

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Ohio Patrolmen's Benevolent Association, Mentor Patrolmen's Association,  
and Steve Graham,

Respondents.

**Case No. 98-ULP-06-0327**

**ORDER  
(OPINION ATTACHED)**

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich: June 17, 1999.

On June 15, 1998, the City of Mentor ("City") filed an unfair labor practice charge against the Ohio Patrolmen's Benevolent Association, the Mentor Patrolmen's Association, and Steve Graham, President of the MPA (collectively, the "Respondents"). On October 2, 1998, the State Employment Relations Board ("Board" or "Complainant") found probable cause to believe that the Respondents had violated Ohio Revised Code §§ 4117.11(B)(1), (B)(2), and (B)(3) by dealing directly with the members of the legislative body in an attempt to bypass the City's selected representative for the processing of grievances, to circumvent the contractual grievance procedure, and to cause or attempt to cause the City to violate O.R.C. § 4117.11(A). A Complaint and Notice of Hearing were issued on October 21, 1998.

A hearing was held on January 4, 1999. On February 11, 1999, the Administrative Law Judge's Proposed Order was issued, recommending that the Board find a violation of O.R.C. § 4117.11(B)(3), but not O.R.C. §§ 4117.11(B)(1) and (B)(2). On March 4, 1999, the City filed its exceptions to the proposed order.

After reviewing the record and all filings, the Board amends the Findings of Fact by adding Finding of Fact No. 31, which reads: "The City Council of the City of Mentor is a 'legislative body' as described in O.R.C. § 4117.10(B)." The Board also adopts the Findings of Fact, as amended, Analysis and Discussion, and the Conclusions of Law in the Proposed Order.

The Ohio Patrolmen's Benevolent Association, the Mentor Patrolmen's Association, and Steve Graham are ordered to:

A. Cease and desist from:

Refusing to bargain collectively by bypassing the City of Mentor's selected representatives for the adjustment of grievances and dealing directly with the legislative body, and from otherwise violating O.R.C. § 4117.11(B)(3).

B. Take the following affirmative action:

1. Post for sixty days in all of the usual and normal posting locations where the bargaining-unit employees work, the **NOTICE TO EMPLOYEES** furnished by the Board stating that the Ohio Patrolmen's Benevolent Association, the Mentor Patrolman's Association, and Steve Graham shall cease and desist from the actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
2. Notify the **State Employment Relations Board** in writing within twenty calendar days from the date the **ORDER** becomes final of the steps that have been taken to comply therewith.

It is so directed.

POHLER, Chairman; GILLMOR, Vice Chairman; and VERICH, 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 days after the mailing of the State Employment Relations Board's order.

Order

Case No. 98-ULP-06-0327

June 17, 1999

Page 3 of 3

I certify that this document was filed and a copy served upon each party by certified mail, return receipt requested, on this 24<sup>th</sup> day of June, 1999.

  
LINDA S. HARDESTY, CERTIFIED LEGAL ASSISTANT

direct\06-17-99.04



# NOTICE TO EMPLOYEES

## FROM THE STATE EMPLOYMENT RELATIONS BOARD

POSTED PURSUANT TO AN ORDER OF THE  
STATE EMPLOYMENT RELATIONS BOARD  
AN AGENCY OF THE STATE OF OHIO

After a hearing in which all parties had an opportunity to present evidence, the State Employment Relations Board has determined that we have violated the law and has ordered us to post this Notice. We intend to carry out the order of the Board and abide by the following:

**A. CEASE AND DESIST FROM:**

Refusing to bargain collectively by bypassing the City of Mentor's selected representatives for the adjustment of grievances and dealing directly with the legislative body, and from otherwise violating Ohio Revised Code Section 4117.11(B)(3).

**B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:**

- (1) Post for sixty days in all of the usual and normal posting locations where the bargaining-unit employees work, the **NOTICE TO EMPLOYEES** furnished by the Board stating that the Ohio Patrolmen's Benevolent Association, Mentor Patrolman's Association, and Steve Graham shall cease and desist from the actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B).
- (2) Notify the **State Employment Relations Board** in writing within twenty calendar days from the date the **ORDER** becomes final of the steps that have been taken to comply therewith.

