

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

Amalgamated Transit Union Local 627,

Respondent.

Case No. 2003-ULP-05-0252

ORDER
(OPINION ATTACHED)

Before Chairman Drake, Vice Chairman Gillmor, and Board Member Verich:
August 5, 2004.

On August 9, 2003, Johnny Brantley ("Intervenor") filed an unfair labor practice charge with the State Employment Relations Board ("Board" or "Complainant") alleging that the Amalgamated Transit Union Local 627 ("Respondent") had violated Ohio Revised Code Section 4117.11(B)(1). On October 16, 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 February 18, 2004, a hearing was held. Subsequently, the parties filed briefs setting forth their positions. On April 12, 2004, a Proposed Order was issued by the Administrative Law Judge, recommending that the Board find that the Respondent violated Ohio Revised Code Section 4117.11(B)(1) when it refused to either file a grievance on the Intervenor's behalf or to provide him with the grievance form he requested so that he could present the grievance himself. On May 3, 2004, the Complainant filed exceptions to the Proposed Order. Also on May 3, 2004, the Respondent filed exceptions to the Proposed Order. On May 13, 2004, the Respondent filed a response to the Complainant's exceptions. Also on May 13, 2004, the Complainant and Intervenor filed responses to the Respondent's 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 also issues this Order, with a Notice to Employees, to the Amalgamated Transit Union Local 627 to cease and desist from restraining or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by failing to file a grievance on the Intervenor's behalf or to

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provide the Intervenor with the appropriate form to file a grievance, and from otherwise violating O.R.C. § 4117.11(B)(1).

The Amalgamated Transit Union Local 627 is hereby ordered to (1) post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Amalgamated Transit Union Local 627 work, the Notice to Employees furnished by the Board stating that the Amalgamated Transit Union Local 627 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 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.

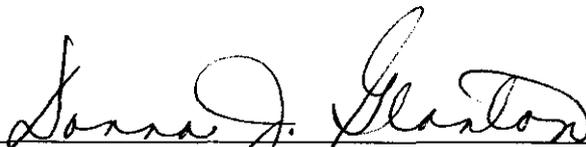
DRAKE, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.



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 9th day of August, 2004.



DONNA J. GLANTON, ADMINISTRATIVE ASSISTANT



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 State Employment Relations Board and to abide by the following:

A. CEASE AND DESIST FROM:

Restraining or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by failing to file a grievance on Johnny Brantley's behalf or to provide him with the appropriate form to file a grievance, and from otherwise violating O.R.C. § 4117.11(B)(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 Amalgamated Transit Union Local 627 work, the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board stating that the Amalgamated Transit Union Local 627 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 that this Order becomes final of the steps that have been taken to comply therewith.

SERB v. Amalgamated Transit Union Local 627
Case No. 2003-ULP-05-0252

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, :
Complainant, : **CASE NO. 03-ULP-05-0252**

v. : **BETH C. SHILLINGTON**
Administrative Law Judge

AMALGAMATED TRANSIT UNION
LOCAL 627,

Respondent. : **PROPOSED ORDER**

I. INTRODUCTION

On May 9, 2003, Johnny Brantley filed an unfair labor practice charge against the Amalgamated Transit Union Local 627 (the "Union").¹ On October 16, 2003, the State Employment Relations Board ("SERB or "Complainant") found probable cause to believe that the Union violated §§ 4117.11(B)(1) by failing to file a grievance on Mr. Brantley's behalf or to provide Mr. Brantley with the appropriate form to file a grievance.

On December 10, 2003, a complaint was issued. Mr. Brantley filed a motion to intervene, which was granted in accordance with Rule 4117-1-07(A). A hearing was held on February 18, 2004, wherein all parties presented testimonial and documentary evidence. Subsequently, all parties filed post-hearing briefs.

II. ISSUE

Whether the Union violated § 4117.11(B)(1) by failing to file a grievance on Mr. Brantley's behalf or to provide Mr. Brantley with the appropriate form to file a grievance?

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 Southwest Ohio Regional Transit Authority ("SORTA") is a "public employer" as defined by § 4117.01(B). (S. 1)
2. The Amalgamated Transit Union Local 627 is an "employee organization" as defined by § 4117.01(D) and is the exclusive representative for a bargaining unit of SORTA's employees. (S. 2)
3. Johnny Brantley is a "public employee" as defined by § 4117.01(C), is employed by SORTA, and is a member of the bargaining unit represented by the Union. (S. 3, 4, 5)
4. SORTA and the Union are parties to a collective bargaining agreement ("CBA") effective from February 1, 2003 through January 31, 2005, containing a grievance procedure that culminates in final and binding arbitration. (S. 8-9; R. Exh. 1)
5. On May 8, 1998, SORTA and the Union entered into an Appointed Storeroom Seniority Agreement ("SSA") as a resolution of a class action grievance. Included in the SSA was a provision that SORTA is to treat the maintenance department seniority of appointed storekeepers as frozen effective with the date such employees were appointed to the storeroom. (S. 10; T. 85-86; C & I Exh. 2)
6. When Mr. Brantley began his employment with SORTA, he worked in the maintenance department as a janitor. After six months of employment, Mr. Brantley transferred to the storeroom. At that time, representatives of both SORTA and the Union told him that his maintenance department seniority would be frozen. In May 2003, as the result of SORTA's elimination of one storeroom position, Mr. Brantley was bumped out of the storeroom and returned to the maintenance department. Mr. Brantley's maintenance department seniority had been frozen as of the date he was appointed to the storeroom position. Therefore, in selecting his maintenance department job assignment, his placement on the seniority list reflected only the amount of time he had worked as a janitor in the maintenance department. (S. 11, 12, 13; T. 34, 50, 74-75, 77, 82-83, 97-98; C & I Exh. 1)

