

**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-11-0654

**ORDER
(OPINION ATTACHED)**

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich:
September 2, 1999.

On November 4, 1998, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Region 2, Local 70 ("UAW") filed an unfair labor practice charge against the Cuyahoga County Sheriff's Department ("Respondent"). On March 11, 1999, the State Employment Relations Board ("Board" or "Complainant") determined that probable cause existed for believing the Respondent had committed or was committing unfair labor practices by implementing revisions to the dress code policy without bargaining with the UAW in violation of Ohio Revised Code Sections 4117.11(A)(1) and (A)(5), authorized the issuance of a complaint, referred the matter to hearing, and directed the parties to the unfair labor practice mediation process. On May 25, 1999, the parties submitted Joint Stipulations of Fact with exhibits and briefs in lieu of an evidentiary hearing in this case. On June 17, 1999, 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, exhibits, and the briefs filed by the parties, the Board finds that the Cuyahoga County Sheriff's Department violated Ohio Revised Code Sections 4117.11(A)(1) and (A)(5) when it implemented revisions to the dress code policy without bargaining with the UAW. Attached is an Opinion, incorporated by reference, that contains supporting Findings of Fact and Conclusions of Law.

The Cuyahoga County Sheriff's Department 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 and refusing to bargain with the exclusive representative of its employees, in violation of Ohio Revised Code Sections 4117.11(A)(1) and (A)(5), by implementing revisions to the dress code policy without bargaining with the UAW;

B. Take the following affirmative action:

1. Return to the status quo relative to the dress code policy as it existed before the unilateral changes;
2. Rescind any and all discipline given to UAW members for violations of the unlawfully implemented dress code policy;
3. Bargain in good faith with the UAW regarding any revisions to the dress code policy;
4. Post the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board, which states 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, for sixty days in all of the usual and normal posting locations where employees represented by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Region 2, Local 70 work; and
5. 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.

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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 on this
3rd day of September, 1999.



SALLY L. BARAILLOUX, EXECUTIVE SECRETARY



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:

A. CEASE AND DESIST FROM:

Interfering with, restraining or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 and refusing to bargain with the exclusive representative of its employees, in violation of Ohio Revised Code Sections 4117.11(A)(1) and (A)(5) by implementing revisions to the dress code policy without bargaining with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Region 2, Local 70;

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

1. Return to the status quo relative to the dress code policy as it existed before the unilateral changes;
2. Rescind any and all discipline given to members of International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Region 2, Local 70 for violations of the unlawfully implemented dress code policy;
3. Bargain in good faith with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Region 2, Local 70 regarding any revisions to the dress code policy;
4. Post the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board, which states 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, for sixty days in all of the usual and normal posting locations where employees represented by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Region 2, Local 70 work; and
5. 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.

CUYAHOGA COUNTY SHERIFF'S DEPARTMENT, CASE NO. 98-ULP-11-0654

BY _____

DATE _____

TITLE _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

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v.

Cuyahoga County Sheriff's Department,

Respondent.

Case No. 98-ULP-11-0654

OPINION

VERICH, Board Member:

This unfair labor practice case comes before the State Employment Relations Board ("Board" or "Complainant") upon the filing of Joint Stipulations of Fact, Joint Exhibits, and Trial Briefs. For the reasons below, we find that the Cuyahoga County Sheriff's Department violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(5) when it unilaterally implemented a Revised and Amended Dress Code Policy that covered bargaining-unit members.

I. FINDINGS OF FACT

1. The Cuyahoga County Sheriff's Department ("Employer" or "Sheriff") is a public employer as defined by O.R.C. § 4117.01(B). (Joint Stipulation of Fact ["Stip." No. 1]).

2. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Region 2, Local 70 ("UAW") is an "employee

organization" as defined by O.R.C. § 4117.01(D) and is the exclusive bargaining representative for a unit of Corporals employed by the Sheriff. (Stip. No. 2).

3. The Sheriff and the UAW were parties to a collective bargaining agreement, effective January 1, 1996 to December 30, 1998 ("Agreement"), containing a grievance procedure that culminates in final and binding arbitration. (Stip. No. 5).

4. Effective March 2, 1998, the Sheriff implemented a revised and amended dress code policy. (Stip. No. 6; Joint Exhibit ["Jt. Exh."] C).

