

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

Mahoning County Board of Commissioners,

Respondent.

Case No. 2003-U LP-04-0178

ORDER
(OPINION ATTACHED)

Before Chairman Drake, Vice Chairman Gillmor, and Board Member Verich:
May 20, 2004.

On April 4, 2003, the International Brotherhood of Teamsters, Local No. 377 ("Intervenor") filed an unfair labor practice charge with the State Employment Relations Board ("Board" or "Complainant") alleging that the Mahoning County Board of Commissioners ("Respondent") violated Ohio Revised Code Sections 4117.11(A)(1) and (A)(5). On July 10, 2003, the Board found probable cause to believe an unfair labor practice had been committed and directed the unfair labor practice case to hearing.

On October 30, 2003, the parties submitted the case on joint stipulations of fact and exhibits in lieu of a hearing. Subsequently, the parties filed briefs setting forth their positions. On January 21, 2004, a Proposed Order was issued by the Administrative Law Judge, recommending that the Board find that the Respondent did not violate Ohio Revised Code Sections 4117.11(A)(1) and (A)(5) when it timely voted to reject the tentative agreement. On January 30, 2004, the Intervenor filed exceptions to the Proposed Order; on February 6, 2004, the Respondent filed its response to those exceptions. On February 11, 2004, the Complainant filed exceptions to the Proposed Order; on February 20, 2004, the Respondent filed its response to those exceptions.

After reviewing the record, the Proposed Order, and all other filings in this case, the Board adopts the Findings of Fact, Analysis and Discussion, and Conclusions of Law in the Proposed Order, incorporated by reference. The Board dismisses the complaint and dismisses with prejudice the unfair labor practice charge.

Order
Case No. 2003-ULP-04-0178
May 20, 2004
Page 2 of 2

It is so ordered.

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



CAROL NOLAN DRAKE, 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 a copy of this document was served upon each party's representative by certified mail, return receipt requested, this 28th day of May, 2004.



DONNA J. GLANTON, ADMINISTRATIVE ASSISTANT

III. FINDINGS OF FACT²

1. The Mahoning County Engineer is a “public employer” as defined by § 4117.01(B). (S. 1)
2. The Mahoning County Board of Commissioners is a “public employer” as defined by § 4117.01(B) and is the “legislative body” for the Engineer. (S. 2)
3. The International Brotherhood of Teamsters, Local 377 is an “employee organization” as defined by § 4117.01(D) and is the exclusive representative for a bargaining unit of the Engineer’s employees. (S. 3)
4. Local 377, the Engineer, and Respondent were parties to a collective bargaining agreement effective May 1, 1999, through April 30, 2002, which contained a grievance procedure that culminates in final and binding arbitration. On March 6, 2002, the parties began negotiations for a successor agreement. (S. 6; Jt. Exh. A)
5. Constance E. Pierce, Mahoning County Human Resource Director, was Respondent’s designated representative at the negotiations. Ms. Pierce participated in the negotiations for the purpose of negotiating the self-funded healthcare package. (S. 7)
6. Local 377 and the Engineer had agreed that healthcare would be negotiated first. As a condition of agreeing to negotiate healthcare, Local 377 insisted that wages be included in the negotiations over healthcare. (S. 9)
7. Tentative agreement was reached on wages, other economic issues, and healthcare, and the agreement was reduced to writing. Ms. Pierce signed this tentative agreement. (S. 10; Jt. Exh. C)
8. On April 26, 2002, Local 377’s membership voted on and approved the tentative agreement on the issues of healthcare and wages. (S. 12)
9. On May 1, 2002, Ms. Pierce informed the Respondent via e-mail of the terms of the tentative agreement on the issues of healthcare and wages, stating, “[t]he Union will also accept our hospitalization package.” (Jt. Exh. D, p. 2)

²All 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 letter(s). References to the stipulations of fact 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.

