

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Southeast Local School District Board of Education,

Respondent.

Case No. 2001-ULP-05-0341

ORDER
(OPINION ATTACHED)

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich: May 9, 2002.

On May 31, 2001, the Southeast Local School District Teachers Association, OEA/NEA ("Union") filed an unfair labor practice charge against the Southeast Local School District Board of Education ("District"), alleging that the District violated Ohio Revised Code Sections 4117.11(A)(1) and (A)(5). On October 4, 2001, the State Employment Relations Board ("SERB" or "Complainant") found probable cause to believe that the District violated Ohio Revised Code Sections 4117.11(A)(1) and (A)(5) by unilaterally assigning the duties of the Athletic Director position to a nonbargaining-unit position.

On November 7, 2001, a complaint was issued. A hearing was held on January 9, 2002, wherein testimonial and documentary evidence was presented. Subsequently, all parties filed post-hearing briefs. On March 6, 2002, the Proposed Order was issued. On March 26, 2002, the Respondent filed exceptions to the Proposed Order. On April 16, 2001, the Complainant and the Union filed their responses to the Respondent's 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, and finds that the Respondent has violated Ohio Revised Code Sections 4117.11(A)(1) and (A)(5). The Southeast Local School District Board of Education is hereby 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 reassigning the duties of the Athletic Director supplemental contract position to an exempt position, and from otherwise violating Ohio Revised Code Section 4117.11(A)(1); and

2. Refusing to bargain collectively with the exclusive representative of its employees by unilaterally reassigning the duties of the Athletic Director supplemental contract position to an exempt position, and from otherwise violating Ohio Revised Code Section 4117.11(A)(5).
- B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:
1. Reinstate Richard Young to the supplemental contract position of Athletic Director for the 2001-2002 school year and pay as back pay all monies to which Mr. Young would have been entitled had his contract not been nonrenewed;
 2. Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Southeast Local School District Teachers Association, OEA/NEA work, the Notice to Employees furnished by the State Employment Relations Board stating that the Southeast Local 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
 3. 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.

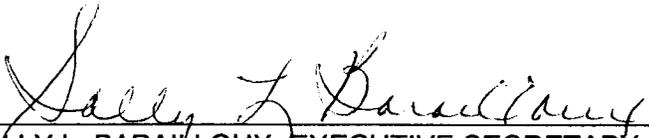


SUE POHLER, CHAIRMAN

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.

Order
Case No. 2001-ULP-05-0341
May 9, 2002
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I certify that this document was filed and a copy served upon each party by certified mail, return receipt requested, on this 14TH day of MAY, 2002.



SALLY L. BARAILLOUX, EXECUTIVE SECRETARY

directives\05-09-02.04



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:

1. Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by unilaterally reassigning the duties of the Athletic Director supplemental contract position to an exempt position, and from otherwise violating Ohio Revised Code Section 4117.11(A)(1); and
2. Refusing to bargain collectively with the exclusive representative of its employees by unilaterally reassigning the duties of the Athletic Director supplemental contract position to an exempt position, and from otherwise violating Ohio Revised Code Section 4117.11(A)(5).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

1. Reinstate Richard Young to the supplemental contract position of Athletic Director for the 2001-2002 school year and pay as back pay all monies to which Mr. Young would have been entitled had his contract not been nonrenewed;
2. Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Southeast Local School District Teachers Association, OEA/NEA work, the Notice to Employees furnished by the State Employment Relations Board stating that the Southeast Local 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
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. Southeast Local School District Board of Education
Case Number 2001-ULP-05-0341

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. 01-ULP-05-0341
Complainant,	:	
	:	
v.	:	BETH C. SHILLINGTON
	:	Administrative Law Judge
SOUTHEAST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION,	:	
	:	
Respondent.	:	<u>PROPOSED ORDER</u>

I. INTRODUCTION

On May 31, 2001, the Southeast Local School District Teachers Association, OEA/NEA (the "Union") filed an unfair labor practice charge against the Southeast Local School District Board of Education (the "District"), alleging that the District violated §§ 4117.11(A)(1) and (A)(5).¹ On October 4, 2001, the State Employment Relations Board ("SERB" or "Complainant") found probable cause to believe that the District violated §§ 4117.11(A)(1) and (A)(5) by unilaterally assigning the duties of the Athletic Director position to a nonbargaining-unit position.

