

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Akron Public School District Board of Education,

Respondent.

CASE NUMBER: 95-ULP-06-0354

**ORDER
(OPINION ATTACHED)**

Before Chairman Pohler, Vice Chairman McGee, and Board Member Mason:
December 12, 1996.

On June 30, 1995, the Ohio Association of Public School Employees ("OAPSE") filed an unfair labor practice charge with SERB against the Akron Public School District Board of Education ("Respondent"). Pursuant to O.R.C. § 4117.12, the Board conducted an investigation and, on January 16, 1996, determined that there was probable cause for believing that an unfair labor practice occurred. Subsequently, a complaint was issued alleging that the Respondent had violated O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(5) by replacing a Clerical Assistant position in its Maintenance Department with a Typist II position outside of that bargaining unit and moving a Clerical Assistant position to Seiberling Elementary School.

The case was heard by a SERB hearing officer on March 5, 1996. A Hearing Officer's Proposed Order was issued on May 28, 1996. The Complainant filed exceptions on June 20, 1996. The Respondent filed its response to the exceptions on July 10, 1996.

The Board has reviewed the record, the Hearing Officer's Proposed Order, the exceptions, and the response. For the reasons stated in the attached Opinion, incorporated by reference, the Board amends Finding of Fact No. 3 to replace "defined" with "described"; amends Conclusion of Law No. 3 to read: "OAPSE is the deemed-certified exclusive representative of a bargaining unit of the Respondent's employees that includes Clerical Assistant positions."; adopts the Findings of Fact and Conclusions of Law as amended in the Hearing Officer's Proposed Order; dismisses the complaint; and dismisses the charge with prejudice.

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It is so ordered.

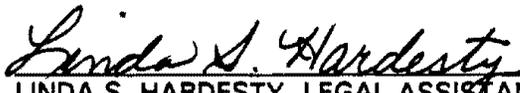
POHLER, Chairman; MCGEE, Vice Chairman; and MASON, Board Member, concur.



SUE POHLER, 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 State Employment Relations Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the court of common pleas 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 State Employment Relations Board's order.

I certify that this document was filed and a copy served upon each party by certified mail, return receipt requested, on this 30th day of December 1996.



LINDA S. HARDESTY, LEGAL ASSISTANT

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OPINION

MC GEE, Vice Chairman:

This unfair labor practice case comes before the State Employment Relations Board ("SERB" or "Complainant") on exceptions to a Hearing Officer's Proposed Order issued on May 28, 1996. For the reasons below, we find that the Ohio Association of Public School Employees ("OAPSE") waived its right to bargain the decision of the Akron Public School District Board of Education ("Employer" or "Board") that changed its classification structure when OAPSE did not request to bargain the decision after the Employer gave notice of its intention. Consequently, Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(5) were not violated. We further find that the Complainant did not meet its burden of proof to show that the Employer violated O.R.C. § 4117.11(A)(2) when it replaced a Clerical Assistant position in its Maintenance Department with a Typist II position.

I. BACKGROUND¹

OAPSE is the exclusive representative of a bargaining unit, which includes Clerical Assistant positions, of the Board's employees. The Employer and OAPSE are parties to a

¹Finding of Fact ("F.F.") Nos. 3, 5 - 6, and 8 - 15.

collective bargaining agreement effective from July 1, 1993 through June 30, 1996. The Akron Association of Classified Personnel ("AACP"), the exclusive representative for another bargaining unit of the Board's employees that includes Typist II positions, and the Employer are parties to a collective bargaining agreement effective from March 1, 1994 through August 15, 1996.

In May 1994, the Employer began negotiating a successor collective bargaining agreement with the AACP. Throughout the course of the negotiations, the AACP attempted to secure contract language that would limit the number of Clerical Assistant positions. On or about September 2, 1994, to settle a strike by the AACP unit, the Employer entered into a Memorandum of Understanding ("MOU") with the AACP. Paragraph A of the MOU states: "The Board shall not permit any growth in the number of clerical assistant positions and when such a position becomes vacant it will be studied by the administration and, where determined to be appropriate as a result of that study, it will be converted to a classified position."