10. After the tentative agreement on health insurance and wages was reached, Constance Pierce did not participate in the negotiations for the issues that remained. (S. 14)
11. On February 20, 2003, a complete tentative agreement resolving all remaining issues was reached. This agreement was reduced to writing and signed by representatives of Local 377 and the Engineer. (S. 13; Jt. Exh. E)
12. On March 30, 2003, the Respondent timely voted to reject the tentative agreement. The Respondent rejected the tentative agreement because of wages and the hospitalization provision. (S. 15, 16; Jt. Exh. F)
13. The terms and conditions of the tentative agreement, including wages and hospitalization, were implemented. (S. 17; Jt. Exh. C)

IV. ANALYSIS AND DISCUSSION

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 Respondent engaged in bad-faith bargaining in violation of §§ 4117.11(A)(1) and (A)(5). The Respondent's designated representative participated in the negotiations for the purpose of negotiating Respondent's self-funded healthcare package. Local 377 insisted that wages and healthcare be negotiated together. Respondent's designated representative signed off on a tentative agreement on wages and hospitalization. Respondent's designated representative did not participate in the negotiation of the remaining issues between the Engineer and Local 377. Respondent subsequently voted to reject the tentative agreement because of the wages and the hospitalization provision.

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).

Section 4117.01(G) provides as follows:

"To bargain collectively" means to perform the mutual obligation of the public employer, by its representatives, and the representatives of its employees to negotiate in good faith at reasonable times and places with respect to wages, hours, terms, and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, with the intention of reaching an agreement, or to resolve questions arising under the agreement. "To bargain collectively" includes executing a written contract incorporating the terms of any agreement reached. The obligation to bargain collectively does not mean that either party is compelled to agree to a proposal nor does it require the making of a concession.

Good-faith bargaining requires that the public employer and the legislative body each keep within their respective roles in the collective bargaining process. The public employer who engages in negotiations is separate and apart from the legislative body. SERB v. Martins Ferry, 1991 SERB 4-62, 4-65 (7th Dist Ct App, Belmont, 6-6-91) ("Martins Ferry").

The role and the description of the legislative body for collective bargaining are set forth in § 4117.10(B), which provides as follows:

The public employer shall submit a request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the appropriate legislative body to the legislative body within fourteen days of the date on which the parties finalize the agreement, unless otherwise specified, but if the appropriate legislative body is not in session at the time, then within fourteen days after it convenes. The legislative body must approve or reject the submission as a whole, and the submission shall be deemed approved if the legislative body fails to act within thirty days after the public employer submits the agreement. The parties may specify that those provisions of the agreement not requiring action by a legislative body are effective and operative in accordance with the terms of the agreement, provided there has been compliance with division (C) of this section. If the legislative body rejects the submission of the public employer, either party may reopen all or part of the entire agreement.

As used in this section, "legislative body" includes the general assembly, the governing board of a municipal corporation, school district, college or university, village, township, or board of county commissioners or any other body that has authority to approve the budget of their public jurisdiction.

The designated representative for the public employer in the negotiations process is set forth in § 4117.10(C), which provides as follows (emphasis added):

The chief executive officer, or the chief executive officer's representative, of each municipal corporation, the designated representative of the board of education of each school district, college or university, or any other body that has authority to approve the budget of their public jurisdiction, *the designated representative of the board of county commissioners and of each elected officeholder of the county whose employees are covered by the collective negotiations*, and the designated representative of the village or the board of township trustees of each township is responsible for negotiations in the collective bargaining process; *except that the legislative body may accept or reject a proposed collective bargaining agreement*. When the matters about which there is agreement are reduced to writing and approved by the employee organization and the legislative body, the agreement is binding upon the legislative body, the employer, and the employee organization and employees covered by the agreement.

Under § 4117.10, the elements of the existence of a collective bargaining agreement are (1) the approval of a tentative agreement by the employee organization and the employer and (2) the approval of the employer's submission by the legislative body, either through its active assent or by operation of law.

On May 2, 2002, Local 377 notified the Engineer in writing of its approval by ratification vote of the tentative agreement on economic issues. On February 20, 2003, following the completion of collective bargaining negotiations between Local 377 and the Engineer on the remaining issues, the Engineer submitted to the Respondent legislative body the tentative collective bargaining agreement agreed to by Local 377 and the Engineer, along with a request for legislative approval under § 4117.10(B). The Respondent passed a resolution rejecting the tentative agreement on March 20, 2003.

Section 4117.10(B) distinguishes between the roles of the public employer and the legislative body in order to keep legislative bodies out of the give-and-take of the negotiation process. As the Seventh District Court of Appeals stated in Martins Ferry, supra at 4-62:

Pursuant to R.C. 4117.10(C), the public employer's chief executive officer or his designated representative is responsible for negotiations. The legislative body may accept or reject a proposed collective bargaining agreement but has no other function in the bargaining process. The acceptance or rejection must be made in whole.

