

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Cuyahoga County Sheriff's Department,

Respondent.

**Case No. 98-ULP-03-0109**

**ORDER  
(OPINION ATTACHED)**

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

On March 9, 1998, the Ohio Patrolmen's Benevolent Association ("Charging Party") filed an unfair labor practice charge against the Cuyahoga County Sheriff's Department ("Respondent"). On May 28, 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), (A)(2), and (A)(5) by unilaterally implementing a Revised and Amended Dress Code policy that included a disciplinary component. A Complaint and Notice of Hearing were issued on July 7, 1998.

A hearing was held on August 25, 1998. On February 1, 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)(5), but not (A)(2). On March 1, 1999, the Respondent filed its exceptions to the proposed order. On March 5, 1999, the Complainant filed its exceptions to the proposed order and its response to the Respondent's exceptions.

After reviewing the record and all filings, the Board amends Finding of Fact No. 4 by deleting the word "not" and adopts the Findings of Fact and Conclusions of Law, as amended, in the Proposed Order.

The Cuyahoga County Sheriff's Department is ordered to:

A. Cease and desist from:

- (1) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 in violation of Ohio Revised Code Section 4117.11(A)(1) by unilaterally implementing a Revised and Amended Dress Code Policy upon employees represented by the Ohio Patrolmen's Benevolent Association;
- (2) Interfering with the administration of an employee organization in violation of Ohio Revised Code Section 4117.11(A)(2) by implementing a dress code that discriminates against the Ohio Patrolmen's Benevolent Association; and
- (3) Refusing to bargain collectively with the Ohio Patrolmen's Benevolent Association before implementing a Revised and Amended Dress Code Policy upon employees represented by the Ohio Patrolmen's Benevolent Association in violation of Ohio Revised Code Section 4117.11(A)(5).

B. Take the following affirmative action:

- (1) Return to the status quo regarding the Dress Code Policy for bargaining-unit members represented by the Ohio Patrolmen's Benevolent Association in effect before the unlawful act and rescind any and all discipline given to these bargaining-unit members for violations of the unlawfully implemented Dress Code Policy;
- (2) Bargain in good faith with the Ohio Patrolmen's Benevolent Association regarding the changes to the Dress Code Policy that include a disciplinary component affecting wages;
- (3) Post for sixty days the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board stating that the Cuyahoga County Sheriff's Department 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 Cuyahoga County Sheriff's Department, who are represented by the Ohio Patrolmen's Benevolent Association 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.

It is so directed.

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



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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.



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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 Cuyahoga County Sheriff's Department is hereby ordered to:

**A. Cease and desist from:**

1. Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 in violation of Ohio Revised Code Section 4117.11(A)(1) by unilaterally implementing a Revised and Amended Dress Code Policy upon employees represented by the Ohio Patrolmen's Benevolent Association;
2. Interfering with the administration of an employee organization in violation of Ohio Revised Code Section 4117.11(A)(2) by implementing a dress code that discriminates against the Ohio Patrolmen's Benevolent Association; and
3. Refusing to bargain collectively with the Ohio Patrolmen's Benevolent Association before implementing a Revised and Amended Dress Code Policy upon employees represented by the Ohio Patrolmen's Benevolent Association in violation of Ohio Revised Code Section 4117.11(A)(5).

**B. Take the following affirmative action:**

1. Return to the status quo regarding the Dress Code Policy for bargaining-unit members represented by the Ohio Patrolmen's Benevolent Association in effect before the unlawful act and rescind any and all discipline given to these bargaining-unit members for violations of the unlawfully implemented Dress Code Policy;
2. Bargain in good faith with the Ohio Patrolmen's Benevolent Association regarding the changes to the Dress Code Policy that include a disciplinary component affecting wages;
3. Post for sixty days the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board stating that the Cuyahoga County Sheriff's Department 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 Cuyahoga County Sheriff's Department, 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. Cuyahoga County Sheriff's Department, Case No. 98-UPL-03-0109**

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  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Cuyahoga County Sheriff's Department,

Respondent.

Case No. 98-ULP-03-0109

**OPINION**

GILLMOR, Vice Chairman:

This unfair labor practice case comes before the State Employment Relations Board ("Board" or "Complainant") upon the filing of exceptions and responses to exceptions to an Administrative Law Judge's Proposed Order that was issued on February 1, 1999. For the reasons below, we find that the Cuyahoga County Sheriff's Department violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1), (A)(2), and (A)(5) when it unilaterally implemented a revised and amended Dress Code Policy covering bargaining-unit members, which included a new disciplinary component that directly affects wages.

**I. BACKGROUND**

Since August 8, 1996, the Ohio Patrolmen's Benevolent Association ("OPBA") has been the exclusive representative for a bargaining unit of Corrections Officers employed by the Cuyahoga County Sheriff's Department ("Respondent" or "Department"). Before being represented by the OPBA, Corrections Officers were represented by the United Auto Workers ("UAW"). Corporals continue to be represented by the UAW.

