

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

89-009

In the Matter of
State Employment Relations Board,
Complainant,

v.

United Steelworkers of America,
District 27, Sub-District 5,

Respondent.

CASE NUMBER: 86-ULP-01-0028

ORDER
(Opinion attached.)

Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;
December 8, 1988.

On January 24, 1986, the City of Gahanna (Charging Party) filed an unfair labor practice charge against the United Steelworkers of America, District 27, Sub-District 5 (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(B)(1) and (B)(2) by threatening an employee because he did not pay union dues and by demanding that the Charging Party deduct union dues from the employee and threatening to seek termination of his employment. The case was heard by a Board hearing officer.

The Board acted on August 4, 1988 to remand this case to the hearing officer. This Board action is hereby vacated.

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, amends Conclusion of Law No. 4 by replacing the word, "Respondent" with "Employer," amends Conclusion of Law No. 5 to read: "the Respondent did not violate O.R.C. §4117.11(B)(2)," and adopts the Conclusions of Law as amended. Recommendations Nos. 2 and 3 are rejected.

The unfair labor practice complaint is dismissed.

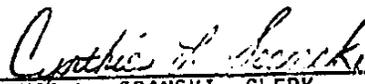
It is so ordered.

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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 3rd day of May, 1989.


CYNTHIA L. SPANSKI, CLERK

2036b:LSI/jlb

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SERB OPINION 89-009

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OPINION

Sheehan, Chairman:

I.

The issue in this case arises from events occurring subsequent to and arising out of a dues deduction provision of a collective bargaining agreement, effective January 1, 1983, through December 31, 1983,¹ between the City of Gahanna (City or Employer) and the Gahanna Classified Employees Association (GCEA).² The agreement was extended until November 19, 1985.³ Carl Lang, employed by the City of Gahanna as a building inspector for thirteen (13) years, signed a dues deduction form and GCEA dues were deducted from his paycheck⁴ pursuant to the GCEA contract which provided in part:

Article II. Recognition. Section 2. Dues Deductions

The City agrees to deduct Bargaining Unit membership dues, in the amount certified by the Bargaining Unit to the City, the first pay period of each month from the pay of any member requesting same. If a dues deduction is

¹Finding of Fact (F.F.) No. 2.

²F.F. No. 1.

³F.F. No. 3.

⁴F.F. No. 12.

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desired, the member shall sign a payroll deduction form which shall be forwarded by the Bargaining Unit and presented to the appropriate payroll clerk. The City agrees to furnish to the Director of OLPA or its designate once each calendar month, a warrant in the aggregate amount of the deduction made for that calendar month, together with a listing of the members for whom deductions were made.

The Steelworkers of America (USWA) launched an organizing campaign which resulted in a GCEA vote to affiliate with USWA and the GCEA became Local 9110 of the United Steelworkers of America.⁵

On October 31, 1985, Lang sent the City a written request to cease deductions of GCEA union dues from his wages.⁶ The request was timely and made prior to the effective date of the new contract on November 19, 1985, which provided for a maintenance of membership clause:

Article II, Section 2.03.

Notwithstanding the provisions of Section 1, any bargaining unit employee who is a member of the union on the effective date of this agreement, or who becomes a member during its term, shall not revoke his authorization for regular membership dues deduction, except for a period of no less than 150 or more than 120 days preceding the expiration of the agreement.

However, the Respondent was not informed either by Lang or the City of Lang's revocation of membership.

On December 2, 1985, two representatives of the USWA, the President of Local 9110 and the Sub-District Director, met with two City officials, the Finance and Personnel Director and Deputy Finance Director, to discuss the manner in which payroll deductions were to be made.⁷ At this meeting, one

⁵F.F. No. 4.

⁶F.F. No. 6.

⁷F.F. No. 9.

of the USWA representatives asked the City to deduct dues from Carl Lang's paycheck, to which the City official responded that since Lang had not submitted a signed authorization card for dues deduction the City was not authorized to do so.⁹ The USWA representative remarked that if Lang did not sign a dues deduction card, the USWA would ask for Lang's termination.⁹ Neither City official told the USWA representative at this meeting that a timely request had been received by Lang to stop dues deductions from his paycheck, only that Lang had not signed an authorization card.¹⁰

As a result of this exchange, the City of Gahanna charged the USWA of committing an unfair labor practice in violation of Ohio Revised Code (O.R.C.) §4117.11(B)(2). It further charged that USWA violated O.R.C. §4117.11(B)(1) by threatening Lang because he did not pay his union dues.

II.

