

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

City of Cleveland,

Respondent.

Case No. 2001-ULP-03-0132

ORDER
(OPINION ATTACHED)

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich: December 6, 2001.

On March 7, 2001, the Communications Workers of America, Local 4340, AFL-CIO ("Charging Party") filed an unfair labor practice charge against the City of Cleveland ("Respondent"), alleging that the Respondent violated §§ 4117.11(A)(1) and (A)(5). On June 21, 2001, the State Employment Relations Board ("SERB" or "Complainant") determined that probable cause existed to believe that the Respondent had violated Ohio Revised Code Sections 4117.11(A)(1) and (A)(5).

The parties agreed to submit this case for determination on stipulations of fact and exhibits in lieu of a hearing. On October 16, 2001, the Proposed Order was issued. On November 5, 2001, the Respondent filed exceptions to the Proposed Order. On November 8, 2001, the Complainant filed its response to the Respondent's exceptions.

After reviewing the record and all filings, the Board adopts the Findings of Fact and Conclusions of Law in the Proposed Order for the reasons set forth in the attached Opinion, incorporated by reference.

The City of Cleveland is ordered to:

A. CEASE AND DESIST FROM:

1. Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by unilaterally refusing to bargain with the Communications Workers of America, Local 4340, AFL-CIO while seeking a change in the composition of the bargaining unit, and from otherwise violating Ohio Revised Code Section 4117.11(A)(1).

2. Refusing to bargain collectively with the Communications Workers of America, Local 4340, AFL-CIO while seeking a change in the composition of the bargaining unit, and from otherwise violating Ohio Revised Code Section 4117.11(A)(5).
- B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:
1. Post the attached Notice to Employees furnished by the State Employment Relations Board for sixty days in all of the usual and normal locations where employees represented by Communications Workers of America, Local 4340, AFL-CIO, work stating that the City of Cleveland shall cease and desist from the 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 of the **ORDER** becomes final of the steps that have been taken to comply therewith.

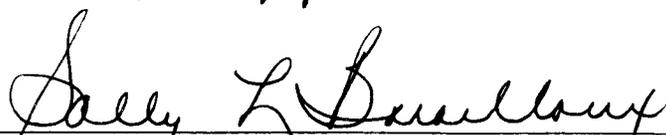
It is so ordered.

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 12th day of December 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 abide by the following:

A. CEASE AND DESIST FROM:

1. Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by unilaterally refusing to bargain with the Communications Workers of America, Local 4340, AFL-CIO while seeking a change in the composition of the bargaining unit, and from otherwise violating Ohio Revised Code Section 4117.11(A)(1).
2. Refusing to bargain collectively with the Communications Workers of America, Local 4340, AFL-CIO while seeking a change in the composition of the bargaining unit, and from otherwise violating Ohio Revised Code Section 4117.11(A)(5).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

1. Post the attached Notice to Employees furnished by the State Employment Relations Board for sixty days in all of the usual and normal locations where employees represented by Communications Workers of America, Local 4340, AFL-CIO, work stating that the City of Cleveland shall cease and desist from the 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 of the **ORDER** becomes final of the steps that have been taken to comply therewith.

SERB v. CITY OF CLEVELAND
CASE NO. 2001-ULP-03-0132

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
STATE EMPLOYMENT RELATIONS BOARD**

In the matter of

State Employment Relations Board,

Complainant,

v.

City of Cleveland,

Respondent.

Case No. 2001-ULP-03-0132

OPINION

GILLMOR, Vice Chairman:

This unfair labor practice case comes before the State Employment Relations Board (“SERB” or “Complainant”) upon the issuance of a Proposed Order on October 16, 2001, and the filing of exceptions by the City of Cleveland (“City”) and responses to the exceptions by the Communications Workers of America, Local 4340, AFL-CIO (“CWA”) and the Complainant. For the reasons below, we find that the City violated Ohio Revised Code (“O.R.C.”) §§ 4117.11(A)(1) and (A)(5) by refusing to bargain with CWA while seeking a change in the composition of the bargaining unit without obtaining a stay of its duty to negotiate from SERB.

I. FACTUAL BACKGROUND

CWA is the exclusive representative for a bargaining unit of the City’s Emergency Medical Services (“EMS”) Supervisors. On October 1, 1998, CWA filed a Request for Recognition in Case No. 98-REP-10-0236 seeking to represent a bargaining unit consisting of the City’s EMS Supervisors. The City did not timely object to the Request for

Recognition, and SERB certified CWA as the exclusive representative on August 5, 1999. On November 16, 1999, the City filed a Notice to Negotiate, seeking to negotiate the parties' initial collective bargaining agreement. On March 6, 2000, the City filed a Petition for Clarification of Bargaining Unit in Case No. 2000-REP-03-0047, asserting that all employees in the bargaining unit are supervisors and not "public employees" under § 4117.01(C). On January 25, 2001, the City filed a motion to withdraw the petition, which was granted on March 1, 2001.

