

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Cuyahoga County Commissioners,

Respondent.

Case No. 99-ULP-05-0273

**ORDER
(OPINION ATTACHED)**

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich:
June 22, 2000.

On May 13, 1999, the Service Employees International Union, Local 47 ("Charging Party") filed an unfair labor practice charge against the Cuyahoga County Commissioners ("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 Sections 4117.11 (A)(I) and (A)(5) and directed the matter to hearing.

On December 1, 1999, a hearing was conducted. On February 14, 2000, an Administrative Law Judge issued a Proposed Order recommending that the Board find that the Respondent violated Ohio Revised Code Sections 4117.11 (A)(I) and (A)(5) when it refused to honor an executed Settlement Agreement resolving a grievance filed by David Clopper. On March 8, 2000, the Respondent filed exceptions to the Proposed Order. On March 20, 2000, the Complainant filed its response to the exceptions. Also on March 20, 2000, the Charging Party filed its cross-exceptions to the Proposed Order. On April 10, 2000, the Complainant filed its response to the cross-exceptions.

After reviewing the record, including the transcript, exceptions, cross-exceptions, and responses, the Board adopts additional Finding of Fact No. 14, which states: "Once a settlement agreement is reached for a grievance, the matter is presented as a 'personnel action form' to the Board of County Commissioners for approval at a public meeting. Before January 19, 1999, the Board of County Commissioners had always voted whether to approve the settlement agreement and, as a result, to take the personnel action recommended."; rennumbers the conclusions of law in the Proposed Order; amends new

Conclusion of Law No. 4 to read: "The Cuyahoga County Commissioners violated O.R.C. §§ 4117.11 (A)(I) and (A)(5) by refusing to take action in any manner on an executed Settlement Agreement resolving a grievance filed by David Clopper."; adopts the Findings of Fact and Conclusions of Law, as amended, in the Proposed Order; and finds for the reasons stated in the attached Opinion, incorporated by reference, that the Cuyahoga County Commissioners committed an unfair labor practice in violation of O.R.C. Sections 4117.1 I(A)(I) and (A)(5) by refusing to take action in any manner on the executed Settlement Agreement resolving a grievance filed by Mr. Clopper.

We hereby order the Cuyahoga County Commissioners 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)(I) and 4117.11 (A)(5).

B. Take the following affirmative action:

- (1) Place the Settlement Agreement resolving the grievance filed by David Clopper on the agenda for the Board of County Commissioners for a regularly scheduled meeting within forty-five days of receipt of this Opinion and Order and act upon the Settlement Agreement at such meeting;
- (2) Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Service Employees International Union, Local 47 work, the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board stating that the Cuyahoga County Commissioners shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
- (3) 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.

Order
Case No. 99-ULP-05-0273
June 22, 2000
Page 3 of 3

It is so ordered.

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 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 22nd 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 Cuyahoga County Commissioners are 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 4117.1 I(A)(I) and 4117.1 I(A)(5).

B. Take the following affirmative action:

- (1) Place the Settlement Agreement resolving the grievance filed by David Clopper on the agenda for the Board of County Commissioners for a regularly scheduled meeting within forty-five days of receipt of this Opinion and Order and act upon the Settlement Agreement at such meeting;
- (2) Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Service Employees International Union, Local 47 work, the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board stating that the Cuyahoga County Commissioners shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
- (3) 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. Cuyahoga County Commissioners
Case No. **99-U LP-05-0273**

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,

Complainant,

v.

Cuyahoga County Commissioners,

Respondent.

Case No. 99-ULP-05-0273

OPINION

GILLMOR, Vice Chairman:

This unfair labor practice case comes before the State Employment Relations Board (“SERB” or “Complainant”) on the exceptions, cross-exceptions, and responses to the exceptions and cross-exceptions to the Administrative Law Judge’s Proposed Order issued on February 14, 2000. The issue to be decided is whether the Cuyahoga County Commissioners’ refusal to take action on a settlement agreement resolving a grievance constitutes an unfair labor practice in violation of Ohio Revised Code (“O.R.C.”) §§ 4117.1 I(A)(I) and (A)(5). For the reasons below, we find that the Cuyahoga County Commissioners violated O.R.C. §§ 4117.11 (A)(1) and (A)(5).

I. BACKGROUND

Service Employees International Union, Local 47 (“Union”) is the exclusive representative for certain employees of the Cuyahoga County Commissioners (“County”). At all relevant times, the Union represented Custodial Worker David Clopper. The County and the Union have had a collective bargaining relationship for many years and are parties

to a collective bargaining agreement effective January 1, 1997 to December 1, 1999 (“CBA”), containing a grievance procedure that culminates in binding arbitration. The grievance procedure provides in relevant part as follows:

SECTION 1 A grievance is any matter concerning the interpretation application [sic] or alleged violation of this Agreement between the County and the Union, or which alleges an employee has been discharged or disciplined without just cause.