The Hearing Officer concluded that the Charging Party (City of Gahanna) does not have standing to assert employee Carl Lang's rights under O.R.C. §4117.11(B)(1), and since Lang did not file a charge himself, the O.R.C. §4117.11(B)(1) charge should be dismissed. The Board concurs with this recommendation. However, the Hearing Officer concluded that Respondent (USWA) violated O.R.C. §4117.11(B)(2) by "demanding that the City deduct union dues from Lang's paycheck and by threatening to seek termination of

⁹F.F. No. 9.

⁹F.F. No. 9.

¹⁰F.F. No. 10.

Lang's employment." The Board does not concur with the Hearing Officer's recommendation regarding this issue for the reasons adduced below.

III.

There is no dispute about the verbal exchange on December 2, 1985, between the Respondent and the City of Gahanna officials regarding dues deductions from Carl Lang's paycheck. The Respondent requested the City to deduct the dues and the City refused because Lang had not signed an authorization card. The Respondent said it would seek Lang's termination of employment if he did not sign an authorization card. No other request or representation was ever made to the City in respect to Carl Lang and/or his payment of dues.

It is also undisputed that the Respondent was unaware that Lang had written the City on October 31, 1985, to cease deducting dues from his paycheck. Lang had not notified the Respondent of this action or of his resignation from membership. Neither was this information revealed to the Respondent by the City officials at the December 2 meeting. Without the City or Lang informing the Respondent of Lang's action, it had no way of knowing that Lang had revoked his membership. Moreover, Lang at one time was even identified briefly as the Financial Secretary of the newly constituted USWA Local 9110. The Respondent claims that as far as it knew, Lang was a member as of the effective date of the contract and was obligated to pay dues pursuant to Article II, Sec. 2.03 of said contract.

The issue here is whether the Respondent violated O.R.C. §4117.11(B)(2) when its representative remarked that if Lang did not sign a dues deduction card, the USWA would ask for Lang's termination.

O.R.C. §4117.11(B)(2) states:

(B) It is an unfair labor practice for an employee organization, its agents, or representatives, or public employees to:

(2) Cause or attempt to cause an employer to violate division (A) of this section;

There is nothing on the record to indicate that following the above-mentioned remark the Employer terminated Lang or acted in anyway in violation of O.R.C. §4117.11(A). Obviously, if no violation occurred, the Respondent could not have caused the Employer to commit a violation. Thus, the question here is whether the statement "if Lang does not sign a dues deduction card, the USWA will ask for Lang's termination" - constitutes "attempt to cause" as this term is used in O.R.C. §4117.11(B)(2). The answer is "no." The record does not show that the Respondent put any pressure on the Employer to act. The Respondent did not demand the termination of Lang in any formal or even informal way. Moreover, the record does not show that the Respondent ever directly or indirectly actually requested that the Employer discharge Lang. The only statement made by the Respondent was phrased prospectively and there was never a follow up.¹¹

The Respondent did nothing to seek advancement of the sentiments it expressed regarding Lang's job at the December 22 meeting. Had it done so, it would have clearly been in the wrong, but it did not. Although mistaken about Lang's membership status, but without any basis for knowing otherwise,

¹¹See for the same kind of rationale, even though not the same issue, Carpenters, Local 515, 188 NLRB No. 115 (1971). Also Asbestos Workers Union, 146 NLRB No. 85 (1964).

its request for Lang's dues can only be construed as pursuing its contractual rights as set forth in the negotiated agreement, i.e., maintenance of membership clause.¹²

Moreover, it is indeed reasonable to believe that the request for the deduction of dues or the remark about seeking Lang's termination would not have occurred had the City informed the Respondent of Lang's letter withdrawing authorization for dues deductions. As noted earlier, the Respondent made no further demand on the Charging Party in respect to Carl Lang's dues after this initial meeting. This is a classic case of a communication gap where only partial information was transmitted. We make no judgment as to whether this was accidental or intentional but find the undisputed statements of the USWA representatives were little more than a request for dues deduction to which the Respondent believed it was entitled. There is no record of conduct or speech on the part of the Respondent's representative which constitutes a violation of O.R.C. §4117.11(B)(2). Davis, Vice Chairman, and Latané, Board Member, concur.

¹²Maintenance of membership clauses and the enforcement thereof are lawful. O.R.C. §4117.09(C) only prohibits requirements regarding initial membership or "union shop" arrangements. Once an employee joins, durational membership requirements, such as Article II, Section 2.03 of the collective bargaining agreement between the City of Gahanna and the United Steelworkers are proper.