

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 89 -

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In the Matter of
State Employment Relations Board,
Complainant,

v.

Ohio Council 8, American Federation of
State, County and Municipal Employees, AFL-CIO,
Respondent.

89-003

CASE NUMBER: 85-ULP-12-0465

DIRECTIVE GRANTING MOTION TO APPROVE SETTLEMENT AGREEMENT
AND DISMISSING THE COMPLAINT
(Concurring Opinion Attached)

Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;
September 15, 1988.

On December 1, 1986, Louise Metcalf (Charging Party) filed an unfair labor practice charge against Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (Respondent) pursuant to Ohio Revised Code (O.R.C.) §4117.12 the Board (Respondent) conducted an investigation and found probable cause to believe that an unfair labor practice had been committed. Subsequently, a complaint was issued alleging that Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (Respondent) has violated O.R.C. §4117.11(B)(6) and (1) by arbitrarily and negligently failing to process the grievance filed by the Charging Party.

On April 29, 1988, the Complainant in the above-styled case filed a motion to approve a settlement agreement and dismiss the complaint. The settlement agreement was signed only by Complainant and Respondent. The Charging Party then filed a memorandum contra Complainant's motion to settle. The hearing officer transferred the Complainant's motion to the Board for action.

On May 25, 1988, the Board issued a directive remanding the case to the hearing officer to issue recommendations on the Complainant's motion.

On June 17, 1988, a hearing officer's procedural order was issued recommending that the Complainant's Motion to Approve Settlement Agreement and Dismiss Complaint be denied and that the matter be directed to hearing.

On August 12, 1988, the Board instructed the Charging Party to file within ten days with the Board a statement showing what relief was sought and why a hearing was warranted as opposed to resolution through the proposed settlement agreement.

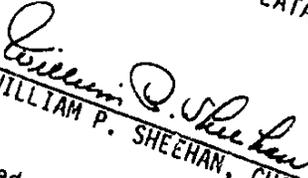
Thereafter, the Charging Party submitted a statement of objection, and the Complainant and the Respondent filed timely responses.

The Board has reviewed the record, the hearing officer's procedural order, the Charging Party's statement of objection, the Complainant's response and the Respondent's memorandum in opposition to Charging Party's Statement.

The Complainant's motion to approve the settlement agreement and dismiss the complaint is granted. The unfair labor practice charge is dismissed with prejudice.

It is so directed.

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 8th day of February, 1989.


CYNTHIA L. SPANSKI, CLERK

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SEEB OPINION 89-003

In the Matter of
State Employment Relations Board,

Complainant,

and

Louise Metcalf,

Intervenor,

v.

Union Council 8, American Federation of
State, County and Municipal Employees, AFL-CIO,

Respondent.

CASE NUMBER: 86-ULP-12-0465

CONCURRING OPINION

Latané, Board Member:

I.

In this case the hearing officer's reasoning for recommending proceeding to hearing rather than forcing Charging Party to accept a settlement focuses on the rationale that settlements, although preferable to decisions reached through hearings, should not be forced where the Charging Party asserts that further remedies are possible through a hearing.

The Board gave the Charging Party full opportunity to demonstrate what she felt she could gain through a full hearing in addition to the remedy offered in the settlement by instructing the Charging Party, through her counsel, to file a statement showing cause explaining how she would benefit from a hearing.

In response to this directive, the Charging Party filed a brief statement merely reasserting her desire for a full hearing and her claim of emotional injury, medical, and legal expenses as a result of negligent

representation by her union. This statement did not set out for the Board any further remedy or benefit available under R.C. Chapter 4117 that the Charging Party could have expected to obtain through a hearing. The settlement agreement reached by the Complainant and the Respondent remedied all the allegations put forth in the original Complaint and even purported to remedy several matters not mentioned in the Complaint. Further, there is no section in O.R.C. Chapter 4117, which gives the State Employment Relations Board authority to award the Charging Party monetary damages for personal injuries.

II

"Settlements constitute the 'lifeblood' of the administrative process, especially in labor relations." N.L.R.B. v. United Food & Commercial Workers, 108 S.Ct. 413, ___ U.S. ___, 98 L.Ed. 2d 429 (1987).

At issue in this case is the Board's authority to effectuate settlements of unfair labor practice complaints when the Charging Party objects. The Charging Party submits that once a complaint is issued, the Board's duty to conduct hearings is mandatory.¹

¹Ohio Revised Code §4117.12(B) provides:

When anyone files a charge with the Board alleging that an unfair labor practice has been committed, the Board or its designated agent shall investigate the charge. If the Board has probable cause for believing that a violation has occurred, the Board shall issue a complaint and shall conduct a hearing concerning the charge. The Board shall cause the complaint to be served upon the charged party which shall contain a notice of the time at which the hearing on the complaint will be held either before the board, a board member, or a hearing officer.

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It is a well-settled rule in the private sector that a charging party has no absolute right to a hearing in an unfair labor practice case, where the National Labor Relations Board has decided to settle such a case over the objections of the charging party. Local 282, International Brotherhood of Teamsters v. NLRB, 339 F. 2d 795 (2nd Cir. 1964). The application of this policy to the public sector is reasonable as long as it will effectuate the policies of Chapter 4117. In this case the Charging Party offered no substantial argument as to why a hearing was necessary to effectuate the purposes of the Act. The U.S. Supreme Court held, in NLRB v. United Food & Commercial Workers *supra*, that, given the importance of settlements, it could not find any legislative intent "...to deny the Board the usual flexibility accorded an agency in interpreting its authorizing statute and in developing new regulations to meet changing needs." The Board's enabling statute seems to provide that same kind of desired flexibility in unfair labor practice proceedings.

Ohio Revised Code Sec. 4117.02(H) provides in pertinent part:

In addition to the powers and functions provided in other sections of Chapter 4117. of the Revised Code, the Board shall:

(3) Hold hearings pursuant to Chapter 4117 of the Revised Code and for the purpose of the hearings and inquiries administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel the attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate these powers to any members of the board or any attorney-trial examiner appointed by the board for the performance of its functions...

* * *

(8) Promulgate, amend, and rescind rules and procedures and exercise other powers appropriate to carry out Chapter 4117 of the Revised Code.

Ohio Revised Code Sec. 4117.12(B) provides:

(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.

These sections, when construed liberally, as provided in Ohio Revised Code §4117.22:

Chapter 4117. of the Revised Code shall be construed liberally for the accomplishment of the purpose of promoting orderly and constructive relationships between all public employers and their employees.

provide authority for the Board's adoption of the settlement agreement without hearing, absent any showing of prejudice by the Charging Party.

The remaining argument of the Charging Party, which warrants comment here, is the assertion of a claim for monetary relief due to emotional injury. Chapter 4117 does not envision an allowance for such a remedy, which might be available under some common law tort action. The procedure and remedies available under O.R.C. §4117.12 and under common law theories of tort are dissimilar and are co-existent, not inconsistent. The 10th District Court of Appeals, in a somewhat similar situation, found that although the legislature created a special remedy to deal with sexual harassment in the work place, it did not withdraw other available remedies and intended to create a range of remedies under both existing common law and R.C. §4112.02. Helmick v. Cincinnati Word Processing, Inc., No. 86AP-1073 (10th Dist. Ct. of App. April 26, 1988). Similarly, a liberal interpretation of O.R.C. §4117.12 does not preclude an employee from

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seeking relief under common law, while not making such relief available in the unfair labor practice proceeding in this case.

The Charging Party here has neither demonstrated any prejudice by the adoption of the proposed Settlement Agreement nor submitted any persuasive authority which would entitle her to an evidentiary hearing.

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