

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Columbiana County Board of Commissioners,

Respondent.

**CASE NUMBER: 97-UJP-11-0604**

**ORDER  
(OPINION ATTACHED)**

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

On November 4, 1997, the Fraternal Order of Police, Ohio Labor Council, Inc. ("Charging Party") filed an unfair labor practice charge against the Columbiana County Board of Commissioners ("Respondent"). Pursuant to Ohio Revised Code ("O.R.C.") § 4117.12, the State Employment Relations Board ("SERB" or "Complainant") conducted an investigation and found probable cause to believe that an unfair labor practice had been committed. A complaint was issued alleging that the Respondent had violated O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(3) by bypassing the exclusive representative and negotiating mandatory subjects of bargaining with a private employer.

A hearing was held on June 17 and 18, 1998. On September 2, 1998, the Hearing Officer's Proposed Order was issued, recommending that the Board find that the Respondent committed unfair labor practices in violation of O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(3). On September 25, 1998, the Respondent filed exceptions to the proposed order. On October 9, 1998, the Charging Party filed its response to the exceptions. On October 13, 1998, the Complainant filed its response to the exceptions.

After reviewing the record, the Hearing Officer's Proposed Order, the exceptions, and the responses to the exceptions, the Board amends Conclusion of Law No. 3 to read, "The Columbiana County Board of Commissioners is a 'legislative body' as defined by O.R.C. Section 4117.10(B) for the Columbiana County Sheriff." and amends Conclusion of Law No. 4 to read, "The Columbiana County Board of Commissioners did not violate O.R.C. Sections 4117.11(A)(1), (A)(2), and (A)(3) when it signed a contract to privatize the

jail without first bargaining with the Fraternal Order of Police, Ohio Labor Council, Inc. and when it refused to fund an arbitration award against the Columbiana County Sheriff." The Board adopts the Findings of Fact and Conclusions of Law, as amended, in the Hearing Officer's Proposed Order; dismisses the complaint; and dismisses with prejudice the unfair labor practice charge.

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

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

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Case No. 97-UPL-11-0604

**OPINION**

POHLER, Chairman:

This unfair labor practice case comes before the State Employment Relations Board ("SERB" or "Complainant") upon the filing of exceptions and responses to exceptions to the Hearing Officer's Proposed Order that was issued on September 2, 1998. For the reasons below, we find that the Columbiana County Board of Commissioners did not violate O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(3) when it signed a contract to privatize the jail without first bargaining with the Fraternal Order of Police, Ohio Labor Council, Inc. and when it refused to fund a grievance-arbitration award against the Columbiana County Sheriff.

**I. BACKGROUND**

The Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP") is the exclusive representative for four bargaining units of employees of the Columbiana County Sheriff ("Sheriff"), including a unit of corrections officers. The FOP and the Sheriff have engaged in multi-unit bargaining for those units and have had several collective bargaining agreements over the years. In 1994, the parties began bargaining over the collective bargaining agreement to be effective January 1, 1995 through December 31, 1997 (1995-

1997 CBA). The Sheriff did not consult with the Columbiana County Board of Commissioners ("County" or "Respondent") in making the original bargaining proposals for the 1995-1997 CBA, but all parties knew the agreement would be subject to ratification and approval by the County. The Sheriff and the FOP reached a tentative agreement on most issues, and the unresolved issues were submitted to a fact finder pursuant to O.R.C. § 4117.14. The fact-finding report was submitted to the legislative body, the Respondent, pursuant to O.R.C. § 4117.10. The County rejected the fact-finding report. The parties went to conciliation pursuant to O.R.C. § 4117.14. The conciliator awarded a three-percent wage increase for 1995 and a three-percent wage increase for 1996, with a wage reopener in 1997.

The Sheriff had been responsible for operating two jails: a felony facility (the old jail) and a misdemeanor facility (the "MSMJ"). As a result of a federal lawsuit, the Sheriff and the County entered into a consent decree to build a new jail to replace the old jail. Due to serious fiscal problems encountered when a former Columbiana County official stole ten million dollars from the county, the construction of the new jail was significantly delayed. In 1996, the federal consent order permitted a maximum of 28 prisoners in the old jail. The MSMJ facility, which was not involved in the consent decree, could hold up to a maximum of 66 inmates; it usually averaged only 42 inmates because it was limited to misdemeanants. The average daily prisoner population of the County ranged from 85-100, but could go as high as 120. Excess prisoners were sent to jails in other counties at a cost to the Sheriff of \$500,000-600,000 for the year. In 1996, the County began exploring alternatives to its jail operations.

