

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Brookfield Local School District Board of Education,

Respondent.

Case No. 2006-ULP-09-0467

**ORDER  
(OPINION ATTACHED)**

Before Chairperson Brundige, Vice Chairperson Verich, and Board Member Spada: November 6, 2008.

On September 19, 2006, the Brookfield Federation of Teachers, OFT/AFT (“the BFT”) filed an unfair labor practice charge against the Brookfield Local School District Board of Education (“Respondent”), alleging that Respondent violated Ohio Revised Code §§ 4117.11(A)(1), (A)(3), and (A)(5). On January 4, 2007, the State Employment Relations Board (“SERB” or “Complainant”) determined that probable cause existed to believe that Respondent violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(5) by unilaterally reducing the salaries of bargaining-unit employees, by assigning bargaining-unit duties to nonbargaining-unit employees, and by replacing bargaining-unit employees with nonbargaining-unit employees. On June 20, 2007, a complaint was issued. On July 9, 2007, the BFT filed a motion to intervene, which was granted in accordance with Ohio Administrative Code Rule 4117-1-07(A).

On September 10 and September 11, 2007, a hearing was held, wherein testimonial and documentary evidence was presented. Subsequently, all parties filed post-hearing briefs. On December 21, 2007, the Administrative Law Judge issued a Proposed Order in this matter. On January 8, 2008, the Administrative Law Judge issued an Amended Proposed Order in which she recommended that SERB find that Respondent had violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(5) by unilaterally reducing the salaries of bargaining-unit employees, abolishing the bargaining unit position of Technology Coordinator and replacing it with the non-bargaining unit position of Computer Network/Support Technician position and by

STATE EMPLOYMENT  
RELATIONS BOARD  
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replacing bargaining-unit nursing positions with non-bargaining unit clinical assistant positions.

On January 28, 2008, Respondent filed exceptions to the Proposed Order; it also filed a motion for oral argument on that date. After timely requesting and receiving an extension of time to file a response to the exceptions, both the BFT and Counsel for Complainant filed responses to the exceptions on February 19, 2008. On March 20, 2008, SERB granted the motion for oral argument. On July 10, 2008, oral arguments were presented to SERB by the parties' representatives.

After reviewing the unfair labor practice charge, complaint, answer, Proposed Order, Amended Proposed Order, exceptions, responses to exceptions, and all other filings in this case, for the reasons set forth in the attached Opinion, incorporated by reference, Finding of Fact No. 11 in the Amended Proposed Order is amended to read, "Karen Marshall was hired by the District as a full-time teacher in the 1977-1978 school year."; the Findings of Fact, as amended, and Conclusions of Law in the Amended Proposed Order are adopted, finding that Respondent violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(5) by unilaterally reducing the salaries of bargaining-unit employees, by abolishing the bargaining-unit position of Technology Coordinator and replacing it with the nonbargaining-unit position of Computer Network/Support Technician position, and by replacing bargaining-unit nursing positions with nonbargaining-unit clinical-assistant positions.

The Brookfield Local School District Board of Education is ordered to:

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 unilaterally reducing the salaries of bargaining-unit employees,
- (2) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by unilaterally abolishing the bargaining-unit position of Technology Coordinator and replacing it with the nonbargaining-unit position of Computer Network/Support Technician position, and
- (3) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by unilaterally replacing bargaining-unit nursing positions with nonbargaining-unit clinical-assistant positions; and

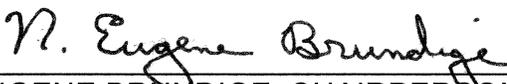
B. Take the following affirmative action:

- (1) Return the salaries of all BFT bargaining-unit members to the 2005-2006 level, retroactive to July 1, 2006;

