

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

Montgomery County Children's Services,

Respondent.

Case No. 2004-ULP-03-0137

**ORDER
(OPINION ATTACHED)**

Before Chairman Drake, Vice Chairman Gillmor, and Board Member Verich:
November 3, 2005.

On March 4, 2004, the Professionals Guild of Ohio ("Charging Party") filed an unfair labor practice charge against the Montgomery County Children's Services ("Respondent"), alleging that the Respondent violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(5). On September 30, 2004, the State Employment Relations Board ("Board" or "Complainant") found probable cause to believe that the Respondent violated O.R.C. §§ 4117.11(A)(1) and (A)(5) by refusing to bargain over the effects of medical plan changes. A hearing was held on February 10, 2005.

On May 4, 2005, the Administrative Law Judge issued a Proposed Order, recommending that SERB find that the Respondent did not violate Ohio Revised Code §§ 4117.11(A)(1) and (A)(5) when it did not bargain the effects of medical plan changes with the Charging Party. The Complainant and the Charging Party jointly filed exceptions to the Proposed Order. The Respondent filed a response to the exceptions.

After reviewing the record, the Proposed Order, the joint exceptions, the response to exceptions, 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, and finds that the Respondent did not violate Ohio Revised Code §§ 4117.11(A)(1) and (A)(5). Therefore, the complaint is dismissed, and the unfair labor practice charge is dismissed with prejudice.

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It is so ordered.

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

/s/ Carol Nolan Drake
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 16th day of November, 2005.

/s/ Donna J. Glanton
DONNA J. GLANTON, ADMINISTRATIVE ASSISTANT

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

STATE EMPLOYMENT RELATIONS BOARD,	:	
	:	CASE NO. 04-ULP-03-0137
Complainant,	:	
	:	
v.	:	KAY A. KINGSLEY
	:	Administrative Law Judge
MONTGOMERY COUNTY CHILDREN'S SERVICES,	:	
	:	
Respondent.	:	<u>PROPOSED ORDER</u>

I. INTRODUCTION

On March 4, 2004, the Professionals Guild of Ohio ("Union") filed an unfair labor practice charge against Montgomery County Children's Services ("MCCS"), alleging that MCCS violated §§ 4117.11(A)(1) and (A)(5).¹ On September 30, 2004, the State Employment Relations Board ("SERB" or "Complainant") found probable cause to believe that MCCS violated §§ 4117.11(A)(1) and (A)(5) by refusing to bargain over the effects of medical plan changes.

On December 29, 2004, a complaint was issued. On February 3, 2005, the Union filed a motion to intervene, which was granted in accordance with Rule 4117-1-07(A). A hearing was held on February 10, 2005, wherein testimonial and documentary evidence was presented. Subsequently, all parties filed post-hearing briefs.

II. ISSUE

Whether MCCS violated §§ 4117.11(A)(1) and (A)(5) by refusing to bargain over the effects of medical plan changes.

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. Montgomery County Children's Services is a "public employer" as defined by § 4117.01(B). (S.)
2. The Professionals Guild of Ohio is an "employee organization" as defined by § 4117.01(D) and is the exclusive representative for bargaining units of MCCS's professional and non-professional employees. (S.)
3. MCCS and the Union are parties to a collective bargaining agreement effective from June 1, 2003 through May 31, 2006 ("CBA"), containing a grievance procedure that culminates in final and binding arbitration. (S. 5; Jt. Exh. 3)
4. Article 27, Section 1 of the CBA provides as follows:

All employees, except part-time (working twenty (20) hours or less per week), temporary, seasonal and intermittent employees, shall be entitled to participate in the County's group health insurance program in accordance with the Plan.

This language has been included in each collective bargaining agreement between MCCS and the Union since 1989. Management negotiation notes from March 27, 1992, reflect acknowledgement that both MCCS and the Union were required to "follow what the county does in terms of carriers and details associated with the coverage." (Jt. Exh. 4; T. 14-15, 45, 82-83)

5. Article 27, Section 4 of the CBA provides as follows: "The benefits provided for herein shall be provided through group coverage selected by the County." (Jt. Exh. 4)
6. The health insurance plan year for the County is July 1 through June 30. The Employee Benefits Manager, Human Resources Director, County's Director of Administrative Services, and the broker review bids to determine the insurance plans for the year. This group makes a recommendation to the County

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 Respondents Exhibits in the record are indicated parenthetically by "R. 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.

