

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SEEB OPINION 88

In the Matter of
State Employment Relations Board,
Complainant,

88-013

and
Union Local Association of Classroom Teachers,
Intervenor,

v.
Union Local School District Board of Education,
Respondent.

CASE NUMBER: 86-ULP-12-0483

ORDER
(Opinion attached.)

Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;
July 14, 1988.

On December 10, 1986 the Union Local Association of Classroom Teachers (Intervenor) filed an unfair labor practice charge against the Union Local 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 U.R.C. §4117.11(A)(1) and (5) by refusing to execute the collective bargaining agreement ratified by the Intervenor. 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, Stipulations of Fact, Findings of Fact, and Conclusions of Law with the deletion of Conclusion of Law No. 3, but not the analysis of Law with the instant unfair labor practice charge and the complaint" and adopts the recommendations as modified. The complaint and the charge are dismissed.

It is so ordered.

Order
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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 9th day of September, 1988.

Cynthia L. Spanski

CYNTHIA L. SPANSKI, CLERK

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OPINION

Sheehan, Chairman:

I.

This matter comes before the Board on the hearing officer's proposed order recommending a dismissal of the unfair labor practice charge and ordering the parties to engage in good faith collective bargaining regarding the issues in dispute.

II.

On June 19, 1986, Union Local School District Board of Education (Respondent) and Union Local Association of Classroom Teachers (Intervenor) entered into negotiations for a successor bargaining agreement in accordance with Ohio Revised Code (O.R.C.) §4117.14 and the 1985-86 collective bargaining agreement then in effect between the parties.¹ At the initial meeting, the Intervenor, among several other proposals it presented, suggested ARTICLE V, Section 5.12,² Negotiations Procedures, to read:

¹Stipulations of Fact (Stip. of F.) No. 1.

²Finding of Fact (F. of F.) No. 3 and Board Exhibit (Exh.) No. 2.

If any negotiation sessions are held during the regular school year, such negotiations shall be held during the regular teacher workday.

The parties met again on June 28, 1986. Again, the Respondent did not submit any proposals but responded to those the Intervenor presented at the first meeting by essentially rejecting all items.³ At the same meeting, the Intervenor proposed to the Board what it designated as ARTICLE V, Sections 5.8 and 5.9. The last two sentences of Section 5.9 read:

Negotiation meetings shall be in closed sessions unless mutually agreed upon by both parties. Such meetings may take place during the school day. (Emphasis added.)

Section 5.9, as it was presented anew, was in the parties' 1985-86 agreement.⁴

On July 8, the negotiating teams met again and the Respondent rejected the Intervenor's newest proposals on ARTICLE V, Sections 5.8 and 5.9. No new proposals were made by either party until the night of September 25, 1986, when a federal mediator ordered both parties to exchange final offers.⁵ At this meeting, the Respondent submitted a paper entitled, "Final Offer Proposal of Union Local School District Board of Education." In the document, the Respondent agreed to the Intervenor's proposal on ARTICLE V.⁶

The parties ultimately reached a tentative agreement. The version of the tentative agreement ratified by the Intervenor incorporated ARTICLE V, Sections 5.8, 5.9, and 5.12, as it had proposed at the June 19 and June 28

³Stip. of F. No. 4.

⁴Transcript pp. 36-40.

⁵Stip. of Fact No. 10.

⁶Exh. C-5.

meetings respectively. When the Respondent was presented with the Intervenor's ratified version, and noted the inclusion of Section 5.12, it ratified its own version omitting that section. With this single exception, all other parts of the tentative agreements ratified by the parties were identical.

The Respondent refused to sign the agreement ratified by the Intervenor. The Intervenor subsequently filed an unfair labor practice charge alleging the Respondent had violated of O.R.C. §§4117.11(A)(1) and (A)(5).⁷

III.

The Intervenor contends that its proposal for Section 5.12 of ARTICLE V, was never withdrawn from the bargaining table, and that it was offered to address the scheduling of bargaining sessions during the actual school year as opposed to Section 5.9 which governed the scheduling of bargaining sessions during the summer days of the school year. Accordingly, it claims the proposals present no inconsistencies since Section 5.12 and Section 5.9

On June 15, 1985, the Ohio Local Education Boards District Board of Education (Respondent) and the Ohio Local Association of Teachers (Intervenor) entered into negotiations for a collective bargaining agreement.

