

97-001

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

v.

Toledo Federation of Teachers,

Respondent.

CASE NUMBER: 95-ULP-04-0173

CORRECTED OPINION

POHLER, Chairman:

This unfair labor practice case comes before the State Employment Relations Board ("SERB") on exceptions to the Hearing Officer's Proposed Order issued on May 31, 1996. For the reasons below, we find that the Toledo Federation of Teachers ("Federation") did not violate Ohio Revised Code ("O.R.C.") §§ 4117.11(B)(1) or (B)(2)¹ through its conduct and actions in response to the agreement between the Toledo Board of Education ("Employer" or "Board of Education") and the Toledo Association of Administrative Personnel ("TAAP") concerning the Fourth Grade Proficiency Exams.

I. BACKGROUND²

¹O.R.C. §§ 4117.11(B)(1) and (B)(2) provide:

(B) It is an unfair labor practice for an employee organization, its agents, or representatives, or public employees to:

(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code. This division does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or an employer in the selection of his representative for the purpose of collective bargaining [sic] or the adjustment of grievances.* * *

(2) Cause or attempt to cause an employer to violate division (A) of this section[.]

²Finding of Fact ("F.F.") Nos. 2, 4, 7 - 14, 16 - 19, and 22.

The Federation is the exclusive bargaining representative for a unit of the Toledo Public Schools' employees that includes teachers. TAAP also represents a bargaining unit that includes secretaries, foremen, assistant directors, directors, supervisors, assistant principals, principals, counselors, deans, and various other positions at the elementary, junior high, and high school levels, excluding teachers. The 1992-1995 Collective Bargaining Agreement between TAAP and the Board of Education provided for a Testing Implementation Committee designed to examine and resolve matters about the implementation of student proficiency exams. The 1992-1995 Collective Bargaining Agreement also provided for the payment of a \$1,000 stipend and a \$500 stipend to high school Testing Coordinators and junior high school Testing Coordinators, respectively, for the Ninth Grade Proficiency Exam.

In anticipation of administering the Fourth Grade Proficiency Exam in 1995, the TAAP President sent an October 27, 1994 letter to the Employer's Testing Coordinator expressing the concerns of TAAP bargaining unit members and indicating the intention to bargain the issue of stipends with other Board of Education representatives. On December 9, 1994, TAAP officials met with the Employer's representatives to negotiate the terms of the Elementary Principals' responsibilities for setting up and administering the Fourth Grade Proficiency Exam. An agreement on administering the Fourth Grade Proficiency Exam was executed by TAAP on January 12, 1995, and by a Board of Education representative on January 19, 1995. The Fourth Grade Proficiency Exam agreement provided for using retired administrators where necessary and paying a yearly stipend of \$515 to each Elementary Principal to serve as a Testing Coordinator.

On January 25, 1995, the Federation's President became aware of the Fourth Grade Proficiency Exam agreement between TAAP and the Board of Education. On January 26, 1995, the Federation's President contacted the Employer's Superintendent and Assistant Superintendent regarding that agreement and suggested several alternatives; the primary alternative was eliminating the \$515 stipend payments to the Elementary Principals. By a letter dated January 26, 1995, the Federation requested a meeting to discuss the impact on the fourth-grade teachers of the Employer's implementation of the Fourth Grade Proficiency Exam. The Federation's President and Administrative Assistant met with the Employer's representative on February 9, 1995; economic and non-economic matters were discussed. Among the non-economic matters discussed, the Federation proposed using retired teachers to assist with student make-up tests for the Fourth Grade Proficiency Exams despite the Federation knowing that the Employer had agreed with TAAP to use retired administrators for this purpose, as had been the past practice for the Ninth Grade Proficiency Exam.

After the February 9, 1995 meeting with the Federation's President, the Employer's Deputy Superintendent met with the TAAP President to inquire as to whether TAAP would consider changing some of the non-economic portions of

the Fourth Grade Proficiency Exam agreement in order to accommodate the concerns of the Federation. At the Board of Education's regular public meeting on February 28, 1995, the Federation's President threatened retaliation if the Board of Education ratified the agreement with TAAP. In a letter to all Board of Education members dated March 22, 1995, the Federation's President threatened that if the Board of Education voted to pay the principals he would deliver a cancellation notice for the intern program. The Federation took the position that the payment of such stipends was a violation of previous collective bargaining agreement extensions that included no pay increases. The Federation's President asked the Board of Education at its regular public meeting on March 28, 1995 to vote against the payments proposed in the Fourth Grade Proficiency Exam agreement.