- (2) Re-establish the full-time and part-time nursing positions and re-hire both bargaining-unit members, paying backpay and all benefits to the full-time and part-time nurses, less any offset for wages and benefits earned since the time of layoff, until such time as Respondent and the BFT bargain in good faith as required by *Lorain City School Dist Bd of Edn v State Emp. Relations Bd*, (1988), 40 Ohio St.3d 25, 1989 SERB 4-2;
- (3) Re-establish the bargaining-unit position of Technology Coordinator until such time as Respondent and the BFT bargain in good faith as required by *Lorain City School Dist Bd of Edn v State Emp. Relations Bd*, (1988), 40 Ohio St.3d 25, 1989 SERB 4-2;
- (4) Return to the status quo ante;
- (5) Bargain in good faith with the BFT on all mandatory subjects of collective bargaining;
- (6) Post the Notice to Employees issued by SERB for sixty days in all of usual and customary posting locations where employees represented by the BFT work; and
- (7) 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.

It is so ordered.

BRUNDIGE, Chairperson, and VERICH, Vice Chairperson, concur; SPADA, Board Member, abstains.

  
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N. EUGENE BRUNDIGE, CHAIRPERSON

#### **TIME AND METHOD TO PERFECT AN APPEAL**

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 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, by filing in the court a notice of appeal setting forth the order appealed from and the grounds of appeal within fifteen days after the mailing of the State Employment Relations Board's order. A copy of the notice of appeal must also be filed with the State Employment Relations Board, at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, pursuant to Ohio Administrative Code Rule 4117-7-07.

**PROOF OF SERVICE**

I certify that a copy of this document was served upon each party by certified mail, return receipt requested, and upon each party's representative by ordinary U.S. mail, this 18<sup>th</sup> day of November, 2008.

  
\_\_\_\_\_  
LICIA M. SAPP, ADMINISTRATIVE ASSISTANT

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

Brookfield Local School District Board of Education,

Respondent.

Case No. 2006-ULP-09-0467

**OPINION**

VERICH, Vice Chairperson:

This matter comes before the State Employment Relations Board (“the Board” or “Complainant”) upon the issuance of an Amended Proposed Order on January 8, 2008, and the filing of exceptions to the Proposed Order by Respondent Brookfield Local School District Board of Education (“the District”), responses to the exceptions by Intervenor Brookfield Federation of Teachers, OFT/AFT (“the BFT”) and Counsel for Complainant, and the oral arguments presented by the parties to the Board on July 10, 2008. For the reasons that follow, we find that the District violated Ohio Revised Code (“O.R.C.”) §§ 4117.11(A)(1) and (A)(5) by unilaterally reducing the salaries of bargaining-unit employees, by abolishing the bargaining-unit position of Technology Coordinator and replacing it with the non-bargaining-unit position of Computer Network/Support Technician position, and by replacing bargaining-unit nursing positions with nonbargaining-unit clinical-assistant positions without first bargaining those changes.

## I. BACKGROUND

The BFT is the exclusive representative for a bargaining unit of all eligible, certificated personnel employed by the District. Eligible, certificated personnel include all full-time and part-time regular classroom teachers, guidance counselors, remedial teachers, nurses, librarians, and tutors. The superintendent, principals, assistant principals, and casual substitute teachers are excluded from the bargaining unit.

On December 4, 2001, the BFT and the District tentatively agreed to the Master Agreement, effective from July 1, 2002, through June 30, 2005. On December 18, 2001, the BFT and the District tentatively agreed to a one-year extension to the Master Agreement, from July 1, 2005 through June 30, 2006. The final draft was not completed until May 2002. The Master Agreement and its one-year extension were executed as a single document with two cover pages between May 20, 2002, and June 5, 2002, by the BFT representatives and by the District President, Treasurer, and Superintendent. The Master Agreement (“the BFT Agreement”) was modeled after the parties’ previous Master Agreement and extension. The BFT Agreement contained a grievance process that culminated in binding arbitration.

On February 28, 2006, the BFT filed a Notice to Negotiate in SERB Case No. 2006-MED-02-0180. At the time of hearing and oral argument, the parties had not reached a successor collective bargaining agreement.

