

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

AND

Fraternal Order of Police, Ohio Labor Council, Inc.,

Intervenor,

V.

Springfield Township Board of Trustees,

Respondent.

CASE NUMBER: 87-ULP-01-0003

ORDER  
(Opinion attached.)

Before Sheehan, Chairman, and Davis, Vice Chairman, October 27, 1988.

On January 5, 1987, The Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP/OLC") filed an unfair labor practice charge against the Springfield Township Board of Trustees ("Respondent" or "Employer"). On July 16, 1987, the Board found probable cause to believe that an unfair labor practice had been committed and on January 4, 1988, a complaint was issued alleging that Respondent violated Ohio Revised Code §4117.11(A)(1) and (5) by breaching O.R.C. §4117.20 in the composition of its bargaining team. The matter was heard by a board hearing officer on February 25, 1988. On September 2, 1988, the hearing officer issued her proposed order in which she recommended that the complaint be dismissed.

The Board has reviewed the hearing officer's report and recommendations, the record, the exceptions and the response to exceptions. The Board concludes that, for the reasons stated in the attached opinion incorporated by reference, the Respondent violated O.R.C. §4117.20(A) and (B) and, therefore, committed an unfair labor practice in violation of O.R.C. §4117.11(A)(1) and (5). Accordingly, the Board adopts the Stipulations of Fact, Findings of Fact, and Conclusions of Law Nos. 1 and 2, but rejects Conclusions of Law Nos. 3 and 4, finding instead that the Respondent violated O.R.C. §4117.11(A)(1) and (5) by failing to remove FOP members Paul Huffman and David Heimpold from its bargaining team as required by O.R.C. §4117.20(B).

ORDER  
Case No. 87-ULP-01-0003  
October 27, 1988  
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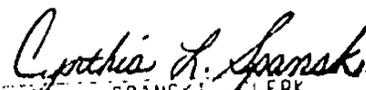
The Respondent is ordered to cease and desist from interfering with the bargaining rights of its employees and from including on its bargaining team individuals who hold memberships violative of C.R.C. §4117.20. The Respondent is further ordered to post for sixty days in conspicuous locations where notices to employees are commonly posted, the Board-provided "Notice to Employees."

It is so ordered.

SHEEHAN, Chairman, and DAVIS, Vice Chairman, concur. LAINE, Board Member, absent.

  
WILLIAM P. SHEEHAN, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 29<sup>th</sup> day of October, 1989.

  
CYNTHIA L. SPANSKI, CLERK

0103q:JFD/jlb



# 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. We will cease and desist from:

interfering with, restraining, or coercing employees in the exercise of their bargaining rights guaranteed by C.R.C. §4117.20 and from refusing to bargain in good faith by maintaining a bargaining team containing FOP members.

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. We will take the following affirmative action:

1. Post for sixty days in all Springfield Township building where our employees work, this Notice to Employees furnished by the State Employment Relations Board;
2. Remove from their role on the Springfield Township Police Department bargaining team, Paul Huffman and David Heimbold.

Springfield Township Board of Trustees  
Case NO. 87-ULP-01-0003

DATE \_\_\_\_\_ BY \_\_\_\_\_ TITLE \_\_\_\_\_

**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.

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of  
State Employment Relations Board,

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Fraternal Order of Police, Ohio Labor Council, Inc.,

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Springfield Township Board of Trustees,

Respondent.

CASE NUMBER: 87-ULP-01-0003

OPINION

Davis, Vice Chairman:

I. ISSUES

This action involves interpretation and application of Ohio Revised Code ("O.R.C.") §4117.20, which relates to management bargaining team members who hold memberships in labor organization affiliates. Specifically at issue is the composition of the team that represented the Springfield Township Board of Trustees ("Employer" or "Respondent") during negotiations with the Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP/OLC"). Two potential issues are presented:

1. Whether the Respondent violated Ohio Revised Code §4117.20 by including on its bargaining team two management employees who also were members of FOP Lodge No. 74 ("Lodge 74"), and, if so:
2. Whether such a breach of O.R.C. §4117.20 constituted an unfair labor practice in violation of O.R.C. §4117.11(A).

## II. FACTS'

On October 30, 1986, the FOP/OLC was certified as the exclusive representative of a unit of patrol officers employed by Respondent. (Stipulation #5.) In November 1986, the FOP/OLC and Respondent commenced collective bargaining negotiations. At all times relevant to the negotiations, Respondent's bargaining team included Lieutenant Colonel Paul Huffman, the chief of police, and Captain David Heimpold, assistant chief of police. By virtue of their management positions, these two officers were excluded from the bargaining unit, but both were members of FOP Lodge 74. In fact, Heimpold was Lodge president. (Stipulations #7, #8, and #10; Respondent's Exhibit 2, page 31.)