**OHIO PATROLMEN'S BENEVOLENT ASSOCIATION, MENTOR PATROLMAN'S ASSOCIATION,  
AND STEVE GRAHAM  
CASE NO. 98-ULP-06-0327**

BY \_\_\_\_\_

DATE \_\_\_\_\_

TITLE \_\_\_\_\_

---

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED**

**STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT RELATIONS BOARD,	:	
	:	CASE NO. 98-ULP-06-0327
Complainant,	:	
	:	
v.	:	
	:	
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION,	:	BETH C. SHILLINGTON
	:	ADMINISTRATIVE LAW JUDGE
MENTOR PATROLMEN'S ASSOCIATION,	:	
	:	
and	:	
	:	
STEVE GRAHAM,	:	<u>PROPOSED ORDER</u>
	:	
Respondents.	:	

**I. INTRODUCTION**

On June 15, 1998, the City of Mentor ("City" or "Employer") filed an unfair labor practice charge against the Ohio Patrolmen's Benevolent Association ("OPBA"), the Mentor Patrolmen's Association ("MPA")(collectively, the OPBA and the MPA are referred to as "Union"), and Steve Graham, President of the MPA (collectively, OPBA, MPA, and Mr. Graham are referred to as "Respondents"). On October 2, 1998, the State Employment Relations Board ("SERB," "Board," or "Complainant") found probable cause to believe that Respondents had violated § 4117.11(B)(1), (2), and (3)<sup>1</sup> by dealing directly with the members of the legislative body in an attempt to bypass the City's selected representative for the processing of grievances, to circumvent the contractual grievance procedure, and to cause or attempt to cause the City to violate § 4117.11(A). Thereafter, a Complaint and Notice of Hearing issued on October 21, 1998.

The City moved to intervene in this case, and its motion was granted. A hearing was held on January 4, 1999. Thereafter, all parties filed post-hearing briefs.

---

<sup>1</sup> All references to statutes are to the Ohio Revised Code, Chapter 4117, and all references to administrative code rules are to the Ohio Administrative Code, Chapter 4117, unless otherwise indicated.

## II. ISSUE

Whether Respondents violated §§ 4117.11(B)(1), (2), and (3) by dealing directly with members of the legislative body.

## III. FINDINGS OF FACT<sup>2</sup>

1. The City is located in Lake County, Ohio, and is a "public employer" within the meaning of § 4117.01(B). (S.; T. 140.)
2. The OPBA is an "employee organization" within the meaning of § 4117.01(D) and is the exclusive representative for a bargaining unit of full-time police officers ("Police Officers"). (S.)
3. The MPA is the former employee organization representing Police Officers. At all relevant times, the MPA, through its elected officers, acted as an agent or representative of the OPBA. (S.)<sup>3</sup>
4. Steve Graham is the President of the MPA. At all relevant times, Mr. Graham acted as an agent or representative of the OPBA. Since 1996, Mr. Graham has served on the OPBA's Board of Directors. Mr. Graham lives in Jefferson, Ohio, which is located in Ashtabula County. Mr. Graham has been employed by the City as a Police Officer since 1989. (S.; T. 196-197, 231-232, 239.)
5. The City and the OPBA are parties to a collective bargaining agreement effective April 8, 1996, to April 11, 1999 ("CBA"). The CBA contains a grievance procedure that culminates in final and binding arbitration. (S.; Jt. Exh. 1.)
6. Neither the Mentor City Council ("Council") nor the Council members are or have been involved in the grievance process. The City Charter provides that the Council has no involvement in grievance or administrative processes. There are four ward and three at-

---

<sup>2</sup>All references to the transcript of the hearing are indicated parenthetically by "T.," followed by the page number(s). All references to the Joint Exhibits are indicated parenthetically by "Jt. Exh.," followed by the exhibit number. All references to the Stipulations of Fact are indicated parenthetically by "S." All references to the Respondents' exhibits are indicated parenthetically by "U. Exh.," followed by the exhibit number. References to the transcript and/or exhibits in the Findings of Fact are intended for convenience only and are not intended to suggest that such references are the sole support in the record for that related finding of fact.

<sup>3</sup>The parties entered into this stipulation for purposes of this case only. This stipulation is not to be construed as setting any precedent with regard to future issues with the City and the status of the MPA.

large Council members. The Council's participation in the collective bargaining process is limited to ratifying the tentative agreements presented to it as the result of the collective bargaining negotiations process. (T. 46-47, 53-54, 111, 143.)

