

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

International Association of Fire Fighters, Local 1267,

Respondent.

Case No. 2004-ULP-10-0568

**ORDER
(OPINION ATTACHED)**

Before Chairman Mayton, Vice Chairman Gillmor, and Board Member Verich:
October 12, 2006.

On October 14, 2004, the City of North Olmsted ("the City") filed an unfair labor practice charge against the International Association of Fire Fighters, Local 1267 ("the Union"), alleging that the Union violated Ohio Revised Code Section 4117.11(B)(3). On April 21, 2005, the State Employment Relations Board ("the Board" or "Complainant") found probable cause to believe that the Union violated Ohio Revised Code Sections 4117.11(B)(3) by attempting to bypass the City's representative and deal directly with the legislative body.

The parties agreed to stipulate the case in its entirety. Joint stipulations of fact and joint exhibits were filed in lieu of a hearing on March 16, 2006. Briefs were filed by all parties on April 14, 2006. On June 22, 2006, the Board transferred the case from the Hearings Section for a determination on the merits.

After reviewing the joint stipulations of fact, joint exhibits, the parties' briefs, and all filings in this case, the Board finds, for the reasons set forth in the attached Opinion, incorporated by reference, that the Union violated Ohio Revised Code Section 4117.11(B)(3) when it attempted to bypass the City's representative and deal directly with the legislative body.

The International Association of Fire Fighters, Local 1267 is ordered to:

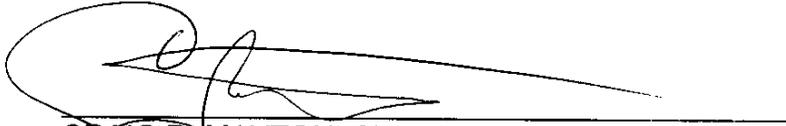
- A. Cease and desist from refusing to bargain collectively with the City of North Olmsted by attempting to bypass the City's representative and

deal directly with the legislative body, and from otherwise violating Ohio Revised Code Section 4117.11(B)(3); and

- B. Take the following affirmative action:
1. Post for sixty days in all of the usual and normal posting locations where bargaining-unit employees of the City who are represented by the International Association of Fire Fighters, Local 1267 work, the Notice to Employees furnished by the State Employment Relations Board stating that the International Association of Fire Fighters, Local 1267 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.

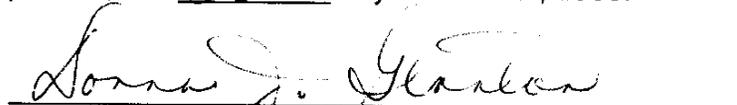
MAYTON, Chairman; GILLMOR, Vice Chairman, and VERICH, Board Member, concur.



CRAIG R. MAYTON, 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 20th day of October, 2006.



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:

Cease and desist from refusing to bargain collectively with the City of North Olmsted by attempting to bypass the City of North Olmsted's representative and deal directly with the legislative body, and from otherwise violating Ohio Revised Code Section 4117.11(B)(3); and

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

1. Post for sixty days in all of the usual and normal posting locations where bargaining-unit employees of the City of North Olmsted who are represented by the International Association of Fire Fighters, Local 1267 work, the Notice to Employees furnished by the State Employment Relations Board stating that the International Association of Fire Fighters, Local 1267 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 that this Order becomes final of the steps that have been taken to comply therewith.

SERB v. International Association of Fire Fighters, Local 1267
Case No. 2004-ULP-10-0568

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**

In the matter of

State Employment Relations Board,

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International Association of Fire Fighters, Local 1267,

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Case No. 2004-UJP-10-0568

OPINION

MAYTON, Chairman:

On October 14, 2004, the City of North Olmsted ("the City") filed an unfair labor practice charge against the International Association of Fire Fighters, Local 1267 ("the Union"), alleging that the Union violated Ohio Revised Code ("O.R.C.") § 4117.11(B)(3). On April 21, 2005, the State Employment Relations Board ("SERB" or "Complainant") found probable cause to believe that the Union violated O.R.C. § 4117.11(B)(3) by attempting to bypass the City's representative and deal directly with its legislative body.

On December 19, 2005, the Complaint and Notice of Hearing was issued. The Union filed an Answer admitting every factual allegation contained in the Complaint. On March 16, 2006, the parties submitted joint stipulations of fact and joint exhibits in lieu of hearing. Subsequently, all parties filed briefs setting forth their legal arguments. On June 22, 2006, this case was transferred from the Hearings Section for a decision on the merits. For the reasons below, we find that the Union violated O.R.C. § 4117.11(B)(3) when it sent the October 2004 letter to the President of City Council, thereby attempting to bypass the City's representative and deal directly with the legislative body.