SECTION 3 A grievance relating to discharge, suspension, layoff, recall, bumping rights or job bidding, may be filed at Step 3 of the grievance procedure.

SECTION 7 Any grievance not answered by Management within the stipulated time limits shall be considered to have been [sic] and may be appealed to the next step of the grievance procedure. Pending and future grievances shall be resolved in the following manner:

STEP 3 County Office of Labor Relations If the grievance is not thereby resolved [at Step 2], a written copy shall be submitted to the County’s Manager of Labor Relations or his designee within five (5) working days after the Union receives the answer under Step 2. A meeting shall be held between the County Manager and/or designee, the Local 47 Business Representative, the Steward and the Grievant. Within ten (10) working days from the date of the meeting, a written response to the grievance shall be sent to the Union.

SECTION 8 If the grievance is not settled at Step 3, the matter will then be submitted to the Executive Board of the Union at its next regular meeting following receipt of the Step 3 answer, and if it is the decision of the Executive Board to submit the matter to binding arbitration, such matter will then be submitted. * * * (emphasis added).

Once a settlement agreement is reached for a grievance, the matter is presented as a “personnel action form” to the Board of County Commissioners for approval at a public meeting. Before January 19, 1999, the Board of County Commissioners had always voted whetherto approve the settlement agreement and, as a result, to take the personnel action recommended.

On July 2, 1998, Mr. Clopper was relieved of his duties as a Custodial Worker, but continued to receive pay as a full-time employee. On July 6, 1998, Mr. Clopper filed a grievance under the CBA concerning his relief from duty. On August 11, 1998, the Board of County Commissioners voted at its meeting to terminate Mr. Clopper's employment effective August 19, 1998.

On October 22, 1998, a document titled "Settlement Agreement" was signed by Mr. Clopper and Union Business Representative Dennis Dingow. On October 23, 1998, the Settlement Agreement was signed by County Labor Relations Specialist Gerard Vancavage, the County's designee under Step 3 of the grievance procedure.

On October 26, 1998, Nicholas E. Vaccariello, Personnel Administrator for the County's Department of Central Services, sent Mr. Clopper a letter informing him that he was to report to work on November 16, 1998. The letter also stated that his removal was reduced to a 62-day suspension without pay. Before November 16, 1998, however, the County informed Mr. Clopper that he was not to report to work.

Labor Relations Administrator Egdilio Morales, who became employed by the County in November 1998, spoke with Mr. Dingow about the Settlement Agreement in December 1998 and January 1999. Mr. Morales informed Mr. Dingow that the County Commissioners had to vote on whether Mr. Clopper would be reinstated. When Mr. Dingow asked why the County might decide not to allow Mr. Clopper to return to work, Mr. Morales said a Commissioner had received a letter from the County Prosecutor's Office recommending that Mr. Clopper not be reinstated.

In January 1999, Mr. Morales sent Mr. Dingow a letter stating that the Settlement Agreement would be placed on the Board of County Commissioners' agenda for January 19, 1999, for reinstatement on January 19, 1999. Mr. Clopper reported to work

on January 19, 1999, but was not allowed to work. The Board of County Commissioners did not vote to accept or reject the Settlement Agreement on January 19, 1999; the matter was removed from the agenda. The Board of County Commissioners never voted whether to accept or reject the Settlement Agreement.

II. DISCUSSION

O.R.C. § 4117.1 1 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 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[.]

Whether a party has engaged in good-faith bargaining is determined by the totality of the circumstances. *In re Dist 1199/HCSSU/SEIU, AFL-CIO*, SERB 96-004 (4-8-96). The Union argues that the County has repudiated a settlement agreement that its representative signed while exercising actual authority. Although an employer may be willing to meet at length with the exclusive representative and discuss substantive issues, an employer refuses to bargain in good faith if it offers a proposal that it knows it does not have authority to implement. *In re Springfield Local School Dist Bd of Ed*, SERB 97-007 (5-1-97). This principle holds true unless the party to whom the offer is made knows or has reason to know that the party lacks the capacity to make such an offer. *In re Ohio Dept of Health*, SERB 99-007 (5-6-99). In the present case, the Union knew or should have known that the representative could not enter into an agreement that would bind the County without the contract being approved by the Board of County Commissioners at a public meeting. The Union's cross-exceptions address alleged violations occurring after

the alleged repudiation. But we cannot reach the issue of a possible repudiation because the Board of County Commissioners has refused to take action on the settlement agreement resolving a grievance. The inaction of the Board of County Commissioners demonstrates that good faith can also be breached when an employer has the authority to implement, but refuses to act, thereby committing an unfair labor practice in violation of O.R.C. §§ 4117.1 I(A)(I) and (A)(5).

