

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

200
89-025

In the Matter of
State Employment Relations Board,
Complainant,

v.

City of Jackson,
Respondent.

CASE NUMBER: 87-ULP-10-0493

ORDER
(Opinion attached.)

Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;
March 30, 1989.

On October 30, 1987, the Ohio Civil Service Employees Association, Local No. 11, American Federation of State, County and Municipal Employees, AFL-CIO (Charging Party) filed an unfair labor practice charge against the City of Jackson (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 failing to notify the Charging Party of a grievance settlement.

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 here by reference, the Board adopts the Findings of Fact, Conclusions of Law and Recommendations of the hearing officer, and declares the settlement agreement reached by the Respondent and the bargaining unit member to be invalid. The Charging Party may pursue arbitration of the grievance if it so chooses.

The Respondent is ordered to:

A. CEASE AND DESIST from:

- (1) Adjusting employees' grievances without promptly notifying the employee's exclusive representative of the date, time and place of any grievance adjustment meeting.
- (2) In any like or related matter, interfering with, restraining or coercing employees in the exercise of rights guaranteed them under Chapter 4117 of the Revised Code, or refusing to bargain collectively with the employees' representative, and from otherwise violating R.C. §4117.11(A)(1) and (A)(5).

B. Take the following affirmative action:

- (1) Post for sixty (60) days in all the buildings of the City of Jackson the Notice to Employees furnished by stating that the City shall cease and desist from the actions set forth in Paragraph A.2.
- (2) 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.

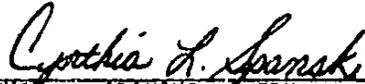
SHEEHAN, Chairman; DAVIS, Vice Chairman; and LATANE, Board Member, concur.



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

2218b: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. The State Employment Relations Board has also declared that the settlement agreement reached by us and the bargaining unit member is invalid and that the employees' exclusive representative may pursue arbitration of the grievance if it so chooses. We intend to carry out the order of the Board and abide by the following:

WE WILL CEASE AND DESIST FROM:

Adjusting employees' grievances without promptly notifying the employee's exclusive representative of the date, time and place of any grievance adjustment meeting.

In any like or related matter, interfering with, restraining and coercing employees in the exercise of rights guaranteed them under Chapter 4117 of the Revised Code, or refusing to bargain collectively with the employees' representative, and from otherwise violating O.R.C. §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.

WE WILL TAKE THE FOLLOWING AFFIRMATIVE ACTION:

1. Post for sixty (60) days in all the buildings of the City of Jackson the Notice to Employees furnished by stating that the City shall cease and desist from actions set forth in Paragraph A.

CITY OF JACKSON
87-ULP-10-0493

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.
2226b:j1b

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
State Employment Relations Board,
Complainant,

and
City of Jackson,
Respondent.

CASE NUMBER: 87-ULP-10-0493

OPINION

Latané, Board Member:

I.

On February 12, 1987, Charles A. Stapleton (Employee), a member of a bargaining unit represented by Ohio Civil Service Employees Association/AFSCME (Union, Charging Party), was discharged from his position with the City of Jackson (Employer, Respondent).¹ On or about February 19, 1987, he filed a letter of appeal regarding the termination, requesting that the grievance procedure be advanced directly to arbitration, the final stage of the employee grievance form for Stapleton was filed on February 25, 1987; the Employer and the Union agreed to proceed directly to arbitration, and communications regarding arbitration of the grievance were exchanged in March 1987.³ However, there were no further communications between the parties on the matter after April 1, 1987.

On or about June 1, 1987, the Employee and the Employer signed a release, meant to be a settlement of all claims including the discharge grievance filed by and through the Union. The Union was not notified of the intended settlement and had no opportunity to be present at the settlement meeting. Moreover, the Union had no knowledge of the settlement until August 1987, when it contacted the Employer in regard to arbitration of the grievance and learned that a release had been agreed to and signed by the Employer and the Employee.

