

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Fairland Local School District Board of Education,

Respondent.

**Case No. 98-ULP-04-0153**

**ORDER  
(OPINION ATTACHED)**

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

On April 1, 1998, the Ohio Association of Public School Employees, Local 345 ("Charging Party") filed an unfair labor practice charge against the Fairland Local School District Board of Education ("Respondent"). On August 6, 1998, the State Employment Relations Board ("Board" or "Complainant") found probable cause to believe that the Respondent had violated Ohio Revised Code Sections 4117.11(A)(1) and (A)(3) by terminating Mr. Chancie Love's employment because he engaged in protected activities. A Complaint and Notice of Hearing were issued on September 1, 1998.

A hearing was held on October 22, 1998, and November 6, 1998. On December 30, 1999, the Administrative Law Judge's Proposed Order was issued, recommending that the Board find violations of O.R.C. Sections 4117.11(A)(1) and (A)(3). On January 22, 1999, the Respondent filed its exceptions to the proposed order. On February 3, 1999, the Complainant filed its response to the exceptions.

After reviewing the record and all filings, the Board adopts the Findings of Fact and Conclusions of Law in the Proposed Order.

The Fairland Local School District Board of Education is ordered to:

A. Cease and desist from:

- (1) Interfering with, restraining, or coercing Chancie Love and other employees represented by the Ohio Association of Public School Employees, Local 345 in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 in violation of Ohio Revised Code Section 4117.11(A)(1) and otherwise violating Ohio Revised Code Section 4117.11(A)(1); and
- (2) Discriminating in regard to hire or tenure of employment or any term or condition of employment on the basis of the rights guaranteed by Ohio Revised Code Chapter 4117 in violation of Ohio Revised Code Section 4117.11(A)(3) and otherwise violating Ohio Revised Code Section 4117.11(A)(3).

B. Take the following affirmative action:

- (1) Reinstatement Chancie Love to the same or comparable position and remove all references to his termination from his personnel file;
- (2) Make Chancie Love whole for all wages and benefits lost from the effective date of his termination to the date on which the Respondent offers to reinstate him;
- (3) Post for sixty days the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board stating that the Fairland Local School District Board of Education shall cease and desist from the actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B) in all of the usual and normal posting locations where the bargaining-unit employees of the Fairland Local School District Board of Education, who are represented by the Ohio Association of Public School Employees, Local 345 work; and
- (4) 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.

Order  
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It is so directed.

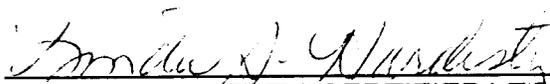
POHLER, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member,  
concur.



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.

I certify that this document was filed and a copy served upon each party by certified mail, return receipt requested, on this 30<sup>th</sup> day of June, 1999.



LINDA S. HARDESTY, CERTIFIED LEGAL ASSISTANT



# 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 State Employment Relations Board and abide by the following:

The Fairland Local School District Board of Education is hereby ordered to:

- A. Cease and desist from:
  - 1. Interfering with, restraining, or coercing Chancie Love and other employees represented by the Ohio Association of Public School Employees, Local 345 in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 in violation of Ohio Revised Code Section 4117.11(A)(1) and otherwise violating Ohio Revised Code Section 4117.11(A)(1); and
  - 2. Discriminating in regard to hire or tenure of employment or any other term or condition of employment on the basis of rights guaranteed by Ohio Revised Code Chapter 4117 in violation of Ohio Revised Code Section 4117.11(A)(3) and otherwise violating Ohio Revised Code Section 4117.11(A)(3).
- B. Take the following affirmative action:
  - 1. Reinstatement Chancie Love to the same or comparable position and remove all references to his termination from his personnel file;
  - 2. Make Chancie Love whole for all wages and benefits lost from the effective date of his termination to the date on which the Fairland Local School District Board of Education offers to reinstate him;
  - 3. Post for sixty days the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board stating that the Fairland Local School District Board of Education shall cease and desist from the actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B) in all of the usual and normal posting locations where the bargaining-unit employees of the Fairland Local School District Board of Education, who are represented by the Ohio Patrolmen's Benevolent Association work; and
  - 4. Within twenty calendar days from the issuance of the Order, notify the State Employment Relations Board in writing of the steps that have been taken to comply therewith.

