

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
State Employment Relations Board,
Complainant,
and
West Carrollton Education Association, OEA/NEA,
Intervenor,
v.
West Carrollton City School District Board of Education,
Respondent.

CASE NUMBER: 86-ULP-1-0008

ORDER
(Opinion attached.)

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

On January 8, 1986, the West Carrollton Education Association, OEA/NEA (Charging Party) filed an unfair labor practice charge against the West Carrollton City School District Board of Education (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) and (A)(3) by threatening Barbara Hufnagle with reprisal if she did not cease engaging in certain activities on behalf of the Charging Party. 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 attached opinion, incorporated by reference, the Board adopts the Admissions, Findings of Fact, and Conclusions of Law Nos. 1 and 2. The Board amends Conclusion of Law No. 3 to read:

Principal David Mays' conduct and actions during the course of a conversation with Teacher Barbara Hufnagle on October 22, 1985, constitutes interference, restraint and coercion of Hufnagle's rights in violation of O.R.C. §4117.11(A)(1).

The Respondent is ordered to:

ORDER

Case No. 86-ULP-1-0008
January 21, 1988
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A. Cease and desist from:

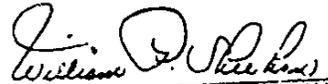
(1) Interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Chapter 4117 of the Revised Code and from otherwise violating §§4117.11(A)(1).

B. Take the following affirmative action:

(2) Post for sixty (60) days in all West Carrollton City School District Board of Education buildings the NOTICE TO EMPLOYEES furnished by SERB stating that the West Carrollton City School District Board of Education shall cease and desist from the actions set forth in Paragraph A.

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 14th day of July, 1988.



CYNTHIA L. SPANSKI, CLERK

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OPINION

Latané, Board Member:

The issue in the instant case is whether an employee's protected activities under Ohio Revised Code (O.R.C.) Chapter 4117 are jeopardized by an employer's private, intimidating, verbal communication with the employee.

I

The West Carrollton Education Association OEA/NEA (CWEA) filed an unfair labor practice charge against the West Carrollton City School District Board of Education (Respondent) alleging that Respondent violated O.R.C. §§4117.11 (A)(1) and (A)(3).

Probable cause was found by the State Employment Relations Board and a complaint was issued against the Respondent. A hearing was conducted on November 18, 1986.

Barbara Hufnagle, a first grade teacher in the West Carrollton City School District, was an active member of the WCEA and served as Vice-President during the 1985-86 school year.¹ Prior to and at the beginning of the 1985-86 school year, Ms. Hufnagle discussed her concerns over too large first grade class sizes and lack of classroom materials with Principal David Mays and with WCEA President Al McCroskey.² Ms. Hufnagle distributed a letter in her classroom to first grade parents addressing her concerns and also spoke to the Respondent school board on the same subjects at an open school board meeting on September 4, 1985.³

Principal Mays relayed Ms. Hufnagle's concerns about class size and materials to the Superintendent of Schools, and subsequently advised her of the Respondent's positions on the perceived problem.⁴ Ms. Hufnagle was informed that the school administration would wait to see how many children showed up on the first day of class and that an additional teacher would be added if the numbers were as large as projected.⁵ Principal Mays stated in his testimony that approximately three weeks after school started a first grade teacher was added to the school staff, thereby reducing all first grade class sizes in the school.⁶

1F.F. 1 and 2.

2F.F. 3, 3, and 5.

3F.F. 4 and 7.

4T. pp. 75 and 76.

5T. p. 75.

6T. p. 75.