¹Stipulation (St.) 5.

²St. 8.

³St. 10, 11, and 14.

OPINION
Case No. 87-ULP-10-0403
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In October 1987, the Union filed an unfair labor practice charge claiming that the Employer violated the duty to bargain collectively with the exclusive representative by failing to notify the Union of the intended settlement, as required by Ohio R.C. §4117.03 (A)(5). A hearing was conducted in October 1988, and the Hearing Officer found that the failure of the Employer to notify the Union of the intended settlement was a violation under Ohio R.C. §4117.11 (A)(1) and (5).

The Board adopts the Stipulations, Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, incorporated here by reference. However, an additional aspect of the order and remedy shall be that the Board invalidates the settlement agreement, in that it was executed without the knowledge of the Union, and that the Board permits the Union to pursue arbitration if it so chooses.

II.

R.C. §4117.03 (A)(5) requires that the exclusive representative be given an opportunity to be present at the settlement of a grievance. That section provides:

"Public employees have the right to... present grievances and have them adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and as long as the bargaining representatives have the opportunity to be present at the adjustment."

This section of the statute has been further clarified by the Board to require that the Employer notify the exclusive representative before the intended settlement of a pending grievance, in order that the Union has knowledge of the intended settlement and an opportunity to be present at the settlement meeting. See SERB v. New Richmond Exempted Village School District Board of Education, SFRB 86-022 (6-4-86).

In the instant case, the Employer agreed to arbitrate the grievance and communicated this intention to the Union.⁴ The Employer also exchanged communications with the Union, in preparation for arbitration, that gave every indication it understood that the matter was being handled by and through the Union as exclusive representative and that the grievance would be settled by arbitration. Yet the Employer did not notify the Union that it intended to adjust the grievance and did not provide an opportunity for the Union to be present.

The exclusive representative must be given an opportunity to be present at an adjustment meeting, whether or not it has participated in settlement

⁴st. 11.

OPINION
Case No. 87-ULP-10-0403
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discussion. The grievance at issue in this case was adjusted without the presence of the Union, so the settlement cannot be held to be acceptable or effective.

III.

Ohio R.C. §4117.12 (B)(3) empowers the Board, upon finding an unfair labor practice under §4117.11, to:

"Take such affirmative action...as will effectuate the policies of Chapter 4117."

This language has been interpreted to allow the Board broad powers to fashion appropriate remedies. See SERB v. East Palestine City Sch Dist Bd of Ed, 1988 SERB 4-57 (7th Dist. Ct. App. 6-29-88). In addition, similar language in the NLRA has been construed as endowing the NLRB with broad remedial powers to devise remedies to effectuate its policies. See Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 205, 57 LRRM 2609 (1964).

It is the express policy of the Board that the exclusive representative be given an opportunity to be present at the adjustment of a grievance, per §4117.03 (A)(5). This policy promotes the peaceful resolution of disputes by requiring the parties to communicate and bargain to mutually acceptable agreements. The whole thrust of Chapter 4117 is to effectuate collective bargaining between the Employer and the exclusive representative. To allow an employee whose collective bargaining interests are represented by an exclusive representative to complete a process started within the collective bargaining framework without the knowledge of the exclusive representative weakens the collective bargaining process.

The record indicates that the Union did not attempt to communicate with the Employer regarding the grievance for at least four months; this long lapse in communication possibly lessened the Employer's motivation to notify the Union of the pending settlement of a grievance that both had agreed to process to arbitration. Nevertheless, the requirement exists that the union be notified of, and be given the opportunity to be present at, grievance adjustment. The Employer's failure to present the Union with the opportunity to be present at the settlement violates the requirements of O.R.C. §4117.03(A)(5).

