

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,
Complainant,

v.

Kent State University,

Respondent.

CASE NUMBER: 89-ULP-08-0410

ORDER
(Opinion Attached)

Before Chairman Owens, Vice Chairman Pottenger and Board Member Sheehan: March 19, 1992.

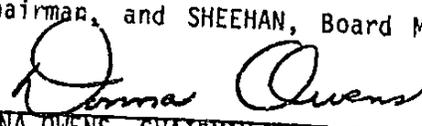
On August 10, 1989, the American Federation of State, County and Municipal Employees (Charging Party) filed an unfair labor practice charge against Kent State University (Respondent). Pursuant to Ohio Revised Code (O.R.C.) §4117.12, the Board conducted an investigation and found probable cause to believe 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 refusing to bargain over the wages, hours and terms of employment of certain employees added to the bargaining unit.

The case was heard by a Board hearing officer. The Board has reviewed the record, the Hearing Officer's Proposed Order, exceptions, cross-exceptions and response. For the reasons stated in the attached Opinion, incorporated by reference, the Board adopts the Stipulations, amends Conclusion of Law No. 3 by adding to its last sentence the phrase, "inasmuch as the existing contract was applied reasonably and sensibly to the accreted employees" and adopts the Conclusions of Law as amended.

The complaint is dismissed.

It is so ordered.

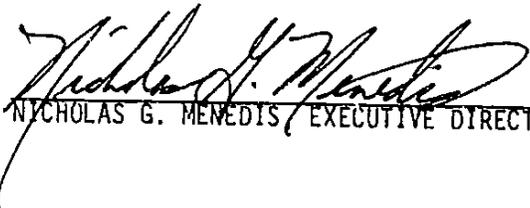
OWENS, Chairman, POTTENGER, Vice Chairman, and SHEEHAN, Board Member,
concur.


DONNA OWENS, CHAIRMAN

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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 (15) days after the mailing of the Board's directive.

I certify that this document was filed and a copy served upon each party by certified mail, return receipt requested, on this 20th day of March, 1992.


NICHOLAS G. MENEDIS, EXECUTIVE DIRECTOR

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 92-002

In the Matter of
State Employment Relations Board

Complainant,

and

Ohio Council 8, American Federation of State, County
and Municipal Employees, AFL-CIO,

Intervenor,

v.

Kent State University,

Respondent.

CASE NUMBER: 89-ULP-08-0410

OPINION

Pottenger, Vice Chairman:

On February 10, 1988, Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME, Intervenor) and Kent State University (Respondent) jointly filed a Petition for Amendment of Certification with the Board which, inter alia, requested that the classification of Parking Facility Attendants (then consisting of five (5) employees) be added to the bargaining unit of over three hundred and fifty (350) employees represented by AFSCME under the 1987-90 contract. (Stipulation No. 9).

On March 3, 1988, the Board amended the unit as petitioned and certified AFSCME as the exclusive representative of a bargaining unit including the Parking Facility Attendants. (Stipulation No. 10). Pursuant to SERB certification, the Respondent notified all Parking Facility Attendants that they were part of the bargaining unit and furnished each a copy of

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the collective bargaining agreement. (Stipulation 11). The collective bargaining agreement which was in effect at the relevant time, included a negotiated wage plan which abolished the Ohio Civil Service System of longevity supplements and step increases and replaced it with a five hundred dollar (\$500) one-time payment effective on February 4, 1987, and yearly percentage increases - nine percent (9%) on February 4, 1987, and four percent (4%) on February 4, 1988. The one-time payment as well as the yearly percentage increases, were applied to all employees who were in the bargaining unit on the effective dates (Stipulations 5 and 8). Because the Parking Facility Attendants were not accreted into the bargaining unit until March 3, 1988, they did not receive the \$500 bonus nor the two percentage increases.

Before their accretion to the bargaining unit, the Parking Facility Attendants were paid longevity and step increases. Once they were in the bargaining unit, their longevity and step increases were abolished like those of all other bargaining unit employees. From the date of SERB's certification pursuant to the petitioned amendment, the Parking Facility Attendants have received all contractual wage increases specified in the relevant contracts, and their benefits are identical to those of all other bargaining unit members.¹ The Parking Facility Attendants, who were all classified as pay range 3 under the Ohio Civil Service System, were unilaterally slotted into pay grade 3 under the negotiated compensation plan (Stipulation 12). This method of slotting was consistent with the method

¹ Except for Food Service Workers who are provided laundry service. (Stipulations 13 and 18).

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the university had utilized in 1987 when it unilaterally converted all unit employees from the Ohio Civil Service Compensation System to the negotiated compensation plan (Stipulation 12).