One individual held the Clerical Assistant position in the Employer's Maintenance Department from August 1983 until August 1, 1994. Between February 1994 and August 1994, Karen Bennett, the Employer's Support Staff Coordinator, discussed the Maintenance Department's needs -- specifically, this Clerical Assistant position -- with the Employer's Maintenance Coordinator. Ms. Bennett believed that typing and data entry would become major skills required for the Maintenance Department job. Ms. Bennett also was considering a realignment of the satellite schools' Clerical Assistant positions consistent with student enrollments. Ms. Bennett concluded that the Maintenance Department needed to replace the Clerical Assistant position with a Typist II position.

On May 3, 1995, Ms. Bennett met with Edna Robinson, OAPSE Local 689 President. Ms. Bennett told Ms. Robinson that the Employer wanted to replace the Clerical Assistant position in the Maintenance Department with a Typist position. Ms. Bennett also informed Ms. Robinson that on or about June 9, 1995, the Employer wanted to realign the Clerical Assistant positions more consistently with the school enrollments. Ms. Bennett also told Ms. Robinson that the Employer wanted to replace the Clerical Assistants in the satellite

buildings with non-Clerical Assistants once the positions become vacant. In a June 4, 1995 letter, Ms. Bennett informed Ms. Robinson that the Employer was moving the Clerical Assistant position in the Maintenance Department to Seiberling Elementary School. Ms. Robinson did not make a request to bargain these issues at any time.

On May 5, 1995, Ms. Bennett telephoned OAPSE Field Representative Marc Beallor and told him about the proposed reorganization plan that was discussed with Ms. Robinson. Mr. Beallor did not make a request to bargain this issue at any time.

On or about June 6, 1995, the Employer posted a bid for a Typist II position in the Maintenance Department to replace the vacant Clerical Assistant position and posted a bid for the Clerical Assistant position at Seiberling Elementary School. By the time that OAPSE filed the present unfair labor practice charge on June 30, 1995, Ms. Robinson knew about the MOU between the Employer and the AACP.

II. DISCUSSION

On February 2, 1996, SERB issued a complaint alleging the Employer violated O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(5):

(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 [O.R.C.] Chapter 4117[.];

(2) Initiate, create, dominate, or interfere with the formation or administration of any employee organization, or contribute financial or other support to it;

* * *

(5) Refuse to bargain collectively with the representative of his employees recognized as the exclusive representative[.]

It is the Complainant's burden to demonstrate by a preponderance of the evidence that an unfair labor practice has been committed by the Respondent.² The burden has not been met in this case.

A. Procedural Issues

At the outset, a few procedural issues must be clarified. First, the Hearing Officer's Proposed Order states that since the unfair labor practice charge alleged that only O.R.C. §§ 4117.11(A)(1) and (A)(5) were violated, and did not specifically allege that O.R.C. § 4117.11(A)(2) was violated, the Complainant inappropriately alleged in the complaint that O.R.C. § 4117.11(A)(2) was violated. This finding is based upon a reading of *SERB v. Warren County Sheriff*.³ We do not interpret *Warren County Sheriff* similarly.

In *Warren County Sheriff*, the complaint charged the employer with violating O.R.C. §§ 4117.11(A)(1) and (A)(3) when it committed discriminatory acts, including some that occurred after the unfair labor practice charge was filed but before the complaint was issued. In determining SERB's jurisdiction, the Ohio Supreme Court held: "Any incidents which occur prior to the issuance of the complaint may be considered by the board in determining whether an unfair labor practice has been committed."⁴ The Court recognized that the filing of the charge begins the investigatory process: "The charge therefore involves the allegation of a violation of law, not the recitation of particular incidents which give rise to the violation."⁵ The Court concluded that "incidents occurring prior to the filing of the charge were substantial evidence that an unfair labor practice had occurred. Consideration of events occurring after the filing of the charge would therefore be mere surplusage."⁶

²O.R.C. § 4117.12(B)(3).

³63 Ohio St.3d 69, 1992 SERB 4-7 (1992) (hereinafter "*Warren County Sheriff*").

⁴*Id.* at syllabus.

⁵*Id.* at 73, 1992 SERB at 4-9.

⁶*Id.* at 74, 1992 SERB at 4-9.