In light of the considerations above, the Board concludes that the appropriate remedy in this case is to restore to the Union the right to proceed to arbitration with the grievance if it so chooses. This should not unduly burden the Employer, which agreed to arbitration initially. It would be more of a burden on the rights of the Union as the exclusive bargaining representative to permit the settlement to stand. Therefore, the settlement, executed by the Employer and the Employee, without the knowledge of the Union, is declared invalid.

Sheehan, Chairman, and Latané, Board Member, concur.

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

201
SERB OPINION 89-026

In the Matter of
State Employment Relations Board,
Complainant,
and
Ohio Health Care Employees Union, District #1199,
Intervenor,
v.
State of Ohio, Office of Collective Bargaining,
Respondent.

CASE NUMBER: 88-ULP-04-0216

ORDER
(Opinion attached.)

Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;
July 6, 1989.

On April 27, 1988, the Ohio Health Care Employees Union, District #1199 (Intervenor) filed an unfair labor practice charge against the State of Ohio, Office of Collective Bargaining (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 unilaterally increasing the employees health insurance premium during the term of a collective bargaining agreement and by refusing to bargain this matter with the Intervenor.

The case was heard by a Board hearing officer who issued a proposed order. Exceptions were filed, but no response to the exceptions was filed.

On April 12, 1989, the Intervenor filed a motion for oral argument. No objections were filed to the motion. On May 25, 1989, the Board granted the motion for oral argument and on June 8, 1989, oral argument before the Board in the above-styled case took place. All parties participated in the oral argument.

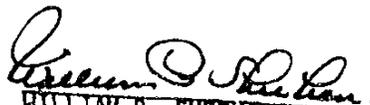
Order
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July 6, 1989
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The Board has reviewed the hearing officer's proposed order, exceptions and the whole record. The Board amends Finding of Fact No. 2 by deleting the last sentence and instead inserting the following: "The parties ultimately agreed to a dollar maximum employer contribution per employee. This agreement is reflected in Article 15 of the 1986-89 collective bargaining agreement executed by the parties;" deletes Finding of Fact No. 6; moves Finding of Fact No. 7 to become No. 6; inserts a new Finding of Fact No. 7 to read: "In 1987, due to financial problems with the plan, a premium increase became necessary. Respondent, Intervenor and other affected unions in April 1987, negotiated regarding the problem. An agreement was reached which was incorporated in writing which was reflected in Joint Exhibit #1. This agreement included cost containment measures, a premium increase, and establishment of a task force to address a longer range solution. The task force, consisting of union and management, met and discussed the relevant issues ultimately agreeing to seek an actuarial study by the firm of Touche-Ross. The task force did not meet pending release of the Touche-Ross study. In March 1988, the Touche-Ross study was released setting forth several options. The Employer on April 8 assembled a meeting of union representatives and announced its intention to increase health insurance premiums by 16%," replaces Finding of Fact No. 8 with the following: "On April 18, 1988, the matter of the raise in premiums was brought before the compensation board and the Intervenor objected to the rate increase. However, the increases were implemented;" deletes Finding of Fact No. 9, Findings of Fact Nos. 10 and 11 become Nos. 9 and 10; adopts the Findings of Fact as amended and adopts the Conclusions of Law Nos. 1 and 2.

For the reasons stated in the attached opinion, incorporated by reference, the Board amends Conclusion of Law No. 3 to read: "The Respondent has violated O.R.C. §4117.11(A)(1) and (A)(5) by increasing health insurance premiums for employees represented by the Intervenor without bargaining and adopts the Conclusions of Law as amended. The case is remanded to the hearing officer for determination of remedy as was requested by the Respondent.

It is so ordered.

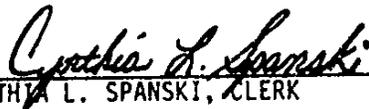
SHEEHAN, Chairman; DAVIS, Vice Chairman; and LATANE, Board Member,
concur.


WILLIAM P. SHEEHAN, CHAIRMAN

Order
Case 88-ULP-04-0216
July 6, 1989
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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 order.

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

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