By letter of May 25, 1988, AFSCME requested that the Respondent negotiate with regard to wages, hours and other conditions of employment for the Parking Facility Attendants. The Respondent refused and continued to refuse thereafter to negotiate with AFSCME regarding the accreted attendants (Stipulation 23).

I.

The issue before the Board is whether the Respondent's refusal to bargain with AFSCME regarding the wages, hours and other conditions of employment of the Parking Facility Attendants following their accretion to the bargaining unit, constitutes a violation of Ohio Revised Code (O.R.C.) §4117.11(A)(1) and (A)(5).

II.

In recommending that the complaint be dismissed, the hearing officer relied on NLRB precedent that no bargaining is required when employees are accreted to an existing bargaining unit. While we agree that no bargaining was required in this case, we disavow the hearing officer's strict reliance upon NLRB precedent.

Under federal law, the vehicle of accretion, by which employees may be added to a unit under existing contract terms, is limited to the unit clarification procedure. This procedure is available only to add employees whose classifications did not exist at the time the unit was created or whose job descriptions and duties had significantly changed.

Under the Ohio Public Employee Collective Bargaining Act, in addition to the unit clarification procedure, there is another vehicle of accretion.

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Pursuant to Ohio Administrative Code (OAC) Rule 4117-5-01(G), a small number of employees as here, can be accreted to an existing bargaining unit via amendment of certification with the only limitation being that the number of employees accreted is substantially smaller than the existing unit - a circumstance which could require an election and bargaining under NLRB precedent.²

The NLRB, which allows accretion only in unit clarification situations, tips the balance in the direction of employees' individual rights. Rule 4117-5-01(G), in allowing accretions on a broader basis, clearly tips the balance of equities more in the direction of controlling over-fragmentation and ensuring efficiency of operation and less in the direction of employees' individual rights. Because the nature of accretions under the NLRA and the Ohio Collective Bargaining Law is different, we are not persuaded that the NLRB accretion policies and accompanying bargaining obligations should be applied automatically to cases before SERB.

Accordingly, we will not automatically require mid-term bargaining for accreted employees in every circumstance where the NLRB has required it, nor will we automatically deny bargaining in every circumstance where the NLRB has denied it.

Where employees are added to a unit through SERB's unit clarification procedure, we will not normally require bargaining. However,

² NLRB v. Mississippi Power & Light, 272 NLRB No. 12, 117 LRRM 1493 (1984), enfd. 769 F.2d 276, 120 LRRM 2302 (5th Cir. 1985); NLRB v. Abex Corp., 215 NLRB No. 114, 88 LRRM 1157 (1974), enf. denied, 543 F.2d 719, 93 LRRM 2669 (9th Cir. 1976); Massachusetts Teachers Association, 236 NLRB 1427, 98 LRRM 1431 (1978); Federal-Mogul Corp, 209 NLRB 343, 85 LRRM 1353 (1974).

where they are added pursuant to Rule 4117-5-01(G) and a contract is in effect, we will sometimes require mid-term bargaining, but only in limited circumstances. In those cases where working conditions already settled by the existing collective bargaining agreement could be reasonably and sensibly applied to the newly added classifications, we will treat the existing contract as an agreement in advance with respect to the newly-added employees, and the accretion will trigger no additional bargaining of terms. However, in those circumstances where substantial terms and conditions of employment are involved, and where the provisions of the existing contract cannot be reasonably and sensibly applied to the newly-added classifications, then the employer and employee organization must bargain about contract modifications. This limited bargaining obligation is only for the period of time left until the existing collective bargaining agreement expires.

In reaching this decision, we are persuaded that in the public sector there is a special need to seek relatively minor adjustments in unit compositions without automatically triggering a concomitant obligation to reopen negotiations. We believe that this added flexibility in the public sector is warranted.

State government is complicated and cumbersome, with operations involving numerous agencies, rules and regulations, and civil service laws. Civil service classifications change frequently, and so public sector units may require modification to avoid over-fragmentation and ensure operational efficiency. The existence of appropriate and rationally structured bargaining units is the cornerstone of stability in labor relations. Consequently, a more flexible accretion policy is needed in the public sector to ensure that unit structure can respond to inevitable changes.

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III.

In adopting such a policy, we recognize that there will be occasions when existing contract terms cannot reasonably and sensibly be applied to accreted employees. This is so because the jobs of accreted employees are not identical to existing unit classifications and the existing contract was not negotiated with the accreted employees in mind. In such cases, to make portions of the contract applicable without any attempt of modification would be to force the added employees to wear a garment that was not designed to fit. In these circumstances a limited duty to bargain appropriate contract terms will arise.