I. FINDINGS OF FACT¹

1. The City of North Olmsted is a “public employer” as defined by O.R.C. § 4117.01(B). (S. 1)

2. The International Association of Fire Fighters Local 1267 is an “employee organization” as defined by O.R.C. § 4117.01(D). The Union is the exclusive representative for all full-time employees of the City’s fire department. (S. 2)

3. In February and March 2004, the Union filed several grievances, eight in total, alleging that the City had violated the predecessor CBA by adopting or changing various policies. The grievances included the overtime rate grievance, acting officer pay grievance, shift staffing/time off policy grievance, station manning/callback policy grievance, compensatory time off grievance, linen grievance, Boatman overtime grievance, and shift manning overtime log policy grievance. As of October 2004, three of these grievances had proceeded to arbitration and were pending but had yet to be formally heard. (S. 3)

4. The City and the Union were parties to a collective bargaining agreement effective through December 31, 2003 (“Predecessor Agreement”). The parties were unable to negotiate a successor agreement and proceeded to fact finding. (S. 4)

5. On May 12, 2004, following the expiration of the Predecessor Agreement, the City and the Union engaged in statutory fact-finding proceedings pursuant to O.R.C. § 4117.14 before Arbitrator Harry Graham. On June 9, 2004, fact-finding recommendations were issued for the 2004-2006 CBA between the City and the Union. The fact-finding

¹ 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 Joint Exhibits in the record are indicated parenthetically by “Jt. Exh.,” followed by the exhibit number(s). 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.

recommendations were not rejected by either party, thereby forming the basis for the current CBA, effective January 1, 2004 through December 31, 2006 (Jt. Exh. A). (S. 5)

6. Based upon the fact-finding report and recommendations, the City and the Union, by and through their respective Chief Negotiators, James Dubelko and David Boatman, drafted and reviewed language for the 2004-2006 CBA and otherwise prepared the final document for signature by the parties. This process included several exchanges of draft documents and various forms of communication between the Chief Negotiators during the summer and fall of 2004. (S. 6)

7. In October 2004, Union President David Boatman sent a letter to Thomas O'Grady, President of City Council, requesting a special meeting with City Council members. The letter stated: "This meeting will cover various topics, including: strengthening the line of communication between the local's executive board and city council, current pending grievances, and our still unresolved collective bargaining agreement." The letter also stated that "if unable to meet with all of council, we will have no choice but to take this information the council meeting scheduled on 19, October, 2004." [sic] (S. 7; Jt. Exh. B)

8. The City Council did not agree to meet with the Union. (S. 8)

9. At the time of Respondent's letter to City Council in October 2004, none of the grievances referenced in paragraph 3 hereof had actually been heard or decided in arbitration, and the parties had not yet formally executed the 2004-2006 CBA. (S. 10)

10. On October 19, 2004, Union members orally addressed City Council during the public comments session of its regular meeting and participated in a discussion with Council members and other public officials, including Director of Law Dubelko, which was recorded in the Minutes of Council. (S. 11; Jt. Exh. C)

11. On November 4, 2004, the City adopted Resolution No. 2004-131, approving the 2004-2006 CBA and authorizing the Mayor to execute it. (S. 12; Jt. Exh. A)

12. On May 17, 2005, the Union sent letters to all members of City Council apologizing for asking to meet with them. (S. 14; Jt. Exh. D)

II. DISCUSSION

The Union is alleged to have violated O.R.C. § 4117.11(B)(3), 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:

* * *

(3) Refuse to bargain collectively with a public employer if the employee organization is recognized as the exclusive representative or certified as the exclusive representative of public employees in a bargaining unit[.]

"To bargain collectively" is defined in O.R.C. § 4117.01(G) and "means to perform the mutual obligation of the public employer, by its representatives, and the representatives of its employees * * * to resolve questions arising under the agreement." SERB has described how bypassing a party's exclusive representative interferes with the collective bargaining process as follows: "Bypassing the authorized representative, whether the authorized representative of an employee organization or the designated representative of a public employer, undermines the statutory scheme, interferes with the planned process of negotiations, creates chaos in an otherwise orderly, if difficult, process and, hence, constitutes an act in contravention of the obligation to bargain in good faith." *In re SERB v. OAPSE, Local 530*, SERB 96-011 (6-28-96) ("*Local 530*") at p. 3-93.