² References in the record to the Joint Stipulations of Fact filed by the parties are indicated parenthetically by "S.," followed by the stipulation number. References to the Respondent's Exhibits in the record are indicated parenthetically by "R. Exh.," followed by the exhibit number. References to the Complainant and Intervenor's Exhibits in the record are indicated parenthetically by "C & I Exh.," followed by the exhibit number. References to the stipulations 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. Mr. Brantley was upset that following his involuntary transfer out of the storeroom he was placed near the bottom of the maintenance department seniority list. Mr. Brantley told his immediate supervisor, Terry Bender, about his concerns. Mr. Bender told Mr. Brantley to raise the issue with the Union. Mr. Brantley spoke with Union Steward James Nerlinger, a mechanic employed by SORTA. Mr. Brantley told Mr. Nerlinger that he wanted to file a grievance. Mr. Nerlinger told Mr. Brantley that Mr. Brantley did not have a grievance. Mr. Nerlinger gave Mr. Brantley copies of the class action grievance documents that had resulted in the SSA. Mr. Brantley asked Mr. Nerlinger for a grievance form. Mr. Nerlinger would not give Mr. Brantley a grievance form because it was Mr. Nerlinger's opinion that Mr. Brantley did not have a grievance. Mr. Nerlinger told Mr. Brantley that Mr. Brantley could talk to Mr. Hampton. (T. 66, 72-73, 74, 101-102, 103; C & I Exhs. 2, 7)
8. Mr. Brantley telephoned Union President Mitchell Hampton. Mr. Hampton explained the SSA to Mr. Brantley. Mr. Hampton told Mr. Brantley that Mr. Brantley could file a grievance if he wanted to, but that Mr. Hampton was not sure how successful such a grievance would be. Mr. Brantley did not ask Mr. Hampton how to file a grievance or for a grievance form. (T. 20-25, 50-52)
9. Section 3 of the CBA contains a grievance procedure. An employee who believes that a grievance exists is to first meet informally with his or her direct supervisor. The employee's Union Steward may also attend this meeting. If informal discussion does not resolve the problem, the Union or the employee may initiate the grievance procedure. Section 3 of the CBA provides in relevant part as follows:

Step One – If the grievance is a complaint of an employee or the Union, the grievance complained of shall be submitted in writing to the other party within ten (10) days after the incident giving rise to the same becomes known with reasonable diligence, stating the nature of the grievance and the remedies sought from the Authority. The Union will submit the written grievance to the immediate supervisor or his/her designee.

The parties' practice has been for the affected employee to advise his or her Union Steward of the problem, and, if informal discussion does not resolve the problem, to reduce the grievance to writing on a grievance form or on a plain sheet of paper attached to the grievance form. (T. 18-19, 68; C & I 6; R. Exh. 1, at pp. 3-4)
10. Before 1997, bargaining-unit members were able to select job assignments both in and out of the storeroom by seniority. Beginning with the collective bargaining agreement executed in 1997, SORTA selected and assigned storeroom employees. Section 22(b)(7) in the Mechanical Departments section of the current CBA explains the process as follows:

Effective with the 1997 general pick in Maintenance all Storekeeper positions shall become appointed positions. [SORTA] will select and assign the employees. Appointed employees will continue to accrue overall seniority for the purpose of vacation eligibility and selection, job selection within the Inventory and Stores department, or in the event of lay-off.

(T. 64-65, 68-69; R. Exh. 1, at p. 47)

11. The SSA was signed on May 8, 1998, to resolve a class action grievance filed after the new storeroom selection and assignment process was implemented. Paragraphs 3 and 4 of the SSA read as follows:

In accordance with the Union's request, "maintenance department" seniority of appointed storeroom employees will be frozen effective with the date of their appointment to the storeroom. Employees appointed to the position of storekeeper will continue to accrue overall seniority for benefit purposes. An employee's appointed storekeeper seniority date will be used for appointed storekeeper job selection. However, employees appointed to the storekeeper position will not continue to accrue departmental seniority within the mechanical (maintenance) department.

The Union and SORTA agree that all issues relating to maintenance employees' seniority in the storeroom, as well as the interview and selection process for appointed storekeeper positions, are now fully and finally closed, and the Union agrees that no unfair labor practices have occurred during the appointment process.