During the 1997 wage reopener negotiations, which began in late 1996, the Sheriff and the FOP agreed on a three-percent wage increase. The Sheriff did not consult the County's preferences regarding the wage reopener negotiations. When the tentative agreement was submitted, the County rejected the wage increase, preferring a wage

freeze for 1997 to help pay for construction expenses of the new jail. The Sheriff and the FOP proceeded to fact-finding on the wage reopener. The FOP proposed a five-percent increase and the Sheriff proposed a three-percent increase. The fact finder awarded a three-percent increase. The fact-finding report was submitted to the County, which voted to reject it. The Sheriff and the FOP then went to binding conciliation and both submitted three-percent wage increase proposals. The conciliator awarded a three-percent wage increase on April 21, 1997.

In 1996, the Sheriff spent \$3,768,862 operating the road patrol and the two jails, including \$500,000 to \$600,000 for housing excess prisoners outside the County. The County appropriated only \$1.4 million to the Sheriff for 1997, with an additional \$1.2 million amount specially restricted to housing prisoners outside the county. The Sheriff was told by the County that both jails would be closed for 1997. In prior years, the Sheriff could use any monies appropriated in his budget to fund any of his operations that needed money, but for the first time the Sheriff was told by the County Auditor that the \$1.2 million was restricted to housing prisoners outside the county. The total \$2.6 million appropriation for 1997 was 32% less than the Sheriff's 1996 expenditures.

By agreement between the County and the Sheriff, the old jail remained open in 1997. The Sheriff was eventually reimbursed the expense of that operation in his 1997 patrol budget. At the beginning of 1997, the Sheriff had 85 full-time and 8-10 part-time employees. The County signed an agreement with Mahoning County to accept up to 80 prisoners of the County for \$45 per day per prisoner. Without funds, the Sheriff closed the MSMJ facility on February 21, 1997, and laid off 18 correctional officers, three cooks, one program coordinator, one receptionist, two nurses, and one maintenance employee, citing lack of work and lack of funds under the 1995-1997 CBA. Neither the Sheriff nor the County offered to bargain with the FOP over the decision to close the MSMJ facility, but the Sheriff did engage in bargaining with the FOP over the effects of the jail closure. By

the end of 1997, the Sheriff had been appropriated and had spent about \$3.9 million on all operations, which included about \$1.1 million for housing prisoners outside the county that year.

The FOP filed three grievances over the February layoffs on February 21, 1997. One grievance was denied, but the FOP won the other two class-action grievances because the arbitrator held that bargaining-unit work was being performed now by nonbargaining-unit employees. Specifically, the arbitrator held on August 15, 1997, that the County deliberately forced the Sheriff to make an unnecessary layoff without bargaining over the issue. The arbitrator ordered reinstatement and back pay to the laid-off employees. In spite of this award, the County asserted that it does not have to provide funds to pay for this award. Most of the laid-off employees were never recalled to employment, and none have received any of the back pay or damages ordered in this award despite the final and binding arbitration clause in the 1995-1997 CBA.

In June or July 1997, the federal judge reduced the maximum capacity of the old jail from 28 prisoners to 15 prisoners and limited the maximum stay to five days. The Sheriff and the County agreed to keep the old jail open strictly as a temporary holding facility for prisoners. This decision necessitated that the Sheriff make a second round of layoffs. The old jail was officially closed by court order on December 31, 1997.

During the summer and autumn of 1997, the County actively negotiated with Civigenics, a private company, to run the new jail when it opened around January 1, 1998. The new jail would cost appreciably more to staff and to operate than the old jails because it has a minimum of 170 beds. The Sheriff was invited to participate in some of those negotiations, but declined. A contract with Civigenics was signed in November 1997, and the Sheriff was informed that his appropriations for 1998 would include no money for housing prisoners. Neither the County nor the Sheriff offered to negotiate with the FOP

over the decision to privatize the jail operations. On December 1, 1997, the Sheriff had 55-60 employees. By December 31, 1997, the Sheriff's staff was reduced to approximately 30 employees.