The Ohio Supreme Court gave an example in *Warren County Sheriff* that an unfair labor practice charge alleging an O.R.C. § 4117.11(A)(1) violation will not permit a SERB investigation of a potential O.R.C. § 4117.11(A)(2) violation. This example illustrated the principle that "a 'charge' is restricted to the particular course of conduct which gives rise to a violation under R.C. 4117.11."⁷ According to the Court, the limitation applies to the particular course of conduct mentioned in the charge and not with naming the specific statutory sections. The Court's example is consistent with SERB's interpretation since a particular course of conduct that may violate O.R.C. § 4117.11(A)(1) may not also violate O.R.C. § 4117.11(A)(2) because the sections are so different.

But a particular course of conduct that violates O.R.C. § 4117.11(A)(5), such as bargaining with a rival employee organization instead of the exclusive bargaining agent, may also violate O.R.C. § 4117.11(A)(2) because it initiates, creates, dominates, or interferes with an employee organization's formation or administration. Direct dealing conduct can violate both O.R.C. §§ 4117.11(A)(2) and (A)(5). While the Ohio Supreme Court illustrated its point with an example in *Warren County Sheriff*, one should use care not to read more into the example than intended.

Unfair labor practice charges are not necessarily drafted by lawyers. On many occasions individual employees, management employees, and union officers file these charges. All parties filing charges must state the course of conduct about which they are complaining. It is impractical and unfair to expect all filers to know all the subtle legal theories when they list which statutory sections apply. During an investigation, there is nothing improper in modifying the assigned Ohio Revised Code sections listed in a charge so long as the change applies to the particular course of conduct described in the charge. The complaint will contain only those potential violations for which the Board found probable cause existed. In the instant case, an O.R.C. § 4117.11(A)(2) allegation plainly applied to the course of conduct described in the charge. Thus, investigating an O.R.C. § 4117.11(A)(2) allegation and including it in the complaint was appropriate.

⁷*Id.*

Further, we agree with the Hearing Officer's Proposed Order that in unfair labor practice cases we cannot issue a remedial order against a party who is not named in the complaint.⁸ Even though the AACP was not named as a respondent and an order voiding or otherwise affecting the MOU could negatively impact the AACP, SERB can still find that O.R.C. § 4117.11(A)(2) was violated. SERB's determination whether an unfair labor practice occurred does not depend on the ability to shape a remedy; a cease and desist order can always be issued if nothing else is appropriate. Whether an unfair labor practice occurred is always determined separately from the remedy question.

B. The Respondent Did Not Violate O.R.C. §§ 4117.11(A)(1) or (A)(5)

The Complainant asserts that the Employer violated O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(5) when it unilaterally removed the Clerical Assistant position from the Maintenance Department and replaced it with a Typist II because the removal is a mandatory subject of bargaining. The reassignment of work previously performed by members of a bargaining unit to persons outside the unit is a mandatory subject for collective bargaining under O.R.C. §§ 4117.08(A) and (C).⁹ Alternatively, the Complainant argues that even if the removal of the Clerical Assistant position is a permissive subject of bargaining, the Employer committed an unfair labor practice because it failed to bargain over the effects of its decision.

Even assuming, *arguendo*, the Complainant's best case scenario that the subject at issue was a mandatory subject of bargaining, the Employer fulfilled its statutory obligations. SERB has established the respective bargaining obligations of the parties, including when a waiver occurs:

Where an employer's decision is implemented mid-term in a collective bargaining agreement, the employer should give the employee organization

⁸*In re SERB v. Liberty-Benton Local School Dist Bd of Ed*, SERB 96-002 (2-8-96); *In re Ohio Civil Service Employees Assn/AFSCME, Local 11*, SERB 93-019 (12-20-93).

⁹*Lorain City School Dist Bd of Ed v. SERB* (1988), 40 Ohio St.3d 257, Syllabus 3, 1989 SERB 4-2 (hereinafter "*Lorain*").

reasonable advance notice both of the decision to be implemented and the projected date of implementation.