**SERB v. Fairland Local School District Board of Education, Case No. 98-UPL-04-0153**

\_\_\_\_\_  
BY

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE

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

ERB 2012 This Notice must remain posted for sixty consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this Notice or compliance with its provisions may be directed to the State Employment Relations Board.

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

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v.

Fairland Local School District Board of Education,

Respondent.

Case No. 98-ULP-04-0153

**OPINION**

VERICH, Board Member:

This unfair labor practice case comes before the State Employment Relations Board ("Complainant" or "SERB") on the exceptions and response to exceptions to the Administrative Law Judge's Proposed Order issued on December 30, 1998. For the reasons below, we find that the Fairland Local School District Board of Education violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(3) when it discriminated against a bargaining-unit member for engaging in protected activities by terminating his employment contract.

**I. BACKGROUND**

The Ohio Association of Public School Employees Local 345 ("Union") is the exclusive representative for a bargaining unit of employees of the Fairland Local School District Board of Education ("School Board"). The School Board and the Union are parties to a collective bargaining agreement ("Agreement") that is effective from July 1, 1996 through June 30, 1999.

On December 2, 1991, Mr. Chancie Everett Love was hired as a full-time school bus driver for the School Board. Mr. Love was the Union vice president from 1995-1998. He also served as chairman of the Union's grievance committee and as a member of the Union's negotiating team during the 1996 contract negotiations. As chairman of the grievance committee, Mr. Love brought approximately eight grievances to the attention of the School Board; on at least two occasions, he filed grievances over discipline that he received from the School Board. As a member of the Union's 1996 negotiating team, he was involved in the contentious contract negotiations.

During his employment with the School Board, Mr. Love was confrontational with other employees and even a constituent of the School Board. In some instances, he received disciplinary action for these confrontations while he was not disciplined for other outbursts. For example, in early September 1995, Mr. Love was approached while in his bus by a parent of a student transported on Mr. Love's bus. The parent complained that Mr. Love had started to move the bus before his child had a chance to be safely seated. The exchange between the two became heated, but ended when Mr. Love ordered the parent to leave the bus. Later, the parent made a formal complaint to the School Board. In response, the School Board questioned Mr. Love about the incident. As a result of the meeting with the School Board, Mr. Love agreed not to move the bus before the children were seated. He received no formal discipline for this incident.

Mr. Love's clashes with the School Board intensified in the spring of 1996. At this time, Mr. Love was participating in contract negotiations as part of the Union's negotiating team. The spring of 1996 also marked a return of the friction between the parent and Mr. Love. In March 1996, Mr. Love, on his way into a pizza parlor, saw the parent sitting in a car. The two exchanged profanities that culminated in Mr. Love threatening to do violence to the parent if he stepped out of his car. The parent again formally complained to the School Board. This time Superintendent McConnell conducted a disciplinary hearing and

reported his findings to the School Board; it issued a three-day suspension to Mr. Love on April 1, 1996. Mr. Love filed a grievance over this suspension; his appeal of this grievance was pending before the Lawrence County Court of Common Pleas in November 1997.

Shortly after returning from the three-day suspension, Mr. Love was observed smoking on school grounds by the principal of Fairland West Elementary School, Mr. John Lewis. Principal Lewis informed Mr. Love that the School Board had a "no smoking policy" and that he was not to smoke on school property. Principal Lewis would not characterize his comments as an oral warning. Mr. Love was again caught smoking by Principal Lewis on school grounds in August 1996. On September 3, 1996, a written warning was generated and signed by Principal Lewis to be issued to Mr. Love. A meeting on this issue, scheduled for September 6, 1996, did not take place and was not rescheduled. The written warning was not served on Mr. Love.

Also in the spring of 1996, Mr. Love became involved in a bitter battle with the Fairland High School track team and Mr. Whitley, its coach. Mr. Love transported the track team to competitions at other schools on two occasions. Both times, the kids left messes on the bus that Mr. Love had to clean. He was so disturbed after the second occurrence that he informed the school administration that Mr. Whitley was no longer permitted on "his" bus. This ultimatum was challenged in December 1996 when then-Assistant Principal Whitley attempted to climb on Mr. Love's bus to escort the children to the Chesapeake Community Center. Mr. Love refused to allow Assistant Principal Whitley on the bus. For these actions, Mr. Love received a fifteen-day suspension from the School Board on February 10, 1997.