The Department and the OPBA are parties to a collective bargaining agreement effective August 8, 1996 to June 30, 1999 ("Agreement") containing a grievance procedure that culminates in final and binding arbitration. In January 1998, the Department gave notice that a Dress Code Policy would be implemented, and the OPBA received a draft of the Policy pertaining to Corrections Officers.

Paul Hasman is a Corrections Officer employed by the Department. He has worked as a Corrections Officer for approximately four years; he has been a member of the OPBA for more than three years. In January 1998, in a meeting between the Department and the OPBA, Mr. Hasman was informed by management employees that, under the Dress Code Policy, sweaters with the OPBA logo could no longer be worn, and no union logos would be allowed except for the UAW Veteran's Patch. The OPBA told the Department that it was going to file an unfair labor practice charge regarding this policy.

On or about February 25, 1998, the Department posted a Revised and Amended Policy ("Policy") pertaining to all Corrections Officers, without negotiating or bargaining with the OPBA. The Policy was unilaterally implemented and fully effective beginning March 16, 1998. Under the Policy, Corrections Officers were prohibited from wearing organizationally affiliated patches or sweaters with the OPBA logo. The Policy, however, specifically permitted Corrections Officers to wear the UAW Veteran's Patch on the uniform. After the Policy became effective, certain Department employees, including one Corrections Officer and two Corporals, continued to wear the UAW Veteran's Patch. Some OPBA members also wore the UAW Veteran's Patch.

Corrections Officers could be disciplined if they continued to wear the sweater with the OPBA logo, since the sweater violated the Policy. The Policy provided that if a Corrections Officer failed to report to duty in compliance with the Policy, the officer would not be allowed to work, would be declared A.W.O.L., and would be subject to disciplinary

action. After the Policy became effective, OPBA members ceased wearing sweaters with the OPBA logo to avoid discipline.

Before the Policy was implemented, Corrections Officers were allowed to wear sweaters with the OPBA logo. Approximately 150 of the 700 Corrections Officers wore the OPBA sweaters before the Policy was implemented. Even after the Policy was issued, uniformity did not exist regarding what Corrections Officers wore. The uniform consists only of dark blue pants and gray shirts, with a badge worn on the upper left of the shirt and an I.D. on the upper right of the shirt. Otherwise, Corrections Officers wear dark blue or black jackets, cardigan sweaters, or pull-over sweaters. Some sweaters are mid-thigh length while other sweaters are cropped at the waist.

Out of approximately 700 Corrections Officers, only 12 Corrections Officers come into direct contact with members of the non-incarcerated public during first and second shifts in the inmate visitation area. The Corrections Officers do not transport prisoners. The only other time the Corrections Officers may be observed by members of the non-incarcerated public would be on their breaks and lunch periods if they chose to leave the jail. The Corrections Officers normally stay within the jail facility.

## **II. DISCUSSION**

The issue in this case is whether the Department's unilateral implementation of the Revised and Amended Dress Code with its disciplinary aspect violated O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(5), 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 their rights guaranteed in Chapter 4117. of the Revised Code[;]

(2) Initiate, create, dominate, or interfere with the formation or administration of any employee organization[;]

\* \* \*

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

The Complainant has the burden of demonstrating by a preponderance of the evidence that the Respondent has committed an unfair labor practice. O.R.C. § 4117.12(B)(3). The evidence supports a finding that the Department violated O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(5).

**A. The Respondent's Motion to Strike the Testimony of the Complainant's Witness and to Submit Further Evidence Was Properly Denied**

At several points during these proceedings, the Respondent has moved to strike the testimony of Richard Mauney, the Complainant's rebuttal witness. The Respondent has also requested that if Mr. Mauney's testimony was not stricken, that the Respondent be allowed to present additional evidence through additional witnesses; this request was denied. The Respondent also moved to allow the admission of additional evidence that was denied at the hearing, namely the September 8, 1998 amendment to the dress code policy. For the following reasons, the Respondent's motions were properly denied.

The Administrative Law Judge who originally heard this case did not issue a proposed order before leaving SERB's employ. When the parties were given the option of submitting the record of the first hearing to the new Administrative Law Judge or retrying the case, the Respondent requested a new hearing so that the witnesses' credibility and demeanor could be observed. The new Administrative Law Judge then issued a Procedural Order stating that the hearing would be limited to those issues and defenses previously raised. The order also addressed the witnesses, stating: "Only the same witnesses who testified in the first hearing shall be heard in this hearing, and only on those

matters that they previously testified to at the first hearing.” The order did not address the issue of rebuttal witnesses.

Mr. Mauney was called to rebut testimony from a Department witness that contradicted the witness' previously sworn testimony. As such, the calling of a rebuttal witness was proper. In addition, since the rebuttal testimony was not the basis of any factual finding in this record, the Department was not prejudiced by the calling of this witness.