(C & I Exh. 2)

12. Section 22(c) of the CBA provides in relevant part as follows:

When an employee applies for and is awarded a job in a different department, that employee will move into the new department at the bottom of the department seniority list. The employee will retain his/her overall seniority for purposes of benefits. Picking rights will be determined by his/her place on the new department seniority list. Any such employee moving from the department to another as outlined above, will serve a sixty (60) day probationary period in the new department and job. The Authority may at any time during the probationary period elect to move the employee back to his/her former department. In such a case, the employee will move back to their old department with full seniority for picking and benefits. In

case of layoff an employee shall be allowed to return to his/her former department with the seniority attained at the time they left. For this paragraph only, departments are defined as Transportation, Mechanical including Building Maintenance, Farebox Pullers and Traffic Checkers.

(R. Exh. 1, at p. 48)

IV. ANALYSIS AND DISCUSSION

Section 4117.03 provides in relevant part as follows:

(A) Public employees have the right to:

(5) Present grievances and have them adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of the bargaining agreement then in effect and as long as the bargaining representatives have the opportunity to be present at the adjustment.

Section 4117.11 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:

(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code.

The question presented is whether the Union restrained or coerced Mr. Brantley in the exercise of his guaranteed right to present grievances. The parties' actual practice reflects the language of the CBA, which contemplates the involvement of the Union from the beginning of the formal grievance process at Step One. While the CBA notes that a grievance is a complaint of either an employee or the Union, at Step One the CBA states that "[t]he Union will submit the written grievance to the immediate supervisor or his/her designee." The Union, through Mr. Nerlinger, Mr. Brantley's Union Steward, refused either to undertake this process or to give Mr. Brantley a grievance form so that he could submit the grievance on his own. The Union's defense is, primarily, that notwithstanding the language of the CBA calling for the Union to submit the written grievance, Mr. Brantley could have simply filed the grievance on his own. Mr. Nerlinger, however, refused to give Mr. Brantley a grievance form despite Mr. Brantley's request for the form. Therefore, the Union restrained Mr. Brantley in his attempt to exercise his guaranteed right to present grievances as set forth in § 4117.03(A)(5). Accordingly, the Union violated § 4117.11(B)(1).

The Union argues that evidence of restraint or coercion is not present. The Union cites In re OCSEA/AFSCME Local 11, SERB 95-020 (11-8-95), in which the employee organization was found to have violated § 4117.11(B)(6), but not § 4117.11(B)(1), when it failed to file a grievance on a bargaining-unit member's behalf. But this case is distinguishable because the Union, in refusing Mr. Brantley's request for a grievance form, actively restrained him in his attempt to present his grievance on his own. The Union further argues that it did not violate § 4117.11(B)(1) because Mr. Brantley's grievance was meritless and the Union so determined and informed Mr. Brantley. This argument would be relevant in an analysis of whether § 4117.11(B)(6) was violated, and is relevant to remedy, as discussed below. This argument however, is not a defense to a § 4117.11(B)(1) violation, in which the inquiry is whether the Union restrained Mr. Brantley in his attempt to exercise his guaranteed rights as a public employee, rather than whether the Union failed to fairly represent its bargaining-unit members. Therefore, the Union violated § 4117.11(B)(1) when it refused to either file a grievance on Mr. Brantley's behalf or to provide Mr. Brantley with the grievance form he requested so that he could present the grievance himself.

The remedy for the violation in this case should be limited to a cease-and-desist order and a notice posting. Mr. Brantley's grievance was not reasonably likely to succeed on the merits. No conflict exists between the SSA and the CBA. Both the SSA and section 22(c) of the CBA support the conclusion that when employees return to a department where they worked previously, they return with only the departmental seniority they had when they left the former department. The only circumstance in which this scenario is not the case is set forth in section 22(c), which provides specifically that when an employee is returned to his or her former department while serving a probationary period in a new department, the employee will return with full seniority for both benefit and picking purposes. The present case does not fall within the section 22(c) exception.

V. CONCLUSIONS OF LAW

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

1. The Southwest Ohio Regional Transit Authority is a "public employer" as defined by § 4117.01(B).
2. The Amalgamated Transit Union Local 627 is an "employee organization" as defined by § 4117.01(D).
3. Johnny Brantley is a "public employee" as defined by § 4117.01(C).

4. The Amalgamated Transit Union Local 627 violated § 4117.11(B)(1) when it refused to either file a grievance on Mr. Brantley's behalf or to provide him with the grievance form he requested so that he could present the grievance himself.

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 § 4117.12(B), requiring the Amalgamated Transit Union Local 627 to do the following:

A. CEASE AND DESIST FROM:

- (1) Restraining or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by failing to file a grievance on Johnny Brantley's behalf or to provide Mr. Brantley with the appropriate form to file a grievance, and from otherwise violating Ohio Revised Code Section 4117.11(B)(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 Amalgamated Transit Union Local 627 work, the Notice to Employees furnished by the State Employment Relations Board stating that the Amalgamated Transit Union Local 627 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.