

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,
Complainant,

v.

Ohio Association of Public School Employees,
Respondent.

CASE NUMBER: 89-ULP-09-0486

OPINION

Sheehan, Board Member:

A short comment is warranted to clarify the statutory mandate of O.R.C. 4117.21. The hearing officer found that 4117.21 supported the finding of violation in this case. While we agree that the Respondent violated O.R.C. 4117.11(B)(3) we do not agree that 4117.21 is relevant to the case at issue.

O.R.C. 4117.21 states:

Collective bargaining meetings between public employers and employee organizations are private, and are not subject to Section 121.22 of the Revised Code. (Emphasis added.)

As the Board observed about this provision in In re City of Dayton SERB 85-006 (3-14-85): "The command could hardly be more plainly stated in English." Collective bargaining meetings are private and are not subject to the public meetings requirement of the Sunshine Law. That is all that 4117.21 says and intends to say. The wisdom of this section is evident. Negotiation sessions need to be conducted away from the public eye.

Productive bargaining requires an atmosphere where the parties can be completely frank in their exploration of acceptable agreement, where they can take tough stands and reach delicate compromises without the temptation of grandstanding or fear of bad publicity.

As valuable as this privacy is, however, it applies only to the meetings themselves. This is clear from both the words of the statute and its intent.

The purpose of Section 4117.21 is to protect public employers from the harsh consequences of violating the open meetings law - O.R.C. 121.22. O.R.C. 4117.21 makes it clear that no party can insist on public meetings for collective bargaining negotiations, and that no sanctions for the violation of O.R.C. 121.22 shall apply. What happens outside negotiation sessions is not governed by 4117.21, since the aim of 121.22 is to make public the actions and deliberations of public bodies and not to restrict communications between a public body and the general public.¹

The case at issue involves an action which took place outside the collective bargaining meetings. Although the instant case is not governed by 4117.21, it is governed though by the ground rules agreed to by the parties in their collective bargaining contract. Article III, Section J of that agreement authorized the bargaining representatives to provide interim

¹ The hearing officer noted erroneously that in In re Mentor Exempted Village School District Board of Education, SERB 89-011 (5-16-89), the Board had found that it was reasonable to construe §4117.21 to include communications concerning negotiations as well as the actual negotiations process. The Board majority reached no such conclusion. This view was stated only in the concurring opinion.

Opinion
Case No. 89-ULP-09-0486
August 22, 1991
Page 3 of 3

reports of negotiations to the association membership, the Board and the administration. Periodic reports to individuals not directly represented by the association or the Board were permitted, but only with prior approval of both parties. (Hearing Officer's Finding of Fact, No. 4, Jt. Ex. 1)

The hearing officer found that the Respondent through its agent Bridgette Schiffer, violated the ground rules for negotiations by communicating information to the news media regarding the Employer's bargaining position without first seeking or obtaining the Employer's approval and, thus, conducted bad faith bargaining in violation of O.R.C. 4117.11(B)(3). We agree with this part of the hearing officer's analysis.

Owens, Chairman, and Pottenger, Vice Chairman, concur.

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35

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 92-005

In the Matter of

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Ohio Association of Public School Employees,

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CASE NUMBER: 89-ULP-09-0486

ORDER
(Opinion Attached)

Before Chairman Owens, Vice Chairman Pottenger and Board Member Sheehan: August 22, 1991.

On September 20, 1989, the South Euclid-Lyndhurst City School District Board of Education (Charging Party), or Employer, filed an unfair labor practice charge against the Ohio Association of Public School Employees (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(B)(1), (B)(2) and (B)(3) by unilaterally releasing information to the news media on negotiation positions during the negotiating process for a successor agreement.

This case was heard by a Board hearing officer. The Board has reviewed the record, the Hearing Officer's Proposed Order, Exceptions, Cross-exceptions and Responses.¹

¹ We note that on August 21, 1991, some 49 days after the Proposed Order was issued, the Ohio Civil Service Employees Association, Local 11, AFSCME, AFL-CIO, which was not a party to these proceedings, filed a Motion to Intervene with Memorandum in Support, as well as a brief and exceptions to the Proposed Order. The Complainant and Intervenor opposed OCSEA's intervention. O.A.C. Rule 4117-1-13 provides that exceptions to a proposed order shall be filed with the Board within twenty (20) days after service of the Proposed Order. Accordingly, as we ruled at our Board meeting on April 16, 1992, OCSEA's exceptions and motion for intervention are denied as untimely.

Directive
Case No. 89-ULP-09-0486
August 22, 1991
Page 2 of 3

The Board adopts the Admissions and Stipulations, the Findings of Fact, amends Conclusion of Law No. 3 to find only a violation of O.R.C. §4117.11(B)(3), and delete the reference to §4117.11(B)(1), amends Conclusion of Law No. 4 to read: "The conduct of Respondent's agent, Bridgette Schiffer, as described in Conclusion of Law No. 3, does not constitute a violation of §4117.11(B)(1) or (B)(2)" and adopts the Conclusions of Law as amended.

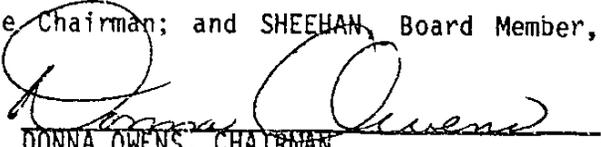
The Board amends Recommendation 2(A) by eliminating 2(A)(1) and renumbering 2(A)(2) as 2(A)(1) and adopts the Recommendations as amended.

The Respondent is ordered to:

- A. Refrain from refusing to bargain collectively with a public employer and from otherwise violating §4117.11(B)(3).
- B. Take the following affirmative action:
 - (1) Post for sixty (60) days in the usual and normal posting locations where the bargaining unit employees work, the NOTICE TO EMPLOYEES furnished by the Board stating that the Ohio Association of Public School Employees shall refrain from the actions set forth in paragraph A and shall take the affirmative action set forth in paragraph B.
 - (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.

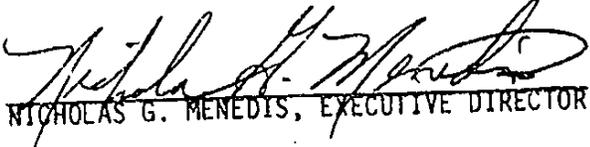
OWENS, Chairman; POTTENGER, Vice Chairman; and SHEEHAN, Board Member, concur.


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

Opinion
Case No. 89-ULP-09-0486
August 22, 1991
Page 3 of 3

I certify that this document was filed and a copy served upon each party
by certified mail, return receipt requested, on this 21st day
of April, 1992.


NICHOLAS G. MENEDIS, EXECUTIVE DIRECTOR

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31



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 REFRAIN FROM:

- (1) Refusing to bargain collectively with a public employer and from otherwise violating §4117.11(B)(3).

WE WILL NOT in any like or related manner, 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 the usual and normal posting locations where the bargaining unit employees work, the NOTICE TO EMPLOYEES furnished by the Board stating that the Ohio Association of Public School Employees shall take the affirmative action set forth in paragraph A and shall take the affirmative action set forth in paragraph B.
- (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.

OHIO ASSOCIATION OF PUBLIC
SCHOOL EMPLOYEES
89-ULP-09-0486

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:

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B. WE WILL TAKE THE FOLLOWING AFFIRMATIVE ACTION:

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- (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.

OHIO ASSOCIATION OF PUBLIC
SCHOOL EMPLOYEES
89-ULP-09-0486

DATE

BY

TITLE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

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 concerning this notice or compliance with its provisions may be directed to the Board.

32