A. The Grievance Procedure

Good-faith bargaining extends to the grievance process. Grievance meetings are both an extension and an inherent part of the collective bargaining process. *In re Bryan City Bd of Ed*, SERB 97-003 (3-14-97) (“*Bryan*”). In *Bryan*, *supra* at 3-13, the Board observed that the goal of any grievance procedure is for the parties to make a good faith attempt to settle disputes and to adjust the grievances presented.

The material facts are essentially undisputed. In negotiating the Settlement Agreement, Mr. Vancavage was acting as the County’s representative under Step 3 of the grievance procedure. As a Labor Relations Specialist, Mr. Vancavage makes efforts to resolve grievances by settlement during Step 3 and the entire grievance process. His authority to negotiate and settle grievances on behalf of the County is set forth in Article 8 of the CBA, which clearly contemplates settlement of grievances at Step 3. Before the settlement of Mr. Clopper’s grievance occurred, Mr. Vancavage’s grievance settlements were always voted on by the Board of County Commissioners. The grievance settlements were addressed by the settlement being placed on the agenda for a regular meeting and being voted on by the Board of County Commissioners.

The County argues that O.R.C. § 305.25 renders the Settlement Agreement invalid absent the approval of the Board of County Commissioners. This argument has merit. O.R.C. § 305.25 provides in relevant part as follows:

No contract entered into by the board of county commissioners * * * shall be valid unless it has been assented to at a regular or special session of the board and entered in the minutes of its proceedings by the county auditor or the clerk of the board.

The provisions of a collective bargaining agreement entered into pursuant to O.R.C. Chapter 4117 prevail over conflicting laws. O.R.C. § 4117.1 O(A); *City of Cincinnati v. Ohio Council 8, American Federation of State, County, and Municipal Employees, AFL-CIO* (1991), 61 Ohio St.3d 658, at Syllabus ¶ 1, 1991 SERB 4-87. However, no conflict exists between the CBA and O.R.C. § 305.25. It is undisputed that the CBA was duly adopted by the Board of County Commissioners. The CBA contains a grievance procedure that provides for the resolution of grievances by designated representatives of the County. The grievance procedure in the CBA allows for grievance settlement agreements. O.R.C. § 305.25 then requires that such agreements, to be valid, must be approved by the Board of County Commissioners at a public meeting. The Union knew or should have known that Mr. Vancavage lacked actual or apparent authority to bind the County without the final approval of the Board of County Commissioners.

The problem in this case is that the Board of County Commissioners refused to act in any manner. The Board of County Commissioners had placed this Settlement Agreement on the agenda several times, but the Board of County Commissioners had removed the agreement from the agenda before taking action. Thus, Mr. Clopper was placed in a constant state of limbo by being told to report to work, and then not being allowed to work when he reported as instructed by the County.

In this case, a grievance was filed and processed through the steps to settlement. By taking no action whatsoever, the grievance is being held hostage by the County; thus, the County is preventing the Union from taking any further action on the grievance. If for some reason, the County is not prepared to approve the terms of the Settlement Agreement, then the Union must be allowed to continue to process the grievance through

the remainder of the grievance and arbitration procedure. At the time the grievance was deemed settled, any time restraints for processing the grievance were tolled and will restart after the Board of County Commissioners acts on the Settlement Agreement. Accordingly, the County's refusal to take any action on the Settlement Agreement constitutes bad-faith bargaining in violation of O.R.C. § 4117.11 (A)(5).'

B. Intervenor Is Not Entitled to Its Costs or Attorney Fees

Intervenor asserts that it is entitled to its costs and attorney fees in this action. Intervenor cites no legal authority in support of this provision. Moreover, SERB brought this action as the Complainant and was represented throughout by the Attorney General. No extraordinary circumstances are present in this case that would warrant an award of costs and fees to Intervenor.

III. CONCLUSION

For the reasons above, we find that the Cuyahoga County Commissioners committed an unfair labor practice in violation of O.R.C. §§ 4117.11 (A)(I) and (A)(5) by refusing to take action in any manner on an executed Settlement Agreement resolving a grievance filed by Mr. Clopper. The Cuyahoga County Commissioners are ordered to place the Settlement Agreement resolving the grievance filed by Mr. Clopper on its agenda for a regularly scheduled meeting within forty-five days of receipt of this Opinion and Order and act upon the Settlement Agreement at such meeting. In addition, a cease-and-desist order will be issued, and the County will be ordered to post a notice to employees for sixty days as a part of this remedy.

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

¹O.R.C. § 4117.11 (A)(I) represents 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.