

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

In the Matter of

International Association of Fire Fighters, Local No. 67,

Employee Organization,

and

City of Columbus,

Employer.

Case No. 98-MED-01-0046

**DIRECTIVE REMANDING CASE TO HEARINGS SECTION  
FOR ADDITIONAL EVIDENCE  
(OPINION ATTACHED)**

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

On November 18, 1998, the City of Columbus ("Employer") filed a motion to stay publication of notice of rejection of a Fact Finder's Report and to stay conciliation proceedings, as well as a motion to deem the Fact Finder's Report agreed upon for negotiations with the International Association of Fire Fighters, Local No. 67 ("Employee Organization"). On December 17, 1998, the State Employment Relations Board denied the motion to stay publication of the notice of rejection as moot in that the notice of rejection had already been issued before the filing of the motion to stay. The motion to stay conciliation proceedings was granted pending disposition of the motion to deem the Fact Finder's Report agreed upon, which was directed to an expedited hearing.

A hearing was held on January 12, 1999. On March 11, 1999, the Administrative Law Judge's Proposed Order was issued. On March 22, 1999, the Employee Organization filed exceptions to the proposed order. On April 5, 1999, the Employer filed its response to the exceptions.

The Board has reviewed the record, the Proposed Order, the exceptions, and the response to exceptions. For the reasons stated in the attached Opinion, incorporated by reference, the Board remands this case to the Hearings Section to take additional testimony and evidence to determine: (a) whether all recruits paid an initiation fee; (b) the dates on which each recruit paid the initiation fee; (c) whether union dues deducted during

Directive Remanding Case to Hearings Section  
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the second pay period of November 1998 were for the payment of November dues; (d) when the dues were actually forwarded to the Union; (e) whether union dues were deducted in November 1998 for recruits who had not paid their initiation fees by November 20, 1998; (f) if dues were deducted despite nonpayment of an initiation fee, whether the recruits were nonetheless added to the Union roster and allowed to fully participate in the rights and privileges of Union membership.

It is so directed.

POHLER, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member,  
concur.



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SUE POHLER, CHAIRMAN

I certify that this document was filed and a copy served upon the representative of  
each party on this 30<sup>th</sup> day of June, 1999.



\_\_\_\_\_  
LINDA S. HARDESTY, LEGAL ASSISTANT

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**OPINION**

VERICH, Board Member:

This mediation case comes before the State Employment Relations Board (“SERB” or “Board”) upon the filing of exceptions and response to exceptions to the Administrative Law Judge’s Proposed Order issued on March 11, 1999. For the reasons below, we find that the record is unclear as to whether the union dues deducted for the fire fighter recruits were for the month of November or December 1998 and that all other requirements for membership for the recruits were either met, ignored or inconsistently applied. As a result, this case must be remanded to the Hearings Section to take additional testimony and evidence.

**I. BACKGROUND**

On October 26, 1998, a class of 50 fire fighter recruits (“recruits”) began employment with the City of Columbus (“City”). On October 28, 1998, all 50 recruits applied for membership in the International Association of Fire Fighters, Local No. 67 (“Union”), signing both an Application for Membership and an Authorization of Payroll Deduction of union dues. By signing the latter, the recruits authorized the deduction of union dues to commence in November 1998.

The City deducted regular monthly union dues for all Union members, including the recruits, from earnings for the pay period beginning November 15, 1998, and ending November 28, 1998. The City's long-standing practice was to deduct monthly union dues from the second pay of each month.

The City and the Union, having entered into negotiations for a successor agreement in April 1998, submitted their disputed issues to fact finding on September 14, 1998. The fact finder submitted his report and recommendations to the parties on November 4, 1998. On November 7 and 8, 1998, the Union voted on the fact-finder's report, rejecting it by a vote of 844-141. The Union certified that it had 1,397 members in the bargaining unit in its filing with SERB on November 9, 1998. The Union did not include the 50 recruits in the total number of Union members listed in its certification of the fact-finding vote.

The Union's Constitution ("Constitution") discusses membership at Article III, Section 1, and provides as follows:

Any member of good moral character who at the time of making application is engaged in service within the jurisdiction of this local as given in Article II, will be eligible for active membership. Anyone eligible for membership in this Local shall not be refused membership or be discriminated against because of race, creed, national origin, gender or by reason of disability.