On June 28, 2006, at a Special Meeting, the District’s legislative body, the School Board, approved a “Salary Notice Resolution.” The Salary Notice Resolution, effective September 1, 2006, set the 2006-2007 salaries based on the 2004-2005 salary schedule, thereby reducing current salaries by 3.5 percent.

The Technology Coordinator position was established in the mid-1990s. The District hired Karen Marshall as a full-time teacher during the 1977-1978 school year. During the 1992-1993 school year, Ms. Marshall assumed the duties of Technology Coordinator (then called Computer Coordinator). Ms. Marshall held the position of Technology Coordinator full-time from the 1999-2000 school year through the summer of 2006. She was paid

under the labor contract between the BFT and the District. BFT union dues were deducted from her paycheck.

Sally Schneider served as part-time Technology Coordinator for the elementary buildings. Both Ms. Marshall and Ms. Schneider had teaching responsibilities. Both Ms. Marshall and Ms. Schneider were employed as certificated personnel. For four of her final five years with the District, Ms. Marshall served only as Technology Coordinator and did not teach any classes.

In June 2006, Ms. Marshall told the District that she was retiring. On May 14, 2006, the District posted a Technology Education vacancy notice on line for a part-time Technology Coordinator. In her role as Technology Coordinator, Ms. Marshall performed every duty listed in the job announcement for CNST. On June 17, 2006, the School Board voted to abolish a "Technology Coordinator" position.

During a public meeting held on July 19, 2006, the School Board approved the hiring of a nonbargaining-unit part-time "Computer Network/Support Technician" ("CNST") from August 1, 2006, through July 31, 2007. Dave Cessna was hired by the District as the CNST. Mr. Cessna performed work that was previously performed by Ms. Marshall. Mr. Cessna did not perform any teaching duties. The duties of the CNST were always performed by bargaining-unit employees. The District did not negotiate with the BFT over the loss of bargaining-unit work that hiring Mr. Cessna as CNST would entail.

The District employed Rhonda Zebrowski as a full-time school nurse from the 1989-1990 school year through a portion of the 2005-2006 school year at the middle school and high school. The District also employed Donna Yassall as a part-time nurse at the elementary schools. Both nursing positions were part of the BFT bargaining unit. Both Ms. Zebrowski and Ms. Yassall filed grievances over their RIFs. The grievances were denied.

During a public meeting held on August 16, 2006, the School Board approved the abolishment of one full-time nursing position and one part-time nursing position in the

bargaining unit represented by the BFT. On August 16, 2006, the Superintendent sent a recall notice offering Ms. Zebrowski part-time employment as a school nurse, four hours per day rotating throughout the District. She remained on the recall list for a full-time nursing position with the District.

On August 25, 2006, the School Board entered into a contract with Ready Nurse Staffing Services to provide the District with the services of two part-time Clinical Assistants. Ready Nurse Staffing Services performed the same work that the school nurses had performed.

During negotiations in the spring of 2006, the District proposed replacing the school nurses and having their work performed by non-bargaining unit persons. The BFT did not agree. The matter was not bargained during the negotiations either to conclusion or ultimate impasse.

During the entire term of the BFT Agreement, no one from the District indicated that the District had a problem with the length of the BFT Agreement. The Notice to Negotiate for the successor agreement was filed on February 28, 2006.

The parties exchanged proposals on February 28, 2006. The first negotiation session was March 6, 2006. The District had 28 proposals. The BFT had 26 proposals. Mr. Pasquerilla, the District's Chief Negotiator, insisted that until monetary issues were resolved, the District was not discussing any other issues. Citing financial difficulties, the District proposed a reduction in wages back to the 2004-2005 salary schedule. The March 6, 2006 meeting lasted two hours.

Another meeting date of March 20, 2006 was set. The Superintendent cancelled the meeting via e-mail to BFT President Sally Schneider. The e-mail stated that the District was unable to sign for any wage increase, but that the District would like to meet again once there was an acceptable counter-proposal on salaries.

