

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SEE OPINION 90-006

In the Matter of

City of Canton,

Charging Party,

v.

Canton Police Patrolman's Association,

Charged Party.

CASE NUMBER: 89-ULP-04-0191

ORDER AND OPINION

Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané:
November 9, 1989.

Davis, Vice Chairman:

The City of Canton ("City" or "Employer") has filed an unfair labor practice charge against the Canton Police Patrolman's Association ("CPPA" or "Union") alleging that the CPPA breached its duty of fair representation, thus violating Ohio Revised Code ("O.R.C.") §4117.11(B)(6). The City bases its charge on the contention that a majority of employees in the relevant unit did not support a grievance that the CPPA had filed against the City.

I. Results of Investigation

Pursuant to O.R.C. §4117.12, Board staff members conducted an investigation of the allegations set forth in the charge. The charge states, verbatim:

On or about March 14, 1989, the C.P.P.A. Union President Jerome Thompson filed a rambling 9 page grievance allegedly on behalf of members of the bargaining unit including black and Jewish members. The Union had also contacted the media, including television, radio, and newspapers in attempting to publicize this grievance. Such attempts were successful, Channel 8 did an investigative report on the grievance based on information supplied by the Union. There were also numerous newspaper articles and radio reports. Because of the high profile of this case caused by the C.P.P.A., the Safety Director requested bargaining unit members testify concerning alleged contract violations. The

The information set forth herein is gleaned from the investigation conducted pursuant to O.R.C. §4117.12(B).

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Union had also contacted the NAACP, and the Jewish Defamation League [sic] in further attempts to publicize this grievance and made further spurious allegations concerning training in the K-9 unit. Such allegations caused considerable turmoil and concern in the black community, which the Safety Director believed required a full public hearing.

Black and Jewish members, because of the serious nature of the charges, were specifically requested by the Safety Director to appear at the grievance meeting to present testimony in support of the grievance. At the grievance meeting on Thursday, March 30, 1989, no black or Jewish members appeared to support the Union's position and numerous Union members, black and white, appeared and presented testimony that the Union was not representing the interests of the bargaining unit members and that the majority of the bargaining unit members did not support this grievance. Such action by the Union constitutes a violation of Section 4117.11(B)(6) which requires the Union to fairly represent all public employees in a bargaining unit.

Unfair Labor Practice Charge, filed April 10, 1989.

A review of the grievance, a copy of which was submitted by the City with the charge, reveals that the basis for CPPA's grievance was that the City had violated Articles 7 and 23 of the parties' collective bargaining agreement. Article 7 prohibits the City from discriminating on the basis of "age, sex, marital status, race[,] color, creed, national origin or political affiliation." Article 23 requires the City to exercise its managerial rights in a "fair and prudent" manner. Collective Bargaining Agreement, executed October 17, 1988, filed with SERB on November 22, 1989. According to the CPPA, the alleged contractual violation arose from the City's failure to investigate and act upon reports that Major James V. Fetterman, second-in-command of the City's police department, was maintaining job-related ties and communications with the Ku Klux Klan. The Union requested either that the City "order an independent investigation of the matters alleged," or that the City schedule a step three grievance hearing on its decision not to pursue the matter. Letter to Safety Director James Bowe dated March 14, 1989, page 9 (hereinafter "grievance").

The grievance letter, which the City refers to as "rambling," was nine pages in length, but in it the CPPA explained that "this request for a grievance hearing is more fully documented than is normally the case" because the City's Safety Director had asked for specificity after the CPPA initially had filed a shorter document. In the grievance, the CPPA cited evidence that the City allegedly had in its possession and alleged that the City had taken no action with regard to the information about Ketterman's ties to the Ku Klux Klan. The information included:

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1. A photograph of Roland Overdorf, reputed to be an active member of the Ku Klux Klan, kneeling before Major Fetterman in front of a Confederate flag "in what appeared to be a ritual of some kind." Grievance, page 1.
2. Copies of letters from Overdorf to Major Fetterman containing "offensive, bigoted and threatening references to blacks, Jews and other minorities." Grievance, pages 1-2.
3. A letter signed by Major Fetterman, using his official title, awarding Overdorf the "honorary rank and title of full Colonel" and naming Overdorf as Major Fetterman's "personal law enforcement and security advice consultant for the betterment of services for all in this area and appropriate jurisdiction." Grievance, page 2.
4. Ongoing correspondence sent by Overdorf to Major Fetterman at the police department "in which letters were addressed 'king' or 'chief' or 'Lord'." Grievance, page 8.
5. A particular letter, about which Officer David Greenbaum filed a complaint, that began with "Sieg Heil," made reference to actions by Officer Greenbaum that Overdorf described as "viciously betray[ing] us and our common cause of white law enforcement," and encouraged that Officer Greenbaum "be tried by a jury of his fellow white officers and ordered to be stripped of his uniform in public and systematically be executed by firing squad and his remains be feed [sic] to dogs (he is unworthy of Christian burial)" Grievance, page 8.

The grievance states that Major Fetterman knowingly condoned Overdorf's actions, responded to his beliefs with "solicitude," and continued a close personal relationship with Overdorf even after complaints regarding Overdorf's actions had been formally raised. The CPPA further expressed concern about these matters in light of a "series of unexplained, unsolved incidents of racial and ethnic intimidation as well as several involving police supervision, ... [including] graffiti, Nazi and Hitler posters, and a gunshot fired in front of a Jewish policeman's home." Grievance, page 2.

In response to this grievance, the Safety Director, on March 22, 1989, sent the CPPA a letter establishing March 30, 1989, as the date for a public grievance hearing. In the letter, the Safety Director stated that he was "advising the black members of CPPA" of the hearing and directing the Chief of Police "to excuse from duty those wishing to attend for the purpose of providing testimony..." (emphasis in original). He further stated that, since he did not know which employees were Jewish, all members of the CPPA would be notified of the hearing and would be excused from duty if they wished to testify. The Safety Director, acknowledging that some employees may not wish to testify publicly, offered to accommodate any employees who may desire anonymity by receiving their comments prior to the meeting. Letter from Safety Director to CPPA President, dated March 22, 1989, submitted with Unfair Labor Practice Charge filed April 10, 1989.

At the hearing, no employees appeared. Following the hearing, the City received a statement signed by 74 unit employees indicating that:

... they do not support or condone the action taken against the City of Canton and certain police officials filed in the form of a grievance with regard to Major James Fetterman. Said members further state that they believe that the allegations made against Major James Fetterman are without merit.

Copy of statement submitted to SERB investigator by City on April 24, 1989. The Safety Director denied the grievance.

In support of the instant charge, the City relies upon its contention that the grievance "was not supported by a majority of unit members" and contends that the "Union pursued this grievance not in any attempt to fairly represent their employees but for the select union leadership's personal motivation and goals which have nothing to do with representing union members pursuant to [O.R.C.] 4117...." Letter filed April 24, 1989.

II. Analysis

A. Issue

The preliminary, and dispositive, question in this action is whether the Employer has standing to pursue an allegation that the CPPA has committed an unfair labor practice in violation of O.R.C. §4117.11(B)(6) by breaching the duty of fair representation owed to all unit employees.

B. Standing

1. General Concepts

O.R.C. §4117.12 provides the procedural mechanism for adjudication of alleged unfair labor practices. Paragraph (B) of that section establishes that the Board shall investigate "[w]hen anyone files a charge with the board...." Read broadly, this language could be construed as granting any person the right to pursue a charge, regardless of whether that person or entity is aggrieved or has any interest or involvement in the matter alleged. This Board has chosen not to give the statute such a sweeping and illogical interpretation.

As stated in Middleburg Heights, SERB 85-045 (9-20-85) at 158:

Pursuant to O.R.C. §4117.12(B), anyone may file a charge with the board alleging that an unfair labor practice has been committed. This obviously means anyone with standing.

The employer has standing to file charges alleging violation of [O.R.C.] 4117.11(B)(6) only if it is affected adversely.... (Emphasis added.)