On November 7, 2001, a complaint was issued. On November 13, 2001, the Union filed a motion to intervene, which was granted in accordance with Rule 4117-1-07(A). A hearing was held on January 9, 2002, wherein testimonial and documentary evidence was presented. Subsequently, all parties filed post-hearing briefs.

II. ISSUE

Whether the District violated §§ 4117.11(A)(1) and (A)(5) by unilaterally assigning the duties of the Athletic Director position to a nonbargaining-unit position?

¹All references to statutes are to the Ohio Revised Code, Chapter 4117, and all references to administrative code rules are to the Ohio Administrative Code, Chapter 4117, unless otherwise indicated.

III. FINDINGS OF FACT²

1. The Southeast Local School District Board of Education is a “public employer” as defined by § 4117.01(B). (S. 1)
2. The Southeast Local School District Teachers Association, OEA/NEA is an “employee organization” as defined by § 4117.01(D) and is the deemed-certified exclusive representative for a bargaining unit of the District’s certificated personnel. (S. 2)
3. The District and the Union are parties to a collective bargaining agreement effective from June 29, 2000 to June 28, 2003 (the “CBA”), containing a grievance procedure that culminates in final and binding arbitration. (S. 5; Jt. Exh. 3)
4. The bargaining unit is identified in the CBA as follows:

[A]ll of the following full-time and part-time certificated personnel: classroom teachers, guidance personnel, remedial teacher(s), full-time L.D. tutors, school nurse(s), librarian(s) employed by the Southeast Local Board of Education except casual, day-to-day certificated personnel working on an hourly or per diem basis and excluding all administrative and supervisory personnel as defined in Chapter 4117 of the Ohio Revised Code.

(S. 2)
5. Article 26 of the CBA contains the supplemental pay schedule for each supplemental position, including Athletic Director, which is the highest-paying supplemental position. (Jt. Exh. 3)
6. Article 9.B.1 of the CBA provides that a “Supplemental Contract shall be issued for any Board approved [sic] extra duty in addition to regular teaching duties.” Article 10.B of the CBA provides as follows:

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 Joint Exhibits in the record are indicated parenthetically by “Jt. Exh.,” followed by the exhibit number(s). References to the transcript and 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 the related Finding of Fact.

Non-renewal of [a supplemental] contract shall be preceded by written notification to the teacher from the Superintendent stating the intent to recommend non-renewal of a contract and the reason(s) for such recommendation. Teachers being so notified for either termination of contract or non-renewal of contract shall be given the opportunity to address the Board, with counsel, in Executive Session, prior to any official action by the Board.

(Jt. Exh. 3, at pp. 14-15)