BFT President Schneider wrote the Superintendent on March 22, 2006, asking the District for counter-proposals to the 20 counter-proposals the BFT submitted to the District's 27 original proposals and asking for available dates to meet. On March 29, 2006, the Superintendent responded that the District's initial proposals had not changed. The BFT responded on April 6, 2006, stating that although counter-proposals had been exchanged on the three economic issues requested by the District, the District had not accepted or given counter-proposals on the 17 counter-proposals given by the BFT and renewing its request for meeting dates.

The Superintendent's secretary called on April 24, 2006, and asked to meet on April 27, 2006. The BFT could not meet on April 27, 2006, but offered meeting dates on May 3, 8, 10, 12, 17, 18, 19, 23, 24, and 25, 2006. The Superintendent responded by letter on April 28, 2006, saying he would like to meet on May 8, 2006, to discuss further negotiation dates and that the District could meet on May 13, 20 or 27, 2006. The BFT responded by e-mail on May 1, 2006, and asked to meet on May 10 or May 18, 2006.

The parties met on May 10, 2006, and again on May 27, 2006. The BFT and the District reached four tentative agreements during their two-hour meeting on May 10, 2006.

By letter dated May 12, 2006, the BFT suggested meeting on May 27, 2006. The parties met on May 27, 2006. The District wanted the BFT to pick out the most important proposal to discuss. The BFT wanted to discuss all the proposals on an individual basis. Mr. Pasquerilla refused, and the meeting ended.

The District asked for negotiations the weekend after June 7, 2006, via a letter to BFT President Schneider, who was not at work due to a death in the family. No meetings occurred before the School Board passed its resolution on June 28, 2006, reducing salaries to the 2004-2005 salary schedule. The School Board's resolution acknowledged that the District had been negotiating a new contract with the BFT, and that the District and the BFT were "subject to ongoing negotiations." On August 7, 2006, the District sent a letter to the BFT requesting continued negotiations and offering dates in August 2006.

On August 8, 2006, BFT President Schneider wrote to the Superintendent that she had forwarded the dates to another necessary attendee who was on vacation and that she would contact the Superintendent when she received a response. BFT President Schneider wrote the Superintendent on August 17, 2006, reiterating her two previous requests for information about the nursing positions. She also reiterated her question as to whether the District had changed its position on any of the proposals.

By letter to SERB of June 1, 2006, the Superintendent requested a SERB mediator for the contract negotiations. The parties met with a SERB mediator on August 31, 2006.

The Superintendent wrote the BFT President on September 12, 2006, asking to continue negotiations and requesting dates. BFT President Schneider wrote the Superintendent on September 14, 2006, saying Mr. John Creatura would be contacting the mediator to continue negotiations. The Superintendent delivered a December 13, 2006 letter to BFT President Schneider suggesting December 2006 dates to continue negotiations. On December 21, 2006, BFT President Schneider wrote to the Superintendent and indicated that Mr. Creatura had contacted the mediator and they could not meet on the December 2006 dates suggested by the District.

The parties met with the mediator in the spring of 2007. The parties reached a tentative agreement on March 15, 2007. The BFT ratified the agreement. The School Board rejected the tentative agreement. The District, through its counsel's letter of June 24, 2007, offered a formal proposal to settle the contract and suggested meeting in July 2007. During the meetings in March 2007 and May 2007, the BFT offered to reduce its percentage salary request and offered to pay a portion of health-care costs.

The District was placed in "fiscal caution" on December 22, 2005, and in "fiscal watch" on March 2, 2006. The Treasurer employed at the District since December 2004 first checked for the existence of a "412 certification" in the spring when the District's counsel requested her to do so. The Treasurer found numerous other contracts with outside vendors that should also have had a "412 certification" but did not. At the time the tentative agreement was reached, the Treasurer believed that the District had sufficient

funds to carry out the tentative agreement. Mr. Pasquerilla, one of three new board members elected in November 2006, campaigned against the school levy. The School Board had not put any additional school levies on the ballot at the time of hearing.

