

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

City of Jackson,

Respondent.

Case No. 2003-ULP-11-0586

**ORDER  
(OPINION ATTACHED)**

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

On November 7, 2003, the Ohio Association of Public School Employees, Local 4, AFL-CIO and its Local 410 ("OAPSE") filed an unfair labor practice charge with the State Employment Relations Board ("Board" or "Complainant") alleging that the City of Jackson ("Respondent") had violated Ohio Revised Code Sections 4117.11(A)(1) and (A)(5). On January 22, 2004, the Board found probable cause to believe an unfair labor practice had been committed and directed the unfair labor practice case to hearing.

On June 4 and 10, 2004, a hearing was held. Subsequently, the parties filed briefs setting forth their positions. On August 26, 2004, a Proposed Order was issued by the Administrative Law Judge, recommending that the Board find that the Respondent violated Ohio Revised Code Sections 4117.11(A)(1) and (A)(5) when it failed to recognize the parties' collective bargaining agreement. On September 15, 2004, the Respondent filed exceptions to the Proposed Order. On September 23, 2004, the Complainant filed a response to the Respondent's exceptions. On September 24, 2004, OAPSE filed a response 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 City of Jackson to cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117, and refusing to bargain collectively with the exclusive representative of its employees, by failing to recognize the parties' Collective Bargaining

Order  
Case No. 2003-ULP-11-0586  
March 3, 2005  
Page 2 of 2

Agreement, and from otherwise violating Ohio Revised Code Sections 4117.11(A)(1) and (A)(5).

The City of Jackson is hereby ordered to: (1) recognize the collective bargaining agreement between the Ohio Association of Public School Employees, Local 4, AFL-CIO and its Local 410 and the City of Jackson; (2) post for sixty days in all of the usual and normal posting locations where bargaining-unit employees represented by the Ohio Association of Public School Employees, Local 4, AFL-CIO and its Local 410 work, the Notice to Employees furnished by the Board; and (3) 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.

/s/ 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 10th day of March, 2005.

/s/ 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 Board and to abide by the following:

**A. CEASE AND DESIST FROM:**

Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117, and from refusing to bargain collectively with the exclusive representative of its employees, failing to recognize the parties' Collective Bargaining Agreement, and from otherwise violating Ohio Revised Code Sections 4117.11(A)(1) and (A)(5).

**B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:**

1. Recognize the collective bargaining agreement between the Ohio Association of Public School Employees, Local 4, AFL-CIO and its Local 410 and the City of Jackson;
2. Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Ohio Association of Public School Employees, Local 4, AFL-CIO and its Local 410 work, the Notice to Employees furnished by the State Employment Relations Board stating that the City of Jackson 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 that this Order becomes final of the steps that have been taken to comply therewith.

***SERB v. City of Jackson***  
**Case No. 2003-ULP-11-0586**

\_\_\_\_\_  
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.



### **III. FINDINGS OF FACT<sup>2</sup>**

1. The City of Jackson is a “public employer” as defined by § 4117.01(B). (S.)
2. The Ohio Association of Public School Employees, Local 4, AFL-CIO and its Local 410 is an “employee organization” as defined by § 4117.01(D) and is the SERB-certified exclusive representative for a bargaining unit of employees of the City of Jackson that includes all of the following: Executive Assistant of Administrative Services Water Distribution/Waste Water Collection, Mechanical Supervisor, Electric Superintendent, Waste Water Plant Supervisor, Street and Alley/Sanitation, and Utilities Superintendent. (S.)
3. A special audit that occurred in the City of Jackson in 2002 strained relations between the City Council and the administration of Mayor John T. Evans, including Public Service/Safety Director William Sheward, so as to render communications between City Council and the administration virtually non-existent. (T. 85-86, 230, 235-236)
4. On March 13, 2003, SERB certified OAPSE as the exclusive representative for the bargaining unit pursuant to a Request for Recognition. (S.)
5. OAPSE and the City’s bargaining representatives met and negotiated an initial collective bargaining agreement (“CBA”). On or about August 8, 2003, the parties reached tentative agreement on the initial CBA. (S.; T. 8, 46-47)
6. On August 8, 2003, Public Service/Safety Director Sheward asked Executive Assistant Robin Bissell to prepare a memorandum to City Council for issuance under his name and that of Mayor Evans. The memorandum referred to the tentative agreement between OAPSE and the City, which was attached to the memorandum. The memorandum asked City Council to review the tentative agreement before its August 25, 2003 City Council meeting. The memorandum indicated that Mayor Evans and Mr. Sheward would be present at the meeting on August 25, 2003, to answer questions and indicated that an ordinance would be presented at that time. The memorandum further stated that if City Council needed information prior to August 25, 2003, either the Mayor or Mr. Sheward could be contacted. (Jt. Exh. 1; T. 10-13, 100)

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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.” References to the Joint Exhibits in the record are indicated parenthetically by “Jt. Exh.,” followed by the exhibit number(s). All references to the Complainant and Intervenor’s exhibits in the record are indicated parenthetically by “C - I 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.

