

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Marion City School District Board of Education,

Respondent.

Case No. 2000-ULP-03-0150

ORDER

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich:
March 20, 2001.

On March 14, 2000, the Ohio Association of Public School Employees, Local 154 ("Charging Party") filed an unfair labor practice charge against the Marion City School District Board of Education ("Respondent"). On October 29, 2000, the State Employment Relations Board ("Board" or "Complainant") found probable cause to believe that the Respondent had violated Ohio Revised Code Section 4117.11(A)(1).

A hearing was held on November 15, 2000. On January 12, 2001, the Proposed Order was issued. On February 5, 2001, the Respondent filed exceptions to the Proposed Order. On February 16, 2001, the Complainant filed a response to the exceptions. On February 20, 2001, the Charging Party filed a response to the exceptions.

After reviewing the record and all filings, the Board adopts the Findings of Fact, Analysis and Discussion, and Conclusions of Law in the Proposed Order, incorporated by reference.

The Marion City School District Board of Education 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 by asking bargaining-unit members not to bid on an open secretarial position, and from otherwise violating Ohio Revised Code Section 4117.11(A)(1).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Ohio Association of Public School Employees, Local 154, work, the Notice to Employees furnished by the State Employment Relations Board stating that the Marion City School District Board of Education 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.

It is so ordered.

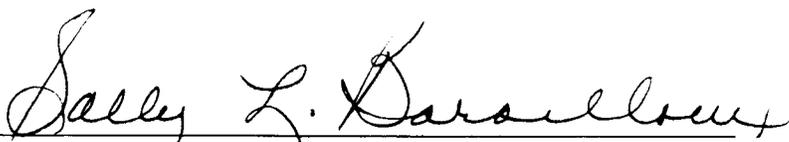
POHLER, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.



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 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 21st day of March, 2001.


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 Board and to abide by the following:

A. CEASE AND DESIST FROM:

Interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Ohio Revised Code Chapter 4117 by asking bargaining-unit members not to bid on an open secretarial position, and from otherwise violating Ohio Revised Code Section 4117.11(A)(1).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

1. Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Ohio Association of Public School Employees, Local 154, work, the Notice to Employees furnished by the State Employment Relations Board stating that the Marion City School District Board of Education 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 twenty calendar days from the date the **ORDER** becomes final of the steps that have been taken to comply therewith.

SERB v. Marion City School District Board of Education
Case No. 00-ULP-03-0150

BY

DATE

TITLE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

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
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT RELATIONS BOARD,	:	
	:	CASE NO. 00-ULP-03-0150
Complainant,	:	
	:	
v.	:	KAY A. KINGSLEY
	:	Administrative Law Judge
MARION CITY SCHOOL DISTRICT	:	
BOARD OF EDUCATION,	:	
	:	<u>PROPOSED ORDER</u>
Respondent.	:	

I. INTRODUCTION

On March 14, 2000, the Ohio Association of Public School Employees, Local 154 ("OAPSE") filed an unfair labor practice charge against the Marion City School District Board of Education ("Respondent") alleging that the Respondent violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(3).¹ On October 29, 2000, the State Employment Relations Board ("Board" or "Complainant") determined that probable cause existed to believe that the Respondent had violated § 4117.11(A)(1) by interfering with, restraining, or coercing employees from exercising guaranteed, protected rights by asking employees not to bid on an open secretarial position. The Board dismissed the § 4117.11(A)(3) allegation for lack of probable cause.

On September 19, 2000, a complaint was issued. OAPSE's motion to intervene, filed on October 12, 2000, was granted on October 20, 2000. A hearing was conducted on November 15, 2000, wherein testimonial and documentary evidence was presented. All parties filed post-hearing briefs on December 14, 2000.

II. ISSUE

Whether the Respondent violated § 4117.11(A)(1) by asking employees not to bid on an open secretarial position.

¹All references to statutes are to the Ohio Revised Code, Chapter 4117.

III. FINDINGS OF FACT²

1. The Marion City School District Board of Education is a “public employer” as defined by § 4117.01(B). (S.)
2. OAPSE is an “employee organization” as defined in § 4117.01(D). (S.)
3. Ms. Sue Seckel, Ms. Mary Sprague, and Ms. Cindy Huff are employed by the Respondent, are members of OAPSE, and are “public employees” as defined by § 4117.01(C). (S.)
4. The Respondent and OAPSE are parties to a collective bargaining agreement (“CBA”) effective March 1, 1998 to June 30, 2002, containing a grievance procedure that culminates in final and binding arbitration. (S.)
5. Ms. Amy Piacentino is the Principal at Silver Street Elementary School (“Silver Street”), a school operated by the Respondent, and has served in that capacity at all times relevant. (S.)
6. Silver Street employs 30 individuals in both teaching and non-teaching capacities. Silver Street averages 300 students. (T. 261, 262)
7. Each school within the district has a HEAT team pursuant to the terms of the CBA. HEAT is an acronym that stands for Hiring Effective Appropriate Teammates. The HEAT team at Silver Street was composed of two certified employees, Ms. Renee Smith and Principal Piacentino, and two classified employees, Ms. Pat Coldren and Ms. Janet Hulse. (T. 18-20, 52, 98)
8. The role of the HEAT team is to review applications for employment, decide which applicants will receive an interview, and conduct the interviews. On occasion, the initial screening may be done by the principal alone. Two applicants are selected and sent to a panel of three members of the school district who make the final recommendation to the school board. (T. 146, 180-190)
9. Ms. Huff was a kindergarten teacher’s aide for four years at Silver Street. She was employed at Silver Street as a cook for three years before becoming an aide. She