After the classroom teacher was added to the C.F. Holiday Elementary School, Ms. Hufnagle, in her role as WCEA Vice President, distributed an "information collection sheet" to other elementary school teachers in the district,⁷ compiled the results and submitted them to the WCEA president. Both Ms. Hufnagle and WCEA president Al McCroskey presented information about needed classroom textbooks and materials at the September 18, 1985, school board meeting.⁸ Ms. Hufnagle sent letters to school board members on September 19, 1985, and shortly after the school board meeting of October 2, 1985. The first letter described concerns about large class sizes and lack of classroom materials. The second letter suggested that Principal Mays' version of the textbook and materials problem was less than accurate.⁹

On October 22, 1985, Principal Mays called Ms. Hufnagle to his office for a private meeting. Both parties agreed that during the meeting Principal Mays became angry at Ms. Hufnagle and criticized her public complaints about class sizes and lack of classroom textbooks and materials. Ms. Hufnagle stated that the Principal threatened that if she did not stop "these union activities" he would make things "mighty uncomfortable" for her.¹⁰ Principal Mays admitted making the reference to union activities. When questioned, he stated in his testimony:

⁷CPL Exh. 3.

⁸Cp1 Exh. 5 and 6.

⁹T. 28-34.

¹⁰HORD, pp. 5 and 6.

A. I referred to my situation of how union activity and board activity ... that brings these types of activities to hang the dirty laundry on the line for the public led to county-wide bargaining, and it ultimately led, in my opinion, to a pretty poor situation in the schools...

* * *

Q. So, that's the parallel you brought up, was the union activity and the board activity in Middleville, Michigan, where you had previously been, correct?

A. Yes. And I felt that a whole county suffered because of it, and still continues to suffer.

* * *

Q. ... so, you acknowledge that the activity that you disagree with concerning Mrs. Hufnagle was, in fact, union activity, did you not?

A. Yes. Yes. I did.¹¹

Principal Mays also admitted that he brought up the threat of using pressure tactics on Ms. Hufnagle to encourage her to stop going public with complaints, although he denied that he would have used them against her.¹²

Ms. Hufnagle was not disciplined before or after this October 22nd private meeting, and there is no evidence that she lessened her involvement in the WCEA as a result of the meeting.

III.

The Hearing Officer found for the Respondent due to the Complainant's and the Intervenor's failure to prove by a preponderance of the evidence that a threat of reprisal was made or that Hufnagle's recounting of the October 22, 1985 conversation was accurate. He found therefore, that the

¹¹T. pp. 105-107.

¹²T. pp. 110-111.

Respondent's actions did not constitute interference, restraint or coercion of Charging Party's rights in violation of O.R.C. §4117.11(A)(1).

IV

There is no question of fact in this case. Both parties gave similar descriptions of the activities of Ms. Hufnagle prior to the meeting of October 22, 1985, and of Mr. Mays' anger during this meeting. The crucial point is that Principal Mays did admit that he was very angrily criticizing Ms. Hufnagle's union activities, and that he was threatening retaliation if she kept up these activities. Ms. Hufnagle was engaging in protected activity, and she suffered verbal abuse because of her union involvement.

The connection of these facts was admitted to by the Respondent. In the opinion of the Board, there was interference with protected activities by the Respondent.

O.R.C. §4117.03(A)(2) provides that public employees have the right to engage in protected, concerted activities for the purpose of collective bargaining or other mutual aid or protection. SERB v. ODOT¹³ found:

And when engaged in "concerted activities for the purpose of ... mutual aid or protection" (the employee) was immune to employer retribution for those activities.

This intimidating behavior on the part of the Respondent in and of itself could have a chilling effect on protected activities. There is no need to find evidence that the threats resulted in lessened union activities or further harm to the Charging Party.

The Board finds, in this case, that a private, angry threat of retaliation made by an Employer to attempt to persuade a union member to

¹³In re ODOT, SERB 87-020 (10-8-87)(Aff'd. 10th Dist. Ct. of App. Franklin, 6-3-88).

lessen or cease protected activities does constitute interference with, restraint and coercion of Charging Party's rights in violation of O.R.C. §4117.11(A)(1).

Sheehan, Chairman, and Davis, Vice Chairman, concur.

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