During the previous eleven years, the Union never investigated the moral character of any recruit for membership and did not investigate the moral character of the recruits. The Constitution, Article III, Section 6 contains an oath, but the Constitution does not require when, or if, a recruit must take the oath before becoming a member.

On November 18, 1998, the City filed a Motion to Stay Publication of Notice of Rejection of the Fact Finder's Report and Stay Conciliation Proceedings, as well as a Motion to Deem the Fact Finder's Report agreed upon. On December 17, 1998, we denied

as moot the motion to stay publication since the Notice of Rejection had issued before the filing of the motion to stay publication. The motion to stay the conciliation proceedings was granted pending disposition of the Motion to Deem the Fact Finder's Report agreed upon, which was directed by the Board to an expedited hearing.

## II. DISCUSSION

The parties do not dispute that the 50 recruits are "public employees" as defined by Ohio Revised Code ("O.R.C.") § 4117.01(C). The parties have also stipulated that if the recruits are deemed members of the Union as of the date of the fact-finding vote, then the Union did not reject the fact finder's report by at least 60% of the members. The single issue to be decided is whether the 50 recruits were "members" of the Union when the voting began on November 7, 1998. If the 50 recruits were "members" of the Union as of the date of the fact-finding vote, then the fact-finder's report was not rejected by at least 60% of the vote required by O.R.C. § 4117.14(C)(6); but if the 50 recruits were not "members" of the Union as of the date of the fact-finding vote, the fact-finder's report was rejected by the requisite 60%.

Ohio Revised Code ("O.R.C.") § 4117.11 provides in relevant part:

- (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 rights guaranteed in Chapter 4117 of the Revised Code[.]

Those guaranteed rights for public employees include the right to form, join, assist, or participate in except as otherwise provided by O.R.C. Chapter 4117, any employee organization of their own choosing [O.R.C. § 4117.03(A)(1)], the right to representation by an employee organization [O.R.C. § 4117.03(A)(3)], and the right to bargain collectively

with 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 [O.R.C. § 4117.03(A)(4)].

The Union argues that O.R.C. § 4117.11(B)(1) grants it unfettered discretion to decide who is, and who is not, a “member,” in that it provides: “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[.]” The Union further argues that it is “entitled to enforce its Constitutional membership requirements anytime and each time it chooses.”<sup>1</sup> The Union further asserts that “a few failures by Union officers to police the rules do not change the rules.”<sup>2</sup> Under O.R.C. Chapter 4117, however, a union’s activities are subject to considerable oversight, including the obligation in O.R.C. § 4117.19(C):

The constitution and bylaws of every employee organization shall:  
\* \* \*

Require periodic election of officers by secret ballot subject to recognized safeguards concerning the equal right of all members to nominate, seek office, and vote in elections, the right of individual members to participate in the affairs of the organization.

In addition, we have ruled that an employee organization “is not totally free to determine its own rules. A certain degree of fairness and due process shall prevail in Union constitutions and bylaws, wherein employee organizations record their own rules; the implementation of those rules is regulated by SERB.” *In re Amalgamated Transit Union, Local 268*, SERB 93-013 (6-25-93). That decision included the following admonition:

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<sup>1</sup>Exceptions To Proposed Order Of Administrative Law Judge And Brief Of International Association Of Fire Fighters, Local 67, at page 15. (“Union Exceptions”).

<sup>2</sup>Union Exceptions at 15, fn4.

*This opinion, however, should serve future notice that the Board will require strict adherence to the procedural rules of pleading and that while employee organizations enjoy latitude in the conduct of internal union affairs, they may not, through their internal practices, interfere with the statutorily protected rights of employees[.] (emphasis added). Id.*

This approach is wholly consistent with SERB's treatment of employers in representation cases wherein SERB has taken the position that actual job duties, not titles or position descriptions, can be used to deprive public employees of statutorily protected rights. To illustrate, while O.R.C. § 4117.01(C) provides in clear and unambiguous language that the term "public employee" does not include "supervisors," we do not accept only an employer's designation of the employee's status as "supervisor" as controlling in determining whether the employee is a supervisor. Instead, we look to the criteria set forth in O.R.C. § 4117.01(F), gather evidence of the actual work performed, and then measure the work in relation to the criteria. *In re Mahoning County Dept. of Human Services*, SERB 92-006 (6-5-92). This same approach is taken when an employer attempts to designate an employee as a "fiduciary" or as a "management level employee." *In re Fulton County Engineer*, SERB 96-008 (6-24-96); *In re Univ. of Cincinnati*, SERB 98-003 (2-26-98).

