

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

City of North Royalton,

Respondent.

Case No. 98-ULP-03-0124

**ORDER
(OPINION ATTACHED)**

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich: January 14, 1999.

On March 19, 1998, the North Royalton Firefighters, Local 2156, IAFF filed an unfair labor practice charge against the City of North Royalton ("Respondent"). On June 25, 1998, the State Employment Relations Board ("Board") determined that probable cause existed to believe that the Respondent had committed or was committing an unfair labor practice by threatening to discharge employees for exercising their right to picket in violation of Ohio Revised Code ("O.R.C.") Sections 4117.11(A)(1).

On August 12, 1998, the parties filed a settlement agreement in which the parties agreed to submit Stipulations of Fact with exhibits and briefs in lieu of an evidentiary hearing in this case. The posthearing briefs were filed by the parties by August 31, 1998. On September 3, 1998, the case was transferred from the Hearings Section to the Board for a determination on the merits.

After reviewing the record and all filings, including the Joint Stipulations of Fact and the briefs filed by the parties, the Board finds that the City of North Royalton violated Ohio Revised Code Section 4117.11(A)(1) when it threatened bargaining-unit members with discipline, including discharge, if they exercised their right to picket. Attached is an Opinion, incorporated by reference, that contains supporting Findings of Fact and Conclusions of Law.

The City of North Royalton is ordered to:

A. Cease and desist from:

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 threatening bargaining-unit members with discipline, including discharge, if they exercise their right to picket under Ohio Revised Code Chapter 4117;

B. Take the following affirmative action:

1. Post the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board, which states that the City of North Royalton shall cease and desist from the actions set forth in paragraph A and shall take the affirmative action set forth in paragraph B, for sixty days in all of the usual and normal posting locations where employees represented by the North Royalton Firefighters, Local 2156, IAFF work; and
2. 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.

It is so directed.

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

/s/ SUE POHLER
CHAIRMAN

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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 on this
22nd day of January, 1999.

/s/ LINDA S. HARDESTY,
CERTIFIED LEGAL ASSISTANT

[The following is the text of the "Notice to Employees" to be posted by the Respondent.]

**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:

A. CEASE AND DESIST FROM:

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 threatening bargaining-unit members with discipline, including discharge, if they exercise their right to picket under Ohio Revised Code Chapter 4117;

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

1. Post the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board, which states that the City of North Royalton shall cease and desist from the actions set forth in paragraph A and shall take the affirmative action set forth in paragraph B, for sixty days in all of the usual and normal posting locations where employees represented by the North Royalton Firefighters, Local 2156, IAFF work; and
2. 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.

**CITY OF NORTH ROYALTON
CASE NO. 98-ULP-03-0124**

BY

DATE

TITLE

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,

Complainant,

v.

City of North Royalton,

Respondent.

Case No. 98-ULP-03-0124

OPINION

GILLMOR, Vice Chairman:

On March 19, 1998, the North Royalton Firefighters, Local 2156, IAFF (“Local 2156”) filed an unfair labor practice charge. On June 25, 1998, the State Employment Relations Board (“SERB” or “Board”) determined that probable cause existed for believing the City of North Royalton (“City”) had committed or was committing an unfair labor practice in violation of Ohio Revised Code (“O.R.C.”) § 4117.11(A)(1), authorized the issuance of a complaint, directed the matter to hearing, and also directed the parties to the unfair labor practice mediation process. On August 12, 1998, the parties filed a settlement agreement in which the parties agreed to submit Stipulations of Fact with exhibits and briefs in lieu of an evidentiary hearing in this case. On September 3, 1998, the case was transferred from the Hearings Section to the Board for a determination on the merits. For the reasons below, we find that the City violated O.R.C. § 4117.11(A)(1) when it threatened bargaining-unit members with discipline, including discharge, if they exercised their right to picket.

I. FINDINGS OF FACT

1. The City of North Royalton (“City”) is a “public employer” as defined by O.R.C. § 4117.01(B). (Respondent’s Admissions in its Answer [“A.”], ¶ 1).

2. The North Royalton Firefighters, Local 2156, IAFF (“Local 2156”) is an “employee organization” as defined by O.R.C. § 4117.01(D) and is the exclusive representative for a bargaining unit of full-time employees employed by the City. (A., ¶ 2).

3. The City and Local 2156 are parties to a collective bargaining agreement effective January 1, 1994 to December 31, 1996 ("Agreement"), containing a grievance procedure that culminates in final and binding arbitration; the Agreement was extended by both parties during all times relevant to this case. (A., ¶ 5; Joint Exhibit ["Jt. Exh."] 5).