## II. DISCUSSION

The County is alleged to have violated O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(3), which provide as follows:

(A) It is an unfair labor practice for a public employer, *its agents, or representatives* to:

(1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code or an employee organization in the selection of its representative for the purpose of collective bargaining or the adjustment of grievances;

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

(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[.] (emphasis added).

All parties agree that the Sheriff is the "public employer" of the public employees who were affected by the privatization of the jail. The contracting out of the jail operations resulted in the reassignment of bargaining-unit work from the Sheriff's employees to Civigenics' employees. The reassignment of work previously performed by members of a bargaining unit to persons outside the unit is a mandatory subject for collective bargaining under O.R.C. §§ 4117.08(A) and (C). *Lorain City School Dist. Bd. of Ed. v. SERB*, 40 Ohio St.3d 257, 1989 SERB 4-2 (1988). The duty to bargain collectively with the employees' exclusive representative rests with the employer. But the Sheriff is not a respondent in this case. Therefore, the Sheriff's actions and unexercised options are not before SERB.

**A. The County Is Not an Agent or Representative of the Sheriff**

The parties do not dispute that the Respondent functions as the “legislative body” pursuant to O.R.C. § 4117.10(B) for the Sheriff and not as a co-employer. See *In re Franklin Cty. Sheriff*, SERB 86-007 (2-26-86), *aff’d*, *Franklin Cty Bd of Commrs v SERB*, 1990 SERB 4-29 (CP, Franklin, 10-2-90). Since the County is neither the employer nor a co-employer of the Sheriff’s employees, it cannot be held to have violated any subsection of O.R.C. § 4117.11(A) unless it is held to be an “agent” or “representative” of the public employer. The County asserts that it is not an “agent” or “representative” of the Sheriff.

An agent is one who acts for or in the place of another by authority from the other. *State v. Lawrence*, 13 Ohio Op. 2d 195, 84 Ohio L. Abs. 16, 168 N.E.2d 21 (C.P. 1960). An agent stands in the shoes of the principal. *American Financial Corp. v. Fireman's Fund Ins. Co.*, 15 Ohio St.2d 171, 44 Ohio Op. 2d 147, 239 N.E.2d 33 (1968). An “agency relationship” is a consensual fiduciary relationship between two persons where the agent has the power to bind the principal by his or her actions, and the principal has the right to control the actions of the agent. *Evans v. Ohio State Univ.*, 112 Ohio App.3d 724, 680 N.E.2d 161, 118 Ed. Law Rep. 1104 (10th Dist. Franklin County 1996), *appeal not allowed*, 77 Ohio St. 3d 1494, 673 N.E.2d 149 (1996). “Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other to so act.” Restatement of Law 2d, Agency (1958). The record in this case plainly establishes that the Sheriff manifested no consent for the County to act on his behalf. Further, the record does not indicate any degree of control by the Sheriff over the County’s actions.

A representative is a person or thing that stands for or is equivalent to, in some way, another person or thing. *Gaffney v. Unit Crane & Shovel Corp.*, 117 F. Supp. 490, 491 (D.C. Pa.). A representative is one who represents others or another in a special capacity

as an agent. *Sunset Mill & Grain Co. v. Anderson*, 39 Cal.2d 773, 249 P.2d 24, 27. The term “representative” is interchangeable with “agent.” *Id.* See, e.g., O.R.C. § 1301.01(II) (“‘Representative’ includes an agent, an officer of a corporation or association, a trustee, executor, or administrator of an estate, or any other person empowered to act for another.”) The record does not reflect that the County was standing for or equivalent to the Sheriff. The record shows that the County and the Sheriff have disagreed from the beginning of the controversy over the jail privatization. Thus, the record supports a finding that the County was not an “agent” or “representative” of the Sheriff.

The Complainant argues that an agency relationship is established by operation of law through an implied relationship that is inherent in O.R.C. Chapter 4117. The extent of that relationship, as well as the role and the description of the “legislative body” for collective bargaining, is set forth in O.R.C. § 4117.10(B), which provides:

The public employer shall submit a request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the appropriate legislative body to the legislative body within fourteen days of the date on which the parties finalize the agreement, unless otherwise specified, but if the appropriate legislative body is not in session at the time, then within fourteen days after it convenes. The legislative body must approve or reject the submission as a whole, and the submission shall be deemed approved if the legislative body fails to act within thirty days after the public employer submits the agreement. The parties may specify that those provisions of the agreement not requiring action by a legislative body are effective and operative in accordance with the terms of the agreement, provided there has been compliance with division (C) of this section. If the legislative body rejects the submission of the public employer, either party may reopen all or part of the entire agreement.