## II. DISCUSSION

### A. Refusal to Bargain

O.R.C. § 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 Ohio Revised Code[;]

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(5) Refuse to bargain collectively with the representative of his employees recognized as the exclusive representative or certified pursuant to Chapter 4117. of the Revised Code[.]

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).

O.R.C. § 4117.08(A) provides that bargaining is appropriate for “all matters pertaining to wages, hours, or terms and other conditions of employment.” The three- part balancing test in *In re Youngstown City School Dist Bd of Ed*, SERB 95-010 (6-30-95) (“*Youngstown*”) is unnecessary when the subject matter at issue is an inherently managerial prerogative not affecting wages, hours, or terms and conditions of employment or pertains only to wages, hours, or terms and conditions of employment, or is preempted by legislation. In *Youngstown* at p. 3-78, SERB cited *In re Portage Lakes Joint Vocational School Dist Bd of Ed*, SERB 93-009 (6-2-93), *aff’d* 1994 SERB 4-88 (CP, Summit, 9-27-94) and stated: “In a case involving the unilateral changing of hours and benefits of a bargaining unit position by the employer, again SERB did not rely on a balancing test to

reach the conclusion that hours and benefits are mandatory subjects of bargaining[.]” In that case, SERB held that a unilateral change of a mandatory subject without bargaining constituted a violation of O.R.C. § 4117.11(A)(1) and (A)(5).

An employer must exhaust all efforts at good-faith bargaining prior to declaring ultimate impasse and unilaterally deciding to implement its “last, best, final” offer or it violates the duty to bargain in O.R.C. §§ 4117.11(A)(1) and (A)(5). *Twinsburg City School Dist Bd of Ed*, SERB 2005-010 (12-2-2005) (“*Twinsburg*”). An employer’s failure to maintain the terms of an expired collective bargaining agreement (i.e., the *status quo ante*) prior to ultimate impasse constitutes bad-faith bargaining in contravention of O.R.C. §§ 4117.11(A)(1) and (A)(5). *In re Crestline Exempted Village School Dist Bd of Ed*, SERB 06-003 (3-21-2006) (“*Crestline*”). “Freezing the status quo ante after a collective bargaining agreement has expired promotes industrial peace by fastening a noncoercive atmosphere that is conducive to serious negotiations on a new contract. Thus, an employer’s failure to honor the terms and conditions of an expired collective bargaining agreement pending negotiations on a new agreement constitutes bad faith bargaining.” *In re Cuyahoga County Commrs.*, SERB 89-006 (3-15-89) at p. 3-29 (citations omitted).

Ultimate impasse is the point at which good-faith negotiations toward reaching an agreement have been exhausted. *In re Vandalia-Butler City School Dist Bd of Ed*, SERB 90-003 (2-9-90) (“*Vandalia-Butler*”), *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). In the present case, the District’s resolution reducing bargaining-unit members’ wages stated that the parties were still negotiating when the reduction was made. Thus, the parties were not at ultimate impasse at this pivotal time.

#### B. Reduction in Teacher Salaries

Teachers’ salaries fall squarely within O.R.C. § 4117.08(A). They are a mandatory subject of bargaining. The District has made a unilateral change in the CBA by altering the

teachers' salaries without bargaining. Application of the *Youngstown* balancing test is not necessary.

The District argues that it could make a unilateral change for several reasons. The District argues that its agreement with the BFT had an expiration date more than three years after its execution date and was therefore invalid under O.R.C. § 4117.09(E). The District argues its only option was to "continue" salaries at the level of the last "valid" year of the agreement, thereby reducing the salaries from the 2006-2007 salary level to the 2004-2005 salary level.

O.R.C. § 4117.09(E) provides: "No agreement shall contain an expiration date that is later than three years from the date of execution. The parties may extend any agreement, but the extensions do not affect the expiration date of the original agreement." This statute does not specify the time period during which an extension must be completed.

The parties were cognizant of O.R.C. § 4117.09(E) when they agreed to the Master Agreement and the extension. The Master Agreement is a three-year agreement. O.R.C. § 4117.09(E) recognizes the validity of a contract extension. The Master Agreement and the extension were not executed contemporaneously. Consequently, this case does not present a four-year agreement as the District contended.

