

B. Take the following affirmative action:

1. Post for sixty (60) days in the usual and normal posting locations where the bargaining unit employees work, the Notice to Employees furnished by the Board stating that the Clermont County Sheriff's Department 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 commence dues deductions from those employees who have signed the dues deduction authorization cards contained in Complainant's Exhibit No. 4.
3. Remit to the International Brotherhood of Teamsters, Local 740, an amount of money equal to the dues that would have been collected from the bargaining unit employees in question had the Respondent complied with Article 3, Section 3.2 of the collective bargaining agreement. Any dues which have already been paid to the Employee Organization will be deducted from the amount of money which is to be remitted by the Respondent.
4. Notify the State Employment Relations Board in writing within twenty (20) calendar days from the issuance of the Order of the steps that have been taken to comply therewith.

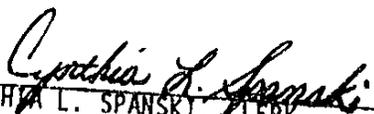
It is so ordered.

SHEEHAN, 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 4117.13(D), by filing a notice of appeal with the Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and common pleas court in the county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or transacts business, 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 5th day of October, 1989.


CYNTHIA L. SPANSKI, CLERK

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. CEASE AND DESIST FROM:

Interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Chapter 4117, or refusing to bargain collectively with the employees' representatives, and from otherwise violating Ohio Revised Code §4117.11(A)(1) and (A)(5).

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. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Post for 60 days in the usual and normal posting locations where the bargaining unit employees work, the NOTICE TO EMPLOYEES furnished by the Board stating that the Clermont County Sheriff's Department shall cease and desist from the actions set forth in Paragraph A and shall take the affirmative actions set forth in Paragraph B.
- (2) Immediately commence dues deductions from those employees who have signed the dues deduction authorization cards contained in Complainant's Exhibit No. 4.
- (3) Remit to the International Brotherhood of Teamsters, Local 740, an amount of money equal to the dues that would have been collected from the bargaining unit employees in question had the Respondent complied with Article 3, Section 3.2 of the collective bargaining agreement. Any dues which have already been paid to the Employee Organization will be deducted from the amount of money which is to be remitted by the Respondent.
4. Notify the State Employment Relations Board in writing twenty (20) calendar days from the date the Order becomes final of the steps that have been taken to comply therewith.

CLERMONT COUNTY SHERIFF
86-ULP-11-0418

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,
Complainant,
and
Clermont County Sheriff,
Respondent.

CASE NUMBER: 86-ULP-11-0418

OPINION

Sheehan, Chairman:

I.

The issues in the instant case arose when the Clermont County Sheriff (Respondent or Employer) refused to accept dues deduction authorization forms from the Public Employees of Ohio, Teamsters Local 740 (Union or Charging Party). The Union was the Board-certified, exclusive representative for two bargaining units of the Respondent's employees, one consisting of Safety Dispatchers and the other of Deputy Sheriffs below the rank of Sergeant.

II.

On or about April 9, 1986, the Employer and the Union entered into a collective bargaining agreement covering the period from January 1, 1986, through January 1, 1988.¹ The agreement included a provision calling for the Employer to deduct Union dues from employee paychecks. This provision, set forth in Article 3, Section 3.2 of the agreement provided:

¹Admissions and Stipulations #6.

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The Employer agrees to deduct regular union membership dues once each month from the pay of any employee in the bargaining unit upon receiving written authorization on a mutually acceptable form signed individually and voluntarily by the employee. The signed payroll deduction form (attached to the Agreement in Appendix A) must be presented to the Employer by the employee. Upon receipt of the proper authorization, the Employer will deduct union dues from the payroll check for the next pay period from which dues are normally deducted following the pay period in which authorization was received by the Employer.²

In April 1986, the Union mailed a packet of signed dues deduction authorization forms to the Employer. The forms were standard dues deduction forms produced by the union rather than the exact form appended to the collective bargaining agreement. On April 23, 1986, the Employer returned the signed forms to the Union, indicating that the forms were unacceptable. In a subsequent telephone conversation, the Employer's Chief Deputy, John Parker, informed Union Representative Barbara Dusina that the Employer would not accept the forms or deduct union dues unless the exact authorization form, agreed to by the parties, was signed and presented to the Employer.³