7. Richard Young, a certificated teacher employed by the District, held the position of Athletic Director from 1977 through 1984, and from 1988 through 2001. Mr. Young's job duties as athletic director, set forth in Joint Exhibits 1 and 2, included recommending the hiring of coaches and assistant coaches and evaluating their work. From 1984 through 1988, Mr. Young worked for the District as an Assistant Principal. (T. 99, 101, 104-109)
8. The Superintendent of the District, Linda Fuline, has held her position since the 1997-1998 school year. Ms. Fuline was involved in the negotiations for the CBA, which were completed in the fall of 2000. For as long as Ms. Fuline has been Superintendent, and for as many years back as she has been able to research, the practice has been to give first priority to bargaining-unit member applicants when awarding supplemental contracts. If a qualified bargaining-unit applicant is not available, nonbargaining-unit applicants are considered. (T. 10, 29, 48-49, 51, 68-69)
9. On or about February 15, 2001, the Superintendent of the District, Linda Fuline, informed Mr. Young, the 2000-2001 Athletic Director, that she did not intend to recommend the District renew his contract for the supplemental position of Athletic Director for the 2001-2002 school year. (S. 7; Jt. Exh. 4)
10. On February 21, 2001, Carolyn Wilkerson, a Labor Relations Consultant representing the Union, sent a letter to Ms. Fuline. Ms. Wilkerson asked Ms. Fuline to confirm rumors that the District was going to hire an administrator to perform the duties of the Athletic Director position. Ms. Wilkerson wrote that the District "must cease and desist from making any change in the contract. Unilateral changes in the contract cannot be made which have an effect on the working conditions of bargaining unit [sic] members * * *. If this rumor were fact, it would have an effect on the working conditions of bargaining unit [sic] members, and therefore, it cannot be implemented without bargaining any effect." (S. 8; Jt. Exh. 5)
11. On March 7, 2001, Ms. Wilkerson wrote to Ms. Fuline again, stating that such "a unilateral change in the contract * * * cannot be made without bargaining." (S.8; Jt. Exh. 6)

12. On March 19, 2001, Ms. Wilkerson wrote again, stating that “this attempt to make this position an administrative position is a change in the working conditions of bargaining unit [sic] members and thus is an attempt to make unilateral changes to the bargaining unit without negotiations. The [Union] believes [this] to be a mandatory subject of bargaining.” (S. 8; Jt. Exh. 7)
13. On or about March 20, 2001, Ms. Fuline sent a letter to Mr. Young, advising him that she intended to recommend that the District nonrenew his supplemental contract as Athletic Director for the 2001-2002 school year. Ms. Fuline further explained: “The reason for the recommendation is that I am recommending the position of Athletic Director not be filled and that the supervision and evaluation of athletic supplemental positions be part of the responsibility of an administrative position.” (S. 9; Jt. Exh. 8; T. 18)
14. On April 12, 2001, Ms. Fuline sent a letter to Ms. Wilkerson, stating that the District had “decided not to fill the position of Athletic Director. This is a right the District has without any duty to bargain with the Union.” (S. 10; Jt. Exh. 9)
15. On April 24, 2001, Mr. Young addressed the District at a school board meeting about the District’s decision to nonrenew his supplemental contract as Athletic Director. Also at the April 24, 2001 meeting, the school board voted to nonrenew Mr. Young’s supplemental contract as Athletic Director for the 2001-2002 school year. (S. 11, 12)
16. On August 1, 2001, the District hired Felix Carmello for the nonbargaining-unit position of Director of Student Services/Athletics. Mr. Carmello is performing all of the duties that Mr. Young previously performed as Athletic Director. The District is considering a possible future plan to reassign the duties Mr. Carmello is performing that are not “administrative or supervisory” in nature to the supplemental contract position of Assistant Athletic Director. (T. 20-22, 23)
17. Had Mr. Young served as Athletic Director during the 2001-2002 school year, he would have earned \$8000 in supplemental contract pay. (Jt. Exh. 3; T. 116-119)

IV. ANALYSIS AND DISCUSSION

A. Refusal to Bargain

Section 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 its employees recognized as the exclusive representative *** pursuant to Chapter 4117. of the Revised Code[.]