7. Pursuant to the City Charter, the City Manager is the Council's exclusive contact for administrative matters. Julian Suso, the City Manager, serves as the City's Chief Executive Officer and Director of Public Safety. The City Manager is the administrative head of all City departments. The City Manager hears grievances under the CBA at Step 3. (T. 36-38, 47; Jt. Exh. 1 at 6.)
8. Chief of Police Richard Amiott reports to Mr. Suso. Mr. Amiott is responsible for the management of the police department. His duties include evaluating Police Officers. He is on the City's negotiating team, and reviews grievances at the Step 2 level. (T. 47, 159-161.)
9. Shift goals are a general representation of the performance level expected for members of a given shift in the police department. Shift goals have quantifiable components, which are also known as "objective standards." The City has utilized shift goals and performance standards for Police Officers for many years. Shift goals and performance standards predate Mr. Suso's tenure as City Manager and Mr. Graham's tenure as a Police Officer. (T. 41-42, 239-240.)
10. The City and the Union agreed to move from 8-hour shifts to 12-hour shifts. On or about April 27, 1998, when the change in shift length occurred, the City adjusted the shift goals accordingly. (T. 42-43; Jt. Exh. 6, at C-D.)
11. On May 1, 1998, the OPBA filed a class action grievance alleging a violation of Articles V and XXXIII of the CBA. The grievance stated in relevant part as follows:

The City used an unreasonable exercise of "Management Rights" when Captain Reese ordered that new "performance standards"/ticket and arrest quotas be implemented.

....

Requested Adjustment:  
Rescinding of Quotas/"Performance Standards."

(S.; Jt. Exh. 2.)

12. On May 1, 1998, the MPA transmitted a letter to each Council member regarding the grievance and enclosing a copy thereof. The letter stated in part as follows:

The Mentor Patrolman's Association (MPA) would like to take this opportunity to inform you of a Class Action Grievance that has been filed against the City of Mentor.

Enclosed is a copy of the Class Action Grievance that has been filed at the step one level.

If you should have any question [sic] please do not hesitate to contact one of the Union Representatives at Police Department (974-5789).

(S.; Jt. Exh. 3.)

13. Also on May 1, 1998, Mr. Graham contacted the Cleveland-area newspaper, The Plain Dealer, to inform the reporter of the filing of the grievance. During Mr. Graham's discussion with the reporter, he deemed the Union's performance standards dispute a "quota" issue. Mr. Graham also indicated to the reporter that if the issue was not resolved to the Union's satisfaction, he would lobby state legislators for laws banning quotas. (T. 227, 237- 239; Jt. Exh. 4.)
14. Police Chief Amiott was contacted by the Plain Dealer reporter and asked to comment on the grievance. Mr. Amiott stated that management has the right to evaluate and assess the production standards that are reasonable to meet the police department's needs. Declining to comment further, Mr. Amiott informed the reporter that the grievance and arbitration process is not public. The Plain Dealer published a news article on the grievance on May 2, 1998. (T. 168-169; Jt. Exh. 4.)
15. On May 5, 1998, the Police Chief's secretary attempted to schedule a Step 1 grievance between Captain Reese, the City's Step 1 designee, and the Union, for May 6, 1998, at 1:30 p.m. Mr. Graham asked that the meeting be rescheduled for 2:30 p.m. so that two Union representatives could attend. However, Captain Reese was unavailable at that time. No Step 1 meeting took place. On May 8, 1998, Captain Reese issued a written decision finding the grievance without merit. (T. 201-202; Jt. Exh. 6, at 4.)
16. The Union appealed the grievance to Police Chief Amiott, the Step 2 designee. On May 12, 1998, Mr. Amiott denied the grievance in writing. On May 13, 1998, the Union appealed the grievance to the City Manager at Step 3. (Jt. Exh. 6, at 5, 9, 13-14.)
17. On May 13, 1998, the MPA sent another letter to each Council member regarding the grievance. The letter stated in part as follows:

The Mentor Patrolman's Association (MPA) would like to take this opportunity to inform you that the Class Action Grievance

that has been filed against the City of Mentor, concerning the ticket and arrest "quotas," has not been resolved at the step one or step two levels. The Union will continue to proceed with this grievance to the next level (step three).