The Union then collected dues deduction authorizations on the proper form. In June or July 1986, the Union's Chief Steward, John Maupin, attempted to present the signed forms in person at the Sheriff's Department to Chief Deputy Parker. Parker informed Maupin that the forms were not acceptable because they had not been signed in his presence, or in the presence of the Fiscal Officer or the Sheriff. Parker refused to take possession of the forms.⁴

²Finding of Fact (F.F.) #1.

³F.F. #2.

⁴Transcript (T.) 13-16, 34-39, 128; Com. Exh. 2, 3 and 4.

Barbara Dusina and another Union Representative, Michael Hemmelgarn, then attempted to resolve the dues deduction controversy by going directly to the Sheriff's Department. However, upon learning that the two were Union representatives, the Sheriff reacted with hostility toward them, refused to discuss the matter, and forbade Chief Deputy Parker from entering into any further discussion with the two Union representatives. They left the Sheriff's Department without discussing the dues deduction issue with either the Sheriff or the Chief Deputy.³

In September 1986, Barbara Dusina met with Mr. Ron Hildebrand, the Employer's representative to discuss the issue. Hildebrand informed Dusina that the Employer insisted the forms be signed by individual employees in his presence or the presence of his designee (the Chief Deputy or the Sheriff's daughter). Hildebrand indicated to Dusina that the reason the Sheriff was requiring this procedure was to assure that the employees were freely and voluntarily requesting dues deduction without coercion from the Union. Hildebrand further indicated that the Sheriff insisted on the requirement and to work with at times, but that the Sheriff insisted on the requirement and would not compromise or negotiate on the issue further.⁴

On November 5, 1986, the Union filed an unfair labor practice charge alleging the Employer had violated Ohio Revised Code (O.R.C.) §4117.11(A)(1) and (A)(5) by refusing to deduct Union dues upon proper authorization from employees and by unilaterally imposing requirements not contained in the collective bargaining agreement.

³F.F. #3.

⁴F.F. #4.

A hearing was held on December 29, 1987, before Hearing Officer Chester C. Christie, in which the Employer was found to have acted in violation of the law as charged. The State Employment Relations Board (SERB or Board), for reasons adduced below, adopted the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendations, incorporated by reference.

III.

The collective bargaining agreement requires that dues deduction forms be signed individually and voluntarily by the employee. The Employer argues that they must be signed in its presence in order to insure that they are signed freely and not obtained through coercion by the Union. Nowhere does the collective bargaining agreement require the employees to sign in the presence of the Employer. To construe the meaning of the contract's provision at issue as requiring each employee to sign the authorization card individually in front of the Employer or its designee is a gross misreading of the contract's language. Such construction, as the Hearing Officer observed, "would be too restrictive and would invite the commission of an unfair labor practice on the part of the Respondent." Requiring employees to appear individually before the Employer in order to authorize a dues deduction form is fraught with coercive implications. With good reason, the employees would fear Employer reprisals, especially in light of the Employer's demonstrated hostility toward the Union in the instant case. In effect, such construction presents the potential for a de facto denial of employees' rights to "join, assist, or participate in any employee organization of their choosing." (O.R.C. §4117.03). This amounts to interference with employees' rights to engage in protected activity and infringes on the right to exclusive representation by permitting the

Employer to deal individually with employees, thus circumventing the duty to bargain collectively.

The Employer's concern that the dues authorization cards be signed freely by employees might be warranted under certain circumstances as, for example, if a legitimate question of representation existed. But that is not the case here. The union is a SERB-certified exclusive representative and the parties have bargained to an agreement which included an acceptable dues deduction provision. Moreover, the Employer failed to produce any evidence that the forms presented him were not voluntarily signed. In fact, no evidence was presented whatsoever to support any reasonable basis for the Employer's suspicion. The Board can only surmise that the Employer's concern is motivated more by hostility toward the Union than by any concern for the rights of individual employees.