On January 25, 2001, the City also filed a Petition for Amendment of Certification in Case No. 2001-REP-01-0017, again asserting that all employees in the bargaining unit are supervisors and not "public employees" under O.R.C. § 4117.01(C). By a letter dated February 5, 2001, the City informed CWA that with the filing of the Petition for Amendment of Certification, "the City will not engage in collective bargaining while this matter is pending." The City did not request, and SERB did not grant, a stay in the negotiations between the City and CWA.

II. DISCUSSION

O.R.C. §§ 4117.11(A)(1) and (A)(5) provide 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 its employees recognized as the exclusive representative * * * pursuant to Chapter 4117. of the Revised Code[.]

O.R.C. § 4117.04(B) requires an employer to bargain collectively with an exclusive representative designated under O.R.C. § 4117.05. The duty to bargain arises when an

employee organization becomes the exclusive representative of a bargaining unit. SERB certified CWA as the exclusive representative for the relevant bargaining unit on August 5, 1999.

CWA filed the required Notice to Negotiate for the initial collective bargaining agreement between itself and the City on November 16, 1999. The City refused to bargain; instead, it chose to file a Petition for Clarification of Bargaining Unit, which it later withdrew. The City then filed its Petition for Amendment of Certification on May 9, 2001. The City continued to refuse to bargain with CWA.

In *In re Marion County Children's Services Board*, SERB 92-017 (10-1-92) ("*Marion*"), a decertification petition was filed during the window period of the collective bargaining agreement between the public employer and the exclusive representative, and the employer suspended bargaining with the incumbent union. After the decertification petition was dismissed, the employer refused to resume bargaining, which led to the filing of an unfair labor practice charge. SERB then held:

A continuation of the bargaining process with the incumbent employee organization might taint the "laboratory conditions" which are essential for the coming election by giving one party an advantage over the other. Also, the imminent possibility of changing or eliminating the employee representation justifies staying negotiations upon an Employer's motion until an election has established which party, if any, the employer is to negotiate with. *Thus, it is sound policy to stay ongoing negotiations with the incumbent organization on a motion by the employer, so long as a question of representation is pending before the Board in the form of [a] petition for representation or decertification.* We do not agree with the hearing officer, however, that good faith doubt may be established apart from a pending petition.

* * *

A public employer must bargain collectively with a certified employee organization so long as the organization retains its certification. A public

employer is not relieved of this obligation simply because it feels a majority of its employees no longer support the certified employee organization. The obligation to bargain imposed by Chapter 4117 depends not upon the majority status of the employee organization, but rather upon the certification of the employee organization by SERB as exclusive bargaining agent. The duty to bargain, once imposed, is relieved only upon revocation of certification by the Board or *temporarily by granting a motion to stay*. [citation omitted]

Id. at 3-57 — 3-58 (emphasis added).

In *State Emp. Relations Bd. v. Miami Univ.* (1994), 71 Ohio St.3d 351, 1995 SERB 4-1, the Ohio Supreme Court held in its Syllabus: “An Ohio public employer may not unilaterally withdraw recognition of and/or refuse to bargain collectively with a certified incumbent union, despite any good faith doubt the employer may have concerning the union’s continuing majority status.” The Court also reviewed SERB’s position announced in *Marion* and found that it “strikes a balance between employee rights and the status of a certified union under the Ohio Act.” *Id.* at 357, 1995 SERB at 4-4. In noting that O.R.C. Chapter 4117 “clearly establishes SERB as the conduit through which Ohio public sector bargaining relationships must pass,” the Court held that it was consistent with the statutory scheme for SERB to preclude the cessation of bargaining without SERB’s involvement. *Id.*

Whether a motion to stay negotiations will be granted under *Marion* depends upon whether a valid petition is pending before SERB and whether the petition presents a question concerning representation. A question concerning representation is usually present in an election petition or a decertification petition. If a question concerning representation is present, an amendment petition or a clarification petition may not be filed pursuant to Ohio Administrative Code Rule 4117-5-01(E); thus, *Marion* does not apply to these petitions. A stay of negotiations rarely will be granted where an amendment or clarification petition has been filed. The City’s Petition for Amendment of Certification in Case No. 2001-REP-01-0017 asserts that *all* employees in the bargaining unit are

supervisors and not “public employees” under O.R.C. § 4117.01(C); this petition presents one of those rare situations where a stay may have been granted upon the filing of an amendment petition. As a result, the City may have avoided committing an unfair labor practice by requesting and receiving a stay of negotiations from SERB pending resolution of its Petition for Amendment of Certification.

CWA’s certification has not been revoked. SERB has not granted a stay of negotiations. Thus, when the City unilaterally discontinued negotiations on February 5, 2001, it acted without authority and violated O.R.C. §§ 4117.11(A)(1)¹ and (A)(5).

III. CONCLUSION

For the reasons above, we find that the City of Cleveland committed an unfair labor practice and violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(5) when it unilaterally refused to bargain with the Communications Workers of America, Local 4340, AFL-CIO while the City was seeking a change in the composition of the bargaining unit, without obtaining a stay of its duty to negotiate from the State Employment Relations Board. Thus, a cease-and-desist order will be issued requiring the City to post a Notice to Employees for sixty days in all of the usual and normal locations where employees represented by the Communications Workers of America, Local 4340, AFL-CIO work and to 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.

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

¹O.R.C. § 4117.11(A)(1) 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.