

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SERD OPINION 92-011

In the Matter of  
Hamilton County Sheriff,  
Charging Party,

v.

Truck Drivers, Chauffeurs and Helpers Local #100,  
International Brotherhood of Teamsters,

Charged Party.

CASE NUMBER: 92-ULP-04-0215

OPINION

POTTENGER, Vice Chairman:

I

This case comes before the Board through an unfair labor practice charge filed by the Hamilton County Sheriff (Charging Party) against the Truck Drivers, Chauffeurs and Helpers Local #100, International Brotherhood of Teamsters (Charged Party) alleging that the Charged Party violated Ohio Revised Code (O.R.C.) Sections 4117.11(B)(1) and (B)(3) by bargaining in bad faith when it made final offers in violation of O.R.C. Section 4117.14(G). More specifically, the Charging Party argued that the Charged Party's final offer before the conciliator constituted unfair labor practice of bad faith bargaining insofar as that offer suggested payments earlier than the start of the fiscal year next commencing contrary to O.R.C. 4117.14(G)(11).<sup>1</sup>

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<sup>1</sup> Section 4117.14(G)(11) states:  
Increases in rates of compensation and other matters with cost implications awarded by the conciliator may be effective only at the start of the fiscal year next commencing after the date of the final offer settlement award; provided that if a new fiscal year has commenced since the issuance of the Board order to submit to a final offer settlement procedure, the awarded increases may be retroactive to the commencement of the new fiscal year. The parties may, at any time, amend or modify a conciliator's award or order by mutual agreement.

II

The fact is, the investigation reveals that even before this unfair labor practice was filed, the Charged Party had revised its final offer so that it sought payments "at the earliest time permitted by law." On that basis alone, it would not effectuate the purposes of the Act to issue a complaint in this matter. However, the charge raises a more fundamental issue warranting comment: the proper forum to complain about substantive offers made to a conciliator. For the reasons stated below, the Board believes that such complaints are properly raised with the courts pursuant to O.R.C. 2711, rather than as unfair labor practices to be adjudicated before SERB.

III

It is implicit in the Ohio Public Employee Collective Bargaining Law that the Board acts to oversee and referee the process of collective bargaining rather than the substance of agreements. The law is premised upon private bargaining under governmental supervision of the procedure alone, without official interference with the actual terms of the collective bargaining agreement. Thus, while the Board recognizes its duty to ensure that the dispute resolution procedure of O.R.C. 4117.14 is properly implemented, it is very much aware that Chapter 4117 is grounded on the premise of freedom of contract and will not sit in judgment upon the substantive terms of collective bargaining agreement.<sup>2</sup> The Board has intervened in the past and will continue to intervene when the

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<sup>2</sup> NLRB v. American Ins. Co., 343 US 395, 30 LRRM 2147 (1952); H.K. Porter Co., Inc. v. NLRB, 397 US 99, 73 LRRM 2561 (1970).

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procedures of Section 4117.14 are ignored or when the process comes to a halt so as to subvert legislatively-mandated dispute resolution. On at least two occasions, the Board intervened where a factfinder directed parties to continue bargaining instead of issuing a statutorily mandated report that could be adopted or rejected.<sup>3</sup> Such intervention was warranted since without it the process of dispute resolution would have come to a halt.

The Board also intervened in In re City of Fairborn, SERB 86-039 (9-25-86) where final offers to the conciliator were drafted in the alternative. In that case, the Board found that the statute ordains issue-by-issue submissions and does not allow alternatives since the General Assembly intended to prevent conciliator compromise by providing as it did in O.R.C. 4117.14(G)(1).

However, the Board has not in the past nor does it intend in the future to police the substantive terms of collective bargaining contracts. The Board strongly believe that such terms should be left completely to the parties themselves to negotiate, to bargain and to struggle with.

IV

Does all this mean that a conciliator may be arbitrary, capricious or choose substantive final offers which are illegal and contradict the mandate of the statute? Clearly not. However, the proper forum for challenging the conciliator's choice of final offers is not the Board but the courts, pursuant to O.R.C. Chapter 2711. This is specifically stated in two places in O.R.C. 4117.14:

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<sup>3</sup> NOPBA and Sandusky County Sheriff, SERB Case No. 85-MF-11-4651; also OPBA and Huron County Sheriff, SERB Cases Nos. 91-MED-10-1226, 91-MED-10-1227, and 91-MED-10-1228.

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Section 4117.14(G)(8) states:

"Final offer settlement awards made under Chapter 4117 of the Revised Code are subject to Chapter 2711 of the Revised Code."

Section 4117.14(H) states:

"All final offer settlement awards and orders of the conciliator made pursuant to Chapter 4117 of the Revised Code are subject to review by the court of common pleas having jurisdiction over the public employer as provided in Chapter 2711 of the Revised Code ....

The Legislature could not have stated more clearly that the conciliation process, both settlement awards as well as orders of the conciliator, are subject to review by the courts pursuant to O.R.C. 2711.

The O.R.C. 2711 process forum is appropriate. It is more expeditious to present conciliation awards initially to the common pleas court for review than to submit them through the more cumbersome unfair labor practice route, from hearing officer to the Board, and on to the appellate courts. The O.R.C. 2711 process promotes quick solutions to problems which interfere with the implementation of collective bargaining agreements. Such expeditious implementation is clearly consistent with the legislative intent to resolve public sector disputes quickly and with finality.

The unfair labor practice charge is dismissed with prejudice.

OWENS, Chairman, and SHEEHAN, Board member, concur.