

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 91-001

In the Matter of
State Employment Relations Board,
Complainant,
v.
Franklin County Sheriff,
Respondent.

CASE NUMBER: 88-ULP-10-0538

ORDER
(Opinion attached.)

Before Chairman Sheehan, Vice Chairperson Brundige and Board Member Pottenger: December 6, 1990.

On October 13, 1988, the Capital City Lodge No. 9, Fraternal Order of Police (Charging Party) filed an unfair labor practice charge against the Franklin County Sheriff (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), (A)(3), (A)(5) and (A)(6) by refusing to process to arbitration certain grievances.

The case was heard by a Board hearing officer. The Board has reviewed the record, the hearing officer's proposed order, exceptions and response. The Board amends Conclusion of Law No. 3 to read: "The Franklin County Sheriff's refusal to process to arbitration the particular grievances herein constitutes a violation of §4117.11(A)(1) and §4117.11(A)(6)." and adopts the hearing officer's Admissions, Stipulations, Findings of Fact, Conclusions of Law as amended and Recommendations.

The Respondent is ordered to:

A. CEASE AND DESIST FROM:

Interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Chapter 4117 of the Revised Code and from repeatedly refusing to arbitrate grievances, and from otherwise violating §4117.11(A)(1) and §4117.11(A)(6).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

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- (1) Post for sixty (60) days, in all of the usual and normal posting locations where the bargaining unit employees work, the NOTICE TO EMPLOYEES furnished by the SERB stating that the Franklin County Sheriff shall cease and desist from the actions set forth in Paragraph A and shall take the affirmative action set forth in Paragraph B.
- (2) The Franklin County Sheriff shall immediately join in with the Capital City Lodge No. 9, Fraternal Order of Police, in the arbitration of the disputed grievances herein.
- (3) Notify the 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.

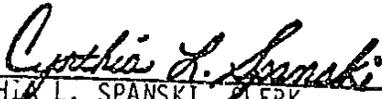
It is so ordered.

SHEEHAN, Chairman, and POTTENGER, Board Member, concur. BRUNDIGE, Vice Chairperson, dissents.


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 8th day of January, 1991.


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. WE WILL CEASE AND DESIST FROM:

Interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Chapter 4117 of the Revised Code and from repeatedly refusing to arbitrate grievances, and from otherwise violating Section 4117.11(A)(1) and Section 4117.11(A)(6).

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. WE WILL TAKE THE FOLLOWING AFFIRMATIVE ACTION:

1. Post for sixty (60) days, in all of the usual and normal posting locations where the bargaining unit employees work, the NOTICE TO EMPLOYEES furnished by the SERB stating that the Franklin County Sheriff shall cease and desist from the actions set forth in Paragraph A and shall take the affirmative action set forth in Paragraph B.
2. The Franklin County Sheriff shall immediately join in with the Capital City Lodge No. 9, Fraternal Order of Police, in the arbitration of the disputed grievances herein.

FRANKLIN COUNTY SHERIFF
88-UPL-10-0538

DATE BY TITLE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACTED

ERB 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 regarding this notice or compliance with its provisions may be directed

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OPINION

Sheehan, Chairman:

I

On October 13, 1988, the Capital City Lodge No. 9, Fraternal Order of Police (Intervenor or FOP) filed an unfair labor practice charge against the Franklin County Sheriff (Respondent or Employer) alleging that Respondent has violated Ohio Revised Code §4117.11(A)(1), (A)(3), (A)(5) and (A)(6). The State Employment Relations Board (SERB or Complainant) subsequently determined that there was probable cause to believe the law had been violated and issued a complaint as charged against the Respondent on June 29, 1989. The matter was submitted on stipulations of fact and exhibits in lieu of a hearing.

The single issue is whether the Respondent's refusal to process to arbitration certain grievances related to the assignment and promotion of bargaining unit members constitutes a violation of O.R.C. §4117.11(A)(1), (A)(5) and (A)(6).

The hearing officer in his proposed order determined that the Respondent's refusal to arbitrate the particular grievances constituted a

violation of §4117.11(A)(1) and (A)(6). The Board adopts the hearing officer's Admissions, Stipulations of Fact, Conclusions of Law No. 1 and No. 2, but amends Conclusion of Law No. 3 to read: "The Franklin County Sheriff's refusal to process to arbitration the particular grievances herein constitutes a violation of §4117.11(A)(1) and §4117.11(A)(6)."; and adopts the Recommendations, but not necessarily the analysis in support. However, for the reasons adduced below, the Board comes to the same conclusion.

II

There is no dispute that Respondent refused to process to arbitration the seven grievances pertaining to hiring and promotions which gave rise to the issues at hand. The Respondent, however, argues that it was justified in doing so because, in its opinion, the grievances are not arbitrable.¹ We disagree.