²All references to the transcript of the hearing are indicated parenthetically by “T.,” followed by the page number(s). All references to the Stipulations of Fact are indicated parenthetically by “S.” References to the transcript 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.

had also been a full-time secretary at Dayton Children's Hospital before becoming a teacher's aide. In February 2000, she applied for an open secretarial position at Silver Street. (T. 10-13)

10. Approximately a week after Ms. Huff submitted her application, Principal Piacentino called Ms. Huff into the office and asked her to consider withdrawing her application. Principal Piacentino felt that it would be unfair for the HEAT team to have to choose among applicants from the same building and that the decision could cause hurt feelings. (T. 21-26, 43)
11. Ms. Huff did not withdraw her application, but she was not interviewed for the secretarial position. (T. 35)
12. Ms. Seckel has been an elementary library media aide at Silver Street since 1981. She has been employed for a total of 29 years with the school and was a teacher's aide for both elementary school and high school. (T. 61-62)
13. After hearing about the secretarial position posting, Ms. Seckel prepared a letter expressing interest in the position and decided to talk to Principal Piacentino about it. In January 2000, Principal Piacentino had encouraged Ms. Seckel to apply for another secretarial position at George Washington School. (T. 63-65, 67)
14. Principal Piacentino told Ms. Seckel she did not want her to apply for the position because she did not want the HEAT team to have to choose between Ms. Seckel and three others. (T. 68-69, 85)
15. Ms. Seckel threw her application away that same day. (T. 70-71)
16. Ms. Sprague has been a teacher's aide for more than two years. She is now at Oak Street School, but split time her first two years, including the 1999-2000 school year, between Silver Street and Oak Street. (T. 90-91)
17. Prior to her employment with the Respondent, Ms. Sprague had substituted as a secretary in the main office and in the guidance department at several schools. On occasion she has substituted as a secretary at various schools. (T. 94)
18. After applying for the Silver Street secretarial position, Ms. Sprague received a note in her mailbox from Principal Piacentino, asking to meet with her. (T. 99)
19. Principal Piacentino told Ms. Sprague that submitting the application would cause hard feelings, and that if Ms. Sprague submitted her application, Principal Piacentino would not consider it. Ms. Sprague submitted her application, but was not interviewed for the position. (T. 100-103, 112, 122)

20. Principal Piacentino told Ms. Seckel, Ms. Huff, and Ms. Sprague that she hoped none of them would apply but said that she did not actively try to discourage anyone from applying. (T. 265-271)
21. Principal Piacentino did not want any of the three to apply because she did not want the close-knit atmosphere of the school to change and feared that the animosity and conflict that could occur as a result of competition for the position would impact negatively upon the morale of the school and, as a result, on the students. (T. 283-285, 293-294, 307-309)
22. Thirty applications were submitted to the HEAT team for the Silver Street secretarial position. Principal Piacentino did the initial screening and narrowed the applicant pool from 30 to 12. She then told the HEAT team members that the applications were on her desk for them to pick up and review at their convenience and to recommend 6 applicants for interviews. (T. 195, 236, 275)
23. Ms. Hulse and Ms. Smith reviewed 12-15 applications including those of Ms. Sprague and Ms. Huff. The applicants were tested, and six persons were recommended to be interviewed. One withdrew. (T. 220, 238)
24. Ms. Coldren received five applications to review immediately before the interviews, none of which included those of Ms. Huff or Ms. Sprague. She asked Ms. Smith about Ms. Huff's and Ms. Sprague's applications, and Ms. Smith told her that they were in a stack of five that did not receive interviews. The HEAT team interviewed five applicants, narrowed the choices to two, and submitted their names to the three-member school district panel. (T. 168-173, 192-193, 227-228, 275-277, 325)
25. The secretarial position was filled on March 9, 2000, by Ms. Nancy Davis, an employee from outside the bargaining unit. (T. 196-197, 200-201)

IV. ANALYSIS AND DISCUSSION

The Respondent is alleged to have violated § 4117.11(A)(1), which 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[.]