Enclosed is a copy of the Class Action Grievance that has been filed at the step three level, and the memorandum to the City Manager.

Again, if you should have any question [sic] please do not hesitate to contact one of the Union Representatives at Police Department (974-5789). The Union hopes to resolve this issue at the City Manager's level.

(S.; Jt. Exh. 5.)

18. On May 26, 1998, a Step 3 grievance meeting was held. In attendance were the City Manager, Assistant City Manager, and a majority of the local Union representatives. The meeting lasted one and one-half to two hours. (T. 78, 205-206.)
19. On June 5, 1998, the grievance was denied at Step 3 by Mr. Suso. Thereafter, the Union notified the City of its intention to arbitrate the grievance. (Jt. Exh. 6; U. Exh. A.)
20. The OPBA knew or should have known of the lawful contractual grievance procedures in the CBA. Mr. Graham is aware of the contents of the grievance procedure. (S.; T. 217.)
21. After the mailing of the May 13, 1998, letter, Mr. Graham telephoned each of the Council members to ask if they had received the two letters and if they had any questions. Respondents had never before contacted Council members about a pending grievance. (T. 55, 117, 211, 237.)
22. A primary election was held in Mentor on May 5, 1998. The City had two levy renewals on the ballot. One, a real estate tax levy for supporting city fire services, passed by a narrow margin. The other, a general fund levy for road improvements and maintenance, failed. (T. 58, 97.)
23. In addition to receiving the two letters sent by Respondents, Council President Richard Hennig received a telephone call from and spoke with Mr. Graham about the grievance. Mr. Graham wanted to discuss his views on the grievance. Mr. Hennig, angry about the failure of the general fund levy, asked Mr. Graham why the grievance was filed when it was and declined to discuss the matter further with Mr. Graham. Mr. Hennig felt that the letters and telephone calls were pressuring him to do something about the

- Union's grievance. Prior to these events, Mr. Hennig, a Council member since 1989, had never been involved in any grievance procedures during his tenure. After his conversation with Mr. Graham, Mr. Hennig contacted Mr. Suso and Mr. Amiott and requested more information about the situation underlying the grievance. Mr. Hennig also was contacted by members of the public about the "quota" issue. Later that summer, Mr. Hennig contacted Mr. Suso and told him that the issue needed to be resolved. (T. 109, 111, 115-118, 122, 128-129, 130-131, 138; Jt. Exh. 7 at 1, 5.)
24. James Struna, a 19-year Council member, also received the letters and a telephone call from Mr. Graham. Mr. Graham wanted to discuss the newspaper article and grievance with Mr. Struna. Mr. Struna informed Mr. Graham that his, Mr. Struna's, understanding of the matter was that Mr. Graham was a civil service employee, that it was a grievance, and that Council did not have a role in the grievance process. That was the end of the conversation. (T. 142-145; Jt. Exh. 7 at 2, 9.)
25. B.J. Kresnye, a one-year Council member, became aware of the grievance through the newspaper articles and Mr. Graham's letters. Early in May 1998, Mr. Kresnye was dining at a private restaurant in Mentor when the restaurant owner introduced him to Mr. Graham, who was at the restaurant having dinner. The restaurant owner had put up a sign reading "Support Our Officers, No Quotas," and Mr. Kresnye was discussing the issue with the owner. Mr. Kresnye told Mr. Graham that he would be sending Police Chief Amiott a letter regarding the grievance, and that Mr. Kresnye would copy Mr. Graham on the letter. On May 11, 1998, Mr. Kresnye sent Mr. Amiott a letter informing the chief that although performance evaluations are necessary to monitor police officers' performance, Mr. Kresnye was not in favor of any form of quota system because "a quota system is counterproductive to the role of our police officers as it takes away the decision-making ability of the officer." In the letter, Mr. Kresnye invited Mr. Amiott to call him if Mr. Amiott wished to discuss the situation with him. In August 1998, Mr. Kresnye introduced a city ordinance regarding quotas at a Council meeting. The proposed ordinance died for lack of a second. (T. 102, 181-185, 194; Jt. Exh. 7 at 2, 8; U. Exh. B.)
26. Mr. Suso was advised by one or more fellow Council members that they had received the letters from the MPA. Council member Evelyn Kiffmeyer gave the letters she received to Mr. Suso. Ms. Kiffmeyer informed Mr. Suso that she had received a telephone message from Mr. Graham and that the call had been placed from Dillard's Department Store. She further informed Mr. Suso that she felt that the letters and telephone call were imposing and inappropriate. Several Council members contacted Mr. Suso and asked him about the process and what was happening. (T. 50-53, 54, 86-87.)
27. The Union's letters and telephone calls affected the Police Chief's ability to set policy and procedures, and to develop goals and objectives for the police department. This was the first time Chief Amiott ever had been contacted by members of the legislative

body questioning the goings-on of the police department, what actions were being taken, and what changes had been made. (T. 164-165.)