5. In July 1998, the Sheriff and the UAW entered into a Settlement Agreement in SERB Case No. 98-ULP-02-0090 regarding the original dress code policy implemented by the Sheriff pertaining to Corporals. Paragraph C of the Settlement Agreement provides:

The Employer understands that it cannot unilaterally change a uniform policy or other policies that effect [sic] mandatory subjects of bargaining without giving notice to and bargaining with the Charging Party [UAW]. The Employer will not engage in conduct so as to violate R.C. 4117.11(A)(1) and (5).

(Stip. No. 7; Jt. Exh. A).

6. In September 1998, the Sheriff posted a Revised and Amended Dress Code Policy ("Policy") pertaining to all Corporals, without first giving notice to or bargaining with the UAW. The Policy was unilaterally implemented and fully effective beginning September 1998. Pursuant to the Policy, Corporals were prohibited from wearing organization-affiliated patches or sweaters with the UAW logo, including the UAW Veteran's Patch, when in uniform. The veteran's patch signifies that the UAW member wearing the patch had been a member of the United States Armed Forces and, thus, was a "veteran." (Stip. Nos. 8 and 9; Jt. Exh. D).

7. In September 1998, the Sheriff initiated discipline against UAW Chief Steward David Pavlick to cause him to remove a veteran's patch. (Stip No. 9).

8. The UAW filed and pursued a grievance over the treatment of UAW Chief Steward David Pavlick as described above in Finding of Fact No. 7. (Stip. No. 10).

II. DISCUSSION

The issue in this case is whether the Sheriff's unilateral implementation of the Revised and Amended Dress Code Policy violated O.R.C. §§ 4117.11(A)(1) and (A)(5), which provide in 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 or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances;

* * *

(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 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.

Unless otherwise provided, a public employer maintains the authority to determine matters of inherent managerial policy as outlined in O.R.C. § 4117.08(C). The employer is required, however, to bargain with an exclusive representative on all matters relating to wages, hours, or terms and other conditions of employment under O.R.C. § 4117.08(A).

In re City of Broadview Heights, SERB 99-005 (3-5-99); *In re Ottawa County Riverview Nursing Home*, SERB 96-006 (5-31-96).

The focus of this case, though, is not on whether the changes to a dress code policy were a mandatory or permissive subject of bargaining. Instead, our focus is on the July 1998 Settlement Agreement. Paragraph C of the agreement states in pertinent part: "The Employer understands that *it cannot unilaterally change a uniform policy* or other policies that effect mandatory subjects of bargaining without giving notice to and bargaining with the Charging Party [UAW]." (emphasis added).

In this case, the Sheriff clearly and voluntarily established the duty to bargain changes to its dress code policy through the Settlement Agreement in an earlier unfair labor practice case under O.R.C. Chapter 4117. Having established that it must give notice to and bargain with the UAW, the Sheriff, only two months later, posted the Revised and Amended Dress Code Policy without negotiating with the UAW. The Sheriff's unilateral act violated O.R.C. § 4117.11(A)(5) through its refusal to bargain with the exclusive representative of the bargaining unit.

In addition, we find that the Sheriff's unilateral implementation of revisions to the dress code policy without first giving notice to and bargaining with the UAW, contrary to its agreement to bargain, violated O.R.C. § 4117.11(A)(1). The violation of O.R.C. § 4117.11(A)(1) is a derivative violation of O.R.C. § 4117.11(A)(5) in this instance. *In re Amalgamated Transit Union, Local 268*, SERB 93-013 (6-25-93) at n.14; *In re City of Broadview Heights, supra* at 3-30.

III. CONCLUSIONS OF LAW

1. The Cuyahoga County Sheriff's Department is a public employer as defined by O.R.C. § 4117.01(B).

2. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Region 2, Local 70 is an "employee organization" as defined by O.R.C. § 4117.01(D).

3. The Cuyahoga County Sheriff's Department committed an unfair labor practice in violation of O.R.C. §§ 4117.11(A)(1) and (A)(5) when it unilaterally implemented its revisions to the dress code policy without first giving notice to and bargaining with the UAW.

IV. DETERMINATION

For the above reasons, we find that the Cuyahoga County Sheriff's Department has violated O.R.C. §§ 4117.11(A)(1) and (A)(5) by unilaterally implementing the revisions to the dress code policy without first bargaining with the UAW. The Sheriff is ordered to return to the status quo relative to the dress code policy as it existed before the unilateral changes; to rescind any and all discipline given to UAW members for violations of the unlawfully implemented dress code policy; and to bargain in good faith with the UAW regarding any revisions to the dress code policy. In addition, a cease-and-desist order with a Notice to Employees shall be posted by the Sheriff for 60 days in the usual and normal posting locations where bargaining-unit employees represented by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Region 2, Local 70 work.

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