The issue is whether the District engaged in bad-faith bargaining in violation of §§ 4117.11(A)(1) and (A)(5) when it unilaterally assigned the duties of the Athletic Director supplemental contract position to a nonbargaining-unit position. Good-faith bargaining is determined by the totality of the circumstances. In re Dist 1199/HCSSU/SEIU, SERB 96-004 (4-8-96). A circumvention of the duty to bargain, regardless of subjective good faith, is unlawful. In re Mayfield City School Dist Bd of Ed, SERB 89-033 (12-20-89).³

When an unfair labor practice charge alleges a unilateral change of an established past practice, SERB's analysis must begin with the determination of whether the activity changed was, in fact, a "past practice" as that term is used in settled labor law. If the activity is determined to be a "past practice," SERB will first look to the existing collective bargaining agreement to determine whether the collective bargaining agreement clearly addresses that issue. If it does, the collective bargaining agreement's terms will prevail over any past practice since the collective bargaining agreement is what the parties bargained for and accepted as the rules governing the way the parties intend their working relationships to operate. In re Defiance City School Dist Bd of Ed, SERB 97-016 (11-21-97) ("Defiance"). The CBA makes references to supplemental contract pay and nonrenewal. The CBA contains a list of supplemental contract positions and states that a supplemental contract will be issued for District-approved extra duties in addition to regular teaching duties. The CBA does not state that supplemental contract duties are bargaining-unit duties; nor does the CBA describe the process for awarding supplemental contracts. Where, as here, the collective bargaining agreement is silent on the activity at issue, SERB must determine: (a) whether the past practice is "a term or condition of employment" and (b) if it is a term or condition of employment, whether it is a mandatory or permissive subject of bargaining. Id.; In re Olmsted Twp, Cuyahoga County, SERB 99-022 (9-7-99) ("Olmsted Twp.").

³A case alleging a refusal to bargain is properly before SERB for decision on the merits. The District's reliance on In re Upper Arlington Bd of Ed, SERB 92-010 (6-30-92) ("Upper Arlington") is misplaced. Upper Arlington stands for the proposition that SERB has *discretion* to defer such cases to arbitration when it appears that contract interpretation will resolve the underlying conflict. In the instant case, SERB exercised its discretion in favor of proceeding with a complaint and hearing on the allegation of a statutory violation of Chapter 4117.

“A past practice is a custom or practice evolved as a normal reaction to a recurring situation; it must be shown to be an accepted course of conduct characteristically repeated in response to a given set of underlying circumstances.” Defiance, supra at 3-109. An employer’s past practice refers to an activity that has been satisfactorily established by practice or custom. Id.; Dow Jones & Co., 150 L.R.R.M. 1089, 1091 (NLRB 1995); Exxon Shipping Co., 291 NLRB 489, 131 L.R.R.M. 1233 (1988). “The nature of the past practice, its duration, and the reasonable expectations of the parties may justify its attaining the status of a term or condition of employment.” Defiance, supra. The record in the present case shows that for as long as anyone can remember, and indeed even before the enactment of Chapter 4117, the practice of the District has been to offer supplemental contract positions first to bargaining-unit members. Moreover, the Athletic Director position had been offered to a bargaining-unit member, Mr. Young, annually since 1988. This activity falls squarely within the generally accepted definition of a past practice.

The next determinations to be made are whether the assignment of the duties of the Athletic Director position involves the exercise of inherent managerial prerogatives and, if so, whether the subject also materially affects wages, hours, or terms and conditions of employment. Olmsted Twp., supra. Section 4117.08(C) lists as managerial prerogatives the hiring of employees and the determination of the personnel by which governmental operations are to be conducted. These prerogatives are involved in the District’s decision to reassign the duties of the Athletic Director supplemental position to an exempt position. Unless otherwise provided, a public employer maintains the authority to determine matters of inherent managerial policy as outlined in § 4117.08(C). The reassignment of these duties, however, impacts the terms and conditions of the employment of bargaining-unit employees, who formerly were the first priority applicants for the position performing these duties. Moreover, wages are affected, as the Athletic Director supplemental position carried with it substantial additional pay. The employer is required to bargain with an exclusive representative on all matters relating to wages, hours, or terms and other conditions of employment under § 4117.08(A). In re City of Broadview Heights, SERB 99-005 (3-5-99); In re Ottawa County Riverview Nursing Home, SERB 96-006 (5-31-96). Thus, if a given subject involves the exercise of inherent managerial discretion and also materially affects any of these factors, a balancing test must be applied to determine whether the subject is a mandatory or permissive subject of bargaining. SERB v. Youngstown City School Dist. Bd. of Ed., SERB 95-010 (1995) (“Youngstown”). See also In re City of Akron, SERB 97-012 (7-10-97).