The District honored the terms of the Master Agreement and the extension as long as the District benefitted from doing so. It should be noted that the District continued to comply with non-financial aspects of the extension.

The District also argued that the entire CBA was void *ab initio* under O.R.C. § 5705.412(C)<sup>1</sup> because a certificate of adequate revenues was not executed when the

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<sup>1</sup> O.R.C. § 5705.412 provides in part as follows:

No subdivision or taxing unit shall:

\* \* \*

(D)(1) Except as otherwise provided in division (D)(2) of this section and section 5705.55 of the Revised Code, make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision

Master Agreement and one-year extension were executed. This argument was already rejected in *Crestline*, where the employer argued that the lack of a “412 certificate” allowed it to eliminate the step increases due bargaining-unit members from the prior contract for the upcoming school year. In addition, the record in this case clearly demonstrates that many of the District’s contracts did not contain such a certificate.

The District also argues that exigent circumstances existed. Since the parties were cognizant of O.R.C. § 4117.09(E) when they agreed to the Master Agreement and the extension, as discussed above, any exigent circumstances upon which the District relies were in existence at the time of negotiations. Consequently, the “exigent circumstances” exception in *In re Toledo City School Dist Bd of Ed*, SERB 99-005 (3-5-99), does not apply.

C. Abolishment of Nurses’ Positions

In *Lorain City School Dist Bd of Edn v State Emp. Relations Bd*, (1988), 40 Ohio St.3d 25, 1989 SERB 402 (“*Lorain*”), the Ohio Supreme Court held at Syllabus 3: “The reassignment of work previously performed by members of a bargaining unit to persons outside the unit is a mandatory subject for collective bargaining under R.C. 4117.08(A)and(C).” A subject of bargaining is not rendered less than mandatory under *Lorain* due to an employer’s alleged financial exigencies. Thus, this argument in support of the District’s actions with regard to the school nurses fails.

D. Abolishment of Technology Coordinator Position

The District argues that the Technology Coordinator position was abolished and a new Computer Network/Support Technician position was created. The District further

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that the amount required to meet the obligation or, in the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the obligation in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. This certificate need be signed only by the subdivision’s fiscal officer. Every such contract made without such a certificate shall be void, and no warrant shall be issued in payment of any amount due thereon. \*\*\*

argues that the Technology Coordinator position is not a bargaining-unit position. The record reflects that the vast majority, if not all, of the Technology Coordinator duties are now performed by the Computer Network/Support Technician position. To the extent the duties are the same, the record does not reflect that the District ever tried to bargain the transfer of the identical duties from bargaining-unit employees to the new nonbargaining-unit position.

The recognition clause of the BFT Agreement provides as follows:

The Brookfield Federation of Teachers, hereinafter referred to as the "B.F.T", is recognized by the Brookfield Board of Education, hereinafter referred to as the "Board", as the exclusive representative of all eligible certificated personnel employed by the Board. Eligible certificated personnel include all full-time and part-time regular classroom teachers, guidance counselors, remedial teachers, nurses, librarians and tutors. This definition excludes Superintendent, principals, assistant principals and casual substitute teacher.

The B.F.T. shall be the recognized bargaining agent for the unit until challenged and replaced in accordance with Ohio Revised Code Section 4117.

The Technology Coordinator position has always been filled by an individual who had some teaching duties. The parties have treated this position as a member of the bargaining unit represented by the BFT. The District's argument that this position was never in the bargaining unit is not supported by the weight of the evidence in the record and must be rejected.