Administrator, who makes a recommendation to the Board of County Commissioners. The Board of Commissioners contracts for the health insurance and makes it available to MCCS and the other County employer entities. Because of the number of separate entities involved, the County has chosen to adopt a uniform health-care plan. Each year between May and June during open enrollment, the County provides information on the available plans. The employees make their choice in June, and coverage is effective July 1. An employee cannot switch plans again until open enrollment the following year. Although plans have changed previously on this annualized basis, this situation is the first instance of coverage changing after the Board of County Commissioners had approved a plan. (T. 7-8, 43-44, 46-48, 54-57, 64)

7. County employees currently have three options available to them pertaining to insurance coverage. They may choose United Health Care, Anthem, or no insurance. Anthem was the only insurance carrier that covered gastric-bypass procedures. (T. 7, 25-26)
8. In May 2003, the County met with the Union and MCCS about changes in the health-care plan that would be effective July 1, 2003. No mention was made of changes in coverage of specific procedures. In April 2003, the County sent out a summary plan-description booklet for the Anthem Plan (effective July 1, 2003), which included gastric-bypass procedures. (Jt. Exh. 1; T. 9-10, 20-21)
9. In December 2003, the County sent out a revised plan that indicated gastric-bypass procedures would no longer be covered effective July 1, 2003. (Jt. Exh. 3; T. 10-12)
10. On January 26, 2004, the Union made a written demand to bargain the changes in the health insurance coverage. (Jt. Exh. 5; T. 12-13)
11. The Union and MCCS met on March 5, 2004, to discuss changes in the health insurance. No bargaining occurred because initially MCCS told the Union that MCCS could not do anything about the changes. (T. 13)
12. Subsequently, MCCS arranged for twelve employees who had started the process for the gastric-bypass procedures to continue with the process as though coverage still existed. (T. 23, 65-66)
13. During negotiations for the current CBA the Union proposed language that would maintain a particular level of benefit, however it did not become part of the CBA. (T. 84-85)

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 MCCS violated §§ 4117.11(A)(1) and (A)(5) when it refused to bargain over the effects of health-care-plan changes.³ 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).

The Complainant cites In re Geauga County Sheriff, SERB 2004-001 (3-17-04) (“Gauga County Sheriff”), in which the Sheriff argued unsuccessfully that it had no duty to bargain changes to the coverage that resulted in increased costs and reduced benefits because the Sheriff had no statutory authority to contract for health insurance. What distinguishes the cases is the language of the parties’ collective bargaining agreements. In Gauga County Sheriff, the agreement required the employer to provide health benefits at a benefit level substantially comparable to or better than the existing coverage. The agreement gave the employer the right to change coverage or benefits only so long as the new coverage was substantially comparable to the existing coverage.

In this case, the language of the CBA entitles employees to participate in the County’s group health insurance in accordance with the plan. Neither the Union nor MCCS has control over the benefits provided in the plan. This language has been in the parties’ collective bargaining agreements since 1989. The CBA further provides that the benefits provided shall be provided through group coverage selected by the County. The CBA does not guarantee any particular plan, level of benefits, or availability of particular procedures. The CBA simply does not require that the benefits be identical, comparable, or substantially similar to any existing level of benefits. The CBA guarantees the employee’s right to participate in whatever health insurance program the County has.

³ Section 4117.11(A)(1) represents an alleged derivative violation of § 4117.11(A)(5) in this instance. In re Amalgamated Transit Union, Local 268, SERB 93-013 (6-25-93) at n. 14.

In essence, MCCS and the Union have agreed through the language of the CBA that the County has control over all matters relating to the provision of health insurance benefits for the term of the CBA. The matter was bargained during negotiations for the most recent CBA and for those agreements in existence since 1989. MCCS did not violate § 4117.11(A)(1) and (A)(5) when it refused to bargain over the effects of the health-care-plan changes because the requisite bargaining had taken place already during negotiations for the parties' CBA.

V. CONCLUSIONS OF LAW

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

1. Montgomery County Children's Services is a "public employer" as defined by § 4117.01(B).
2. The Professionals Guild of Ohio is an "employee organization" as defined by § 4117.01(D).
3. Montgomery County Children's Services did not violate §§ 4117.11(A)(1) and (A)(5) by refusing to bargain the effects of medical plan changes.

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 with prejudice the unfair labor practice charge and the complaint.