The parties have stipulated that both Lodge 74 and the FOP/OLC are "affiliates" of the state organization, the Fraternal Order of Police of Ohio, Inc., more commonly referred to as the "State Lodge." (Stipulation #9.) The State Lodge is composed of "subordinate lodges granted charters by the state lodge." No FOP lodge may exist independent of or without charter from the State Lodge. (Jt. Exhibit #1.) The member lodges pay to the State Lodge an initial charter fee and annual dues. Individual lodges elect delegates to the State Lodge's annual conference, which is the governing body of the State Lodge. These delegates then participate in the election of the State Lodge trustees, who manage and direct the State Lodge. (Transcript, page 16.)

Before addressing the manner in which Lodge 74 and the FOP/OLC fit into the state FOP structure, it is necessary to set forth a brief summation of the historical development of the FOP's labor relations functions. Such an evolutionary perspective enhances a full understanding of the connections among the entities involved.

The State Lodge has been in existence since 1915, and local lodges have been formed under its auspices. (Jt. Exhibit #1.) Prior to the enactment of O.R.C. Chapter 4117, there existed throughout Ohio numerous FOP lodges, some of which had been recognized as representatives for the limited bargaining activities available to public employees prior to the 1984 effective date of the collective bargaining statute. See, e.g., Dayton Fraternal Order of Police Lodge No. 44 v. State Employment Relations Board, 22 Ohio St. 3d 1, 488 NE2d 181, 1984-86 SERB 373 (1986).

In 1984, the State Lodge created the FOP/OLC to act as the collective bargaining agent for certain FOP units. The FOP/OLC's functions include promoting "the formation of collective bargaining units for law enforcement personnel," acting as the "collective bargaining agent for members and member units," and "engaging in collective bargaining, mediation and arbitration, if necessary, for the purpose of improving wages, hours, and

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'References to the transcript, exhibits, stipulations, and/or findings of fact are intended for convenience only and are not intended to suggest that such references are the sole support in the record for the stated fact.

conditions of employment and advancing the rights and promoting the security of the members." (Jt. Exhibit #2; transcript, page 20.) Because of the pre-existence of many lodges, however, post-bargaining-law representation at the local FOP level developed along various lines. Where there historically had been an FOP lodge but the desire was for the FOP/OLC to handle labor relations, the FOP/OLC became the exclusive representative of the unit, and the lodge either continued to exist and function in other, non-bargaining capacities, or it merged with the FOP/OLC. Where there was no prior FOP activity, the FOP/OLC organized the employees, thus becoming the exclusive representative. Where there was a lodge that had "chosen to do [its] own collective bargaining," the lodge became the exclusive representative, with the FOP/OLC acting only in an advisory capacity through the State Lodge. (Transcript, pages 24 and 32.) Through this evolution, there arose the FOP system and structure that exist today, with organizing and bargaining handled in some instances exclusively by the FOP/OLC, in other instances by a cooperative effort between the FOP/OLC and a local lodge, and in yet other instances by the local lodge alone.

Returning to the present structure of the organizations at issue in the instant case, it is undisputed that Lodge 74 is an affiliate--a "subordinate lodge"--of the State Lodge. It is a multi-departmental lodge for which membership is drawn from various police departments in the Hamilton County area, including the Springfield Township Police Department. (Transcript, pages 32 and 36.) Lodge 74 exists for the "advancement of social, charitable, and educational undertakings of the police," and to "advocate rigid enforcement of civil service laws," to "see that all laws, ordinances, rules and regulations affecting the police are enforced," and to "furnish all possible assistance, other than monetary, to active members of the Lodge in good standing who may be dismissed without justification." (Resp. Exhibit #1.) Lodge 74 does not function as a collective bargaining representative for its members. Assistant Chief Heimpold is the president of Lodge 74, and, pursuant to Lodge 74's constitution and by-laws, Heimpold, as president, is an ex officio delegate to the annual State Lodge conference. Lieutenant Colonel Huffman, the chief of police and a past president of Lodge 74, had assisted the FOP/OLC in its efforts to organize in some other law enforcement departments from which Lodge 74 drew membership. (Transcript, page 36.)

Just as Lodge 74 is an affiliate of the State Lodge, so, too, is the FOP/OLC. The board of trustees of the FOP/OLC (aka the "Executive Committee") consists of seven members, three of whom are appointed by the State Lodge. (Jt. Exhibit #2.) As with local lodges, the FOP/OLC elects delegates who participate in the State Lodge's annual conference. The FOP/OLC also holds open discussions at those meetings regarding labor issues. (Transcript, pages 24-26, 32, and 43-46.)