### **III. CONCLUSION**

For the reasons set forth above, we find that the District violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(5) by unilaterally reducing the salaries of bargaining-unit employees, by abolishing the bargaining-unit position of Technology Coordinator and replacing it with the nonbargaining-unit position of Computer Network/Support Technician

position, and by replacing bargaining-unit nursing positions with nonbargaining-unit clinical-assistant positions without first bargaining those changes. As a result, a cease-and-desist order will be issued, along with a Notice to Employees, requiring the District to: (1) return the salaries of all BFT bargaining-unit members to the 2005-2006 level, retroactive to July 1, 2006, (2) re-establish the full-time and part-time nursing positions and re-hire both bargaining-unit members, paying backpay and all benefits to the full-time and part-time nurses, less any offset for wages and benefits earned since the time of layoff, until such time as the District and the BFT bargain in good faith as required by *Lorain City School Dist Bd of Edn v State Emp. Relations Bd*, (1988), 40 Ohio St.3d 25, 1989 SERB 4-2; (3) re-establish the bargaining-unit position of Technology Coordinator until such time as the District and the BFT bargain in good faith as required by *Lorain City School Dist Bd of Edn v State Emp. Relations Bd*, (1988), 40 Ohio St.3d 25, 1989 SERB 4-2; (4) return to the status quo ante, (5) bargain in good faith with the BFT on all mandatory subjects of collective bargaining; (6) post the Notice to Employees issued by the State Employment Relations Board for sixty days in all usual and customary posting locations where employees represented by the BFT work; and (7) notify the State Employment Relations Board in writing within twenty calendar days from issuance of the Order of the steps that have been taken to comply therewith.

Brundige, Chairperson, concurs; Spada, Board Member, abstains.

# SERB

"Promoting Orderly and Constructive  
Labor Relations Since 1984"

**State  
Employment  
Relations  
Board**



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N. Eugene Brundige, Chairperson  
Michael G. Verich, Vice Chairperson  
Robert F. Spada, Board Member  
Sherrie J. Passmore, Executive Director

Ted Strickland, Governor

Case No. 06-ULP-09-0467

## CERTIFICATION

I, the undersigned General Counsel and Assistant Executive Director for the State Employment Relations Board, hereby certify that the attached document is a true and exact reproduction of the original Order (with Opinion Attached) of the State Employment Relations Board entered on its journal, on the 18th day of November, 2008.

  
\_\_\_\_\_  
J. Russell Keith  
General Counsel and Assistant Executive Director  
November 18, 2008



# 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:

- (1) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by unilaterally reducing the salaries of bargaining-unit employees,
- (2) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by unilaterally abolishing the bargaining-unit position of Technology Coordinator and replacing it with the nonbargaining-unit position of Computer Network/Support Technician position, and
- (3) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by unilaterally replacing bargaining-unit nursing positions with nonbargaining-unit clinical assistant positions; and

### B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Return the salaries of all Brookfield Federation of Teachers, OFT/AFT bargaining-unit members to the 2005-2006 level, retroactive to July 1, 2006;
- (2) Re-establish the full-time and part-time nursing positions and re-hire both bargaining-unit members, paying backpay and all benefits to the full-time and part-time nurses, less any offset for wages and benefits earned since the time of layoff, until such time as Respondent and the Brookfield Federation of Teachers, OFT/AFT bargain in good faith as required by *Lorain City School Dist Bd of Edn v State Emp. Relations Bd*, (1988), 40 Ohio St.3d 25, 1989 SERB 4-2;
- (3) Re-establish the bargaining-unit position of Technology Coordinator until such time as Respondent and the Brookfield Federation of Teachers, OFT/AFT bargain in good faith as required by *Lorain City School Dist Bd of Edn v State Emp. Relations Bd*, (1988), 40 Ohio St.3d 25, 1989 SERB 4-2;
- (4) Return to the status quo ante;
- (5) Bargain in good faith with the Brookfield Federation of Teachers, OFT/AFT on all mandatory subjects of collective bargaining;
- (6) Post the Notice to Employees issued by SERB for sixty days in all of usual and customary posting locations where employees represented by the Brookfield Federation of Teachers, OFT/AFT work; and
- (7) 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.

**SERB v. Brookfield Local School District Board of Education, Case No. 2006-ULP-09-0467**

\_\_\_\_\_  
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.