The separation of powers must be construed as the legislature's way of maintaining the relationship between the legislative bodies, particularly

their fiscal authority, and the powers of the executive and administrative offices.

The separation also has a very practical application because it places the legislative body, who must accept or reject the collective bargaining agreement, above the fray of the often emotionally charged bargaining process. Thus legislative bodies, which are elected by the populace, are removed from the rigors and direct political pressures that can generate in a bargaining confrontation.

In In re Fairfield County Human Services Dept., SERB 99-020 (6-30-99) ("Fairfield County"), SERB clarified the principle announced in Martins Ferry. In Fairfield County, supra at 3-127, SERB stated as follows (emphasis added):

If the legislative body voluntarily becomes involved before the process reaches this step, it takes on a new role – the employer's role. Under such circumstances, the legislative body cannot be permitted to accept an agreement in the role of employer and then to reject it in the role of legislative body. See, e.g., In re City of Saratoga Springs, 20 PERB ¶ 3031, (NY PERB, 6/2/87). *The legislative body is not "involved" in the process by merely being briefed as to the status of negotiations. When the legislative body is so involved in the negotiation process that it has final authority on what proposals are offered or accepted, however, it has stepped into the role of employer. At that point in time, whatever the legislative body offers or accepts when it acts as the employer, it must approve when it formally acts as the legislative body. Id.*

Once the separation of roles between employer and legislative body contemplated by § 4117.10(B) has been broken, and the legislative body has already approved everything in an employer's last, best offer, the § 4117.10(C) requirement for approval by the legislative body has been met. The required act by the legislative body under § 4117.10(B) to accept or reject the employer's entire submission becomes a ministerial formality.

The parties have stipulated that Respondent's designee, Ms. Pierce, participated in the negotiations for the purpose of negotiating the healthcare package. Ms. Pierce signed off on a tentative agreement involving wages, health insurance, and other economic benefits, which was subsequently implemented. Eventually, after the Engineer and Local 377 negotiated the remaining non-economic issues, a complete tentative collective bargaining agreement was submitted to the Respondent legislative body. Under § 4117.10(B), Respondent timely voted to reject the tentative agreement. The parties have stipulated that the Respondent rejected the tentative agreement because of wages and the hospitalization provision. Complainant, the Engineer, and Local 377 argue that Ms. Pierce's actions in the negotiations process preclude the

Respondent legislative body's action in rejecting the tentative collective bargaining agreement as a whole. In response, Respondent asserts that the actions of Ms. Pierce and the legislative body are in compliance with the express statutory language of Chapter 4117. Respondent's arguments are persuasive.

Respondent first asserts that § 4117.10(C) contemplates the joint participation in negotiations of a designated representative of a board of county commissioners *and* of each elected officeholder whose employees are covered by the collective negotiations. This assertion is a straightforward reading of the statute. Furthermore, Respondent points out that this reading makes practical sense, in that it furthers the progress of negotiations when a representative of the funding authority participates. Moreover, Respondent accurately points out that the county commissioners have the statutory authority to provide healthcare coverage for county employees under Ohio Revised Code § 305.171. Therefore, it was not only legally appropriate but also practically appropriate for Ms. Pierce to participate in the negotiations between the Engineer and Local 377 for the purpose of negotiating the healthcare package.

In Fairfield County, SERB found that the county commissioners themselves became so intimately involved in the negotiations that they were bound by the tentative agreements reached in the negotiations. The facts, however, were significantly different in that case. All proposals or modifications to the tentative agreements had to have the commissioners' prior approval before being offered to or accepted from the employee organization. The commissioners met regularly with the employer's negotiation team to be kept abreast of developments and to plan the give-and-take of negotiation strategy. Id at 3-124 – 3-125.

In this case, the involvement of the Respondent commissioners themselves was limited to the vote to reject the tentative collective bargaining agreement on March 30, 2003. The fact that Respondent's designated representative, Ms. Pierce, sat in on part of the negotiations and presented and negotiated the self-funded healthcare package into a portion of one of the tentative agreements does not bind the Respondent to accept the terms of the entire agreement. Section 4117.10(C) contemplates a board of county commissioners having a designated representative responsible for negotiations along with the designee of the elected office holder. Although Ms. Pierce signed off on a tentative agreement along with representatives from the Engineer's office and from Local 377, the Respondent legislative body was not involved. The evidence in the record demonstrates only that Ms. Pierce updated the Respondent commissioners on one occasion, informing them via e-mail of the terms of the tentative agreement on wages and healthcare and Local 377's approval of that tentative agreement. SERB has held that the legislative body does not become so involved in the process as to take on the status of employer by merely being briefed as to the status of negotiations. Id at 3-127.