Notwithstanding the fact that he had been suspended twice for a total of eighteen days, Mr. Love was promoted, with the support of School Board President Workman, to the custodian position at Fairland East Elementary School on May 5, 1997. Mr. Love held this position until he was terminated on March 16, 1998.

In November 1997, Mr. Love, as Union vice president, became involved in the upcoming elections for three open seats on the School Board. Mr. Love and the Union president recommended certain candidates to the membership for the Union's endorsement in the upcoming election. None of the candidates who were recommended and endorsed by the Union were elected. School Board President Workman, who was neither recommended nor endorsed, won reelection.

The events in December 1997 marked Mr. Love's final clash with the School Board. The Fairland East Elementary School Hospitality Committee hosted its annual holiday party at the school on the evening of December 11, 1997. Invitations were issued to all of the school employees, including Mr. Love, who was one of the school's evening custodians. The invitations requested those who were planning to attend to bring food items and a "gag gift" (which in the past had consisted of outdated calendars, aspirin, reindeer antlers, and the like). Mr. Love had never before been invited to this annual holiday party because he had been a bus driver.

On the evening of the party, Mr. Love and another custodian, who were already at the school because they were both scheduled to work from 2:30 p.m. to 10:30 p.m. that evening, decided to attend the party. Although they had contributed money for food and gifts, they were reluctant to attend because they had not purchased a "gag gift." Using their ingenuity to create a "gag gift," Mr. Love reduced a sexual innuendo-filled joke to writing as the other custodian recited it to him. The joke was filled with implied sexual connotations that were very degrading toward women. Armed with their "gag gift," they walked together to the party and presented the joke to a teacher who was on her way out of the party. She handed the joke to a second teacher who read the joke to the roomful of predominately female elementary school teachers. The two custodians stood together at the doorway while the second teacher read the joke to the room. Little if any laughter came from the room. The two custodians left immediately after the joke had been read and went back to work. Shortly thereafter, the teachers left.

The following day on December 12, 1997, several teachers who had been at the party approached the Fairland East Elementary School Principal, Ms. Teresa Johnson, and complained about the joke that the two custodians had given to them at the party the night before. Principal Johnson in turn contacted Superintendent McConnell who requested that the teachers' complaint be reduced to writing pursuant to the School Board's sexual harassment policy. A teacher complied with this request and wrote the complaint letter on December 17, 1997, which was then signed by eight of the twenty teachers who had been at the party. They complained that the joke had created a "hostile work environment" in violation of the School Board's policy.

After receiving the letter of complaint, Superintendent McConnell recommended to the School Board that Mr. Love be terminated from employment. Superintendent McConnell based his recommendation not only on the sexual harassment complaint but also on what he regarded as Mr. Love's "dishonesty" during his deposition taken in November 1997. Mr. Love had been questioned in connection with the grievance he had filed over his three-day suspension, which at this point had been appealed to the Lawrence County Court of Common Pleas. Mr. McConnell's recommendation referred to Mr. Love's testimony regarding the discipline he had received for violating the School Board's "no smoking" policy. Mr. Love had testified that he had not received any verbal or written warnings regarding the policy, but Superintendent McConnell remembered the written warning he had prepared and signed. The School Board held a hearing on March 16, 1998, at which time it voted to terminate Mr. Love's employment contract. The other custodian was not disciplined for his conduct at the holiday party.

The "gag gift" incident was the first allegation of sexually harassing conduct that came to the School Board's attention since 1995. At that time, a family threw a private party known as "Creek Fest." Many people in the community, including kids, attended the party. The family supplied kegs of beer, they roasted pigs, and a disc jockey played music. A teacher who is also the coach of football and girls' basketball attended and consumed

five or six beers between 6:00 p.m. and midnight. At midnight, the disc jockey called the coach up to judge a "wet T-shirt" contest. Some of the contestants were Fairland High School students as young as 16 years old; one contestant was a member of the girls' basketball team and another was taking a class in which the coach was the teacher. The contestants came out with their T-shirts on the first time. The second time, though, a couple of contestants took off their T-shirts. The witnesses had conflicting testimony as to whether the coach told the contestants that they would have to take their shirts off to win and as to when he left. The coach denied making the statement; he told the School Board that he left immediately after seeing the half-naked girls. A parent reported the incident to the School Board, but was not told to put anything into writing. After investigating the complaint, the School Board took preliminary steps to terminate the coach. The coach admitted doing some wrong and begged for his job back. The School Board agreed to take away his supplemental coaching contracts for one year and to require him to undergo drug testing.