The overriding purpose of O.R.C. Chapter 4117, and therefore SERB, is to promote "orderly and constructive relationships between all public employers and their employees."

See O.R.C. § 4117.22. In light of this statutory mission, it is particularly incumbent upon SERB to protect vigilantly the lines of communication contemplated by the collective bargaining process described in O.R.C. Chapter 4117. Attempts to shortcut these lines not only contravene the duty to bargain in good faith, they undermine the very principles upon which the collective bargaining process is founded. Specifically, attempts to circumvent the representatives at the bargaining table who have been duly designated by either the employer or employees by appealing directly to the decision makers on issues that are the subject of ongoing negotiations serve only to weaken the effectiveness of those people at the table. This admonishment applies equally to inappropriate direct contact with employee organization members and members of an employer's ultimate decision maker, such as a legislative body.

The issue framed by the facts alleged in the Complaint, admitted in the Answer, and agreed to in the Joint Stipulations of Fact is whether the Union failed to bargain in good faith in violation of O.R.C. § 4117.11(B)(3) by sending a letter in October 2004 to the President of City Council. Good-faith bargaining is determined on a case-by-case basis 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 content and timing of the parties' actions are relevant factors in determining whether O.R.C. § 4117.11(B)(3) has been violated. *In re Dist 1199/HCSSU/SEIU*, supra. "Where the parties are in the midst of negotiations and ultimate impasse has not been reached, the bargaining teams may not bypass each other to appeal directly to either the employees or the employer on issues that are part of ongoing negotiations." *Local 530*, supra at 3-93. In *In re OAPSE/AFSCME Local 4*, SERB 97-014 (10-10-97) ("*Local 4*"), SERB held that the Union did not violate O.R.C. § 4117.11(B)(3) because it communicated with the Board of Education after the parties had reached ultimate impasse in their

negotiations. SERB distinguished its earlier holding in *Local 530* because, in *Local 4*, the parties were not in the middle of negotiations; in fact, the Board of Education – as the legislative body – was considering whether to implement its last best offer. Consequently, the Union in *Local 4* was not presenting bargaining proposals and, thus, was not engaged in bargaining activity.

SERB has previously described “ultimate impasse” as follows:

Ultimate impasse is a legal concept adopted from the private sector. The test developed by the NLRB as to whether there is an ultimate impasse *** appears to be whether there is “no realistic possibility that continuation of discussion at that time would have been fruitful.” Under NLRB case law the existence of an impasse is very much a question of fact, and many factors are considered in such factual determinations. *** Thus, an ultimate impasse is not a point in time which can be predetermined in theory. It is a case by case determination involving the development of a record with enough factual data to determine whether at what point good faith negotiations towards reaching an agreement have been exhausted.

In re Vandalia-Butler City School Dist Bd of Ed, SERB 90-003 (2-9-90) at p. 3-10 (citations omitted), *aff'd sub nom. Vandalia-Butler City School Dist Bd of Ed v. SERB*, 1990 SERB 4-90 (CP, Montgomery, 10-1-90), *aff'd* 1991 SERB 4-81 (2d Dist Ct App, Montgomery, 8-15-91).

Here, the Union sent its October 2004 letter to the President of City Council although the parties had not reached ultimate impasse in their negotiations for a successor collective bargaining agreement. The parties stipulated to the fact that during the summer and fall of 2004, the parties were drafting and finalizing the terms of a successor collective bargaining agreement. When the Union sent its October 2004 letter to the President of City Council, the parties had not yet submitted a final copy of the collective bargaining agreement to City Council for approval.

The Union also requested in its October 2004 letter that City Council meet with the Union to discuss "current pending grievances." SERB has described how bypassing a party's exclusive representative during the grievance/arbitration process constitutes bad-faith bargaining as follows: "Where the parties are working to resolve a labor dispute through their previously agreed-upon grievance/arbitration mechanism, a direct appeal to the employer to resolve the dispute is an illicit bypass of the designated representative. Further, this act in contravention of the agreed-upon mechanism for dispute resolution evidences bad-faith bargaining in general." *In re Ohio Patrolmen's Benevolent Assn, Mentor Patrolmen's Assn*, SERB 99-011 (6-24-99) ("*Mentor*") at p. 3-66. Here, the Union requested a special meeting with City Council regarding the parties' "pending grievances" before the grievances had been addressed by the parties' previously agreed upon grievance procedure.

