

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SEAB OPINION 89-021

196

In the Matter of  
State Employment Relations Board,  
Complainant,

v.

City of Martins Ferry,

Respondent.

CASE NUMBERS: 86-ULP-11-0450  
86-ULP-11-0451

ORDER  
(Opinion attached.)

Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;  
January 26, 1989.

On November 24, 1986, the Fraternal Order of Police, Lodge No. 78 (Charging Party) filed an unfair labor practice charge against the City of Martins Ferry (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(A)(1) and (A)(5) by refusing to collectively bargain in good faith with the Charging Party.

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 amends Findings of Fact No. 2 to read that "the council considered and voted to reject the tentative agreements," amends Recommendations Nos. 3 and 4 to change the word, "rejection" to "vote of rejection," amends Conclusion of Law No. 3 to find that "the City of Martins Ferry did not timely reject the agreement and has violated O.R.C. §4117.12(A)(1) and (A)(5) for failure to execute the contract which was tentatively agreed to." The Board adopts the Admissions, Findings of Fact, Conclusions of Law and Recommendations as amended.

The Respondent is ordered to:

A. Cease and desist from:

Interfering with, restraining, or coercing 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 purpose of collective bargaining or the adjustment of grievances;

B. Take the following affirmative action:

- (1) Post for sixty (60) days in conspicuous locations throughout the City where bargaining unit employees work, the Notice to Employees furnished by the Board stating that the City of Martins Ferry shall cease and desist from the actions set forth in Paragraph A and shall take the affirmative action set forth in Paragraph B.
- (2) Immediately begin to implement the provisions of the tentatively agreed to contract retroactive to July 1, 1986.
- (3) Notify the State Employment Relations Board in writing within twenty (20) calendar days from the date the order becomes final of the steps that have been taken to comply therewith.

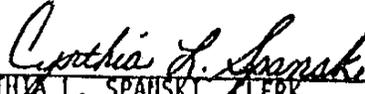
It is so ordered.

SHEEMAN, Chairman; DAVIS, Vice Chairman; and LATANE, Board Member, concur.

  
WILLIAM P. SHEEHAN, CHAIRMAN

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 119.12, by filing a notice of appeal with the Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the Franklin County Common Pleas Court within fifteen days after the mailing of the Board's directive.

I certify that this document was filed and a copy served upon each party on this 23<sup>rd</sup> day of August, 1989.

  
CYNTHIA L. SPANSKI, CLERK

2155b:jlb

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of  
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Complainant,

v.

City of Martins Ferry,  
Respondent.

CASE NUMBERS: 86-ULP-11-4550  
86-ULP-11-4551

OPINION

Sheehan, Chairman:

I

This case involves but a single issue which gave rise to the filing of two unfair labor practice charges by the Fraternal Order of Police, Lodge No. 78 (FOP or Intervenor) against the City of Martins Ferry' (Respondent). What is at hand is the manner in which the Respondent's City Council acted upon two tentative agreements reached between the City and the FOP's bargaining teams respectively. A hearing was held before Hearing Officer Timothy Lecklider on November 10, 1987, wherein testimonial and documentary evidence was presented regarding the relevant issue.

<sup>1</sup>Admissions #3.

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The FOP is the exclusive representative of two bargaining units consisting of members of the City of Martins Ferry's Police Department. One unit is made up of all Police Officers, the other of Lieutenants.<sup>2</sup> Lt. Beltz was the chief negotiator for both units for the FOP<sup>3</sup> and Mayor Regis for the Respondent.<sup>4</sup>

On October 22, 1986, the parties' negotiating teams reached tentative agreements for both bargaining units.<sup>5</sup> These agreements were submitted to the Respondent's City Council<sup>6</sup> for approval. Council took the agreements under consideration at its meeting of November 20, 1986,<sup>7</sup> and then made counter offers which were communicated to the FOP's bargaining representative on the same evening.<sup>8</sup>

II

The single issue to be determined is whether the agreements were properly and timely rejected by the Respondent in accordance with O.R.C. §4117.10(B) which states in pertinent part:

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<sup>2</sup>Admissions #5.

<sup>3</sup>Findings of Fact (F.F.) # .

<sup>4</sup>Although Mayor Regis was not identified as the chief negotiator for the City in the Hearing Officer's proposed order in the instant cases, he had been so identified in the Hearing Officer's proposed order in Case Nos. 87-MED-01-0030 and 87-MED-01-0031. Therefore, it stands that Mayor Regis acted as the Respondent's chief negotiator in the cases at hand.

<sup>5</sup>Admission #8.

<sup>6</sup>F.F. #1.

<sup>7</sup>F.F. #2.

<sup>8</sup>F.F. #2.

The public employer shall submit a request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the appropriate legislative body to the legislative body within fourteen days of the date on which the parties finalize the agreement, unless otherwise specified, but if the appropriate legislative body is not in session at the time, then within fourteen days after it convenes. The legislative body must approve or reject the submission as a whole, and the submission shall be deemed approved if the legislative body fails to act within thirty days after the public employer submits the agreement. The parties may specify that those provisions of the agreement not requiring action by a legislative body are effective and operative in accordance with the terms of the agreement, provided there has been compliance with division (C) of this section. If the legislative body rejects the submission of the public employer, either party may reopen all or part of the entire agreement.

As used in this section, "legislative body" includes the general assembly, the governing board of a municipal corporation, school district, college or university, village, township, or board of county commissioners or any other body that has authority to approve the budget of their public jurisdiction.