28. Several months after talking to Mr. Graham, Mr. Kresnye met with Ohio State Representative Ron Young. Because both agreed that quotas were a matter for local control, Mr. Young never introduced legislation before the Ohio General Assembly with respect to quotas. (T. 182-183.)
29. In late May or early June 1998, Mr. Graham contacted Mr. Young's office to attempt to arrange a meeting with him. Later in the summer of 1998, Mr. Graham met with Mr. Young and Ohio State Representative Jamie Callendar. Mr. Young's and Mr. Callendar's districts each include parts of the City of Mentor. Mr. Graham chose not to contact State Representative and House Minority Leader Ross Boggs, whose district included Mr. Graham's residence in Ashtabula County. (T. 221-222.)
30. In August 1998, the City rescinded the performance standards that were the subject of the grievance. Thereafter, the Union dropped the grievance. (T. 207-208; U. Exh. A.)

#### **IV. ANALYSIS AND DISCUSSION**

Section 4117.11(B) provides in relevant part as follows:

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

- (1) Restrain or coerce \*\*\* 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;
- (3) Refuse to bargain collectively with a public employer[.]

"To bargain collectively" is defined in § 4117.01(G) and "means to perform the mutual obligation of the public employer, by its representatives, and the representatives of its employees \*\*\* to resolve questions arising under the agreement...."

The Board has described the obligation to bargain collectively as follows: "The collective bargaining process provides parties with the right to designate their own representatives in the negotiation process and, thus, to be able to control the strategies and

tactics they employ in the negotiation process. Bypassing the exclusive representative, whether the authorized representative of an employee organization or the designated representative of a public employer, undermines the statutory scheme, interferes with the planned process of negotiations, creates chaos in an otherwise orderly, if difficult, process and, hence, constitutes an act in contravention of the obligation to bargain in good faith." In re SERB v. OAPSE, Local 530, SERB 96-011, at 3-93 (6-28-96)("Local 530").

In In re Bryan City Bd of Ed, SERB 97-003 (3-14-97)("Bryan"), the Board underscored the importance of the grievance procedure in the collective bargaining process, and explained that the grievance procedure is "both an extension and an inherent part of the collective bargaining process." The Board stated that "[t]he goal of any grievance procedure is a good faith attempt by the parties to settle disputes and to adjust the grievances presented." Bryan, at 3-12 to 3-13. Accordingly, the duty to bargain collectively and in good faith extends to the grievance process. The parties have the right to designate their own representatives in the grievance process, and bypassing the authorized representatives for the adjustment of grievances is an act in contravention of the obligation to bargain in good faith.

Good faith bargaining is determined on a case by case basis by the totality of the circumstances. The content and timing of the parties' actions are relevant factors in determining whether § 4117.11(B)(3) has been violated. In re OAPSE/AFSCME Local 4, SERB 97-014, at 3-91 (10-10-97)("Local 4"). The content and timing of Respondents' actions demonstrate a violation of § 4117.11(B)(3).

On May 1, 1998, and May 13, 1998, the dates of their Step 1 and Step 3 filings, respectively, Respondents swiftly and purposefully informed each Council member not only that a grievance had been filed, but also exactly where it was in the grievance process. Through the enclosure of a copy of the grievance itself, Respondents clearly communicated to each Council member the Union's position on the grievance, i.e., that it wanted the City to rescind the "quotas"/performance standards.