In *Mentor*, SERB found that the Union had bypassed the public employer's designated representative by directly communicating with individual City Council members through letters, phone calls, and in-person meetings about a grievance filed by the Union. Although the Union in *Mentor* did not specifically request that the City Council members act or intervene in the grievance process, SERB found that "the Union's communications in this case constitute[d] a direct appeal to the Employer to adjust a grievance, thereby bypassing the Employer's selected representatives for the adjustment of the grievances." *Id* at 3-65.

It is reasonable to conclude in this case that the Union sent its October 2004 letter with a request for a special meeting not only to inform City Council about the parties' strained labor relationship, but also as a request for City Council to have an effect on the parties' labor relationship. After City Council rejected the Union's request for a special meeting, several Union members attended and spoke at a public City Council meeting on October 19, 2004. There, City employee and Union member Matt O'Donnell made the

following statements regarding the Union's grievances and the parties' collective bargaining agreement:

Currently, they [the Union] have approximately 12 outstanding grievances. It seems now to be city policy to make them [the Union] grieve everything rather than try to reach a solution. The Fire Chief has taken a stance that, if anything is not specifically listed in the collective bargaining agreement, then it belongs to management rights. That is not correct. But even agreements reached through collective bargaining are not being honored. They [the Union] will be happy to let a third party decide those issues.

Jt. Exh. C at 9.

Additionally, City employee and Union member Dennis Lambert stated in part at the public meeting:

Over and above the individual concerns and respect he has for arbitration, Council can take a position on this [issue]. He believes from what he heard tonight this is an opportunity for Council to generate legislation to enact an employee involvement program. * * * [H]e believes the Council has an obligation and the power to at least go into committee and to consider an employee involvement program that includes sensitivity training on management's part and better understanding of where employees fit into the picture."

Jt. Exh. C at 11.

Mr. Lambert's request for City Council to enact legislation generated a discussion among Council members on whether the Council possesses the power to intervene in labor disputes between the City and the Union. The Council did not have plans to create legislation that would affect either the parties' agreed upon grievance process or collective bargaining agreement terms, and the Council had not requested public information on labor relations between the City and the Union. Thus, this case is distinguishable from *Local 4*, where SERB did not find an O.R.C. § 4117.11(B)(3) violation, because the Union

members in *Local 4* spoke at a public School Board meeting in response to the School Board's request for public comments about an official agenda item. Additionally, the parties in *Local 4* were at ultimate impasse, which differs from the facts of this case.

Based upon the Union's specific request in its October 2004 letter for a special meeting with City Council, the timing of the letter, and the requests made by Union members to City Council at the public City Council meeting on October 19, 2004, the Union violated O.R.C. § 4117.11(B)(3) by bypassing the City's exclusive representative and directly requesting that City Council meet with the Union to discuss pending grievances and the parties' successor collective bargaining agreement. The Union's subsequent letter of apology to City Council does not mitigate the O.R.C. § 4117.11(B)(3) violation. The appropriate remedy in this case is the issuance of a Notice to Employees to be posted for sixty days.

III. CONCLUSIONS OF LAW

1. The City of North Olmsted is a "public employer" as defined by O.R.C. § 4117.01(B).
2. The International Association of Fire Fighters, Local 1267 is an "employee organization" as defined by O.R.C. § 4117.01(D).
3. The International Association of Fire Fighters, Local 1267 violated O.R.C. § 4117.11(B)(3) when it sent the October 2004 letter to the President of City Council, thereby attempting to bypass the City's representative and deal directly with the legislative body.

IV. DETERMINATION

For the reasons above, we find that the International Association of Fire Fighters, Local 1267 violated Ohio Revised Code § 4117.11(B)(3) when it sent the October 2004 letter to the President of City Council, thereby attempting to bypass the City's representative and deal directly with the legislative body. An Order with a Notice to Employees will be issued to the Union requiring the Union to cease and desist from refusing to bargain collectively with the City of North Olmsted by attempting to bypass the Employer's representative and deal directly with the legislative body, and from otherwise violating Ohio Revised Code § 4117.11(B)(3), and to 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 International Association of Fire Fighters, Local 1267 work, the Notice to Employees furnished by SERB; and (2) notify SERB in writing within twenty calendar days from the date the order becomes final of the steps that have been taken to comply therewith.

Gillmor, Vice Chairman, and Verich, Board Member, concur.