Serb Opinion 97-003

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

v.

Bryan City Board of Education,

Respondent.

CASE NUMBER: 96-ULP-01-0005

OPINION

MASON, Board Member:

This unfair labor practice case comes before the State Employment Relations Board ("SERB") on exceptions to the Hearing Officer's Proposed Order issued on September 3, 1996. For the reasons below, we find that the Bryan City Board of Education violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(5) by insisting on the tape recording of grievance meetings despite the objections of the Bryan Education Association, OEA/NEA.

I. BACKGROUND[1]

The Bryan City Board of Education ("School Board") and the Bryan Education Association, OEA/NEA ("BEA") were parties to a collective bargaining agreement effective from July 1, 1993 through June 30, 1996. The agreement contained a grievance procedure that culminated in final and binding arbitration. The agreement did not include a provision that dealt with the tape recording of grievance meetings.

In accordance with the parties' contractual grievance procedure, a Step II grievance meeting took place on October 19, 1995. The Superintendent represented the School Board; the BEA was represented by its president and a member of its grievance committee. At the meeting's outset, the Superintendent indicated that he intended to tape

[1]Finding of Fact Nos. 3-5, 7, and 9-12.

record the grievance meeting. The BEA's representatives objected to the tape recording. The meeting did not proceed further. In a letter to the BEA's Labor Relations Consultant dated November 3, 1995, the Superintendent indicated his intent to continue the tape recording of grievance meetings.

The BEA filed a grievance over the Superintendent's insistence to tape record the October 19, 1995 grievance meeting. Once this second grievance reached Step II, the Superintendent further insisted on tape recording this grievance meeting as well. The meeting did not go forward when the BEA objected to the tape recording.

Before the October 19, 1995 grievance meeting, Step II grievance meetings had not been tape recorded. Although the Superintendent had presided over two previous Step II grievance meetings, he had not insisted on tape recording either of those meetings.

II. DISCUSSION

The issue in this case is whether the School Board's insistence on tape recording grievance meetings despite the BEA's objections violated O.R.C. §§ 4117.11(A)(1) and (A)(5), which provide:

> (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 Chapter 4117. of the Revised Code * * *;
> * * *
> (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[.]

In *In re City of Cincinnati*, SERB 93-010 (6-10-93) ("*Cincinnati*"), SERB held that a public employer could insist on the tape recording of pre-disciplinary hearings despite an employee organization's objections without committing an unfair labor practice and that tape recording under those circumstances is a permissive subject of bargaining that does not affect wages, hours, and terms and conditions of employment. In *Cincinnati*, SERB also made a distinction between pre-disciplinary hearings and grievance meetings as it concerns the tape recording of these two procedures. Pre-disciplinary hearings are similar to fact-finding procedures where information is gathered to assist management in determining whether discipline should be imposed. Tape recording pre-disciplinary hearings, therefore, is not detrimental to the fact-finding process.

On the other hand, grievance meetings are both an extension and an inherent part of the collective bargaining process. "To bargain collectively" under O.R.C. § 4117.01(G) includes "the mutual obligation of the public employer, by its representatives, and the representatives of its employees * * * to resolve questions arising under the agreement." The parties are not required to renegotiate a collective bargaining agreement during the adjustment of a grievance. But, in many instances, especially where the interpretation of contractual language is at the center of the dispute, the give-and-take process usually associated with contract negotiations may be the appropriate means of resolving the dispute. The tape recording of grievance meetings, or contractual negotiations, may have a chilling effect on the free exchange of proposals and ideas and the give-and-take process that is encouraged during these meetings. Consequently, tape recording may be detrimental to the grievance process.[2]

The School Board argued that the grievance hearings in the present case fall in the same category as pre-disciplinary hearings because the grievance hearings were conducted like formal fact-finding hearings and there was neither room for give-and-take nor an attempt to reach a settlement. We disagree. The goal of any grievance procedure is a good faith attempt by the parties to settle disputes and to adjust the grievances presented.

The importance of the grievance procedure in the collective bargaining process and the ability to adjust grievances in the grievance procedure is demonstrated by the requirement in O.R.C. § 4117.09(B)(1) that all collective bargaining agreements shall contain a provision for a grievance procedure and by the O.R.C. § 4117.03(A)(5) right of public employees to "[p]resent grievances and have them adjusted." A grievance procedure where no adjustment is possible, where no give-and-take is available, and where no flexibility to reach a settlement is present, is not a grievance procedure envisioned by O.R.C. § 4117.09(B)(1). Hence, an argument by a party to a collective bargaining agreement that a grievance procedure is *not* a process by which grievances can be resolved and adjusted must be rejected. Thus, we hold that a grievance procedure, being both an extension and an inherent part of the collective bargaining process, is a mandatory subject of bargaining and, as such, cannot be preconditioned on tape recording, which is a permissive subject of bargaining.[3]

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[2]*See also Pennsylvania Telephone Guild*, 255 N.L.R.B. No. 55, 120 L.R.R.M. 1257 (1985); *Chicago Cartage Co. v. International Bhd. of Teamsters, local 610*, 659 F.2d 825, 108 L.R.R.M. 2567 (7th Cir. 1981).

[3]*City of Cincinnati v. Ohio Council 8, AFSCME*, 61 Ohio St.3d 658, 1991 SERB 4-87 (1991); *NLRB v. Borg-Warner*, 356 U.S. 342, 42 L.R.R.M. 2034 (1958). *See also* the following cases, none of which allowed a party to insist on using a tape-recorder or a professional stenographer in a grievance meeting or in any other negotiation environment: *Pennsylvania Telephone Guild, supra*; *Latrobe Steel Co. v. NLRB*, 630 F.2d 171, 105 L.R.R.M. 2393 (3rd Cir., 1980), *cert. denied* 454 U.S. 821, 108 L.R.R.M. 2558 (1981); *NLRB v. Bartlett-Collins Co.*, 639 F.2d 652, 106 L.R.R.M. 2272 (10th Cir. 1981) *cert. denied* 452 U.S. 961, 107 L.R.R.M. 2768 (1981); *Bakery Workers*, 272 NLRB No. 210, 118

Adhering to the principles discussed above, we find that insisting on the tape recording of grievance proceedings by one party despite the objection of the other party is an unfair labor practice under O.R.C. §§ 4117.11(A)(1) and (A)(5). Tape recording in this context means any objective means of making a verbatim record. It can be the use of a tape recorder, court reporter, stenographer, and the like. It does not include general notes that each party may take for its own use.

III. CONCLUSION

For the above reasons, we find that the Bryan City Board of Education violated O.R.C. §§ 4117.11(A)(1) and (A)(5) when it insisted on the tape recording of grievance meetings despite the objections of the exclusive bargaining representative.

Pohler, Chairman, and McGee, Vice Chairman, concur.

L.R.R.M. 1007 (1984); *County of Cook*, 7 PERI ¶ 4012 (IL App., 1991); *City of Reading*, 12 PPER ¶ 12182 (PA LRB, 1981).