At the regular public meeting on April 25, 1995, the Board of Education approved the Fourth Grade Proficiency Exam agreement with TAAP. The \$515 stipends were paid to the Elementary Principals. As a result of the Board of Education's approval of the agreement, the Federation ceased its voluntary participation in a number of collaborative efforts between it and the Board of Education, including the intern program.

II. DISCUSSION

A. *The Federation Did Not Violate O.R.C. § 4117.11(B)(1)*

The question before us is whether the Federation was restraining or coercing members of the bargaining unit represented by TAAP in the exercise of rights guaranteed in O.R.C. § 4117.03(A)(4).³ The record does not show a reasonable connection between the Federation's actions and the restraint or coercion of these employees. An employee organization's demand for an employer to make a change in another union's collective bargaining agreement before ratification is not necessarily an act of restraining employees in their right to bargain collectively with the public employer. This was not a demand to make a change without bargaining. A demand for a change that can be achieved through negotiations does not restrain or coerce employees in their statutory right to bargain collectively with the employer.

³O.R.C. § 4117.03(A)(4) provides:

(A) Public employees have the right to:

(4) Bargain collectively with their public employers to determine wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, and enter into collective bargaining agreements[.]

In the present case, the record reveals that the Federation approached the Superintendent and Assistant Superintendent and urged them to eliminate the payment of the \$515 stipends to the Elementary Principals. As the result of the Federation's demand, the Deputy Superintendent subsequently met with the TAAP President and asked whether TAAP would consider changing some of the non-economic portions of the Fourth Grade Proficiency Exam agreement in order to accommodate the concerns of the Federation.⁴ While this might have annoyed TAAP, it did not restrain or coerce the bargaining unit members in their right to bargain collectively.

As far as the Federation's actions in attempting to get the Board of Education to vote against ratifying the agreement, the connection between such actions and the public employees' statutory right to bargain collectively is so indirect that restraint or coercion cannot be reasonably implied. The record does not reflect any coercion or restraint against public employees during the debate before the ratification vote had been taken. The record does show that the Federation did pressure the Board of Education not to ratify the agreement. But the record does not show that any action, verbal or physical, was directed at the TAAP members. Thus, neither the facts nor the law support a finding that O.R.C. § 4117.11(B)(1) was violated.

B. The Federation Did Not Violate O.R.C. § 4117.11(B)(2)

O.R.C. § 4117.11(B)(2) is violated when an employee organization *causes or attempts to cause* an employer to *engage in an unfair labor practice*. The question here is whether the Federation caused or attempted to cause the Board of Education to violate O.R.C. § 4117.11(A)(5).⁵

The first requirement to show O.R.C. § 4117.11(B)(2) has been violated is the "cause or attempt to cause" requirement. The Federation's efforts to influence the Employer, including threats and follow-ups on threats after the ratification vote, plainly meet this requirement.

The second requirement to show O.R.C. § 4117.11(B)(2) has been violated is that the attempt, if successful,

⁴F.F. Nos. 11 and 13-14.

⁵O.R.C. § 4117.11(A)(5) provides:

(A) It is an unfair labor practice for a public employer, its agents, or representatives to:
* * *

(5) Refuse to bargain collectively with the representative of his employees recognized as the exclusive representative or certified pursuant to Chapter 4117. of the Revised Code[.]

will cause the employer to engage in an unfair labor practice. The facts demonstrating this point do not exist in the present case. The National Labor Relations Board has held that an employer's failure to execute a supplemental wage agreement, which was agreed upon by all parties, constituted a refusal to bargain in good faith.⁶ But, in the instant case, the Board of Education had not yet reached the point of executing the agreement because it had not yet approved the agreement.

The statutory framework leaves it to the legislative body to approve or reject a tentative agreement.⁷ Ratification of a collective bargaining agreement is not a ministerial act; it calls for weighing pros and cons and may legitimately come out either way. Under the facts of this case, even if the Board of Education had voted not to ratify the Fourth Grade Proficiency Exam agreement, it still would not have been *engaging in an unfair labor practice*. Causing or attempting to cause an employer to engage in something that is not an unfair labor practice does not violate O.R.C. § 4117.11(B)(2).

III. CONCLUSION

For the reasons above, we find that the Toledo Federation of Teachers did not violate O.R.C. §§ 4117.11(B)(1) or (2) by its actions and conduct either preceding or following the Toledo Board of Education's ratification of the Fourth Grade Proficiency Exam agreement with the Toledo Association of Administrative Personnel.

McGee, Vice Chairman, and Mason, Board Member, concur.

⁶*Hydrologics Inc. and International Brotherhood of Electrical Workers, Local 1823*, 131 L.R.R.M. 1350 (1989).

⁷O.R.C. § 4117.10(B) and (C).