

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Greenville Patrol Officers Association,

Respondent.

Case No. 99-ULP-06-0349

**ORDER
(OPINION ATTACHED)**

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich:
June 6, 2000.

On June 17, 1999, the City of Greenville filed an unfair labor practice charge against the Greenville Patrol Officers Association ("Respondent"). On September 16, 1999, the State Employment Relations Board ("Board" or "Complainant") found probable cause to believe that the Respondent had violated Ohio Revised Code Section 4117.11 (B)(3) and directed the matter to hearing.

The parties agreed to submit the case on stipulations and briefs in lieu of a hearing. On November 19, 1999, the "Stipulations of the Parties" were filed. On December 20, 1999, the parties filed their briefs. On February 3, 2000, the Board transferred the case from the Hearings Section for a decision on the merits; coordinated this case with SERB v. *City* of Greenville, Case No. 99ULP-07-0427, for hearing; and directed the parties' representatives to appear for an oral argument. On March 20, 2000, the parties presented their oral arguments to the Board. Also on March 20, 2000, the Board directed the parties to mediation; the Board also stated that its decision in this matter would be withheld while mediation continues during the thirty-day period.

After reviewing the stipulations of fact, the parties' briefs, oral arguments, and all filings, the Board finds for the reasons stated in the attached Opinion, incorporated by reference, that the Greenville Patrol Officers Association committed an unfair labor practice in violation of O.R.C. Section 4117.11 (B)(3) when it did not file its prehearing statement until one day before the conciliation hearing, contrary to O.R.C. Section 4117.14(G)(3).

The Greenville Patrol Officers Association is ordered to:

A. Cease and desist from:

Refusing to bargain collective with the public employer by not timely filing its prehearing statement before a conciliation and from otherwise violating Ohio Revised Code Section 4117.11 (B)(3).

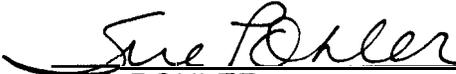
B. Take the following affirmative action:

- (1) Post for sixty days in all the usual and normal posting locations where bargaining unit employees work, the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board stating that the Greenville Patrol Officers Association shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
- (2) 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.

The Board also orders that when the new conciliator is appointed [pursuant to the Judgment Entry in *City of Greenville v. Greenville Patrol Officers Association*, Case No. 99-CV-57669, Court of Common Pleas, Darke County, Ohio], the Greenville Patrol Officers Association will not be permitted to submit a written statement or present evidence, pursuant to O.A.C. Rule 4117-9-06(E).

It is so ordered.

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


SUE POHLER, CHAIRMAN

Order
Case No. 99-ULP-06-0349
June 6, 2000
Page 3 of 3

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 13th day of June 2000.


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:

The Greenville Patrol Officers Association is hereby ordered to:

A. Cease and desist from:

Refusing to bargain collective with the public employer by not timely filing its prehearing statement before a conciliation and from otherwise violating Ohio Revised Code Section 4117.11 (B)(3).

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

- (1) Post for sixty days in all the usual and normal posting locations where bargaining unit employees work, the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board stating that the Greenville Patrol Officers Association shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
- (2) 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**.

SERB v. Greenville Patrol Officers Association, Case No. 99-UPL-06-0349

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.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

Greenville Patrol Officers Association,

Respondent.

Case No. 99-ULP-06-0349

OPINION

VERICH, Board Member:

On June 17, 1999, the City of Greenville filed with the State Employment Relations Board ("Board" or "Complainant") an unfair labor practice charge against the Greenville Patrol Officers Association, pursuant to and in accordance with O.R.C. § 4117.12(B) and O.A.C. Rule 4117-7-01. On September 16, 1999, the Board determined that probable cause existed for believing that an unfair labor practice had been committed, authorized the issuance of a complaint, and referred the matter to hearing. The parties agreed to submit the case on stipulations and briefs in lieu of a hearing. On March 20, 2000, the parties presented oral arguments to the Board. For the reasons below, we find that the Greenville Patrol Officers Association committed an unfair labor practice in violation of O.R.C. § 4117.11 (B)(3) when it did not file its prehearing statement until one day before the conciliation hearing, contrary to O.R.C. § 4117.14(G)(3).