Respondents undertook to keep each Council member informed as the grievance moved through the process, noting in their second letter to the Council members that the grievance had not been resolved at Step 1 or Step 2 and that they "hoped to resolve" the grievance with the City Manager—who just happened to be the sole contact person for Council members on City administrative matters. It is reasonable to conclude that this communication was designed to obtain the influence of the Council members in the grievance process. The record reveals that Respondents' actions in bypassing the City's selected representatives for the adjustment of grievances resulted in the chaos and disruption that Chapter 4117, and § 4117.11(B)(3) in particular, were designed to avoid. Some Council members were, at a minimum, annoyed and confused. The work of the Council members, City Manager, and Police Chief was disrupted as Council members inquired of Mr. Suso and Mr. Amriott what was going on. The Council President felt pressured to do something about the Union's problem.

Respondents' attempts to interject the Council in the grievance process effectively amount to asking Council for the relief they desired. Respondents' actions are no less bad-faith bargaining than those of the union in In re Dist 1199/HCSSU/SEIU, AFL-CIO, SERB 96-004 (4-8-96) ("Dist 1199"). In Dist 1199, SERB held that the union violated § 4117.11(B)(3) when Linda Broadstock, a union official, suggested higher wages to county commissioners at a weekly public meeting. Ms. Broadstock, a county nursing home employee and bargaining team member, told the county commissioners that the home was understaffed and that a 50-cent raise would attract more employees. The Board held that Ms. Broadstock's communications constituted an offer to bargain, and that such conduct constituted bad faith bargaining by unlawfully attempting to bypass the appointed negotiator. Similarly, the Union's communications in this case constitute a direct appeal to the Employer to adjust a grievance, thereby bypassing the Employer's selected representatives for the adjustment of grievances.

Respondents' argument that their conduct was permissive lobbying of elected officials simply does not square with the facts. Respondents cite, and quote at length, the Board's decision in Local 4 in support of their argument. A quick examination of Local 4 reveals that it is not on point. In Local 4, the parties were not in the midst of either negotiations or the grievance process, but rather had bargained to impasse. The school board was, in fact, holding a public meeting and on its agenda had placed a vote on whether to implement its last, best contract offer. The local union representatives attended the school board meeting and asked the school board to vote no on that agenda item. SERB found that the local union's conduct did not constitute bypassing the bargaining representative, holding that the union officials' remarks were permissible lobbying of elected officials acting as a legislative body on a topic which was officially put on the agenda by the legislative body for public comment. SERB noted that at the public meeting the school board was acting as a legislative body rather than as an employer. The timing of the union officials was significant in the finding of no § 4117.11(B)(3) violation.

By contrast, in this case the appeal was to the individual Council members, was not made at a public meeting, and during the first half of May 1998, when the contacts were made, legislative action on the part of either Council or the Union was wholly speculative. Indeed, Respondents concede in their post-hearing brief that the Union was contemplating pursuing legislation banning quotas *only if the grievance was not resolved to the Union's satisfaction*. The letters mention only the grievance, not legislation. At the time the contacts were made, the Union was concerned with obtaining a favorable outcome to a labor dispute, not with lobbying public officials on a matter of public concern.<sup>4</sup> While Council member Mr. Kresnye approached Mr. Graham at a restaurant, Mr. Graham himself sought out only state legislators, and did not begin contacting them until late in May 1998 at the earliest. Mr. Kresnye attempted to introduce local legislation only months later, at an August 1998 Council meeting. Far from being a Council agenda item, Mr. Kresnye's motion died for lack of a second. The facts of Local 4 simply are not present in this case.

---

<sup>4</sup>The labor dispute did not become a matter of public concern simply because some members of the public became interested in the labor dispute after Mr. Graham reported it to the newspaper.

Also significant in Local 4 was that the parties had reached impasse. SERB cited this fact in distinguishing its holding in Local 4 from its holding in Local 530, at p. 3-93 (6-28-96): "Where the parties are in the midst of negotiations and ultimate impasse has not been reached, the bargaining teams may not bypass each other to appeal directly to either the employees or the employer on issues that are part of ongoing negotiations." This principle is at least equally applicable in the grievance process. Where the parties are working to resolve a labor dispute through their previously agreed-upon grievance/arbitration mechanism, a direct appeal to the employer to resolve the dispute is an illicit bypass of the designated representative. Further, this act in contravention of the agreed-upon mechanism for dispute resolution evidences bad-faith bargaining in general.