If a given subject is alleged to affect and is determined to have a material influence upon wages, hours, or terms and other conditions of employment and involves the exercise of inherent management discretion, the following factors must be balanced to determine whether it is a mandatory or permissive subject of bargaining: 1) the extent to which the subject is logically and reasonably related to wages, hours, terms and conditions of employment; 2) the extent to which the employer’s obligation to negotiate may significantly abridge its freedom to exercise those managerial prerogatives set forth in and anticipated by § 4117.08(C), including an examination of the type of employer involved and whether

inherent discretion on the subject matter at issue is necessary to achieve the employer's essential mission and its obligations to the general public; and 3) the extent to which the mediatory influence of collective bargaining and, when necessary, any impasse resolution mechanisms available to the parties are the appropriate means of resolving conflicts over the subject matter. Youngstown, supra at 3-76 to 3-77.

Examining the first prong, the Athletic Director supplemental contract position carries with it additional wages and hours, and the process of filling the position was a term or condition of employment of bargaining-unit employees within the District. Examining the second prong, the employer is a public school district with the essential mission of educating children; no evidence in the record is present to demonstrate that inherent discretion in reassigning the duties of the Athletic Director, a position with duties ancillary to the employer's essential mission, is necessary to achieve this essential mission. Examining the third prong, the mediatory influence of collective bargaining would have been the ideal mechanism for the District to achieve its articulated interest in moving the supervisory and managerial components of the Athletic Director's duties to an exempt position and for the Union to articulate and achieve its interest in retaining a term and condition of employment enjoyed by bargaining-unit members. Even more telling in this regard is the evidence in the record that the District is now considering returning the nonsupervisory and nonmanagement duties of the Athletic Director position to a supplemental contract position. Indeed, it is difficult to conceive of a conflict more amenable to a negotiated resolution. The pay scale for supplemental contract positions is set forth in the CBA; had the District proposed changing the duties of the Athletic Director position or eliminating the position and reassigning many of its duties to another supplemental position, the District and the Union could have negotiated the preferred alternative and the appropriate rate of pay commensurate with the new duties. The three-prong analysis reveals that, on balance, the reassignment of the duties of the Athletic Director supplemental contract position is a mandatory subject of collective bargaining.

Management decisions which are found, on balance, to be mandatory subjects must be bargained before implementation, upon notice by the employer and timely request by the employee organization, except where emergency situations render prior bargaining impossible. In re Toledo City School Dist Bd of Ed, SERB 2001-005 (9-20-2001) ("Toledo"); Youngstown, supra. The District argues that the Union waived its right to bargain. "[W]aiver of a statutory right to bargain * * * must be established by clear and unmistakable action by the waiving party. * * * [I]f an employer offers no reasonable basis for giving little or no advance notice and when bargainable subjects are affected by the management decision, the intended implementation may be found to be a *fait accompli* for which a bargaining request would have been futile and, therefore, would not be required." Youngstown, supra at 3-81 (emphasis in original).

The Union took numerous steps to preserve its right to bargain over the reassignment of the duties of the Athletic Director position. On February 21, 2001, March 7, 2001, and March 19, 2001, the Union's representative, Ms. Wilkerson, advised

Ms. Fuline by letter that the change could not be made “without bargaining” or “without negotiations.” On or about March 20, 2001, Ms. Fuline sent a letter to Mr. Young, advising him that she intended to recommend that the District nonrenew his supplemental contract as Athletic Director for the 2001-2002 school year, and to recommend that “the position of Athletic Director not be filled and that the supervision and evaluation of athletic supplemental positions be part of the responsibility of an administrative position.” Ms. Fuline responded by notifying the Union on April 12, 2001, that the District believed it could reassign the duties of the Athletic Director “without any duty to bargain.”

