a rerun election.³

The Respondent, on September 20, 1985, abolished the positions held by Robert Mass and John Taffe and laid the two employees off.⁴

III

The Hearing Officer found that the conduct of the Respondent was in violation of O.R.C. §4117.11(A)(1) and recommended, in part, the reinstatement of Robert Mass and John Taffe to the positions they formerly held or to a position substantially equivalent with back pay from September 20, 1985.

The Board concurs with the Hearing Officer's findings of facts and recommendations but, for the reasons adduced below, amends the conclusions of law to find anti-union animus as the motivation behind the Respondent's violation of O.R.C. §4117.11(A)(1).

IV

It has long been settled in the private sector that proving a specific anti-union purpose is unnecessary where the employer's conduct is found to

²Transcript (T.) 19.

³F.F. 12; T. 21-22; SERB Exh. 9A.

⁴F.F. 11.

be "inherently destructive of Section 7⁵ rights." In such cases, the National Labor Relations Board and the courts will not require an affirmative showing of the employer's unlawful motive. The hearing officer found that inherently destructive elements to rights guaranteed public employees, pursuant to O.R.C. §4117.11(A)(1), are present here, and the Board concurs with the hearing officer on this issue. However, the facts in this case also point to the Respondent's unlawful motive of anti-union animus.

The Respondent first alleged that the layoffs of Mass and Taffe were caused by an Attorney General's opinion forbidding the Engineer from performing township survey work.⁶ It was evidenced, however, that the Respondent had ignored this opinion for over two years and, in fact, Mass and Taffe were performing township survey work on the very day they were laid off.⁷ The Respondent subsequently acknowledged that a dispute with township trustees prompted the withdrawal of its survey services. The layoffs occurred one day after SERB ordered a rerun election. The Respondent ran an aggressive campaign to discourage his employees from voting for the union.⁸ In fact, it was the Respondent's "captive audience" meeting during the campaign which caused the election results to be set aside and a rerun election ordered.

The campaign activities of both men clearly identified them as supporters of the union. The Respondent had observed union (AFSCME)

⁵National Labor Relations Act.
⁶T. 14-15.
T. 58.

ate Exh. 6T, 8A, 8B, 8C, 8D.

literature on their desks. Mass was a witness against the Respondent in the hearing on the union's objection to the election. He also served as an alternate observer at the election.⁹ Taffe wore an AFSCME badge on his clothing and displayed an AFSCME bumper sticker on his car which he drove to work daily.¹⁰ Both were union members and had dues deducted from their paychecks.¹¹ Both had had discussions with the Respondent regarding check off of union dues for payroll purposes.¹²

Mass and Taffe were treated unlike other employees. While other positions and sections in the Respondent's department had been abolished in the past, no layoffs ever resulted.¹³ Subsequent to the layoffs, a number of people were hired by the Respondent into positions for which Mass and Taffe were qualified.¹⁴ But, contrary to the Respondent's own in-house policy, neither man was ever notified or offered reemployment opportunities.

Taken together: the Respondent's aggressive campaign to discourage unionization of his employees; his cognizance of Mass' and Taffe's union activity; the initiation of the layoffs a day after SERB ordered a rerun election; and the disparate and discriminatory treatment each man suffered forges a montage of deliberate and consistent actions which speaks loudly for itself.

⁹F.F. 15.

¹⁰F.F. 18.

¹¹F.F. 17 and 20.

¹²F.F. 15.

¹³T. 35.

¹⁴T.

The unavoidable consequence of these actions is the indelible impression left on other employees as to the fate which awaits union activists. This, we believe was both calculated and intended.

Whatever the overriding claimed justification may be, the motivation behind the Respondent's laying off of Mass and Taffe, we must conclude, was anti-union animus.

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



NOTICE TO EMPLOYEES

FROM THE STATE EMPLOYMENT RELATIONS BOARD

POSTED PURSUANT TO AN ORDER OF THE STATE EMPLOYMENT RELATIONS BOARD AN AGENCY OF THE STATE OF OHIO

After a hearing in which all parties had an opportunity to present evidence, the State Employment Relations Board has determined that we have violated the law and has ordered us to post this Notice. We intend to carry out the order of the Board and abide by the following:

A. CEASE AND DESIST FROM:

- (i) Interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Chapter 4117 of the Revised Code, and from otherwise violating § 4117.11(A)(1).

WE WILL NOT in any like or related matter, interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them under Chapter 4117 of the Revised Code.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS:

- (i) Post for sixty (60) days in all Belmont County Engineer buildings where the Respondent's employees work, the NOTICE TO EMPLOYEES furnished by SERB stating that the Belmont County Engineer shall cease and desist from the actions set forth in Paragraph (A) and shall take the affirmative action set forth in Paragraph (B).
- (ii) Immediately offer reinstatement to Robert Mass and John Taffe to the positions they formerly held or to positions substantially equivalent thereto.
- (iii) Pay each of these employees back pay from September 20, 1985, until the effective date of the offer of reinstatement, together with interest at 8% per annum, less unemployment compensation benefits and any other earnings which were, or reasonably should have been, earned as mitigation of damages.
- (iv) Make these employees whole in seniority, pension contributions and other benefits which would have accrued to them in the ordinary course had they remained continuously employed since September 20, 1985, to the effective date of the offer of reinstatement.

DATE _____ BY _____ TITLE _____
 BELMONT COUNTY ENGINEER
 85-UR-12-4808

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board.