

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
State Employment Relations Board,
Complainant,

and

Lakota Local School District, Board of Education,
Respondent.

CASE NUMBERS: 87-UPL-03-0098
87-UPL-12-0602
86-REP-12-0376

OPINION

Latané, Board Member:

The three cases at issue evolved because the Lakota School Support Association (LSSA or Union) charged that the Lakota Local School District Board of Education's (Board or Respondent) conduct precluded the holding of a free and untrammelled election. The LSSA filed a petition for voluntary recognition on December 8, 1986, which was declined by the Respondent, after which the parties entered into a consent election agreement. The LSSA did not prevail in the election, filed election objections and requested a remedy from SERB for alleged unfair labor practices.

CASE: 87-UPL-12-0602

The charge filed by the LSSA in 87-UPL-12-0602 alleged that the Respondent violated O.R.C. §4117.11(A)(1) and O.R.C. §4117.11(A)(5) by refusing to bargain concerning a change in the method of calculating wages and, thereafter, unilaterally changing the method of payment. The Hearing Officer determined in this case that LSSA had not prevailed in the election, was not certified as the exclusive representative of the employees in the bargaining unit, and therefore the Respondent had no duty to bargain over the change in method of compensation.

In this case the Board adopted the Admissions, Stipulations, Findings of Fact, Conclusions of Law and Recommendations proposed by the Hearing Officer which are hereby incorporated by reference.

CASE: 87-UPL-03-0098

The Union alleged in this case that the Employer committed a number of unfair labor practices during the Union's organizing drive. The Hearing Officer found that a number of violations had occurred, but also found that in several instances, the incidents did not rise to the level of unfair labor practices.

The Board upheld the Hearing Officer's Findings of Fact and Conclusions of Law, which are incorporated by reference, with the exception of Conclusion of Law No. 5, which is amended to find that the issue described in Finding of Fact No. 25 is an unfair labor practice.

The question "Who was for the union at the high school?" was posed by the Supervisor of Buildings and Maintenance to a support staff employee at the end of a discussion about building maintenance. The employee answered that he did not know, and nothing else was said by either party.¹

The Hearing Officer found that as the question was neither threatening, coercive, nor delivered in a captive audience setting it was not unlawful utilizing standards set forth by the Board in In re Lucas County Bd of Mental Retardation & Developmental Disabilities, SERB 86-048 (12-4-86) and In re Hamilton County Bd of Mental Retardation and Developmental Disabilities, SERB 86-050 (12-11-86).

However, this Board finds that questioning an employee about union business by an employer is inherently coercive in that it would tend to inhibit employees' pursuit of rights guaranteed in Chapter 4117. Support for this position is found in NLRB decisions holding that employer interrogation violates Section 8(a)(1) which states that it shall be an unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.²

State public labor relations boards have generally followed the same course; some have gone even further. Usually these agencies use language to the effect that questioning of employees regarding union activity is

¹ F.F. 25.

²The NLRB reasoned that employer interrogation concerning union activity was inherently coercive because any such questioning would tend to inhibit employees in the pursuit of their rights guaranteed by the Act. If an employer questions an employee regarding union activity, it could lead to the employee's belief that there was surveillance of association activities. The NLRB held that an employer even violated the Act by questioning an open and well-known union supporter. Inquiries of this type were deemed coercive even in the absence of threats of reprisal or promises of benefit. PPG Industries, 251 NLRB No. 156, 105 LRRM 1434 (NLRB 8-27-80). Subsequently, the NLRB manifested its intent to extend this type of protection to situations in which there was a single, apparently spontaneous inquiry in a friendly discussion, not shown to be linked with a broader pattern of interrogation. The NLRB reasoned that even in a situation where there was open union support manifested by an employee, such questioning would tend to coerce the employee by conveying the employer's displeasure with the union activity. Harrison Steel Casting Co., 262 NLRB No. 59, 110 LRRM 1424 (NLRB 6-28-82); order aff'd, 728 F. 2d 831 and 735 F. 2d 1049 (7th Cir. 1984).

Inherently coercive and tends to interfere with an employee's free exercise of protected rights.³ In Michigan the M.E.R.C. reasoned that union meetings are a "confidential corclave - its closed doors sanctuary immune from employer investigation." Any questioning of employees as to union proceedings could destroy the confidentiality and breach the privilege to which union members are entitled.⁴ The Commission further stated that no public employer should have the right to question any union member or any bargaining unit member or union official as to what was said at a ratification meeting.⁵ In New York the Supreme Court, Appellate Division, upheld a P.E.R.B. decision that questioning of a union grievance officer was unlawful interrogation because such questioning interfered with an employee's rights to organization and representation and would tend to deter other employees from seeking advice and representation with regard to pending charges.⁶

The State Employment Relations Board finds that this type of communication is a per se violation, in that the illegality of questioning does not turn on the employer's motive or whether the coercion succeeded or failed. Its basis is the inherent coercion of the interrogation itself. This reasoning is supported by other public sector jurisdictions.⁷ The Michigan Commission, for example, held that per se coercion extends to the questioning of employees as to their co-workers' union activities.⁸ The questioned employee's own union activities, as well as

The question "Who is for the union?" posed by the Employer is clearly a violation of O.R.C. 64117.11(A)(1), and Conclusion of Law No. 5 is amended to read:

Respondent violated O.R.C. 64117.11(A)(1) by telling certain employees they would not be able to communicate directly with the Employer if a union were certified and by interrogating an employee by asking who was for the union.

³In the Matter of the Town of Randolph and International Brotherhood of Police Officers, 3 NPER 22-13078 (Mass. L.R.C. 4-23-82).

⁴In the Matter of Northwest Public School and Northwest education Ass'n /JCEA /4EA, 9 NPER MI-17089 (Mich. E.R.C. 7-17-86).

⁵Northwest Public Schools, *id.*

⁶City of Newburgh v. Newman, 505 N.E. 2d 590; 103 LRRM 3000 (N.Y. Sup. Ct. App. Div. 11-8-79)

⁷Maine State Employees Ass'n v. Dept. of Human Services, State of Maine, 4 NPER 20-12026 (Maine L.R.B. 6-26-81).

⁸In the Matter of City of Lansing (Police Dept.) and Capitol City Lodge, 141, F.O.P., 4 NPER 23-13116 (Mich. E.R.C. 6-24-82).

CASE: 86-REP-12-0376

The issue in this case is whether the Employer's conduct, in whole or in part, prevented the employees from exercising their rights to make a free choice in a representation election. The Hearing Officer concluded that the election was tainted by the Employer's activities and recommended that a rerun election be conducted.

The Board agreed with the Hearing Officer's Findings of Fact and Conclusions of Law, with an amendment noted following, which are incorporated by reference in this opinion.

Finding of Fact No. 25 in this case was identical to Finding of Fact No. 25 in Case 87-ULP-03-0098. As in that case, the Board finds that an employer questioning an employee about other employees' support for a union constitutes a per se violation, due to the inherently coercive nature of such interrogation. With the addition of Conclusion of Law No. 8: "The Employer's questioning of an employee about which employees were for the union prevented a free and untrammled election and constituted a violation of O.R.C. §4117.11(A)(1)," the Board adopts the Findings of Fact and Conclusions of Law and orders a rerun election pursuant to OAC Rules 4117-5-09(B) and 4117-5-10(B).

Chairman Sheehan and Vice Chairman Davis concur.

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