

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Upper Arlington Education Association,

Charging Party,

v.

Upper Arlington City Board of Education,

Charged Party.

CASE NUMBER: 91-ULP-11-0725

OPINION

I

OWENS, Chairman:

This case comes before the Board upon an unfair labor practice charge filed by the Upper Arlington Education Association (Charging Party) against the Upper Arlington City Board of Education (Charged Party). The charge alleges that the Charged Party violated Ohio Revised Code (O.R.C.) § 4117.11(A)(1) and (A)(5) by unilaterally imposing an advisory program which decreased teacher planning time and increased student contact time. The charge involves the interpretation of various sections of the parties' collective bargaining agreement as well as the resolution of statutory issues.

For the reasons stated in this opinion, the Board has decided to retain jurisdiction but defer the matter for resolution through the grievance-arbitration procedure.

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The Board established a formal deferral policy with its Opinion in In re Miamisburg, SERB 86-001 (1-15-86). In that decision, six options were described for dealing with unfair labor practice charges. The six Miamisburg options in essence are: retain jurisdiction and defer to the grievance procedure; decide that an employee proceeding under a grievance procedure has waived statutory rights to the unfair labor practice process unless conflict of interest is involved; process a conflict of interest case under the statutory procedure; go immediately to the statutory unfair labor practice process without deferral where a critical policy issue is raised; dismiss the charge and permit the grievance to be resolved under the contractual procedure; or treat the charge/grievance as strictly a contract issue and leave the parties to their contract and whatever judicial remedies are available.

We have found that the policy of deferring some unfair labor practices to the grievance-arbitration procedure is a valuable tool in avoiding duplicate forums and saving resources of the agency and the parties. We intend to continue using our discretion to defer disputes to the contractual grievance procedure where warranted.

However, in the years since Miamisburg was decided, questions have arisen as to the various Miamisburg options--their meanings and differences. Accordingly, we believe that clarification and simplification of our deferral policy is warranted here.

Henceforth and in this matter, the Board will normally consider only three possibilities when an unfair labor practice charge is filed: (1) dismiss the matter for all the usual reasons including but not limited to lack of jurisdiction, untimeliness, or because no probable cause exists to believe the law has been violated;<sup>1</sup> (2) find probable cause exists and authorize the issuance of a complaint; or (3) retain jurisdiction and defer the matter for resolution through the grievance-arbitration procedure.

Probable cause will be found and a complaint issued in any matter in which statutory interpretation and application lie at the center of the dispute.

On the other hand, the Board will retain jurisdiction but defer to arbitration any matter, such as the one before us today, where a refusal to bargain is alleged<sup>2</sup> and where the contract and its meaning lie at the

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<sup>1</sup> A purely contractual dispute, which encompasses no arguable statutory violation, would be a candidate for dismissal for lack of probable cause. This is consistent with the Board's application of Miamisburg Options 5 and 6, with one important difference. Parties will no longer be ordered to extend grievance timelines when unfair labor practices are dismissed as being purely contractual disputes. That is to say, filing an unfair labor practice charge over a contractual dispute will no longer relieve the wronged party from the obligation of filing a timely grievance. The grievance must be timely filed or face dismissal under the parties' normal contract procedures.

<sup>2</sup> We do not reach the question here of whether deferral of other statutory violations may at some point be found appropriate. We have historically deferred bargaining allegations, and that is the substance of the alleged unfair labor practice before us in this matter.

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center of the dispute and it appears that the arbitral interpretation of the contract will resolve both the unfair labor practice and the contract interpretation issues. Nonetheless, in matters of great statutory significance, the Board will retain discretion to find probable cause and issue a complaint even if contract provisions are at issue.

The Board will not defer to the grievance-arbitration process in situations where the process itself is one of the issues of a pending unfair labor practice charge. For example, if a party has refused to process grievances in a timely manner, refused to arbitrate, or withheld information needed for processing the grievance, deferral will not be considered appropriate. Of course, the Board will not consider deferral to the contractual grievance procedure if such procedure does not include final and binding arbitration. There may be other circumstances where deferral is inappropriate and the Board in such cases will exercise its discretion on a case-by-case basis.

## II

While the Board in its discretion may defer unfair labor practices sua sponte to the contract grievance procedure, the Board will also consider motions for deferral.

A party wishing to have a case deferred to arbitration should file a Motion for Deferral with the Board immediately upon receipt of the charge.

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The motion should contain a concise statement of facts, outlining the background of the alleged unfair labor practice, the identification of any issue(s) which will likely be resolved through contract interpretation, the precise contract section(s) at issue, including the terms of the contract provision requiring final and binding arbitration, the status of a pending grievance to which deferral is sought, and, if a grievance has not been filed, an assurance that the party wishing deferral is willing to waive time limits for filing a grievance.

Because a decision to defer involves an analysis of the specific facts and contract sections at issue, as well as an examination of the grievance procedure to which deferral is sought, the Investigation Section may at its discretion request additional information. Normally, however, less information will be required in support of a deferral motion than for a probable cause determination.

III

If the Board defers a matter sua sponte or grants a Motion for Deferral, it is the responsibility of the parties to file promptly with the Board a copy of the arbitration award. Any party who wishes that the award be reviewed to determine whether the unfair labor practice issue(s) were adequately resolved with consideration for due process rights of the parties, must file a Motion for Review with the Board no later than thirty (30) days after the award issues. The motion should contain a statement of

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reasons why the alleged unfair labor practice should not be dismissed in view of the award. If a Motion for Review is not timely filed, the Board will assume the matter has been resolved and dismiss the ULP.

IV

In the case at issue, the unfair labor practice charge alleges a §4117.11(A)(1) and (A)(5) violation of unilateral change in working conditions without bargaining. Specifically, the charge alleges that the Employer, without bargaining, increased hours of employment and job duties of bargaining unit employees without additional compensation by imposing an advisory program which decreased teacher planning time and increased student contact time.

The collective bargaining agreement between the parties includes a grievance procedure culminating in final and binding arbitration, as well as specific clauses which may be germane to the Charged Party's imposition of the advisory program. The contract addresses situations in which teachers must assume supplemental duties (Article 11.3); specifies periods of minimum conference/planning time (Article 11.11); and requires scheduling accommodations for middle school teachers assigned more than three "class preparations" per semester (Article 11.10(b)). The parties disagree on what constitutes class preparation time.

A grievance was filed, and an arbitration hearing was held on May 13, 1992.

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The investigation reveals that while some statutory issues might be involved, the contract and its interpretation lie at the center of the dispute and it appears that the arbitral interpretation of the contract will resolve both the ULP issue as well as the contract interpretation issue.

Accordingly, the Board defers this matter to arbitration and retains jurisdiction.

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

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