Therefore, to follow a consistent approach and yet recognize "the right of an employee organization to prescribe its own rules with regard to acquisition of membership," we should look first to the Union's Constitution and Bylaws to determine the stated criteria for membership, and then look at the factual application of that stated criteria in the Union's acceptance of new members. In so doing, the rights of the employee organization are honored under O.R.C. § 4117.11(B)(1), while protecting the rights of public employees "to participate in the affairs of the organization" as guaranteed by O.R.C. § 4117.19(C), as well as those rights protected under O.R.C. § 4117.03. Thus, the preliminary question is not whether the Union has a right to prescribe its own rules with regard to the acquisition of members, which it does, but rather, whether the Union's rules were implemented in a manner protective of those rights guaranteed under O.R.C. Chapter 4117.

In applying this standard to the instant matter, the Union argues that it has four requirements in its Constitution and Bylaws for becoming a Union member:

- (1) That the applicant be of good moral character;
- (2) That the applicant be engaged in service within the Union's jurisdiction;
- (3) That the application for membership be accepted at a Union Executive Board meeting; and
- (4) That the applicant be sworn in at a general membership meeting.

Under the first "requirement," the Union conceded that, within the last eleven years, it has never investigated the moral character of any recruit. Under the second "requirement," the Union conceded that the recruits were engaged in service within the Union's jurisdiction. Therefore, the first "requirement" was never acted upon by the Union, and the second "requirement" was met by all recruits.

The third "requirement" for membership was also conceded by the Union to have no foundation in the Union's Constitution and Bylaws. The Union witness stated: "[T]here is no specific place in the Constitution that references how, if at all, the local union executive board ought to respond to applications for membership."<sup>3</sup> However, the Constitution requires approval "by the Executive Board and two thirds vote of the membership at a regular membership meeting" to re-instate a suspended member. Constitution, Article VIII, Section 2. In addition, vacancies in office "shall be filled by an appointment by a majority vote of the Executive Board." Constitution, Article V, Section II. Thus, the framers knew how to establish a voting requirement for new members if that was their intent. Moreover, a review of exhibits submitted by the Union and by the City showing the minutes of regular Union Meetings from November 13, 1985 through July 9, 1998, do not reveal a single instance in the "Executive Board Report" of any such entry for

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<sup>3</sup>Transcript, p. 48.

acceptance of membership or a single instance of a vote on applications for membership, even though such a vote by the general membership is required by Constitution, Article IV, Section 8. See Union Exhibit H and City Exhibit 8. The only instance where the Union Executive Board took action to approve or disapprove an individual's application for membership, much less an entire recruit class' applications, is with this recruit class, and then it was done on advice of counsel.<sup>4</sup> Therefore, since the third "requirement" was not acted upon by the Union for any members who participated in the fact-finding vote, it does not serve as a membership "requirement" for the recruits.

The final "requirement" argued by the Union is that applicants be sworn in at a general membership meeting. Constitution, Article III, Section 6 contains an "Oath for New Members," but it does not specifically require that the oath be administered to all new members. The evidence demonstrates that the oath is not administered to all new members. A reading of the general membership minutes, from May 10, 1995 through July 8, 1998, indicates that a total of 220 new recruits were sworn, while the number of new recruits hired during that same period totaled 326. Thus, more than 100, or approximately one-third, of new recruits hired during that time period were never sworn but they were permitted to vote on the election of Union officers. Moreover, a review of the minutes before May 10, 1995, shows that most entries do not state a specific number of new members being sworn. A typical entry between January 13, 1988 through August 12, 1992, for example, would state only that either the President or Vice President "swore in new members" or "swore in members of our new class of fire fighters." *Id.* Thus, it is impossible to compare the number of new recruits hired with the number of recruits sworn before 1995, which again leads to the conclusion that the importance of the swearing-in requirement is not significant since the records make it impossible to keep an accurate count of who was sworn.

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<sup>4</sup>Finding of Fact No. 5.