## II. DISCUSSION

The School Board is charged with violating O.R.C. §§ 4117.11(A)(1) and (3), which provide in pertinent part:

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

\* \* \*

(3) Discriminate in regard to hire or tenure of employment or any term or condition of employment on the basis of the exercise of rights guaranteed by Chapter 4117. of the Revised Code[.]

In *State Emp. Relations Bd. v. Adena Local School Dist. Bd. of Edn.* (1993), 66 Ohio St.3d 485, 498, 1993 SERB 4-43, 4-49 ("*Adena*"), the Ohio Supreme Court articulated the "in part" test to be applied by SERB to determine whether an individual has been

discriminated against on the basis of protected activity in violation of O.R.C. § 4117.11(A)(1) and (A)(3). The *Adena* standard mandates that SERB's primary focus be on the employer's motive. SERB interpreted and applied the Ohio Supreme Court's *Adena* opinion in *In re Fort Frye Local School Dist. Bd. of Ed.*, SERB 94-017, p. 3-104 (10-14-94) ("*Ft. Frye*"), and held that the *Adena* standard involves a three-step process:

(1) The Complainant must create a "presumption" of anti-union animus, by showing that the employer's action was taken to discriminate against the employee for the exercise of rights protected by O.R.C. Chapter 4117.

(2) The Respondent is then given the opportunity to rebut the presumption by presenting evidence that shows legitimate, nondiscriminatory reasons for its decision.

(3) The Board then determines, by a preponderance of the evidence, whether an unfair labor practice has occurred.

To make a *prima facie* case of discrimination under O.R.C. § 4117.11(A)(3), the Complainant must establish the following elements: (1) that the employee at issue is a public employee and was employed at relevant times by the Respondent; (2) that the employee engaged in protected activity under O.R.C. Chapter 4117, which fact was either known to the Respondent or suspected by the Respondent; and (3) that the Respondent took adverse action against the employee under circumstances that could, if left unrebutted by other evidence, lead to a reasonable inference that the Respondent's actions were related to the employee's exercise of protected activity under O.R.C. Chapter 4117. *Id.*

Chancie Love was a "public employee" who had been employed by the School Board for approximately seven years. During this time, he was an active Union member, serving as Union vice president from 1995-1998, as chairman of the Union's grievance committee, and as a member of the Union's 1996 negotiating team. Mr. Love filed seven or eight grievances. Mr. Love was also a member of the Union's 1996 negotiating committee. Along with the Union president, he recommended certain School Board candidates to the Union membership for endorsement in the November 1997 election.

While engaging in Union activities, Mr. Love was also in a periodic state of friction with the School Board over his own conduct. It is revealing to examine the timing of his significant Union activities and the discipline and termination he received from the School Board. As Mr. Love's protected activities increased, his confrontations with the School Board also increased, especially during his recommendations for Union endorsement for School Board candidates and his deposition testimony in his grievance case.

In summary, Mr. Love was a "public employee" of the School Board who engaged in protected activities under O.R.C. Chapter 4117 about which the School Board knew or reasonably should have known. He was terminated from his employment with the School Board shortly after making his recommendations for School Board candidates and giving deposition testimony in the appeal of his grievance against the School Board. A reasonable inference can be drawn from the facts surrounding and leading to Mr. Love's termination that the School Board's actions were motivated by antiunion animus. Thus, the Complainant has established the necessary prima facie case to raise the rebuttable presumption that the School Board discriminated against him.