The District argues that the statements made by the Union in Ms. Wilkerson’s letters reveal that the Union, rather than requesting bargaining over any such change, would not bargain even if the District had brought the reassignment of the duties to the Union for consideration in the form of a proposal. Therefore, the District argues, it had no choice but to unilaterally implement the reassignment. This conclusion on the part of the District is erroneous. The District’s options were to request the Union to engage in midterm bargaining and then work with the Union toward a negotiated change, or to wait until negotiations for a successor CBA to propose changes. SERB’s recent Toledo decision states the controlling legal principle, as follows:

A party cannot modify an existing collective bargaining agreement without the negotiation by and agreement of both parties unless immediate action is required due to (1) exigent circumstances that were unforeseen at the time of negotiations or (2) legislative action taken by a higher-level legislative body after the agreement becomes effective that requires a change to conform to the statute.

In addition, to clarify *Youngstown*, follow *[In re] Franklin County Sheriff* [SERB 90-012 (7-18-90)], and assure consistency in future cases involving issues not covered in the provisions of a collective bargaining agreement, but which require mandatory midterm bargaining, SERB will apply the same two-part test as stated above.

Toledo, supra at 3-29.⁴ The Union did not waive its right to bargain. Rather, it asserted its position that changes could not be made without bargaining, and the District’s response was disagreement with this position, followed by unilateral implementation of the

⁴This case does not involve exigent circumstances or legislative action. The evidence in the record reveals that the duties of the Athletic Director, including those the District now identifies as supervisory and administrative, had existed virtually unchanged for years. While the District may have identified circumstances that constituted business reasons to make changes in the Athletic Director position, these reasons do not constitute exigent circumstances.

reassignment. The District's actions were in contravention of its duty to bargain and in violation of § 4117.11(A)(1) and (A)(5).

B. The Remedy

The District and the Union should be returned to the *status quo ante* that would have existed had no unfair labor practice occurred. Toledo, supra at 3-29. The District should be ordered to cease and desist from unilaterally reassigning the duties of the Athletic Director supplemental contract position to an exempt position during the term of the existing CBA. Further, because the District nonrenewed Mr. Young as part of its implementation of this unilateral change, the District should be ordered to reinstate Mr. Young to the supplemental contract position of Athletic Director, and to pay to Mr. Young as back pay those monies to which he would have been entitled had the nonrenewal not occurred.

V. CONCLUSIONS OF LAW

Based upon the entire record herein, this Administrative Law Judge recommends the following Conclusions of Law:

1. The Southeast Local School District Board of Education is a "public employer" as defined by § 4117.01(B).
2. The Southeast Local School District Teachers Association, OEA/NEA is an "employee organization" as defined by § 4117.01(D).
3. The Southeast Local School District Board of Education violated §§ 4117.11(A)(1) and (A)(5) by unilaterally reassigning the duties of the Athletic Director position to a nonbargaining-unit position.

VI. RECOMMENDATIONS

Based upon the foregoing, the following is respectfully recommended that:

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 § 4117.12(B), requiring the Southeast Local School District Board of Education to do 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 reassigning the duties of the Athletic Director supplemental contract position to an exempt position, and from otherwise violating Ohio Revised Code Section 4117.11(A)(1); and
- (2) Refusing to bargain collectively with the exclusive representative of its employees by unilaterally reassigning the duties of the Athletic Director supplemental contract position to an exempt position, and from otherwise violating Ohio Revised Code Section 4117.11(A)(5).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Reinstate Richard Young to the supplemental contract position of Athletic Director for the 2001-2002 school year and pay as back pay all monies to which Mr. Young would have been entitled had his contract not been nonrenewed;
- (2) Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Southeast Local School District Teachers Association, OEA/NEA work, the Notice to Employees furnished by the State Employment Relations Board stating that the Southeast Local 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
- (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.