

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 90-002

In the Matter of
Beaver Local Education Association, OEA/NEA,
Employee Organization,
and
Beaver Local School District Board of Education,
Employer.

CASE NUMBER: 90-STK-01-0002

DETERMINATION AND OPINION

Before Chairman Sheehan and Board Member Latané: January 26, 1990.

This case comes before the State Employment Relations Board (SERB) upon the Motion for Determination of Unauthorized Strike filed by the Beaver Local School District Board of Education (Employer) on January 24, 1990, at 12:04 p.m. SERB is required, pursuant to Ohio Revised Code (O.R.C.) §4117.23, to issue its determination within seventy-two (72) hours.

On January 18, 1990, the Employer filed a Request for Determination of Unauthorized Strike in Case 90-STK-01-0001, which was heard by the Board and was determined on January 19, 1990. The record of the January 19, 1990, hearing is hereby incorporated by reference, since it involves the same partial strike action as the case at hand.

The Employer filed a motion to quash the subpoena duces tecum requested by the Beaver Local Education Association (Employee Organization). The motion is granted.

Upon consideration of the original filings, stipulations, testimonies of witnesses, proffers, exhibits, and arguments of counsel, SERB concludes that the strike is authorized.

The issue is whether the alleged misconduct of certain teachers is relevant to the determination of an unauthorized strike. The misconduct is alleged to have occurred in the classroom or on the premises in some of the schools in the days immediately preceding the hearing.

When teachers, as in the instant case, are on the premises and performing their usual and customary duties, all reasonable rules and regulations governing their conduct which were in place prior to the strike are still in force. The strike has changed nothing in this respect. If certain teachers' conduct is violative of those rules while performing their normal work related activity, then the enforcement of those rules and regulations are at the discretion of the Employer and not a function of this Board.

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All strikes by their nature are disruptive and designed to cause inconvenience. The policy of this Board has been to balance the right to strike with the inherent legislative control objectives. Ft. Frye Local School Dist., SERB 87-021 (11-5-87) and Groveport Madison Local School Dist. Bd. of Ed., SERB 89-002 (1-27-89). Crucial to this balance is whether the strike activity is of such a nature as to prevent the employer from taking adequate damage control measures. It is important to point out that strike activity, as mentioned in O.R.C. §4117.01(H), is different from conduct of individual strikers during a strike.

In the instant case, among the measures taken were that the Employer: 1) "sought and received injunction against certain activity;" 2) issued a memorandum reminding teachers that "any deviation from regular curriculum and discipline procedures to strike activities for students may be a cause of disciplinary action" (Exhibit 2); 3) disciplined one teacher; 4) hired additional security personnel; 5) segregated substitute teachers from the striking teachers; and 6) identified substitutes by initials and not by name.

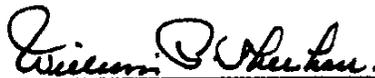
In at least one or more alleged instances, Principal Metrovich elected not to pursue discipline.

From the testimony, there is nothing to suggest that the Beaver Local Board of Education has in any way been hindered in taking damage control measures. Nor is there any evidence that the disruptions during this strike differ substantially from those of a more conventional strike.

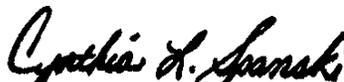
But more important, the determination of an unauthorized strike will not be made on the basis of certain incidents and conduct of individual strikers. It will be made in weighing strike activity (as enunciated in U.R.C. §4117.01[H]) with the employer's ability to manage damage control as referenced in Groveport Madison.

It is so directed.

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


WILLIAM P. SHEEHAN, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 26th day of January, 1990.


CYNTHIA L. SPANSKI, CLERK

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SEP 21 1989 90-003

In the Matter of
State Employment Relations Board,
Complainant,

v.

Vandalia-Butler City School District
Board of Education,

Respondent.

CASE NUMBER: 86-ULP-06-0194

ORDER
(Opinion attached.)

Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;
May 25, 1989.

On June 2, 1986, the Ohio Association of Public School Employees/AFSCME, AFL-CIO (Charging Party) filed an unfair labor practice charge against the Vandalia-Butler City School District Board of Education (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), (2), (3) and (5) by sending letters to the employees stating that health insurance benefits have been canceled, implementing its final offer and transferring employees following a strike.

The case was heard by a Board hearing officer. The Board has reviewed the record, the hearing officer's proposed order, exceptions and responses.

The Board adopts the hearing officer's Admissions, Findings of Fact, Conclusions of Law Nos. 1, 2 and 3, amends Conclusion of Law No. 4 to find that the Respondent's direct communication with bargaining unit employees by letters and summaries dated March 6, 1986, and March 12, 1986, as well as its implementation of its final offer did constitute violations of O.R.C. §4117.11(A)(1), (A)(2) and (A)(5).

The Respondent is ordered to:

A. Cease and desist from:

1. Interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Chapter 4117 of the Revised Code, from dealing directly with its employees and from discriminating against employees on the basis of the exercise of rights guaranteed by Chapter 4117 of the Revised Code.

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B. Take the following affirmative action:

1. Post for sixty (60) days in all Vandalia-Butler City School District buildings where the bargaining unit employees work, the Notice to Employees furnished by SERB stating that the Vandalia-Butler City School District Board of Education 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 offer to all bargaining unit employees who did not work during the strike and were subsequently transferred upon returning to work on or about March 31, 1986, a return to the respective schools where they worked prior to the strike.
3. Notify SERB 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.

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



WILLIAM P. SHEEHAN, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this 9th day of FEBRUARY, 1989.


CYNTHIA L. SPANSKI, CLERK

2296b: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:

WE WILL CEASE AND DESIST FROM:

1. Interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Chapter 4117 of the Revised Code, from dealing directly with employees and from discriminating against employees on the basis of the exercise of rights guaranteed by Chapter 4117 of the Revised Code.

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. Immediately offer to all bargaining unit employees who did not work during the strike and were subsequently transferred upon returning to work on or about March 31, 1986, a return to the respective schools where they worked prior to the strike.

VANDALIA-BUTLER CITY SCHOOL DISTRICT
BOARD OF EDUCATION
86-ULP-06-0194

DATE

BY

TITLE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

EPH 2012 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.

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