The request to admit the September 8, 1998 amendment to the dress code policy was properly denied by the Administrative Law Judge. Whatever the Department did on September 8, 1998, however, has no bearing upon whether the Department violated O.R.C. Chapter 4117 when it adopted the Policy in February 1998. The Department claims that the amendment shows the “original intent of the subject dress code”. Our determination of the Department's intent must be based upon the original policy it issued, not the policy it issued after the unfair labor practice charge had been filed, SERB had found probable cause existed to believe that the Department had committed an unfair labor practice, and a full evidentiary hearing had been conducted. The September 8, 1998 amendment was not relevant to this proceeding and was properly excluded.

**B. The Department Violated O.R.C. §§ 4117.11 (A)(1), (A)(2), and (A)(5)**

It is the Complainant's burden to demonstrate by a preponderance of the evidence that an unfair labor practice has been committed. O.R.C. § 4117.12(B)(3). The Complainant has met this burden of proof. In *In re Ottawa County Riverview Nursing Home*, SERB 96-006 (5-31-96) (“*Ottawa*”), at 3-57, the following test was adopted for determining when a violation would occur between “uniformed” and “non-uniformed” employees:

Where non-uniformed employees are involved, a ban on wearing union buttons violates O.R.C. § 4117.11(A)(1) unless "special considerations" exist that justify such prohibition. (citation omitted). Where uniformed employees are involved, an employer's ban on union buttons is a violation of O.R.C. § 4117.11(A)(1) unless the employer enforces its strict "uniform only" policy in a consistent and nondiscriminatory fashion on employees who have contact with the public.

The Department asserts that its ban on Corrections Officers wearing organizationally affiliated patches or sweaters with the OPBA logo was necessary due to the contact Corrections Officers have with the public. This assertion by the Department is not supported by the record.

The record reflects that the Corrections Officers are uniformed employees. As we held in *Ottawa, supra*, the employer must enforce a "uniform only" policy in a consistent and nondiscriminatory manner when the employees have contact with the public. The Department's policy does not meet the standard stated in *Ottawa, supra*. First, the Department applied the policy in a discriminatory fashion. The policy specifically allowed employees to wear the UAW Veteran's Patch, but did not allow for other union insignia or any other nonunion designations. Consequently, the policy is discriminatory on its face. Second, out of approximately 700 Corrections Officers, only 12 (less than 2%) have any direct contact with the public. Such contact only occurs during the first and second shifts in the inmate visitation area. Virtually no other contact with the public occurs. The Corrections Officers do not transport prisoners, and they do not normally leave the jail facility on breaks or for lunch. Under the test for uniformed employees in *Ottawa, supra*, the Department has not enforced its policy in a consistent and nondiscriminatory manner for employees who have contact with the public. Therefore, the Department has interfered with, restrained, or coerced the bargaining-unit members in the exercise of their rights through this policy in violation of O.R.C. § 4117.11(A)(1).

A public employer commits an unfair labor practice under O.R.C. § 4117.11(A)(2) when it dominates or interferes with the formation or administration of an employee organization. In this case, the complaint does not contain any allegation about the formation of an employee organization. The record does contain evidence demonstrating that the Department's actions unlawfully interfered with the OPBA's administration. The Department's policy favors the former exclusive representative for this bargaining unit, which is also the exclusive representative for a different bargaining unit of the Department's employees. By showing favoritism for one union over another, the Department has interfered with the administration of the OPBA in violation of O.R.C. § 4117.11(A)(2).

In *In re Youngstown City School Dist. Bd. of Ed.*, SERB 95-010 (6-30-95), SERB set forth a balancing test to be used in determining whether a subject was a mandatory or permissive subject of bargaining. SERB also held that where it is readily apparent that the subject matters at issue are not a mixture of inherently managerial prerogatives and wages, hours, terms and other conditions of employment, a balancing test is unnecessary. Where an employer introduces a disciplinary component to a work rule or policy and the potential discipline affects wages, hours, or terms and other conditions of employment, the work rule or policy, whether new or revised, is a mandatory subject of bargaining.

In this case, the dress code could have been a management prerogative if properly formulated and implemented. However, the disciplinary component of the Policy declares that a Corrections Officer can be declared A.W.O.L. if he or she violates the Policy. Being declared A.W.O.L. can result in the loss of income and other adverse employment consequences. As a result, the disciplinary component of the Policy directly affects "wages." Thus, this dress code policy revision, due to the disciplinary component that directly affects wages, is a mandatory subject of bargaining. Therefore, the Department's unilateral implementation of this revision violates O.R.C. §§ 4117.11(A)(1) and (A)(5).

### III. CONCLUSION

For the above reasons, we find that the revised and amended Dress Code Policy covering bargaining-unit members, which included a new disciplinary component that directly affects wages, is a mandatory subject of bargaining. Accordingly, when the Cuyahoga County Sheriff's Department unilaterally implemented the revised and amended Dress Code Policy, the Department committed an unfair labor practice in violation of O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(5).

Pohler, Chairman, and Verich, Board Member, concur.