7. Mayor Evans gave the memorandum and tentative agreement to Ms. Bissell and asked her to give it to City Council members. (T. 33, 55)
8. On August 8, 2003, Ms. Bissell gave copies of the memorandum and attached tentative agreement to Jackson City Law Director John "Jack" Detty. Also on August 8, 2003, Mr. Detty took copies of the memorandum and attached tentative agreement and placed the copies into City Council member's packets. (T. 101)
9. Both Mayor Evans and Public Service/Safety Director Sheward were out of town the week of the August 11, 2003 City Council meeting. (T. 34, 48, 57)
10. On August 23, 2003, Mr. Detty drafted ordinance 112-03 to be presented at the August 25, 2003 City Council meeting. Ordinance 112-03 authorized the City to enter into an agreement between the City and OAPSE. (Jt. Exh. 3)
11. On August 25, 2003, the City Council gave Ordinance 112-03 its first reading. (S.)
12. On September 8, 2003, the City Council had a second reading on Ordinance 112-03. (S.)
13. On September 22, 2003, the City Council had a third reading on Ordinance 112-03. (S.)
14. On September 22, 2003, a majority of the City Council voted not to pass Ordinance 112-03. (S.)
15. To date, City Council has not signed, recognized, or implemented the terms of the CBA. (S.)
16. In October 2003, OAPSE representative Lynda Bolin asked Ms. Bissell if Mr. Detty would write a letter indicating when he received the memorandum and tentative agreement from the Mayor Evans and Public Service/Safety Director Sheward and when he had given it to City Council. (T. 106-107)
17. On October 23, 2003, Ms. Bissell asked Mr. Detty if he would do as Ms. Bolin requested. Mr. Detty said if Ms. Bissell typed such a letter he would sign it. (T. 107)
18. Mr. Detty reviewed the letter prepared by Ms. Bissell. Since Mr. Detty was uncertain if he placed the memorandum and tentative agreement in the packets for City Council members on August 8, 2003, or whether he took the documents directly to the August 11, 2003 City Council meeting, he had Ms. Bissell correct the letter to say he received the memorandum and tentative agreement on August 8, 2003, and placed the documents in the members' packets so they would have them for the August 11, 2003 City Council meeting. (T. 107; C-I Exh. 1)

#### **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 City engaged in bad-faith bargaining in violation of §§ 4117.11(A)(1) and (A)(5) when it failed to recognize the parties' collective bargaining agreement. 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 4117.10(B) provides in relevant part 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 is 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.

Section 4117.10(B) requires an employer to submit "a request for funds necessary to implement an agreement" within fourteen days of the date the parties finalize the agreement. Since it is undisputed that the parties reached tentative agreement on August 8, 2003, this section required the public employer to submit "a request for funds" to the legislative body by August 22, 2003. The City states that the request for funds was made on August 25, 2003, when it argues that the tentative agreement was submitted for

the first time to City Council along with an ordinance. Section 4117.10(B) also states that the submission shall be deemed approved if the legislative body fails to act within thirty days after the public employer submits "the agreement." The first inconsistency within § 4117.10(B) is the reference in the first sentence to "a request for funds" and in the second sentence to "the agreement" when referring to the submission.

The question of what constitutes a proper submission is not specifically answered by SERB case law. OAG Opinion 88-030, however, provides a useful analogy. The opinion discusses what procedures are sufficient to produce a proper submission to the General Assembly when a public employer submits a request for funds necessary to implement a collective bargaining agreement to the General Assembly. The opinion notes that § 4117.10(B) imposes a duty upon a public employer to make a submission for approval or rejection but specifies only the time within which such a submission must be made. The opinion cites Jewett v. Valley Ry. Co., 34 Ohio St. 601 (1878), and State ex rel. Hunt v. Hildebrandt, 93 Ohio St. 1, 112 N.E. 138 (1915), in concluding that "in the absence of statutory guidelines as to the manner in which the submission is to be made, it is presumed that the legislature intended that the submission be made in any reasonable manner."

