

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO,

Respondent.

**Case No. 2001-ULP-11-0705**

**ORDER  
(OPINION ATTACHED)**

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich:  
October 24, 2002.

On November 29, 2001, the State of Ohio, Department of Administrative Services, Office of Collective Bargaining ("OCB") filed an unfair labor practice charge against the Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO ("OCSEA"), alleging that OCSEA violated Ohio Revised Code Section 4117.11(B)(8). On October 4, 2001, the State Employment Relations Board ("SERB" or "Complainant") found probable cause to believe that OCSEA violated Ohio Revised Code Section 4117.11(B)(8) by failing to give proper notice before engaging in picketing on September 5, 2001.

On April 29, 2002, a complaint was issued. A hearing was held on June 6, 2002, wherein testimonial and documentary evidence was presented. Subsequently, all parties filed post-hearing briefs. On August 7, 2002, the Administrative Law Judge issued a Proposed Order. On August 28, 2002, OCB filed exceptions to the Proposed Order. On September 9, 2002, OCSEA filed its response to OCB'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 did not violate Ohio Revised Code Section 4117.11(B)(8) because it did not engage in picketing related to a labor relations dispute or other activity intended to be regulated under Ohio Revised Code Chapter 4117. Therefore, the complaint is dismissed, and the unfair labor practice charge is dismissed with prejudice.

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It is so ordered.

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



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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 30<sup>th</sup> day of October,  
2002.



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SALLY L. BARAILLOUX, EXECUTIVE SECRETARY

**STATE OF OHIO  
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

<b>STATE EMPLOYMENT RELATIONS BOARD,</b>	:	
	:	<b>CASE NO. 01-ULP-11-0705</b>
<b>Complainant,</b>	:	
	:	
	:	
<b>v.</b>	:	<b>BETH C. SHILLINGTON</b>
	:	<b>Administrative Law Judge</b>
	:	
<b>OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, AFSCME LOCAL 11, AFL-CIO,</b>	:	
	:	<b><u>PROPOSED ORDER</u></b>
	:	
<b>Respondent.</b>	:	

**I. INTRODUCTION**

On November 29, 2001, the State of Ohio, Department of Administrative Services, Office of Collective Bargaining ("OCB") filed an unfair labor practice charge against the Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO (the "Union"), alleging that the Union violated Ohio Revised Code § 4117.11(B)(8).<sup>1</sup> On October 4, 2001, the State Employment Relations Board ("SERB," "Board," or "Complainant") found probable cause to believe that the Union violated § 4117.11(B)(8) by failing to give proper notice before engaging in picketing on September 5, 2001, authorized the issuance of a complaint, and directed the matter to hearing.

On April 29, 2002, a complaint was issued. On May 8, 2002, OCB filed a motion to intervene, which was granted in accordance with Rule 4117-1-07(A). A hearing was held on June 6, 2002, wherein testimonial and documentary evidence was presented. Subsequently, all parties filed post-hearing briefs.

**II. ISSUE**

Whether the Union violated § 4117.11(B)(8) when bargaining-unit employees participated on non-work time in two gatherings near the Gallipolis Developmental Center on September 5, 2001, without giving a ten-day notice of intent to picket.

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<sup>1</sup>All 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 FACT<sup>2</sup>**

1. The State of Ohio is a “public employer” as defined by § 4117.01(B). OCB is designated by statute as the State of Ohio’s representative in collective bargaining matters. (S. 2)
2. The Union is an “employee organization” as defined by § 4117.01(D), and represents a bargaining unit of State of Ohio employees including employees of Gallipolis Developmental Center (“GDC”). (S. 1, 5)
3. The District and the Union are parties to a collective bargaining agreement that provides for final and binding arbitration. (S. 3)
4. The Ohio Department of Mental Retardation and Developmental Disabilities (“ODMRDD”) is an agency of the State of Ohio. ODMRDD’s operations include GDC, a Gallia County campus residence providing housing and care for approximately 300 residents. Michael Dye is the Superintendent of GDC. (S. 4)
5. Danny Brown, Sharon Brown, William “Monty” Blanton, and Beth Sheets are Union members and GDC employees. Mr. Brown serves as President of the local chapter of the Union. Mr. Blanton is president of the Union’s Mental Health, Mental Retardation, and Ohio Veterans’ Homes (“MHMROVH”) Assembly. (S. 5; T. 23-24)
6. On September 5, 2001, the four individuals mentioned in paragraph 5, along with other individuals, including non-employees and a GDC employee in a bargaining unit represented by the Service Employees International Union District 1199, gathered at two locations near the GDC campus. One gathering was held at the private property of First Baptist Church, 1100 Fourth Avenue, Gallipolis, Ohio. The other gathering was held on city park property alongside a public road. (S. 6; 14; T. 66, 84, 96, 97; I. Exhs. A to D and B-1 to E-1)