The Complainant and Local 377 also argue that Ms. Pierce was an agent of the Engineer for the purpose of negotiating healthcare, and that this act of agency bound Respondent and caused Respondent to commit an unfair labor practice by later

rejecting the tentative collective bargaining agreement. SERB has pointed out on two recent occasions that the authority of other parties to bind county commissioners is quite limited. In In re Columbiana County Bd of Commrs, SERB 99-019, at 3-121 (6-30-99), SERB explained the law of agency as it relates to the collective bargaining process under Chapter 4117. To demonstrate an agency relationship, it must be shown that one person consented to another that the other shall act on his behalf and subject to his control, and that the other consented to so act. In In re Cuyahoga County Commrs, SERB 2000-007 (6-22-00), SERB explained that a grievance settlement agreement entered into by a designee of the county commissioners and the exclusive representative of a bargaining unit of county employees was only a tentative contract subject to the approval of the county commissioners under Ohio Revised Code § 305.25.

No evidence is present in the record that the Engineer consented to Ms. Pierce acting on the Engineer's behalf. The record does not reveal any degree of control by the Engineer over Ms. Pierce's actions. The only question involving any agency relationship involves the relationship between Ms. Pierce and Respondent.

Respondent can be bound by Ms. Pierce's actions only to the extent of her authority. The parties have stipulated that Ms. Pierce had authority only to negotiate healthcare. Thus, Ms. Pierce's signature on the tentative agreement on wages and healthcare could, at most, bind the Respondent to its proposal on healthcare. However, the limited agency relationship between Ms. Pierce and Respondent does not change Respondent's status from legislative body to employer in negotiations under § 4117.10. As discussed above, § 4117.10 contemplates a board of county commissioners having a designee present and responsible for negotiations in the collective bargaining process along with a designee of the elected office holder. Thus, notwithstanding Ms. Pierce's participation in negotiations, Respondent retained the right to act as a legislative body and to reject the tentative collective bargaining agreement in accordance with the procedures set forth in § 4117.10(B).

The fact that the terms of the tentative agreement have been implemented does not change the analysis of whether Respondent committed an unfair labor practice. Respondent was not able to vote on the entire tentative collective bargaining agreement until the Engineer and Local 377 presented the agreement to Respondent for its vote, quite some time after the initial tentative agreement on wages and healthcare was reached. Nonetheless, Respondent's action in rejecting the tentative agreement was in accordance with § 4117.10(B) and is another step in the collective bargaining process contemplated by Chapter 4117. As SERB stated in In re City of Martins Ferry, SERB 89-021, at 3-146 (aff'd sub nom. SERB v. Martins Ferry, *supra*):

In the instant case, the next step toward finality was the submission of the proposal to the legislative body. It was then their responsibility to determine if the package as a whole is acceptable, or that one or more provisions are so unacceptable that the entire package must be rejected.

This requirement to accept or reject on a whole compels serious evaluation and responsible action on the part of the legislative body, because either way they, along with the union membership, shall bear the ultimate responsibility for their respective decisions.

Respondent bears the ultimate responsibility for its decision to reject the tentative agreement. Its actions were consistent with the statutory framework for the collective bargaining process, and it did not commit an unfair labor practice by exercising its statutory authority as the legislative body. Thus, Respondent did not commit an unfair labor practice when it timely rejected the tentative agreement on March 30, 2003.

V. CONCLUSIONS OF LAW

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

1. The Mahoning County Engineer is a "public employer" as defined by § 4117.01(B).
2. The Mahoning County Board of County Commissioners is a "public employer" as defined by § 4117.01(B) and is the "legislative body" for the Mahoning County Engineer.
3. The International Brotherhood of Teamsters, Local No. 377 is an "employee organization" as defined by § 4117.01(D).
4. The Mahoning County Board of County Commissioners did not violate §§ 4117.11(A)(1) and (A)(5) when it timely voted to reject the tentative agreement.

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