It should be emphasized that this is a very narrow bargaining duty. No new or separate collective bargaining agreement for the accreted employees is contemplated here. On the contrary, it is expected that in most situations the existing collective bargaining will be applicable in toto to the added employees and even in those cases where the fit is not exact, there will be very few and limited issues requiring negotiations.

This rule is flexible enough to allow both labor and management to bargain matters which are not covered by the existing contract, which are of unique concern to the affected positions, and which could not have been predicted when the contract was negotiated.

IV.

In the case at hand, the Employee Organization contends that the Respondent was required to bargain regarding three subjects: wage entitlements, laundry services and vehicle inventory procedures. Applying the rule we announce today, we find, for the reasons set forth below, that no bargaining was required on any of those issues.

1. Wage entitlements:

As part of the 1987 contract negotiations with AFSCME, Respondent implemented a negotiated wage plan, which replaced that of the Ohio Civil Service system. Under the Ohio Civil Service System employees were entitled to yearly longevity supplements and step increases. Under the new negotiated plan, civil service longevity and step increases were abolished and replaced with yearly percentage increases and a one-time payment which was effective on February 4, 1987 and applied to employees who were bargaining unit members on that date. (See Joint Exhibit 1, Article 48 C, D, E and F.) Specifically, upon the effective date of reassignment from their former civil service wage system to the negotiated wage plan, employees then in the bargaining unit and on the active payroll received a nine percent (9%) increase in their individual wage rate and a five hundred dollar (\$500) one-time lump sum payment. (See Joint Exhibit 1, Article 48 C and D.) Thereafter, bargaining unit employees received a four percent (4%) increase to their individual wage rates on February 4, 1988 and a five percent (5%) increase to their individual wage rates on February 4, 1989. (See Joint Exhibit 1, Article 48 E and F.) All bargaining unit employees who were in pay grades 1 through 7 and were not in a classification series retained the same or received a lower numerical grade and wage step under the university wage system than they held under the Civil Service System (Stipulation No. 8).

The employee organization contends that although the Parking Facility Attendants did not join the unit until March, 1988, the Respondent should have bargained about whether they would receive a

five hundred dollar (\$500) bonus and two percentage increases that unit employees had received before that date. It further contends that the Respondent should have bargained about which pay grade the Parking Facility Attendants were to be assigned. AFSCME suggests, in the alternative, that the Respondent should have bargained about whether the Parking Facility Attendants were entitled to the increases they would have received in 1988, had they remained under the Civil Service Plan.

Rather than bargain these issues, the Respondent simply assigned to the Parking Facility Attendants what appears to be the closest comparable pay grade and awarded them only the 1989 increase, to which they were entitled under the plain language of the contract.

We find that this contract application, which involved no unilateral deviation from what was enjoyed by other unit employees at the time of accretion, was a reasonable and sensible application of contract terms and so required no midterm bargaining.

In so concluding, we note that if applying the contract's plain language somehow disadvantages accreted employees, the shortfall need not be permanent. If the employee organization feels that further adjustments are necessary for those employees accreted midterm, it can, of course, seek them during regular contract negotiations.

2. Laundry Services:

The employee organization argued that bargaining should also have taken place regarding the discontinuance of the Parking Facility Attendants' free laundry services which had been provided to the Parking Facility Attendants by the university prior to their being

accreted into the bargaining unit.

Article 43 of the contract (Joint Exhibit 1, page 38) mentions the providing of clean uniforms as an option but only for Food Service employees. Other employees were simply issued four uniforms. The Parking Facility Attendants, following their accretion to the bargaining unit were issued four uniforms, equipment and accessories (Stipulation No. 24). This was a reasonable application of the collective bargaining agreement.

3. Vehicle Inventory Procedure:

The employee organization argued that bargaining should have taken place regarding the change in the procedure Parking Facility Attendants utilized in inventorying vehicles to be towed.

The change of procedure regarding inventorying of vehicles' contents was consistent with procedures for Respondent's police officers and was announced to the Parking Facility Attendants prior to their accretion into the bargaining unit. We do not see any bargaining requirement in these circumstances.

In summary, we find that the Respondent did not deviate from any procedure or term of the collective bargaining agreement as applied to other bargaining unit employees and that the application of the collective bargaining agreement to the Parking Facility Attendants was reasonable and sensible. It is understandable that the Parking Facility Attendants felt that they could have done better. However, a collective bargaining agreement is a result of extensive negotiations, the core which is a give-and-take procedure. The fact that on some issues newly-added employees seemed to be worse off than before does not mean that once everything is taken into account their situation has been unfairly worsened. Also, any

seeming inequities created following a midterm addition of employees into a bargaining unit may always be corrected in the coming negotiations for the next contract.

V.

For all the above-mentioned reasons the Board finds no violation and dismisses the case.

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

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