In *Hughs v. Local No.11 of the International Association of Bridge, Structural and Ornamental Ironworkers*, 287 F. 2d 810 (3rd Cir., 1961), *cert denied* 368 U.S. 818 (1961), the Third Circuit Court of Appeals held that if one has fulfilled the requirements of union membership, one is entitled to the rights and privileges of union membership, even if the union officials' have not performed the ministerial acts precedent to formal admission and recognition." *Id.* at 815. The evidence in the record, or in some instances the lack thereof, showed that "swearing in" was primarily a ministerial act that should not preclude the recruits from enjoying the rights and privileges of Union membership.

Finally, two other apparent requirements for Union membership are the payment of union dues and the payment of an initiation fee. Constitution, Article VIII, Sections 1 and 3, provide as follows:

### **Section 1. INITIATION FEES FOR NEW MEMBERS**

Initiation fees shall be paid in the amount equal to the initiation fees charged by the I.A.F.F., O.A.P.F.F., and the initiation fee for local 67. Such initiation fees shall accompany their application for membership. There shall be no initiation fee for transfers from another I.A.F.F. Local.

\* \* \*

### **Section 3. DUES**

Dues, each month, shall be the sum of:

- (a) 3/4 of 1% of the base rate of an "E" Step Fire Fighter, and
- (b) \$.75

One (\$1.00) dollar of each member's monthly dues will be recorded into a separate account to be utilized, in accordance with subsequent and periodic instructions from the Executive Board, as and for contributions to and/or Municipal elective office or any issue effecting the welfare of the membership.

The Executive Board shall set a maximum balance for this account. Monies collected in excess of this amount shall be transferred to a building fund.

Neither the Union nor the City devoted much argument to the initiation fee issue. It was acknowledged by the Union that some undetermined number of the 50 recruits had in fact paid their initiation fees on October 26, 1998, while others paid at a later date. This practice is contrary to Constitution, Article VIII, Section 1. Nonetheless, it is troublesome that the record contains no evidence to determine the actual number of recruits who paid their initiation fees on the date they applied for Union membership, especially since this requirement contained in the Constitution is clear and unambiguous.

Constitution, Article VIII, Section 3 states that union dues are to be paid "monthly." The record indicates that dues deductions are made during the second pay period of the month. The record is not clear about whether the dues are for the month in which they are deducted or for the following month. The City asserts that it is "perfectly apparent" that the dues deducted from the second pay period are for the current month. The City argues that Finding of Fact ("F.F.") No. 5 supports that conclusion. But F.F. No. 5 merely states: "The City deducted regular monthly union dues for all Union members, including the recruits, from the pay period beginning November 15, 1998 and ending November 28, 1998. The dues were sent to the Union on or after December 4, 1998." The evidence does not establish that the dues were for November 1998.

### **III. CONCLUSION**

From the evidence presented, it appears that the only absolute requirement for Union membership, met by every Union member, is the submission of an Application for Membership and an Authorization for Payroll Deduction of union dues. Payment of an initiation fee may be such an absolute requirement as well, but the record is not sufficient to confidently reach such a conclusion. The actual payment of dues is also a clear requirement of Union membership and the record shows that all 50 recruits had dues deducted from the second pay period in November. But the record is unclear as to whether the dues deducted were for the months of November 1998 or December 1998.

Since many of the rights guaranteed to public employees under O.R.C. Chapter 4117 flow from and are effectuated by an employee's right to join and participate in an employee organization of the individual's own choosing, any impediment to joining and participating in such an organization should be closely scrutinized. That scrutiny should apply whether the impediment is put in place by an employer or an employee organization. Any rule of this employee organization that resulted in the denial of the recruits' right to fully participate in a vote to accept or reject a labor agreement, the terms of which will affect their wages, hours, and terms or other conditions of employment for years to come, must be based on "a certain degree of fairness and due process." *In re Amalgamated Transit Union 268*, SERB 93-103 (6-25-93).

In order for the Board to determine whether the requisite degree of fairness and due process prevailed in the instant matter, the case should be remanded to the Hearings Section to determine: (a) whether all recruits paid an initiation fee; (b) the dates on which each recruit paid the initiation fee; (c) whether union dues deducted during the second pay period of November 1998 were for the payment of November dues; (d) when the dues were actually forwarded to the Union; (e) whether union dues were deducted in November 1998 for recruits who had not paid their initiation fees by November 20, 1998; (f) if dues were deducted despite nonpayment of an initiation fee, whether the recruits were nonetheless added to the Union roster and allowed to fully participate in the rights and privileges of Union membership.

Pohler, Chairman, and Gillmor, Vice Chairman, concur.