* * *

If the exclusive representative states that it does not wish to bargain collectively or does not request to bargain collectively within a reasonable period of time, then it will be found to have waived its rights. What constitutes reasonable conduct by the employer and a reasonable time to request to bargain collectively by the exclusive representative will depend upon the facts and circumstances in each case[.]¹⁰

In the instant case, the Employer, through Ms. Bennett, called a meeting on May 3, 1995 with the Local Union President, Ms. Robinson. Ms. Bennett detailed all the changes that the Employer wanted to make, including eliminating the Clerical Assistant position in the Maintenance Department and creating a Typist II position in the same department, and creating a Clerical Assistant position at Seiberling Elementary School. Due to the difficulty in contacting employees over the summer, the Employer also made clear its desire to have these changes in place by the school year's end, *i.e.*, on or about June 9, 1995. The Employer immediately followed up on this meeting with a phone call to Mr. Beallor, the OAPSE Field Representative, and with a letter to Ms. Robinson, copied to Mr. Beallor, reiterating its proposed changes and desired implementation date.

Ms. Bennett and Ms. Robinson have consistently testified that Ms. Robinson did not request to bargain, but simply responded that "you can't do that." Ms. Robinson admitted that she "just ignored" Ms. Bennett's letter taking the approach that if Ms. Bennett actually did something with those positions, Ms. Robinson would then respond.¹¹ It is also uncontroverted that no other OAPSE representative requested to bargain.

Once presented with the Employer's proposed changes and desired implementation date, OAPSE, if it wanted to bargain, had an obligation to request bargaining. By doing nothing other than objecting, OAPSE waived any right to bargain it otherwise might have had.

¹⁰*In re SERB v. Youngstown City School Dist Bd of Ed*, SERB 95-010 at 3-81 (6-30-95) (hereinafter "*Youngstown*").

¹¹Transcript ("T."), page 36.

In a case between the same parties raising similar issues, the Franklin County Court of Appeals upheld SERB's ruling that the Employer, by affording OAPSE adequate notice and a meaningful opportunity to bargain, discharged its duty to bargain in good faith.¹²

OAPSE argues that there was no waiver because this case presents a *fait accompli* for which a bargaining request would have been futile. This argument is not persuasive. First, Ms. Robinson's own testimony belies this argument. Ms. Robinson referred to Ms. Bennett's meeting with the Clerical Assistants to discuss "the *possible* move."¹³ Second, the Employer's witnesses credibly testified that, while the Employer obviously had ideas about what it wanted to do, those ideas were not "set in stone."¹⁴

Contrary to OAPSE's suggestion, the fact that the Employer's implemented plan varied little from its proposed plan proves nothing. First, no alternatives were ever presented by OAPSE to the Employer. Second, after waiting over a month and hearing nothing from OAPSE, the Employer was free to implement its plan as proposed. Thus, we find O.R.C. §§ 4117.11(A)(1) and (A)(5) were not violated because the Employer gave OAPSE a timely notice and OAPSE waived its right to bargain by not demanding negotiations.

C. The Respondent Did Not Violate O.R.C. § 4117.11(A)(2)

OAPSE argues that enforcing the MOU interferes with the administration of an employee organization and violates O.R.C. § 4117.11(A)(2) because the intent and effect of the MOU is to convert clerical positions represented by OAPSE into positions represented by the AACP. OAPSE notes that, because the MOU is "vacancy driven," it may take time to run

¹²SERB v. Akron City School Dist Bd of Ed, 1994 SERB 4-5 (3-3-94).

¹³T. 40 (emphasis added).

¹⁴T. 188: "The purpose of the meeting was to let [Ms. Robinson] know what we had talked about doing, not that it was set in stone that we were going to absolutely do it." See also T. 124-125, 185-186.

its intended course. Nonetheless, OAPSE contends that the result is the movement of bargaining-unit work outside the bargaining unit in contravention of *Lorain*.

While *Lorain* may be distinguished on various grounds, distinguishing it on the ground that in *Lorain* unit work became non-bargaining unit work while here, it is still bargaining-unit work albeit with a different bargaining unit, is a distinction without a difference. A key holding in *Lorain* is that it is a violation to transfer *out* unit work without bargaining with the exclusive representative. Whether the unit work becomes non-bargaining-unit work or another unit's work is immaterial. The issue is the loss of unit work for the unit involved.