O.R.C. §4117.11:

(A) It is an unfair labor practice for a public employer, its agents, or representatives to:

(1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances;

* * *

(5) Refuse to bargain collectively with the representative of his employees recognized as the exclusive representative or certified pursuant to Chapter 4117. of the Revised Code;

addressed the scheduling of bargaining sessions during different periods throughout the year. It argues that although the parties reached tentative agreement on a master agreement with the inclusion of Section 5.12, the Respondent has refused to execute this agreement. Therefore, in accordance with Section 4117.10(B), the agreement has been ratified by operation of law.

The Respondent argues that it rejected the Intervenor's proposal regarding ARTICLE V, Negotiation Procedures, on June 28, 1986. Later, at this meeting, the Intervenor proposed ARTICLE V, Sections 5.8 and 5.9. On July 8, 1986, it rejected the Intervenor's latest proposal on these two sections and contended no new proposals were made by either party regarding ARTICLE V until the night of September 25, 1986, when they agreed to the Intervenor's proposal on ARTICLE V. It is the Respondent's position that it accepted the language of the Intervenor's last proposal which made negotiations during the teacher workday discretionary upon the agreement of the parties, not mandatory. The Respondent further asserts that Section 5.12 and Section 5.9 are two wholly inconsistent proposals and to accept both, as the Intervenor urges, would place the provisions in direct contradiction. The Respondent further argues that the only logical conclusion that can be drawn from the Intervenor's proposal of Section 5.9 is that it replaced the earlier one on Section 5.12.

IV.

For the reasons adduced below, the Board concurs in part with the hearing officer's recommended order. The Board finds the recommendation for dismissal an appropriate one, but rejects the hearing officer's recommended order to bargain over the disputed section.

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V.

When an unfair labor practice charge is dismissed by the Board, as in the instant case, a remedial order cannot ensue. O.R.C. §4117.12 provides:

(B)(3) If upon the preponderance of the evidence taken, the board believes that any person named in the complaint has engaged in any unfair labor practice, the board shall state its findings of fact and issue and cause to be served on the person an order requiring that he cease and desist from these unfair labor practices, and take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of Chapter 4117. of the Revised Code. If upon a preponderance of the evidence taken, the board believes that a person named in the complaint has not engaged in an unfair labor practice it shall state its findings of fact and issue an order dismissing the complaint. (Emphasis added.)

Consequently, the hearing officer's recommended order to engage in collective bargaining when no unfair labor practice is found is clearly improper and must be rejected.

VI.

What is at hand in the instant case is simply a gross misinterpretation by the parties of each other's bargaining moves but, contrary to the hearing officer's conclusion, it does not rise to the standard of a mutual mistake of a material fact.

The "mistake" was not common to both parties where each labored under the same misconception as to past or existing material fact and, in respect to Section 5.12, a meeting of minds was not evidenced.

The Board does not question that both parties are sincere in their contentions and that each believes its version of the tentative agreement is the one agreed upon.

The Board, however, does not subscribe to the Intervenor's claim that there is no inconsistency between Section 5.12 and Section 5.9. The two

proposals are clearly in direct contradiction. Section 5.12 makes meeting times mandatory and Section 5.9 allows discretion. The distinctions between the sections claimed by the Intervenor are just not apparent. If they were designed to treat different periods of the school year, as argued, then those periods should have been specifically noted. Ambivalent or conflicting language too often threads its way into contracts despite normal precaution. Seldom, if ever, is this by intent. Had the parties ratified the Intervenor's version of the tentative agreement, and given each its present posture, it is highly dubious that negotiating sessions could ever be scheduled without an arbitrator's intervention. The finished product of negotiations, the agreement, should be a document containing language as clear and as precise as the parties in their mutual efforts can make it. To write into an agreement provisions that are as contradictory as these two sections, reduces the contract to an instrument of dispute rather than one of settlement.

The Respondent also had some hand in this confusion. For instance, although Section 5.9 was the same section with the same language that had been part of the parties' 1985-86 agreement, the Respondent, nevertheless, rejected it without so much as a counter proposal. Then on September 25, 1986, voluntarily and readily accepted it. This surely must have puzzled the other party.

The best that can be concluded is that the entire negotiations were hardly a study in bargaining sophistication.

However, attribution for this misunderstanding, at least in major part, must be assessed to the Intervenor. When it proposed Section 5.9 immediately after Section 5.12 had been rejected by the Respondent, a

natural reading of this move was that Section 5.12 had been withdrawn. Apparently, this was not the Intervenor's intention, but the signal it sent could hardly be construed differently.

For these reasons, the charge is dismissed.

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

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