I. FINDINGS OF FACT

1. The City of Greenville ("City") is a "public employer" as defined in O.R.C. § 4117.01 (B). (Stipulation ["Stip."] 1).
2. The Greenville Patrol Officers Association ("Association") is an "employee organization" as defined in O.R.C. § 4117.01 (D). (Stip. 2).
3. The City and the Association were parties to a collective bargaining agreement effective January 1, 1996 to December 31, 1998 ("Agreement"), containing a grievance procedure that culminates in final and binding arbitration. (Stip. 5; Joint Exhibit ["Jt. Exh."] 2).
4. On or about November 2, 1998, the Association filed with the Board a Notice to Negotiate. (Stip. 6; Jt. Exh. 3).
5. On February 5, 1999, the parties submitted their outstanding issues to a fact finder. (Stip. 7).
6. On March 3, 1999, the fact finder issued his report and recommendations. The fact-finders report and recommendations were rejected by the City on March 9, 1999. The fact finder's report and recommendations were accepted by the Association on March 9, 1999. (Stip. 8; Jt. Exhs. 4-6).
7. By a letter dated March 30, 1999, with an attachment, the Board confirmed the parties' selection of a conciliator by appointing Lawrence I. Donnelly as such. (Stip. 9; Jt. Exh. 7).
8. The parties agreed to a conciliation hearing date of May 12, 1999. On May 7, 1999, the Association and the Board received the City's position statement, which was accompanied by specific language proposals. (Stip. 10; Jt. Exh. 8).
9. On May 10, 1999, the Association transmitted to the conciliator and to the City only, via UPS next day air, the Association's position statement. The Association did not file a copy of the report with the Board. The City and the conciliator received the position statement on May 11, 1999. On May 11, 1999, the Association transmitted

'References to the transcript or exhibits in the Findings of Fact are intended for convenience only and are not intended to suggest that such references are the sole support in the record for that related finding of fact.

- to the conciliator and the City a correction to Article 17, Vacations. (Stip. 11; Jt. Exhs. 9-10).
10. O.R.C. § 4117.14(G)(3), Ohio Administrative Code Rule 4117-9-06(E), and the SERB letter appointing the conciliator (and accompanying guidelines) refer to the submission of prehearing statements during the conciliation process. (Stip. 12; Jt. Exh. 7).
 11. Conciliator Lawrence I. Donnelly issued his Award on May 28, 1999. He overruled the City's objections to the Association's late filing of its prehearing statement. (Stip. 13; Jt. Exh. 11).
 12. On or about June 18, 1999, the City filed a Motion for Order Vacating or Modifying Arbitration Award, in the case of *City of Greenville v. Greenville Patrol Officers Association*, Case No. 99-CV-57669, Court of Common Pleas, Darke County, Ohio. (Stip. 14; Jt. Exh. 12).
 13. On November 10, 1999, the Judgment Entry was entered by the Darke County Court of Common Pleas in the case of *City of Greenville v. Greenville Patrol Officers Association*. The Court, pursuant to O.R.C. § 2711.10, ordered and decreed "that the State Employment Relations Board shall appoint a new conciliator to conduct further binding interest arbitration (conciliation) proceedings and shall schedule proceedings pursuant to law." (Stip. 15; Jt. Exh. 13).

II. DISCUSSION

A. The Association Violated O.R.C. § 4117.11 (B)(3)

O.R.C. § 4117.11 provides in relevant part as follows:

(B) It is an unfair labor practice for an employee organization, its agents, or representatives, of public employees to:

(3) Refuse to bargain collectively with a public employer if the employee organization is recognized as the exclusive representative or certified as the exclusive representative of public employees in a bargaining unit[.]

The City and the Association engaged in negotiations for a successor collective bargaining agreement. After going through the fact-finding proceedings, the parties still had not reached an agreement. After selecting a conciliator, the parties agreed to a conciliation hearing date of May 12, 1999. On May 7, 1999, the Association and the Board received the City's position statement, which was accompanied by specific language proposals. The Association did not transmit its position statement to the conciliator and to the City until May 10, 1999. The Association did not file a copy of the report with the Board. The City and the conciliator received the position statement on May 11, 1999. On May 11, 1999, the Association transmitted to the conciliator and the City a correction to Article 17, Vacations.

The conciliation process is contained in O.R.C. § 4117.14(G), which provides in relevant part:

(3) The conciliator shall conduct the hearing pursuant to rules developed by the board. He shall establish the hearing time and place, but it shall be, where feasible, within the jurisdiction of the state. *Not later than five calendar days before the hearing, each of the parties shall submit* to the conciliator, to the opposing party, and to the board, a written report summarizing the unresolved issues, the party's final offer as to the issues, and rationale for that position. (emphasis added).

Absent ambiguity, a statute is to be construed without resort to a process of statutory construction. *Central Ohio Transit Auth v Transport Workers Union of America*, 1987 SERB 4-26, 4-28 (CP, Franklin, 2-27-87). Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to rules of statutory interpretation. *Sears v. Weimer (1944)*, 143 Ohio St. 312, Syllabus ¶ 5. An unambiguous statute is to be applied, not interpreted. *Id.*