The State Lodge and the FOP/OLC share the same general counsel. A cooperative agreement exists between the two whereby the State Lodge provides the FOP/OLC with support service and space, the cost of which is reimbursed to the State Lodge from the FOP/OLC's independent financial accounts. (Finding of Fact #5.) The FOP/OLC, under its constitution, may be required to submit financial reports to the State Lodge at the State Lodge's request. (Jt. Exhibit #2.) The FOP/OLC gives quarterly and annual

reports of its activities to the trustees of the State Lodge and, at the State Lodge's annual conference, gives a report to the general membership. The FOP/OLC consults weekly with the president of the State Lodge. (Transcript, page 23.) The State Lodge provides policy direction and coordination of services of the FOP/OLC. (Transcript, page 25.)

In the instant case, the FOP/OLC is the exclusive representative of the unit, serves as the unit's bargaining agent, and is signatory and party to the collective bargaining agreement that ultimately was executed with the Employer.

#### DISCUSSION

##### A. Did Respondent Violate O.R.C. §4117.20?

O.R.C. §4117.20(A) provides, in relevant part:

No person who is a member of the same local, state, national, or international organization as the employee organization with which the public employer is bargaining ... shall participate on behalf of the public employer in the collective bargaining process....

If violative membership exists, an employer under O.R.C. §4117.20(B) is mandated to:

... immediately remove from his role, if any, in the collective bargaining negotiations or in any matter in connection with negotiations any person who violates division (A) of this section.

Thus, a two-step analysis must be applied to determine if O.R.C. §4117.20 has been breached. First, there must be a determination of whether a member of management's team holds a prohibited membership, and, if so, whether the Employer took the required action to remove the individual from the team.<sup>2</sup>

##### 1. Was there prohibited membership?

Under O.R.C. §4117.20(A), it is clear that the "employee organization with which the public employer is bargaining" is the FOP/OLC. Thus, we must determine whether Huffman and Heimpold are members of the same "state organization" as the FOP/OLC.

<sup>2</sup>O.R.C. §4117.20(A) also prohibits participation by persons who have an "interest in conflict with the public employer." This component of O.R.C. §4117.20(A), however, was not raised or pursued in the instant action. The allegations in this case are considered and resolved solely on the basis of violative membership. No inquiry into the actual interests of either Heimpold or Huffman is made. Indeed, such inquiry would be inappropriate under the membership provision of O.R.C. §4117.20(A).

Examination of the facts, relevant organizational structures, and policy concerns leads us to the conclusion that the prohibited convergence of membership was present in the instant case. The reasons for this conclusion follow and involve two sub-issues: (1) whether the State Lodge is a "state organization" to which the statute refers, and, if so, (2) whether Huffman and Heimpold are "members" of that organization.

- a. Does membership in Lodge 74 constitute membership in the same "state organization" as the FOP/OLC?

Respondent argues that the State Lodge is not a "state organization" within the meaning of O.R.C. §4117.20 because that provision should apply only to membership in "employee organizations" as defined in O.R.C. §4117.01(D). Respondent contends that the State Lodge is not such an employee organization. We reject this argument for two reasons. First, the statute does not specify that the conflicting membership must be in an "employee organization." Rather, O.R.C. §4117.20(A) uses the broader term "organization" rather than the more specific term "employee organization." Second, unions' hierarchical structures often involve state, regional, or national parent entities that may not precisely meet all elements necessary to constitute "employee organizations." Even though they may not function directly as employee organizations, these parent entities often are closely involved with and support the labor matters of the local employee organizations. The potential for conflict is pertinent with regard to the parent entity regardless of whether it is itself an "employee organization." Indeed, this logically can be construed as the legislative impetus for use of the general term "organization" rather than "employee organization." Thus, we conclude that the State Lodge clearly is a "state organization" within the contemplation of O.R.C. §4117.20.<sup>3</sup>

With regard to whether membership in the State Lodge through Lodge 74 gives rise to membership in "the same state organization" as the FOP/OLC, we find that it does. Both Lodge 74 and the FOP/OLC are inextricably linked to the State Lodge. While their activities at the local level may differ, their actions, exchanges, and interests merge at the state level, where there is a confluence of Lodge 74 with all other lodges and with the FOP/OLC.

As a member of the State Lodge, Lodge 74 pays dues to and participates in the business of the State Lodge by sending delegates to the annual conference. Through participation in the State Lodge, local lodge delegates

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<sup>3</sup>By referring to membership in the "same state or national organization" as the exclusive representative, the statute thus pertains only to membership links within the same organizational family. Prohibited membership would not occur if the only common link were with a federation of labor organizations such as the AFL-CIO.

