

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

City of Greenville,

Respondent.

Case No. 99-ULP-07-0427

**ORDER
(OPINION ATTACHED)**

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

On July 21, 1999, the Greenville Patrol Officers Association filed an unfair labor practice charge against the City of Greenville ("Respondent"). On November 4, 1999, 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)(l) and (A)(5) 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. Greenville Patrol Officers Association*, Case No. 99-ULP-06-0349, 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 City of Greenville committed an unfair labor practice in violation of O.R.C. Sections 4117.11 (A)(l) and (A)(5) when it unilaterally implemented terms and conditions of employment that had been rejected by the conciliator.

The City of Greenville is ordered to:

A. Cease and desist from:

Interfering with, restraining, or coercing its bargaining-unit employees in the exercise of rights guaranteed in Ohio Revised Code Chapter 4117, or refusing to bargain collectively with the exclusive representative of its employees, and from otherwise violating Ohio Revised Code Sections 4117.11 (A)(1) and 4117.11 (A)(5).

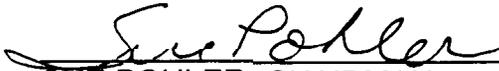
B. Take the following affirmative action:

- (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 City of Greenville 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 the parties to maintain the current terms and conditions of employment, which include the unilateral changes made by the City of Greenville, as the status quo until the new conciliator's award is issued. [The new conciliator is to be 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].

It is so ordered.

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


SUE POHLER, CHAIRMAN

Order
Case No. 99-ULP-07-0427
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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 432154213, 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 City of Greenville is hereby ordered to:

A. Cease and desist from:

Interfering with, restraining, or coercing its bargaining-unit employees in the exercise of rights guaranteed in Ohio Revised Code Chapter 4117, or refusing to bargain collectively with the exclusive representative of its employees, and from otherwise violating Ohio Revised Code Sections 4117.11 (A)(l) and 4117.11 (A)(5).

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 City of Greenville 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. City of Greenville, Case No. 99-U LP-07-0427

_____ 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.

City of Greenville,

Respondent.

Case No. 99-ULP-07-0427

OPINION

VERICH, Board Member:

On July 21, 1999, the Greenville Patrol Officers Association filed with the State Employment Relations Board (“Board” or “Complainant”) an unfair labor practice charge against the City of Greenville, pursuant to and in accordance with O.R.C. § 4117.12(B) and O.A.C. Rule 4117-7-01. On November 4, 1999, the Board determined that probable cause existed for believing that an unfair labor practice had been committed, authorized the issuance of a complaint, referred the matter to hearing, and directed the parties to the unfair labor, practice mediation process. 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 City of Greenville committed an unfair labor practice in violation of O.R.C. §§ 4117.11 (A)(I) and (A)(5) by unilaterally implementing terms and conditions of employment rejected by the conciliator.

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."] I).
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-finder's 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 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. (Stip. 11; Jt. Exhs. 9-10).

'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.

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. He awarded the Association's positions on vacations, wages, and the first effective date of the Agreement; he awarded the City's position on insurance. (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-W-57669, Court of Common Pleas, Darke County, Ohio. The City did not request or obtain a stay of the Conciliator's Award. (Stips. 14-15; 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).
14. On July 6, 1999, while the matter was pending in the Darke County Court of Common Pleas, the City unilaterally implemented the 3.0% wage increase that the City had proposed at the conciliation hearing. The Conciliator had awarded a 3.5% wage increase effective January 1, 1999. (Stip. 17; Jt. Exh. 11).
15. By a letter dated July 9, 1999, the City notified the Association of the City's intention to implement its own proposals at the conciliation hearing contrary to the conciliator's award. (Stip. 18; Jt. Exh. 14).

II. DISCUSSION

A. The City Violated O.R.C. §§ 4117.11(A)(1) and (A)(5)

O.R.C. §§ 4117.11 provides in relevant part 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[;]

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

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 conciliator issued his award, which overruled the City's objections to the Association's late filing of its prehearing statement. He awarded the Association's positions on vacations, wages, and the first effective date of the Agreement; he awarded the City's position on insurance. 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. The City did not request or obtain a stay of the Conciliator's Award. While the matter was pending in the Darke County Court of Common Pleas, the City unilaterally implemented the 3.0% wage increase that the City had proposed at the conciliation hearing; the Conciliator had awarded a 3.5% wage increase effective January 1, 1999.

The issuance of a final offer settlement award constitutes a binding mandate to the parties to take whatever actions necessary to implement the award, pursuant to O.R.C.

§ 4117.14(I). *In re Clermont County Sheriff*, SERB 87-015 (7-21-87). The City acknowledges that implementing a wage increase that is contrary to a conciliator's award would be an unfair labor practice "under ordinary circumstances." City's Brief, p. 3. The City asserts "that the circumstances of this case are far from ordinary." *Id.* In support, the City points to the Association's alleged violation of O.R.C. § 4117.14(G)(3), which is the subject of an unfair labor practice charge (Case No. 99-ULP-06-0349) filed by the City. This argument is without merit and contrary to SERB precedent. *In re Clermont County Sheriff, supra.*

With this act, 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. *In re City of North Royalton*, SERB 99-002 (1-22-99) at 3-14. If the Association has acted improperly, the City's appropriate response is to file an unfair labor practice charge, which the City has done. If the conciliator has committed an error by accepting the Association's prehearing statement and taking evidence in support of the issues contained in it, the City's appropriate response is to appeal the decision to the court of common pleas under O.R.C. § 4117.14(H), which the City has done. To unilaterally implement the terms and conditions of employment rejected by the conciliator is an inappropriate response that violates O.R.C. §§ 4117.11 (A)(I) and (A)(5), which the City has done.

B. Remedy

Ordinarily, the remedy would be to rescind the City's implementation of its own proposals and to return the parties to the status quo prior to implementation, as the Complainant suggests. But in 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 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.” Consequently, we cannot return the parties to the status quo before implementation since it no longer exists. As a result, we order the parties to maintain the current terms and conditions of employment, which include the City’s unilateral changes, as the status quo until the new conciliator’s award is issued, unless they mutually agree otherwise. The error committed by the conciliator’s acceptance of the position statement will also be corrected through the new conciliation hearing. Thus, the only remaining remedy is to issue a **cease-and-desist** order with a notice to employees to be posted by the City.

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 City of Greenville unilaterally implemented the terms and conditions of employment rejected by the conciliator, the City engaged in bad-faith bargaining in violation of O.R.C. § 4117.11 (A)(1) and (A)(5).

IV. DETERMINATION

For the reasons above, we find that the City of Greenville committed an unfair labor practice in violation of O.R.C. §§ 4117.1 I(A)(I) and (A)(5) by unilaterally implementing terms and conditions of employment rejected by the conciliator. The parties are ordered to maintain the current terms and conditions of employment, including the City’s unilateral changes, until the new conciliator’s award is issued. A cease-and-desist order will be issued, and the City will be ordered to post a notice to employees as a part of this remedy.

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