The Association argues that its actions conformed with O.A.C. Rule 411 7-9-06(E)² and the SERB letter appointing the conciliator. It contends that the statute sets forth a general requirement concerning the submission of position statements while the Ohio Administrative Code elaborates upon that requirement to impose a penalty only if the position statement is not filed prior to the day of the hearing. “It is axiomatic that administrative rules are valid unless they are unreasonable, or in clear conflict with the statutory intent of the legislation governing the subject matter.” *Woodbridge Partners Group, Inc. v. Ohio Lottery Comm.*, 99 Ohio App.3d 269, 273 (10th Dist Ct App., Franklin, 1994). When the potential for conflict arises, the proper subject for determination is whether the rule contravenes an express provision of the statute. *Id.*; *Carroll v. Dept. of Admin. Services* (1983), 10 Ohio App.3d 108; *Kelly v. Accountancy Bd. of Ohio* (1993), 88 Ohio App.3d 453. We note that the statute and the rule can be read together if we interpret “prior to the day of hearing” to mean five days before the hearing as the statute requires. But we do not need to look to an administrative rule to interpret this statute. O.R.C. § 4117.14(G)(3) plainly requires the employer and the employee organization to file their position statements no later than five days before the conciliation hearing. Our duty is to apply this statute in its clear and unambiguous form.

The filing of the position statements is a critical step in the conciliation process, which is reinforced by the mandatory language used by the General Assembly. The failure to timely file a position statement constitutes a violation of O.R.C. § 4117.11 (A)(5) by a public employer or a violation of O.R.C. § 4117.1 I(B)(3) by an employee organization. Therefore, we find that the Association, by not timely filing its position statement in

²O.A.C. Rule 4117-9-06(E) provides in relevant part:

Upon notice of the conciliator’s appointment, each party shall submit to the conciliator and serve on the other party a written statement. A failure to submit such a written statement to the conciliator and the other party prior to the day of the hearing shall require the conciliator to take evidence only in support of matters raised in the written statement that was submitted prior to the hearing. * * *

accordance with this statutory requirement, has committed an unfair labor practice in violation of O.R.C. § 4117.11 (B)(3).

B. Remedy

On or about June 18, 1999, the City filed a Motion for Order Vacating or Modifying Arbitration Award, in the case of City of Greenville v. Greenville Patrol *Officers Association*, Case No. 99-CV-57669, Court of Common Pleas, Darke County, Ohio. On November 10, 1999, the Judgment Entry was entered by the Court. The Court, pursuant to O.R.C. § 2711 .10, ordered and decreed “that the State Employment Relations Board shall appoint a new conciliator to conduct further binding interest arbitration (conciliation) proceedings and shall schedule proceedings pursuant to law.”

The Association asserts that the Court’s Entry is appropriate and fulfills the purposes of O.R.C. Chapter 4117 because the statute “is designed to give each of the parties an equal opportunity to formulate their last best offer to present in conciliation.” Association’s Brief, p. 7. Consequently, the Association submits that the appropriate remedy for this violation is to appoint a new conciliator and give the parties an opportunity to submit their final offer positions and proceed to hearing under O.R.C. § 4117.14(G)(3).

Under O.A.C. Rule 4117-9-06(E), the failure to submit timely a position statement will result in the conciliator taking evidence only in support of matters raised in the written statement that was timely submitted. While the *violation* that was committed was the untimely filing of the position statement, the error that was committed was the conciliator’s acceptance of the position statement. Thus, to carry out both O.R.C. § 4117.14(G)(3) and O.A.C. Rule 4117-9-06(E), the remedy must be imposed at the point in the conciliation process where the conciliator’s procedural error occurred. If the conciliator had not allowed the untimely submission, he would have taken evidence only in support of the matters

raised in the City's position statement. Therefore, when the new conciliator is appointed, the new conciliator can take evidence only in support of matters raised in the City's written statement. The Association will not be permitted to submit a written statement or present evidence pursuant to O.A.C. Rule 4117-9-06(E). In addition, a cease-and-desist order will be issued, and the Association will be ordered to post a notice to employees as a part of this remedy.

III. CONCLUSIONS OF LAW

1. The City of Greenville is a "public employer" within the meaning of O.R.C. § 4117.01 (B).
2. The Greenville Patrol Officers Association is an "employee organization" within the meaning of O.R.C. § 4117.01 (D).
3. When the Greenville Patrol Officers Association submitted its written report summarizing the unresolved issues to the conciliator and the City less than five days before the conciliation hearing, the Association acted contrary to O.R.C. § 4117.14(G)(3) and in violation of O.R.C. § 4117.11 (B)(3).

IV. DETERMINATION

For the reasons above, we find that the Greenville Patrol Officers Association committed an unfair labor practice in violation of O.R.C. § 4117.11 (B)(3) when it did not file its prehearing statement until one day before the conciliation hearing, contrary to O.R.C. § 4117.14(G)(3). When the new conciliator is appointed, the Association will not be permitted to submit a written statement or present evidence pursuant to O.A.C. Rule 4117-9-06(E). In addition, a cease-and-desist order will be issued, and the Association will be ordered to post a notice to employees for sixty days as a part of this remedy.

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