As used in this section, “legislative body” includes the general assembly, the governing board of a municipal corporation, school district, college or university, village, township, or board of county commissioners or any other body that has authority to approve the budget of their public jurisdiction.

The Complainant argues that the County had a duty to bargain the decision to contract out its jail operations and its effects with the exclusive representative before entering into any agreements with another entity. In *Stark County Educators Assn For The Training of Retarded Persons v SERB*, 1989 SERB 4-119 (5th Dist Ct App, Stark, 10-10-89), the Stark County Board of Commissioners, the legislative body, told the Stark County Board of Mental Retardation and Developmental Disabilities, the employer, not to negotiate certain issues and set certain parameters for the employer's negotiations. The court of appeals found that the legislative body exceeded its authority in attempting to intervene in the bargaining process between the employer and its employees. The court cited with approval the part of the Hearing Officer's Proposed Order that stated in relevant part: "[G]ood faith bargaining requires that the public employer and the legislative body each keep within their respective roles in the collective bargaining process." *Id.* at 4-125. The public employer who engages in negotiations is separate and apart from the legislative body. *SERB v. Martins Ferry*, 1991 SERB 4-62, 4-65 (7th Dist Ct App, Belmont, 6-6-91).

O.R.C. §§ 9.06 and 341.35 constitute enabling statutes that permit a board of county commissioners to contract jail operations with private entities under certain circumstances. These statutes contain restrictions as to how they may be implemented, but the statutes do not add any O.R.C. Chapter 4117 obligations.

Addressing the legislative acts of a city's civil service commission in *In re City of Akron*, SERB 97-006, at 3-37 (5-1-97), SERB held: "SERB cannot prohibit a city or its civil service commission from enacting legislation, including civil service rules, because such a remedy exceeds SERB's jurisdiction; SERB must focus on the public employer's implementation of those legislative enactments." In this case, the County was not involved in the negotiations and did not intervene in the collective bargaining process. The County acted solely within its legislative capacity. Therefore, the County did not commit an unfair labor practice because it acted only within its statutorily prescribed role as a legislative

body, not as an agent or representative of the employer. The Sheriff, as the employer, had the obligation to bargain the effects of the legislative acts with the exclusive representative, including layoff process and procedures, bumping rights, and early retirement incentive plans. The Sheriff's actions are not before SERB.

**B. The County Did Not Violate O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(3) When It Refused Funds to Pay a Grievance-Arbitration Award**

Once a collective bargaining agreement is reached, whether through the negotiation process or by operation of law under O.R.C. §§ 4117.10(B) or 4117.14(G), the agreement is binding upon the legislative body, the employer, the employee organization, and the employees covered by the agreement. O.R.C. § 4117.10(C). At that point, the legislative body is obligated to fund the agreement.

After the collective bargaining agreement is in place, the responsibilities under the agreement fall on the employees, along with their exclusive representative, and the employer. It is the employer's duty to administer the agreement properly. If the employer does not comply with the agreement and receives a grievance-arbitration award in the employees' favor, it is the employer's obligation to comply with the award. The employer may seek additional funds from the legislative body, and the legislative body may approve additional funds for the employer.

The issue presented in this case, though, is whether the legislative body is obligated to fund a grievance-arbitration award. O.R.C. Chapter 4117 does not impose such a duty on a legislative body. After the legislative body funds the agreement, it does not serve as an open funding source for the consequences of the employer's acts. The additional funding for grievance-arbitration awards against an employer is a discretionary matter for a legislative body. The legislative body is not required to approve additional tax dollars for the employer's illegal actions or contractual violations. The Sheriff, as the employer,

despite the difficult choices it faces, is obligated to meet the grievance-arbitration award, with or without the legislative body's support; but this issue is not before SERB in this case. Thus, the County did not violate O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(3) when it refused to fund the grievance-arbitration award against the Sheriff.

### **III. CONCLUSION**

For the reasons above, we find that the Columbiana County Board of Commissioners did not violate O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(3) when it signed a contract to privatize the jail without first bargaining with the Fraternal Order of Police, Ohio Labor Council, Inc. and when it refused to fund a grievance-arbitration award against the Columbiana County Sheriff.

Gillmor, Vice Chairman, and Verich, Board Member, concur.