An employee organization commits an unfair labor practice in violation of § 4117.11(B)(1) in one of two situations: (1) if it restrains or coerces employees in the exercise of rights guaranteed in Chapter 4117, or (2) if it restrains or coerces the employer in the selection of its representative for the purpose of collective bargaining or the adjustment of grievances. Dist 1199, at 3-40. The first situation is not applicable, since the object of Respondents' alleged restraint and coercion was the Employer and not public employees. In re AFSCME, Ohio Council 8, SERB 90-015 (9-14-90).

The second situation where an employee organization is in violation of § 4117.11(B)(1) is where it restrains or coerces the employer in the selection of its representatives for collective bargaining purposes, including the selection of its representatives for the adjustment of grievances. The record does not support such a violation. In SERB v. OAPSE, SERB 95-008 (6-6-95), the Board found restraint and coercion under the totality of the circumstances, which included an implied threat by the employee organization not to reach a contract if the specific negotiator continued to function as the sole negotiator; a letter to the membership tying the upcoming election to the board of education with the change in the employer's negotiating team; and a letter to the administration criticizing the school board negotiator and reminding the board of the upcoming school levy campaign where the union had always cooperated with the board. In this case, by contrast, the letters sent by Respondent were factual communications that, while clearly communicating the Union's position on the grievance, and its hope to resolve the issue through the grievance process, were not accompanied by any threats. Further, the telephone calls placed by Mr. Graham were for the purpose of verifying that Council members had received the letters, answering any questions, and discussing the Union's position on the grievance. Mr. Graham's telephone conversations with the Council members he did speak with were brief and were not accompanied by any threats. In Dist 1199, at 3-40, the Board stated as follows: "In the absence of facts demonstrating undue pressure or threats to coerce or restrain the Employer in the selection of its representative, and with a record specifically demonstrating that there were no threats, we cannot find restraint or coercion, which is key to a ... § 4117.11(B)(1) violation."

Moreover, to the extent that any "undue pressure" was applied, or that the letters or telephone calls constituted "implied" coercion as suggested by Mr. Hennig's statement that he felt pressure to "do something" about the Union's problem, such behavior was not targeted

at the employer's selection of its representatives for the adjustment of grievances, as the second element requires. The Union's conduct was connected to the "quota" or performance standards issue regardless of who the grievance step designees were. The purpose of the Union representatives was to change the Employer's mind regarding the issue that was the subject of the grievance. As in Local 530, any coercive behavior or undue pressure was issue-oriented and not representative-oriented. Accordingly, since the second element of the § 4117.11(B)(1) is also lacking, Respondents did not violate § 4117.11(B)(1).

There is no evidence that Respondents at any time suggested, requested, or demanded that the City change its grievance representatives. In Local 530, the Board suggested that a refusal to meet or an attempt to delay negotiations may constitute a § 4117.11(B)(1) violation if such action is taken because of the identity of the Employer's negotiators. Such a theory should be equally applicable to grievance meetings and the grievance process. However, the record in this case does not reflect that Respondents refused to attend a grievance meeting or otherwise attempted to stall the grievance process because of the identity of the City's representatives. While a Step 1 meeting was not held, there is no evidence that Respondents refused to attend that meeting due to an improper motive related to the identity of the Step 1 designee.<sup>5</sup> Finally, the Union continued to advance the grievance through the subsequent steps, and a Step 3 hearing was held with representatives of both the City and the Union present.

The record also does not support a § 4117.11(B)(2) violation. Under § 4117.11(B)(2), it is a violation to cause or attempt to cause an employer to violate § 4117.11(A). Dist. 1199, at 3-40. There is nothing in § 4117.11(A) that Respondents allegedly attempted to cause the City to violate. The City suggests that a violation of § 4117.11(B)(2) is established because the City Charter forbids Council from participating in the day-to-day administration of the City, and because §§ 4117.10 and 4117.14 set forth the role of the legislative body in the collective bargaining process. Even assuming arguendo that Respondents attempted to cause the City to violate these provisions, there is no violation because these provisions are not found in § 4117.11(A). Complainant and the City also suggest that Respondents attempted to cause the City to violate its obligation to bargain in good faith pursuant to § 4117.11(A)(5). There is no merit to this theory. The resolution or granting of a grievance is obviously contemplated by Chapter 4117 as well as the CBA. There is no indication that Respondents