The record does reveal that the proper forms were signed and properly presented to the Employer. The Union, therefore, has complied with the requirements of the dues deduction provision of the collective bargaining agreement. The Employer's insistence that individual employees sign the dues authorization forms in his presence, or in the presence of his designee, amounts to a unilateral imposition of a condition not required by the language of the provision in the negotiated agreement. The Employer imposed the requirement without bargaining and refused to even discuss the matter with the Union Representative. Thus, the Hearing Officer properly concluded that the Employer violated O.R.C. §4117.11(A)(1) and (A)(5).

IV.

The only appropriate remedy in this case is to order the Employer to directly compensate the Union for the dues it lost as a result of the Employer's actions. Because of these actions, the Union was deprived of funds to which it was legally entitled and the employees of possible services they voted to receive from their exclusive representative. The seriousness of such an offense cannot be overstated because it can potentially cripple the Union's very ability to properly represent its members. A union's effectiveness is severely impaired if the funds it needs to operate are cut off or significantly reduced. Indeed it is not unreasonable to presume that an Employer, if so minded, could in short time rid itself of the employees' union by simply abrogating its contractual obligations to deduct dues from its employees' paychecks. Indeed, the Legislature was clearly aware of the consequential role of dues deductions since O.R.C. §4117.09(B)(2) specifically requires collective bargaining agreements to contain a dues deduction provision. In the instant case, the Employer's action interfered with the Union's rights, with its employees' rights and, doubtlessly, put unnecessary and perhaps irreparable strain on the relationship between the Union and its members.

Consequently, the Employer must bear the consequence of its actions, not the employees. They have endured enough and should not be required to make up dues lost as a result of the Employer's violative acts. In the interest of promoting collective bargaining and preserving the relationship of the employees with their exclusive representative, it is indeed proper in this

case to require the Employer to directly compensate the Union for the lost dues.' ***

Therefore, with the exception of the Hearing Officer's Recommendation found in Section 2.(B)(3), the Board adopts the Admissions and Stipulations, the Findings of Fact, Conclusions of Law and Recommendations. Recommendation Section 2.(B)(3) is amended to provide for any dues, which have already been paid to the Union, to be deducted from the amount of money which the Employer has to remit to the Union.

Although the Board is not requiring the payment of interest in the instant case, it may be found to be an appropriate part of a remedy in future such cases.

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

⁷The "make-whole" relief ordered in this case has been held to be proper in similar cases elsewhere. See West Coast Centos Corp., 291 NLRB No. 20 (1988); Swick Insulation Co., 247 NLRB No. 86, 103 LRRM 1161 (1980); Dura-Vent Corp., 257 NLRB No. 83, 107 LRRM 1505 (1981); El Centro, 266 NLRB No. 1, 112 LRRM 1251 (1983); NLRB v. Shen-Mar Food Products, 557 F. 2d 396, 95 LRRM 2721 (4th Cir., 1977); SeaPak v. Professional Employees, 300 F. Supp. 1197, 72 LRRM 2405 (S.D. C.A., 1969), aff'd., 423 F. 2d 1229 (5th Cir., 1970) and 400 U.S. 985 (1971); County of Passaic, 10 NPER NJ-19047 (NJ PERC, 1987). Moreover, the Board has broad remedial powers to fashion appropriate remedies to effectuate policies. SERB v. East Palestine City Sch. Dist. Bd. of Ed., 1988 SERB 4-57 (7th Dist. Ct. App., 1988). It is the policy of the Board to promote collective bargaining, ever mindful of the statutory rights of employees, employee organizations and employers.

⁸Payment of compensation for an unfair labor practice does not amount to direct employer support of the Union, which would be a violation of O.R.C. §4117.11(A)(2). Direct payment of deducted dues by an employer to a union does not represent such support; thus, compensation for dues lost by an employer's failure to deduct them under the terms of a collective bargaining agreement is not support and does not violate the Statute. See SeaPak, supra.