4. The parties' Agreement expired December 1996, and the parties have been in negotiations for a new contract since October 1996. (A., ¶ 6).

5. On February 20, 1997, during the negotiations mentioned in Finding of Fact ("F.F.") No. 4, the parties entered into an agreement to waive the provisions of O.R.C. § 4117.14(G)(11) regarding all matters of compensation or with cost implications that may be awarded by a conciliator in accordance with O.R.C. Chapter 4117. In the agreement, the parties further agreed that any wage increase or other matters with cost implications decided by such conciliator may be retroactive to January 1, 1997. (A., ¶¶ 7 and 8).

6. A conciliation award was issued on December 30, 1997. The conciliator selected the City's position on annual fees paid to certain employees, premium pay for holidays, compensatory time, and wages. (A., ¶¶ 9 and 10).

7. On March 17, 1998, during the dispute over terms of the conciliator's award, Local 2156 informed the City that it would be conducting informational picketing on March 19, 1998. The notice referred to the dispute involving the City's refusal to sign the Agreement. (A., ¶ 13).

8. On March 16, 1998, Marc Buchanan, President of Local 2156, prepared a Notice of Intent to Picket the City of North Royalton and sent a copy to SERB by fax. A copy of the notice was hand delivered to the City on March 17, 1998, and the original was filed with SERB on March 19, 1998. (Joint Stipulations of Fact ["Stip."] No. 2; Jt. Exh. 1).

9. On March 18, 1998, Joseph Lencewicz, Labor Relations Representative for the City, sent a letter by fax to Susannah Muskovitz, Attorney for Local 2156, and to Marc Buchanan. In that letter, the

City stated:

Additionally please be further advised that if such action is carried out the City will regard it as a willful and deliberate violation of the state law, the collective bargaining agreement and certain departmental policies and the Union, its officials and/or employees of Local #2156 involved in such action will be subject to unfair labor practice charge(s) and other appropriate action up to and including discharge.

(Stip. No. 3; A., ¶ 14; Jt. Exh. 2).

10. On March 18, 1998, Susannah Muskovitz sent by fax and mail a letter to Joseph Lencewicz. (Stip. No. 8; Jt. Exh. 6).

11. On March 25, 1998, Marc Buchanan prepared a Notice of Intent to Picket the City of North Royalton. A copy of the notice was hand delivered to the City on March 25, 1998, and the original was filed with SERB on March 30, 1998. (Stip. No. 4; Jt. Exh. 3).

12. In preparing and filing both Notices of Intent to Picket mentioned above in F.F. Nos. 8 and 11, Marc Buchanan relied upon the last sentence on page 10 in SERB's publication known as *Unfair Labor Practices*, which states: "On the other hand, where picketing is determined to be informational only, and is in no way connected with a work stoppage, it does not require filing of a notice." (Stip. No. 5; Jt. Exh. 4).

13. The North Royalton Fire Department has no departmental policies with regard to picketing. (Stip. No. 7).

II. ANALYSIS AND DISCUSSION

O.R.C. § 4117.11(A)(1) provides 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 rights guaranteed in Chapter 4117. of the Revised Code[.]

When a violation of O.R.C. § 4117.11(A)(1) is alleged, the appropriate inquiry is an objective rather than subjective one. *In re Pickaway County Human Services Dept.*, SERB 93-001 (3-24-93), *aff'd sub nom. SERB v. Pickaway Human Services Dept.*, 1995 SERB 4-46 (4th Dist. Ct. App., Pickaway, 12-7-95). We must determine, under the totality of the circumstances, whether one could reasonably conclude that the public employer's conduct interfered with, restrained, or coerced public employees in the exercise of their O.R.C. Chapter 4117 rights. For example, an O.R.C. § 4117.11(A)(1) violation was found when a transportation supervisor told public employees who were engaged in strike activity that "if they did not come back to work from the strike, they would lose their jobs." *In re Springfield Local School Dist Bd of Ed*, SERB 97-007 at 3-49 (5-1-97). The supervisor's statements were considered "overtly threatening because they are tied directly to the individuals' protected activity." *Id.*

At issue is a statement made by the City after it received the notice of intent to picket. In his letter to the Attorney for Local 2156, the City's Labor Relations Representative stated:

Additionally please be further advised that if such action is carried out the City will regard it as a willful and deliberate violation of the state law, the collective bargaining agreement and certain departmental policies and the Union, its officials and/or employees of Local #2156 involved in such action *will be subject to unfair labor practice charge(s) and other appropriate action up to and including discharge.* (emphasis added).¹

A charge that an unfair labor practice has been or is being committed may be filed by any person.² O.R.C. § 4117.12(B); Ohio Administrative Code Rule 4117-7-01(A). Charges can be filed by public employers, public employees, and employee organizations. O.R.C. § 4117.11 provides a process whereby disputes over another party's conduct can be raised, investigated, and remedied where necessary.