In determining whether a § 4117.11(A)(1) violation occurred, the appropriate inquiry is an objective one as opposed to a subjective one. A violation will be found if, under the totality of the circumstances, it can be reasonably concluded that the employer's conduct interfered with, restrained, or coerced an employee in the exercise of Chapter 4117 rights. In re Springfield Local School Dist. Bd. of Ed., SERB 97-007 (5-1-97) ("Springfield"); 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). Because this is an objective test, neither the intent of the employer nor the individual employee's subjective view of the employer's conduct are relevant.

Applying this standard to the case at bar, the first question is whether Ms. Sprague, Ms. Huff, and Ms. Seckel were exercising rights guaranteed by Chapter 4117 by bidding on the secretarial position at Silver Street. Section 4117.03(A)(4) gives employees the right to bargain collectively with their public employers to determine wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, and to enter into collective bargaining agreements. An individual acting alone may engage in concerted activity by invoking a contract right. In re Cincinnati Metropolitan Housing Authority, SERB 93-002, at p. 3-11 (4-6-93). Concerted activity is also protected activity if the policies or rules have their genesis in collective bargaining. Id. In this case the parties negotiated a CBA that, among its provisions, provided a process for employees to bid on open positions. Bidding on an open position within a bargaining unit pursuant to the terms of a CBA is protected activity.

The second question is whether Principal Piacentino's comments to Ms. Sprague, Ms. Huff, and Ms. Seckel interfered with, restrained, or coerced them in the exercise of their Chapter 4117 rights. In the context of the job application process, Principal Piacentino's statements were inherently coercive. The statements were made to employees over whom Principal Piacentino was in a position of authority. The statements were directly related to the employees' protected activity of participating in the bidding process. The Respondent argues that the applicants were extended every right under the CBA and that they all understood they had a right to apply for the position. This argument misses the point that Springfield requires an objective test. Independent of the applicants' reactions to the statements, viewing the statements in the context of the totality of the conduct and the circumstances under which they were made, the chilling effect of Principal Piacentino's comments created an environment that interfered with, restrained, or coerced the employees in accessing the terms and conditions set forth in the CBA, thereby rendering the rights guaranteed under § 4117.03(A)(4) meaningless.

The Respondent argues that no violation has been committed because no one was harmed. As Springfield points out, threatening statements tied directly to protected activity are sufficient to constitute a § 4117.11(A)(1) violation.

Principal Piacentino's rationale was that if three people in a small school setting applied for the same job, hard feelings would occur, causing a drop in morale and a resultant adverse impact on students. Although Principal Piacentino said her intent in telling the three people that she hoped they would not apply was not to discourage them from applying, one cannot imagine nor did Principal Piacentino articulate another more likely result of her statements. Although one can sympathize with Principal Piacentino's stated efforts to set the "social tone" of the school by nurturing a "warm, caring, trusting environment" (T. 291), these actions cannot be taken at the expense of statutorily guaranteed rights. Therefore, the Respondent, through the conduct and actions of Principal Piacentino, its agent or representative, violated § 4117.11(A)(1) when it dealt directly with the bargaining-unit employees concerning their bidding on the open position.

OAPSE requests a five-part remedy that is essentially a redo of the posting and bidding process for the Silver Street secretarial position. OAPSE's request is an extreme remedy under the facts presented and is not recommended. Although Principal Piacentino's statements were inappropriate and interfered with the potential applicants' rights to participate in the bidding process, her statements did not carry any direct threat of reprisal. Two of the individuals still applied for the opening; the other applicant simply chose not to apply for the position. The Board's responsibility is to remedy the violation committed, which is accomplished in this case by issuing a cease-and-desist order with the sixty-day posting of a Notice to Employees in all of the usual and normal locations where OAPSE members work.

V. CONCLUSIONS OF LAW

1. Marion City School District Board of Education is a "public employer" as defined in § 4117.01(B).
2. The Ohio Association of Public School Employees, Local 154 is an "employee organization" as defined in § 4117.01(D).
3. Sue Seckel, Mary Sprague, and Cindy Huff are "public employees" within the meaning of § 4117.01(C).
4. The Respondent's conduct and actions in asking Mary Sprague, Sue Seckel, and Cindy Huff not to bid on an open secretarial position constitutes a violation of § 4117.11(A)(1).

VI. RECOMMENDATIONS

Based upon the foregoing, the following is respectfully recommended:

1. The State Employment Relations Board adopt the Findings of Fact and Conclusions of Law set forth above.
2. The State Employment Relations Board issue an **ORDER**, pursuant to O.R.C. § 4117.11(B)(3) requiring the Marion City School District Board of Education 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 by asking bargaining-unit members not to bid on an open secretarial position, and from otherwise violating Ohio Revised Code Section 4117.11(A)(1).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

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