In *Warren County Sheriff*, the Ohio Supreme Court recognized that a charge merely initiates an investigatory process that may involve other incidents, facts, and issues not mentioned in the charge, as long as they are reasonably related to the charge in compliance with Ohio Administrative Code Rule 4117-7-02(A). This rule provides in pertinent part: "Investigation of charges shall be limited to the facts and issues raised in the charge *and any facts or issues reasonably related to the charge.*" (emphasis added).

The Memorandum of Understanding between the Respondent and the AACP, though not mentioned in the charge, is related to the charge. The particular conduct specifically stated in the charge is that the Employer posted a bid for a Typist II position to replace the vacant Clerical Assistant position in the unit represented by OAPSE. Also specifically stated in the charge is that the Typist II position is not in the unit represented by OAPSE, but is represented by another employee organization. The MOU is reasonably related to the charge as background evidence to establish an explanation and a motive for the particular conduct stated in the charge. Thus, under the Ohio Administrative Code and the Ohio Supreme Court ruling in *Warren County Sheriff*, adding the paragraph about the MOU to the complaint was definitely appropriate.

The MOU was mentioned in the complaint, but not specifically as a basis for alleging a violation. This does not limit utilizing the MOU in the O.R.C. § 4117.11(A)(2) analysis because the act of *signing* the MOU was never one of the Respondent's actions alleged as a

basis for violation. The actions on which the alleged violation was based were only those specifically alleged in the complaint. The MOU was only used as background evidence to check whether the Respondent's acts, which were specified in the complaint as the actions on which the alleged violation were based, could be viewed as *implementation* of the MOU.

The O.R.C. § 4117.11(A)(2) issue before us is whether the Respondent's replacement of a Clerical Assistant position with a Typist II position was an implementation of the MOU. Each stage of the implementation of such an agreement may constitute a continuing violation. The MOU states first that "[t]he Board shall not permit any growth in the number of clerical assistant positions" and second, that "when such a position becomes vacant it will be studied by the administration and, where determined to be appropriate as a result of that study, it will be converted to a classified position."¹⁵ The second part is sufficiently discretionary not to cross the threshold and violate O.R.C. § 4117.11(A)(2) since it allows the Employer to make meritorious management decisions. The first part, however, crosses the line, inasmuch as it allows no discretion and defies meritorious decision-making by the Employer. Under the first part, even if there is a need for another position in the bargaining unit, and under normal circumstances the bargaining unit will grow, the Employer committed itself not to do so. Where an employer negotiates with an employee organization the terms and conditions of employment for employees in a different unit with a different exclusive bargaining agent, including what may constitute depleting positions in the second unit, an O.R.C. § 4117.11(A)(2) violation may arise.

But whether the Employer implemented the MOU and violated O.R.C. § 4117.11(A)(2) is not before us to decide. The record shows that the Employer replaced the Clerical Assistant position in its Maintenance Department with a Typist II position for meritorious business reasons. Moreover, the Employer created a new Clerical Assistant position at Seiberling Elementary School. Thus, under the circumstances of this case, the Employer was *not* implementing the MOU by the changes it made.

¹⁵Joint Exhibit No. 3, Paragraph A.

IV. CONCLUSION

For the reasons above we find that the Akron City School District Board of Education did not violate O.R.C. §§ 4117.11(A)(1) and (A)(5) when it replaced a Clerical Assistant position in its Maintenance Department with a Typist II position and created a Clerical Assistant position at Seiberling Elementary School because OAPSE waived its right to bargain by not requesting bargaining after it received a timely notice of the intended changes. We further find that the Employer did not violate O.R.C. § 4117.11(A)(2) since it had sound business reasons to make the changes independent of the Memorandum of Understanding. Therefore, the complaint and the charge are dismissed with prejudice.

Pohler, Chairman, concurs; Mason, Board Member, concurs in a separate opinion.

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CONCURRING OPINION

MASON, Board Member:

I concur with the majority's discussion about the processing of an unfair labor practice charge and with the finding that O.R.C. §§ 4117.11(A)(1) and (A)(5) were not violated. However, I agree with the hearing officer in concluding that we do not need to reach the merits of the purported O.R.C. § 4117.11(A)(2) violation because the Complaint SERB issued does not contain a clear and concise description of the acts necessary to support such an allegation as required by O.A.C. Rule 4117-7-03.