It does not seem unreasonable for Mayor Evans and Public Service/Safety Director to draft a memorandum, attach a copy of the tentative agreement thereto, and give the memorandum and attachment to their Executive Assistant to give to City Council. It also does not seem unreasonable for the Executive Assistant to give the memorandum and tentative agreement to the Law Director when he offers to take it over to City Council for its next meeting. In the absence of any case law to the contrary, the question of whether the submission of the tentative agreement without an ordinance is sufficient to cause the thirty-day clock to start ticking must be answered in the affirmative.

The City argues that Ms. Bissell's version of what transpired between herself and Law Director Detty on August 8, 2003, should not be believed. The City argues that Ms. Bissell's credibility in this regard is suspect in that she stood to gain economically by implementation of the tentative agreement. But by the same token, it stands to reason that the already fiscally strapped City would be negatively impacted by implementation of the tentative agreement. Is the testimony of Council members and current city administration to be disbelieved as well? The City's argument, absent more, is not a legitimate basis upon which to discount Ms. Bissell's testimony.

The City further argues that the memorandum alone was submitted to City Council for its August 11, 2003 meeting. The City argues that it is clear from the testimony of members of City Council that they received only the memorandum and no attached tentative agreement at the August 11, 2003 City Council meeting. The actual testimony of Council members, however, was in conflict. Councilman Heath testified that he received both the memorandum and the tentative agreement. Councilmen Hodge and Goodman testified they received the memorandum but not the tentative agreement. Councilman Brown testified that he received neither.

What is most telling in this case is the letter signed by Law Director Detty stating that he provided the memorandum and the tentative agreement to City Council before their August 11, 2003 meeting. Although Mr. Detty now claims absolutely no memory of anything related to his actions in this regard, he does admit that his signature is affixed to the letter. It is more reasonable to conclude that this letter contains what actually occurred than to speculate as to another version of events based solely upon Law Director Detty's current memory lapse. Whether he put the documents in the City Council packets on August 8, 2003, or between August 8, 2003 and August 11, 2003, Mr. Detty's letter is clear that both the memorandum and tentative agreement were in the hands of City Council members at the August 11, 2003 City Council meeting.

The parties reached tentative agreement on August 8, 2003. By a preponderance of the evidence, the record supports, that at City Council's August 11, 2003 meeting, City Council members had before them a copy of the tentative agreement and of the memorandum from Mayor Evans and Public Service/Safety Director Sheward. The memorandum stated that an ordinance would be presented at the August 25, 2003 City Council meeting and that Mayor Evans and Mr. Sheward would be present then to discuss the terms of the tentative agreement. Any questions in the interim could be directed to Mayor Evans or Mr. Sheward. City Council met on August 11, 2003. The tentative agreement was not discussed. An ordinance was submitted to City Council on August 25, 2003, authorizing the City to enter into an agreement with OAPSE. City Council gave the ordinance its first reading on August 25, 2003, a second reading on September 8, 2003, and a third reading on September 22, 2003.

Under § 4117.10(B), City Council had thirty days from August 11, 2003, to either approve or reject the tentative agreement. City Council rejected the tentative agreement on September 22, 2003. By failing to take action to approve or reject the City's submission within the thirty-day time limit, City Council allowed the tentative agreement to become the parties' collective bargaining agreement by operation of law. In re East Palestine City School Dist Bd of Ed, SERB 86-011 (3-20-86), at 247. Thus, the City has committed an unfair labor practice in violation of §§ 4117.11(A)(1) and (A)(5) by failing to recognize the parties' collective bargaining agreement.

## **V. CONCLUSIONS OF LAW**

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

1. The City of Jackson is a "public employer" as defined by § 4117.01(B).
2. The Ohio Association of Public School Employees, Local 4, AFL-CIO and its Local 410 is an "employee organization" as defined by § 4117.01(D).

3. The City of Jackson violated §§ 4117.11(A)(1) and (A)(5) by failing to recognize the parties' CBA.

## **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 City of Jackson 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 failing to recognize the parties' Collective Bargaining Agreement, 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 failing to recognize the parties' Collective Bargaining Agreement, and from otherwise violating Ohio Revised Code Section 4117.11(A)(5).

### **B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:**

- (1) Recognize the Collective Bargaining Agreement between the Ohio Association of Public School Employees, Local 4, AFL-CIO and its Local 410 and the City of Jackson.
- (2) Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Ohio Association of Public School Employees, Local 4, AFL-CIO and its Local 410 work, the Notice to Employees furnished by the State Employment Relations Board stating that the City of Jackson 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.