<sup>4</sup>We do not decide whether the State Lodge or Lodge 74 is an "employee organization" as defined in O.R.C. §4117.01(D). Because the statute does not require such status, we need not determine that question in resolving the instant case.

contribute to the formation of general collective bargaining policies, can acquire information about particular bargaining approaches used or recommended by the FOP/OLC, and can enjoy the benefit of legal guidance from the joint State Lodge-FOP/OLC general counsel. Support can flow from the lodges to the FOP/OLC as well. In fact, Lodge 74, through Huffman, has assisted in the organizing efforts of the FOP/OLC. (Transcript, pages 23-26, 41, 42 and 43.)

Thus, the structure and operation of the State Lodge in relation to local lodges and the FOP/OLC give rise to the very merger of information and direction that O.R.C. §4117.20 is designed to avoid. Participation and membership at the local lodge level provide a direct link to policy-making and substantive direction at the State Lodge. While the local entities are different, the State Lodge is the parent entity, constituting the state organization for both the FOP/OLC and Lodge 74.

b. Are Huffman and Heimpold "members" of the State Lodge?

Under the FOP structure, there is no opportunity for individual employees to be members of the State Lodge. "Membership" is conferred only upon lodges, not people. Thus, technically, Huffman and Heimpold are not themselves members of the State Lodge. However, Heimpold's and Huffman's memberships in Lodge 74 link them to the State Lodge as if they were individual members of the State Lodge.

As members of an affiliate lodge, Heimpold and Huffman have the opportunity for participation in the formulation of State Lodge issues. Lodge 74 selects delegates to the State Lodge's annual conference, where trustees who direct the State Lodge are selected and where major policy issues are resolved. In fact, Heimpold, by virtue of his position as president of Lodge 74, is an ex officio delegate to the conference. Thus, Huffman's and Heimpold's memberships in Lodge 74 give them the potential for intimate involvement with the policies and directions of the State Lodge. Combining such FOP membership with the role of Respondent's collective bargaining representative creates precisely the potential for conflicting opportunities, functions, interests, and loyalties that O.R.C. §4117.20 is designed to avoid. Merely because Huffman and Heimpold hold State Lodge memberships through Lodge 74 rather than directly does not alter the practical import of the relationship. Hence, the Board finds that the prohibited convergence of membership occurs.

"Indeed, even the FOP itself speaks in terms of individual State Lodge members. In his testimony, the FOP General Counsel stated that the membership of the State Lodge consisted of "18,000 law enforcement officers." (Transcript, page 28.)

"The statute does not require proof of conflicting participation or values. The statute's prohibition is based solely upon membership, regardless of how well-meaning or careful in action and judgment the individuals may be. O.R.C. §4117.20 reflects a standard common to many regulations of ethical conduct: the appearance of--or potential for--conflict is to be avoided.

2. Did Respondent comply with O.R.C. §4117.20(B)?

When a member of an employer's bargaining team is found to have a conflicting membership under O.R.C. §4117.20(A), paragraph (B) of that same statutory section directs the employer to take swift action to remove the individual from his or her role in the collective bargaining negotiations. Heinbold's and Huffman's memberships in Lodge 74 triggered the Respondent's legal duty to remove them from their roles on the management team. Respondent did not take such action. Thus, by failing to take the corrective measures required by O.R.C. §4117.20(B), the Respondent violated O.R.C. §4117.20.

B. Does a Violation of O.R.C. §4117.20 Constitute an Unfair Labor Practice?

O.R.C. §4117.20 provides no specification regarding enforcement of the prohibition if an employer fails to comply with the removal requirement of O.R.C. §4117.20(B). Certainly, however, failure to take such action breaches the strictures of the statute regarding the employer's bargaining obligation. O.R.C. §4117.20 guarantees employees the right to collectively bargain with employer representatives who have no potentially conflicting role within a state or national affiliate of the local employee organization. This right, being a right "guaranteed in Chapter 4117," is one with which the employer may not interfere. By failing to remove the violative team members, the Respondent interfered with this right and, therefore, committed an unfair labor practice in violation of O.R.C. §4117.11(A)(1).

Moreover, the Respondent's noncompliance also reflects on the performance of its duty to bargain in good faith. An employer who negotiates through prohibited representatives cannot be said to have bargained in good faith. Thus, Respondent also violated O.R.C. §4117.11(A)(5) by failing to abide by the statutory mandates designed to ensure a proper bargaining effort free from the potentialities presented by conflicting memberships. Accordingly, pursuant to O.R.C. §4117.12, the Respondent is ordered to take the remedial steps set forth in the order accompanying this opinion.

Sheehan, Chairman, concurs. Litané, Board Member, absent.