SERB has a duty to investigate all the allegations within a charge. SERB will find probable cause exists only for those allegations that have merit. The directive announcing the "probable cause" finding advises the parties in very general terms what is being sent to hearing. The complaint is drafted setting out the specific pertinent facts and legal issues being sent to hearing.

The requirements for an unfair labor practice complaint are set forth in relevant part in O.A.C. Rule 4117-7-03:

A complaint that an unfair labor practice has been or is being committed shall contain:

(A) *A clear and concise* description of the acts which are claimed to constitute unfair labor practices, including the approximate dates, times, and places of such acts and the names of the persons by whom committed[.] (emphasis added).

I agree with the majority that unfair labor practice charges frequently are not drafted by lawyers and, therefore, require more consideration and flexibility by SERB during the investigation. But complaints are drafted by SERB. O.A.C. Rule 4117-7-03 creates a higher standard for complaint drafting. "The importance of following these rules is to ensure due process and to maintain fairness in proceedings before this agency. Therefore, strict adherence is of the utmost importance[.]"¹ All parties are entitled to due process and basic fairness under O.R.C. Chapter 4117 from SERB and, in return, must comply with SERB's rules and procedures under O.R.C. Chapter 4117. A respondent is entitled under O.R.C. § 4117.12 to receive notice of exactly what charges and actions it must defend against. The respondent should not have to defend against any and all possible charges or violations that could conceivably be construed from a given set of facts within a complaint. If the complaints are drafted too broadly, extraneous legal issues will be litigated, resulting in, among other things, confusion among the litigants and the hearing officer, difficulty in determining the proper relevance of evidence, increased difficulty in mediating settlements, and a generally inefficient process for all parties.

Even after the issuance of a complaint, controls are in place in SERB's procedures to allow for correcting errors and omissions to a deficient complaint. If the complaint is insufficient, it is incumbent upon the complainant or the intervenor to move to amend it; a motion to amend a complaint may be entertained at any time prior to the close of the hearing.² The motion to amend allows the hearing officer to assess the issue being raised and the action requested within SERB's parameters. If an amendment is clearly within the bounds of the Board's probable cause finding, the hearing officer may grant the motion. If an amendment exceeds the obvious bounds of the Board's probable cause finding, the motion should go to

¹*In re Amalgamated Transit Union, Local 268*, SERB 93-013 at 3-82 (6-25-93).

²O.R.C. § 4117.12(B)(1).

the Board to make sure the motion is not raising issues already considered and rejected by the Board when it found probable cause existed.

In this case, the central action specified in the Complaint alleges that the Respondent replaced a Clerical Assistant position represented by the Intervenor with a Typist II position represented by another union in a different bargaining unit and that the Typist II position performs the same or similar duties to the Clerical Assistant position. The Complaint states that through these acts and this conduct the Respondent is violating O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(5). The Complaint also states that the Respondent entered into a Memorandum of Understanding ("MOU") with the Akron Association of Classified Personnel, the exclusive representative for a bargaining unit of the Respondent's employees that includes Typist II positions.

The Complaint does not allege that the MOU is the basis for the O.R.C. § 4117.11(A)(2) violation. The Complaint is misleading because it does not clearly indicate that the MOU is important to this case; this fact is listed merely as background information. The majority infers that the *implementation* of the MOU is the possible violation. However, the parties were left to guess the connection between the MOU and the possible O.R.C. § 4117.11(A)(2) violation. The behavior of the parties indicates as much: the Intervenor argued that the *execution* of the MOU was the violation, the Respondent defended both agreeing to and carrying out the MOU, the Complainant claimed the MOU was irrelevant, and the hearing officer ultimately dismissed consideration of the MOU on procedural grounds.³ If the MOU is an important legal issue in this case, as it obviously is, then that legal issue needs to be clearly expressed in the Complaint.

This Complaint is vague or ambiguous, at best, as to the specific acts alleged to be a violation of O.R.C. § 4117.11(A)(2). This Complaint could have been amended up to the close of the hearing, but was not. We should not overlook this Complaint's deficiencies and ignore the requirements of O.A.C. Rule 4117-7-03(A). For these reasons, I would find O.R.C. § 4117.11(A)(2) was not violated in this case purely due to the deficiencies of this Complaint.

³Hearing Officer's Procedural Order, p. 12.