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<sup>2</sup>All 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.,” followed by the stipulation number. References to OCB’s exhibits in the record are indicated parenthetically by “I. Exh.,” followed by the exhibit letter. 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.

7. Neither the Union nor District 1199 filed a Notice of Intent to Strike or Picket before the September 5, 2001 gatherings. (S. 9)
8. No GDC employee at the gatherings was on active work status. No work stoppage occurred during the gatherings. Access to GDC continued as usual during the time period of the gatherings. (S. 7)
9. The gatherings addressed GDC employees' concerns about the "reassessment" of services rendered by GDC to Ohio citizens, as well as potential budget cuts proposed by Ohio's Governor or General Assembly. (S. 8)
10. The reassessment proposed eliminating some GDC departments, including the commissary and some allied health services, and reassigning affected employees to direct-care positions. (T. 27, 46-50, 76)
11. At the time of the September 5, 2001 gatherings, the Union was not concerned that its members would lose jobs as a result of the reassessment or proposed budget cuts. The Union already had been assured that no jobs would be lost. (T. 46-50, 55-57)
12. The primary purpose of the September 5, 2001 gatherings was to call the attention of the local community and the Ohio General Assembly to the loss of services that would be incurred by GDC residents if the proposed 4.1 percent ODMRDD budget cut, which amounted to at least \$4 million, was passed. The Union selected the September 5, 2001 date because of its proximity to legislative committee hearings on the proposed cut. (T. 15-19, 39, 47-51, 55-56)
13. The GDC bargaining unit represented by the Union enjoys a positive relationship with the local community. Various local elected officials testified at the budget hearings. (T. 33-34)
14. Ultimately, the conference committee restored \$1.5 million of the proposed cut to the ODMRDD budget. (T. 18)
15. During 2001, similar rallies organized by the Union's MHMROVH Assembly took place near other ODMRDD developmental centers, including Apple Creek, Springview, and Mount Vernon. Notices of Intent to Strike or Picket were not filed. OCB did not file any unfair labor practice charges regarding the other rallies. (S. 10; T. 23, 92, 95)

#### **IV. ANALYSIS AND DISCUSSION**

The Complaint alleges that the Union failed to give a ten-day notice as required by § 4117.11(B)(8), which provides in relevant part as follows:

- (B) It is an unfair labor practice for an employee organization, its agents, or representatives, or public employees to:

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- (8) Engage in any picketing, striking, or other concerted refusal to work without giving written notice to the public employer and to the State Employment Relations Board not less than ten days prior to the action. The notice shall state the date and time that the action will commence and, once the notice is given, the parties may extend it by written agreement of both.

The Union agrees that it did not provide a notice, but asserts that no notice was required under the facts of this case. The evidence of record reveals that neither Complainant nor OCB has carried the burden of proving a violation of § 4117.11(B)(8).

The case law developed by the Board under § 4117.11(B)(8) reveals that SERB has endeavored to interpret and apply this provision consistent with the First Amendment to the United States Constitution. In re Ohio Civil Service Employees Assn, Local 11, AFSCME, SERB 94-009 (5-26-94) ("In re OCSEA"). In re OCSEA recounts the history of the Board's interpretation, explaining that the Board's decision in In re University of Akron, SERB 86-010 (3-14-86), required that picketing have a nexus to a labor dispute under Chapter 4117 in order to trigger the notice requirements of § 4117.11(B)(8). In In re OCSEA, 1994 SERB at 3-62 to 3-63, the Board examined both the purposes of Chapter 4117 and the legitimate state interests for requiring a ten-day notice related to Chapter 4117 rights and issues. The Board summarized its analysis as follows:

Picketing by bargaining unit employees may involve any of those areas delineated above intended to be regulated by Chapter 4117, including but not limited to picketing related to recognition demands, unfair labor practices, to bring pressure or publicity to bear on contract negotiations, picketing in support of or ancillary to the filing of grievances and, of course, picketing related to a strike. Accordingly, ... 'any picketing' which relates to those activities intended by the Legislature to be regulated by Chapter 4117 and falling within SERB's jurisdiction pursuant to Chapter 4117 constitutes picketing subject to the notice requirements of § 4117.11(B)(8). Hence, purely informational picketing related to First Amendment rights not intended to be regulated by Chapter 4117, such as in support of political candidates or general social issues not related to a labor relations dispute involving a public employer or public employee rights under Chapter 4117, is not subject to the notice requirements of § 4117.11(B)(8).

Also, in Dale v. Ohio Civil Service Employees Ass'n (1991), 57 Ohio St.3d 112, 116 ("Dale") the Ohio Supreme Court defined "labor dispute" as "any controversy over the terms

and conditions of employment or the representation of employees for collective bargaining purposes.” The evidence in the record does not demonstrate a connection between the September 5, 2001 picketing and activities intended by the legislature to be regulated by Chapter 4117. Moreover, the picketing did not relate to a labor dispute as defined in Dale.

The testimony of the Union witnesses was consistent on both direct and cross-examination. This testimony reveals that the picketing was intended to call attention to the proposed ODMRDD budget cut pending in the State’s legislative branch by providing information to the local community about the loss of services that would be incurred by GDC’s residents if the budget cut was enacted as proposed. Indeed, the Union selected September 5, 2001, as the date for the picketing precisely because of its proximity in time to finance committee hearings on the proposed budget cut. As such, the picketing was concerned with, and designed to impact, a matter under consideration by the State as *lawmaker*, rather than by the State as *employer*. Furthermore, the subject matter of the picketing was a proposed cut in services to citizens, rather than a controversy over terms and conditions of employment or representation of employees for collective bargaining purposes.

Both Complainant and OCB attempted ardently at hearing to elicit testimony from the Union’s witnesses to the effect that employee organizations exist for the purpose of protecting the jobs of their members. Thus, Complainant and OCB assert that the picketing necessarily concerned job preservation and, therefore, the notice requirement in § 4117.11(B)(8) applies. Yet, conversely, Complainant and OCB elicited testimony from the same witnesses that ODMRDD had already informed the Union that no jobs would be lost by Union members as a result of either the reassessment or the proposed budget cut. The Union and OCB were not engaged in contract negotiations at the time of the picketing. The picketing did not relate to a pending grievance. While the Union had at some unspecified time filed an unfair labor practice charge against ODMRDD alleging bad-faith bargaining during the reassessment process, the record is devoid of evidence linking the September 5, 2001 gatherings to that unfair labor practice charge. Indeed, no evidence of the status of that charge is present in the record. Therefore, the Union members’ testimony is credible that the purpose of the picketing was to call attention to the political and general social issue of the loss of services to GDC residents.<sup>3</sup> Consistent with the Board’s articulated goal in applying § 4117.11(B)(8) consistent with First Amendment rights, this provision does not apply to the political expression at issue in this case.

The evidence reveals that on September 5, 2001, the Union did not engage in picketing related to a labor relations dispute or other activity intended to be regulated under

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<sup>3</sup> At hearing, counsel for Intervenor attempted to introduce a document titled “Stop GDC Job Abolishments and Layoffs.” (See Intervenor’s Closing Brief, Proposed Finding of Fact No. 5.) Counsel for Intervenor had not disclosed this document as required by the Administrative Law Judge’s Prehearing Order. Therefore, the Administrative Law Judge excluded the document from the record and struck all testimony related to it. (T. 29-31, 126)

Chapter 4117. Accordingly, Complainant and Intervenor have not demonstrated a violation of § 4117.11(B)(8).

#### **V. CONCLUSIONS OF LAW**

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

1. The State of Ohio is a “public employer” as defined by § 4117.01(B). OCB is designated by statute as the State of Ohio’s representative in collective bargaining matters.
2. The Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO is an “employee organization” as defined by § 4117.01(D).
3. The Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO did not violate § 4117.11(B)(8).

#### **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 dismiss the complaint and dismiss with prejudice the unfair labor practice charge.