The School Board claims its motivation to terminate Mr. Love stemmed from his violation of its sexual harassment policy and from giving false testimony in a deposition conducted pursuant to a grievance appeal filed in the court of common pleas. Its efforts to rebut this presumption are unconvincing. The Ohio Supreme Court has said that "the motivation of the employer is rarely clear." *Adena, supra* at 495. The discriminatory motivation of an employer may be reasonably inferred from a variety of factors including but not limited to: inconsistencies between the proffered reasons for discharge and other actions of the employer; disparate treatment of certain similarly situated employees; and the proximity in time between the employee's union activities and the employee's discharge. *In re Columbus Bd of Health, City of Columbus*, SERB 96-003 (3-26-96), *citing Turnbull Cone Baking Co. v. NLRB*, 778 F.2d 292, 297 [121 L.R.R.M. 2025] (6th Cir. Tennessee 1985) *cert. denied*, 476 U.S. 1159, 106 S.Ct. 2277 (1985). Not only has the

School Board failed to rebut the presumption of antiunion animus, but its conduct under the totality of the circumstances supports this presumption conclusively.

The timing between Mr. Love's protected activities and his termination is relevant in determining the School Board's motivation. Mr. Love, who had been in some state of friction with the School Board throughout his employment, was terminated shortly after two significant events in the fall of 1997. The first event was his recommendation of ultimately unsuccessful School Board candidates to the Union membership for endorsement in November of 1997. The second event was his deposition testimony against the School Board that Superintendent McConnell found later to have been "dishonest." Approximately one month after these events, the School Board began the preparations to terminate Mr. Love.

The School Board found that Mr. Love had violated its sexual harassment policy by reducing a joke to writing and then handing it to be read to a roomful of elementary school teachers. We stop short of any determination as to whether Mr. Love violated the sexual harassment policy. Mr. Love's conduct was not acceptable or appropriate behavior, but that issue is not before us. The School Board's reaction to the "gag gift" was inconsistent at best with its past treatment of allegations of sexual harassment.

The disparate treatment of the two custodians is perhaps the most telling evidence of the School Board's intent. The joke that was found to be a terminable violation of the School Board's sexual harassment policy by Mr. Love was not a violation by the other custodian. The other custodian received no discipline despite the fact that the joke was recited by him to Mr. Love and presented by both custodians to the holiday party as the substitute for their "gag gift."

A separate incident is relevant to the School Board's motive. A teacher who is also coach of the football and the girls' basketball teams attended a party. The coach was not

on school property nor on school time. A parent complained to the School Board that the coach had become publicly intoxicated at this party and judged a "wet T-shirt" contest in which some of the coach's students removed their T-shirts at his behest. After the School Board initiated an investigation into the incident, the coach approached the School Board and admitted some wrongdoing. The School Board decided to revoke his supplemental coaching contracts for one year and require him to undergo drug testing but did not terminate his employment contract. The School Board argues that loss of the supplemental pay for one year and the loss of status of head coach should not be construed as lenient. But when the *permanent* loss of primary employment is compared to the *temporary* loss of supplemental employment, the coach's discipline for the wet T-shirt incident must be viewed as lenient and not comparable whatsoever to the School Board's termination of Mr. Love.

The disparate treatment of similarly situated employees, the timing of Mr. Love's termination after significant Union activities, and the vastly inconsistent treatment of sexual harassment by the School Board raise the reasonable inference of School Board's discriminatory intent in the instant matter. We find by a preponderance of the evidence that the School Board was motivated in part by antiunion animus when it terminated the employment contract of Mr. Love.

Our broad remedial powers to fashion unfair labor practice remedies are found in O.R.C. § 4117.12(B)(3):

If upon the preponderance of the evidence taken, the board believes that any person named in the complaint has engaged in any unfair labor practice, the board shall state its findings of fact and issue and cause to be served on the person an order requiring that he cease and desist from these unfair labor practices, and take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of Chapter 4117. of the Revised Code.

The statute does not limit SERB to a particular remedy for specific violations in different sections of O.R.C. Chapter 4117. The only requirement is to take such remedial action as will "effectuate the policies of [O.R.C.] Chapter 4117." In this case the only action that will remedy the wrong, in addition to posting a cease-and-desist order, is reinstating Mr. Love's employment with back pay. It is our policy to develop remedies uniquely adapted to each case. We cannot condone Mr. Love's conduct in this matter. Consequently, our order omits any reference to an interest award on Mr. Love's back pay.

### **III. CONCLUSION**

For the foregoing reasons, we find that the Fairland Local School District Board of Education violated O.R.C. §§ 4117.11(A)(1) and (A)(3) when it terminated Mr. Chance Love for engaging in protected activities.

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