O.R.C. § 4117.11(A)(1) is not violated when a public employer notifies its employees or an employee organization of its intent to file an unfair labor practice charge if a certain act is, or is not,

¹F.F. No. 9.

²"This obviously means anyone with standing." *In re City of Middleburg Heights*, SERB 85-045 (9-20-85) at 158, *cited with approval in In re City of Canton*, SERB 90-006 (2-16-90).

carried out by the employees or employee organization. Likewise, O.R.C. § 4117.11(B) is not violated by public employees or employee organizations if they notify a public employer of their intent to file a charge. If Local 2156 engaged in picketing without the statutory ten-day notice, the City could exercise its O.R.C. Chapter 4117 rights by filing an unfair labor practice charge against Local 2156 for violating O.R.C. § 4117.11(B)(8). We do not find that the City's advance notice that it will file an unfair labor practice charge violates O.R.C. § 4117.11(A)(1).

Had the City stopped at merely warning its bargaining-unit employees and Local 2156 that it would file an unfair labor practice charge against them, this matter would be concluded. But the City threatened its bargaining-unit employees with "other appropriate action up to and including discharge" if they engaged in picketing under the notice that was hand delivered to the City on March 17, 1998. When a public employer threatens an employee with discharge for exercising O.R.C. Chapter 4117 rights, the public employee's exercise of those rights has been interfered with, restrained, or coerced. With this threat, the City has engaged in self-help remedies for potential statutory violations. Self-help remedies against unfair labor practices invade SERB's exclusive jurisdiction in O.R.C. §§ 4117.11 and 4117.12 and undermine the statutory mechanisms that provide protection against, and remedies for, unfair labor practices.³ Even the remedies for illegal strikes under O.R.C. § 4117.23 do not come into play until after

³See, e.g., *Southwestern Steel & Supply, Inc., Yuma, Ariz. And Iron Workers, Local 75, AFL-CIO*, 276 NLRB No. 174, 120 L.R.R.M. 1255 (10-29-85) [Employer violated Section 8(a)(5) of Labor Management Reporting Act by withdrawing recognition from union; even if employer correctly believed that union was completely unreasonable in striking and shutting down employer's jobs because of its failure to use union's hiring hall, such belief is not legal justification for resorting to self-help.]; *Catalytic, Inc. v. Monmouth & Ocean County Building*

SERB makes a determination and issues a notice. Thus, considering the totality of the circumstances, we find that the City violated O.R.C. § 4117.11(A)(1) when it unlawfully threatened to discharge bargaining-unit employees who engaged in picketing, which is a protected right guaranteed in O.R.C. Chapter 4117.⁴

III. CONCLUSIONS OF LAW

1. The City of North Royalton is a “public employer” as defined by O.R.C. § 4117.01(B).
2. The North Royalton Firefighters, Local 2156, IAFF is an “employee organization” as defined by O.R.C. § 4117.01(D).
3. The City of North Royalton committed an unfair labor practice in violation of O.R.C. § 4117.11(A)(1) when it threatened bargaining-unit members with “other appropriate action up to and including discharge” if they exercised their right to picket.

IV. DETERMINATION

Trades Council, 126 L.R.R.M. 2425 (CA 3, 1987) [Union’s picketing and hand billing at plant gate, which precipitated work stoppage by other unions, constituted self-help and was designed to bring pressure in precisely the same manner as strike; therefore, employer’s motion for injunction is granted.]

⁴The City and Local 2156 have briefed and argued the applicability of *United Electrical Radio and Mach. v. SERB*, 1998 SERB 4-41 (8th Dist Ct App, Cuyahoga, 5-7-98) to this case. The legality of the picketing without the ten-day notice is not at issue in this case, but the legality of the City’s self-help acts is at issue. We note that since the Ohio Supreme Court declined to hear the appeal of this decision, it exists as binding precedent only in the 8th Ohio Appellate District, which is composed solely of Cuyahoga County.

For the reasons above, we find that the City of North Royalton violated Ohio Revised Code § 4117.11(A)(1) when it threatened bargaining-unit members with discipline, including discharge, if they exercised their right to picket. Therefore, we issue an Order, pursuant to O.R.C. § 4117.12(B)(3), requiring the City of North Royalton to cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117, and from otherwise violating O.R.C. § 4117.11(A)(1). We also order the City of North Royalton to post the Notice to Employees for sixty days in all of the usual and normal posting locations where employees represented by North Royalton Firefighters, Local 2156, IAFF, work.

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