The Hearing Officer determined that the Respondent did timely and properly reject the tentative agreements with the result that no violation of O.R.C. §4117.11(A)(1) or (A)(5) was committed. Consequently, he recommended dismissal.

For reasons adduced below, the Board does not concur.

III

The framers of the statute distinguished and separated the roles of the legislative body and the public employer in the collective bargaining process and delineated their responsibilities. Pursuant to O.R.C. §4117.10(C), the public employer's chief executive officer or his designated representative is responsible for negotiations. The legislative body may accept or reject a proposed collective bargaining agreement but has no other

function in the bargaining process. The acceptance or rejection must be made in whole.<sup>9</sup>

The separation of powers must be construed as the legislature's way of maintaining the relationship between the legislative bodies, particularly their fiscal authority, and the powers of the executive and administrative offices.<sup>10</sup>

The separation also has a very practical application because it places the legislative body, who must accept or reject the collective bargaining agreement, above the fray of the often emotionally charged bargaining process.<sup>11</sup> Thus legislative bodies, which are elected by the populace, are removed from the rigors and direct political pressures that can generate in a bargaining confrontation.

The logic and intent of the legislature in crafting procedures for the collective bargaining process to function effectively is evident, as set forth in O.R.C. §4117.14.

Each step is designed to move the parties closer to settlement. A proposed agreement submitted for acceptance or rejection to a legislative body represents the ultimate efforts of the bargaining parties toward settlement. The acceptance or rejection of the proposed agreement by the legislative body is another step toward the completion of this process. The proposed agreement is submitted to the legislative body solely for acceptance or rejection. Submission of the proposed agreement is not a signal for the legislative body to begin bargaining anew or to negate all

<sup>9</sup>O.R.C. §4117.10(B), *supra*.

<sup>10</sup>In re Franklin County Sheriff, SERB 86-007 (2-26-86).

the bargaining that has been accomplished. Nor is it meant to protract the bargaining process. If the tentative agreement is approved by the legislative body and the employee organization when reduced to writing, the agreement is binding on the legislative body, the employer, the employee organization and employees covered by the agreement.' If rejected, the parties, as in the instant case of strike prohibited employees, shall submit the matter to a final offer settlement procedure. This, again, is a move toward settlement, not an interruption or a protraction of the process.

Finally, the integrity of the entire bargaining process is jeopardized if either party is permitted to treat an agreement submitted for ratification as nothing more than a proposal. If this were to be allowed, then the carefully crafted procedure for ever moving the parties forward toward settlement is irreparably ruptured, for it could forestall the culmination of the bargaining process indefinitely.

IV

The Hearing Officer observed that the language found in Section 4117.10(B) does not specify the method by which tentative agreements are to be accepted or rejected. But the operative phrase is unequivocal: "The legislative body must approve or reject the submission as a whole...." (Emphasis added.) The language could not be clearer, and to allow such deviation as the Hearing Officer sanctioned is to rewrite the statute.

Tentative agreements, the product of the collective bargaining process, are the art of compromise. It would be naive to believe that each side enthusiastically embraces each and every provision on which a tentative

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<sup>1</sup>O.R.C. §4117.10(C).

agreement has been reached. A tentative agreement is the sober acknowledgment of the bargaining parties that it represents the best possible agreement that can be reached at that time, and that both sides can live with it as an instrument with which to conduct their continued relationship. The Board noted in SERB v. Erie County Care Facility, SERB 88-002, 3-6 (3-14-88):

....the term 'tentative agreement' indicates that the provision is accepted by both sides but that finality on the provision is dependent on some event or factor.

In the instant case, the next step toward finality was the submission of the proposal to the legislative body. It was then their responsibility to determine if the package as a whole is acceptable, or that one or more provisions are so unacceptable that the entire package must be rejected. This requirement to accept or reject on a whole compels serious evaluation and responsible action on the part of the legislative body, because either way they, along with the union membership,<sup>2</sup> shall bear the ultimate responsibility for their respective decisions. It also tends to fortify against one-upmanship and political posturing.

This was not a time for choices to be made about what is liked or disliked about the agreement. The option was not theirs to pick and choose. Each member of this legislative body had to balance the acceptable against the not so acceptable, and on a whole, make the collective determination to accept or reject it.

<sup>2</sup>Although the statute sets no standards for acceptance or rejection by the union membership, normally the agreement is presented to the union membership for acceptance or rejection and they have no option but to vote it up or down.

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Because, in the instant case, the legislative body chose to pick and choose and to begin negotiations anew with the union, they failed to properly and timely reject the agreement in accordance with O.R.C. §4117.10(B).

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

0453B:WMPS/jlb:8/10/89:f



# 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:

**WE WILL CEASE AND DESIST FROM:**

Interfering with, restraining, or coercing 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 purpose of collective bargaining or the adjustment of grievances;

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.

**WE WILL TAKE THE FOLLOWING AFFIRMATIVE ACTION:**

1. Post for sixty (60) days in conspicuous locations throughout the City where bargaining unit employees work, the Notice to Employees furnished by the Board stating that the City of Martins Ferry shall cease and desist from the actions set forth in Paragraph A and shall take the affirmative action set forth in Paragraph B.
- (2) Immediately begin to implement the provisions of the tentatively agreed to contract retroactive to July 1, 1986.

CITY OF MARTINS FERRY  
85-UWP-11-0450 & 87-UWP-12-0602

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

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

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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.