---

<sup>5</sup>At most, the evidence on this issue demonstrates that the Union and the City disagree on the interpretation of the CBA's grievance procedure. The Union requested a rescheduling of the Step 1 meeting so that two Union representatives could attend. Captain Reese was unavailable at the time the Union proposed. The Union indicated that it was common practice for the parties to advance a grievance to the next step when a grievance meeting did not take place within the time limits set forth in the CBA, while the City took the position that the Union's failure to attend the Step 1 meeting rendered the grievance null and void. The Complaint, while alleging that Respondents refused to attend a grievance meeting in violation of § 4117.11(B)(3), does not advance the theory that Respondents' alleged failure to attend the Step 1 meeting was a violation of § 4117.11(B)(1). The parties did not discuss this issue in their post-hearing briefs. Nor was this issue a focus of the parties' attention or evidence at the hearing.

attempted to cause the City either to deviate from the grievance steps or to bypass the Union's grievance representatives. Rather, as discussed above, Respondents' goal was to influence the *outcome* of the grievance process. The improper methods it used to do so are violative of § 4117.11(B)(3) and are appropriately addressed by a remedy specific to that division.

#### V. CONCLUSIONS OF LAW

Based upon the entire record herein, this Administrative Law Judge proposes the following Conclusions of Law:

1. The City of Mentor is a "public employer" within the meaning of § 4117.01(B).
2. The Ohio Patrolmen's Benevolent Association is an "employee organization" within the meaning of § 4117.01(D).
3. The Mentor Patrolman's Association is an agent or representative of the Ohio Patrolmen's Benevolent Association in this instance.
4. Steve Graham is an agent or representative of the Ohio Patrolmen's Benevolent Association in this instance.
5. The actions of the Ohio Patrolman's Benevolent Association, the Mentor Patrolman's Association, and Steve Graham in bypassing the City of Mentor's selected representative in the adjustment of grievances and dealing directly with the legislative body constitute a violation of § 4117.11(B)(3).
6. Respondents' actions did not violate §§ 4117.11(B)(1) or (B)(2).

#### VI. RECOMMENDATIONS

Based upon the foregoing, it is recommended:

1. The State Employment Relations Board adopt the Findings Of Fact and Conclusions Of Law set forth above.
2. The State Employment Relations Board issue an ORDER, pursuant to § 4117.12(B)(3), requiring the Ohio Patrolmen's Benevolent Association, the Mentor Patrolman's Association, and Steve Graham to:

**A. CEASE AND DESIST FROM:**

Refusing to bargain collectively by bypassing the City of Mentor's selected representatives for the adjustment of grievances and dealing directly with the legislative body, and from otherwise violating § 4117.11(B)(3).

**B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:**

(1) Post for sixty (60) days in all of the usual and normal posting locations where the bargaining-unit employees work, the **NOTICE TO EMPLOYEES** furnished by the Board stating that the Ohio Patrolmen's Benevolent Association, the Mentor Patrolman's Association, and Steve Graham shall cease and desist from the actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B).

(2) Notify the **State Employment Relations Board** in writing within twenty (20) calendar days from the date the **ORDER** becomes final of the steps that have been taken to comply therewith.

**ISSUED** and **SUBMITTED** to the State Employment Relations Board in accordance with Ohio Administrative Code Rule 4117-1-15 and **SERVED** on all parties listed below by Certified U.S. Mail, return receipt requested, this 11<sup>th</sup> day of February, 1999.

/s/ BETH C. SHILLINGTON  
Administrative Law Judge

Michael D. Allen  
Assistant Attorney General  
Labor Relations Section  
140 East Town Street, 9th Floor  
Columbus, Ohio 43215-6001  
(614) 644-8462  
Representative for Complainant

James A. Budzik, Esquire  
Gary C. Johnson, Esquire  
Johnson & Angelo  
1700 North Point Tower  
1001 Lakeside Avenue  
Cleveland, OH 44114  
(216) 696-5222  
Representatives for Intervenor

Joseph M. Hegedus  
Labor Counsel  
175 South Third Street, Suite 820  
Columbus, Ohio 43215-5134  
(614) 461-6677  
S. Randall Weltman, Esquire  
Climaco, Climaco, Lefkowitz & Garofoli Co., L.P.A.  
The Halle Building  
1228 Euclid Avenue, 9th floor  
Cleveland, Ohio 44115  
(216) 621-8484  
Representatives for Respondents