In pertinent part, O.R.C. §4117.11(A)(1) and (A)(6) provides:

(A) It is an unfair labor practice for a public employer, its agents, or representatives to:

(1) Interfere with, restrain, or coerce 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 purposes of collective bargaining or the adjustment of grievances;

The Respondent filed for a declaratory judgment in the Franklin County Court of Common Pleas seeking the Court's opinion regarding the arbitrability of the disputed grievances. The Court of Common Pleas dismissed the Respondent's declaratory judgment action on the basis that it lacked subject matter jurisdiction. The Respondent appealed. The Tenth District Court of Appeals reversed the Court of Common Pleas on the subject matter jurisdiction issue. Franklin County Sheriff's Dept. v. Fraternal Order of Police Capitol City Lodge No. 9, 89AP-489, 10th Dist. Ct. App., Franklin (1-23-90).

* * *

(6) Establish a pattern or practice of repeated failures to timely process grievances and requests for arbitration of grievances; (Emphasis added.)

Thus, O.R.C. 4117 contains a specific unique violation for failure to process grievances and requests for arbitration of grievances.

With the above cited provision, the legislature clearly defined the employer's obligation and responsibility in processing grievances. This is a consequential part of the legislature's overall design to provide a consistent mechanism for dispute resolution in promoting orderly and constructive relationships between all public employers and their employees.²

The Respondent's refusal to process to arbitration the seven grievances which are the basis of the dispute clearly established a pattern of repeated failure to process grievances, thus committing a violation of §4117.11(A)(1) and (A)(6).

The Respondent's action in the instant case stalled the process, interminably interrupted the resolution of this dispute, and circumvented the parties' collective bargaining agreement which called for the submission to arbitration all questions of contract interpretation and application. Moreover, declaratory judgment is discretionary and there is no obligation on the courts to rule on the merits of the issue. Thus, a request for

²That is not to say that a party has to arbitrate non-arbitrable issues. A party may always raise the issue of arbitrability before the arbitrator as well as the challenge to the arbitrator's jurisdiction to rule on substantive arbitrability. However, under §4117.11(A)(6) a party may not refuse requests for arbitration of grievances.

declaratory judgment will not necessarily resolve the arbitrability issue. A far better way to have approached the issue would have been for the Respondent to proceed to arbitration, as mandated by §4117.11(A)(6), raise the question of arbitrability there, and then, if felt needed, pursue its concerns pursuant to O.R.C. 2711. In this manner, the dispute resolution process would have been accorded the deference it deserved, and the issue would have doubtlessly been more expeditiously accommodated and reached a final resolution without prejudicing the rights of either party. Indeed, it would be bad public policy to permit parties to frustrate established and accepted dispute resolution procedures by simply raising the defense of arbitrability. In the interest of processing grievances in quick and orderly fashion and in promoting harmonious relations, this cannot be allowed.³

It is curious that the Respondent would choose this route when the trend today by both private and public employers and employee organizations is toward mediation and arbitration and away from lengthy and expensive litigation.

For these reasons, the hearing officer's Recommendations are adopted.

Pottenger, Board Member, concurs. Brundige, Vice Chairperson, dissents.

³The Tenth District Court of Appeals, when it reversed the Court of Common Pleas (See fn. 1.), specifically pointed out that SERB has the exclusive jurisdiction to determine the unfair labor practice charges. Thus, even if the Court of Common Pleas decides to use its discretion and to rule on the merits of the arbitrability issue, SERB will still have to rule on the unfair labor practice issue.

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DISSENTING OPINION

Brundige, Vice Chairperson:

In this matter I respectfully dissent from the majority opinion of the Board. I do not necessarily disagree with the decision that an unfair labor practice had been committed. I merely feel that the matter was not ripe for Board determination.

In this case, the Franklin County Sheriff processed several grievances dealing with promotions through the procedure until they reached the arbitration step. At this time, the sheriff asserted that the grievances were not arbitrable. He informed the union of his decision and, further, that he was addressing the question of substantive arbitrability to the Common Pleas Court through a declaratory judgment action.

The Common Pleas Court found that it lacked jurisdiction to decide the matter of arbitrability. The sheriff appealed. The Court of Appeals found that the Common Pleas Court did have discretionary jurisdiction and remanded the matter to the Common Pleas Court in January of 1990.

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The majority of the Board has determined that an unfair labor practice has been committed for failure to process grievances. I respectfully disagree.

The Court of Appeals has said that a Common Pleas Court can (emphasis added) make determinations of arbitrability. Further, the matter is clearly lodged in the Common Pleas Court on a remand order from the Court of Appeals.

In this particular case, in my opinion, this Board should have postponed consideration until the Common Pleas Court had disposed of the matter. If the Common Pleas Court refused to answer the question then, clearly, this Board would have to rule. If the court found the matter not to be arbitrable, then the sheriff's position would have been vindicated and there would have been no reason to act.

I do agree that ordinarily questions of arbitrability are best decided by arbitrators as a threshold issue before a hearing is conducted on the merits. I do not agree that the statute mandates such a requirement in every case.