

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

2010 JAN -5 A 11: 12

In the Matter of

State Employment Relations Board,

Complainant,

v.

Sylvania Township Trustees, Lucas County,

Respondent.

Case No. 2007-ULP-08-0405

CORRECTED ORDER
(OPINION ATTACHED)

Before Chairperson Brundige. Vice Chairperson Verich, and Board Member Spada: December 17, 2009.

On August 15, 2007, the Ohio Patrolmen's Benevolent Association ("OPBA") filed an unfair labor practice charge against Sylvania Township Trustees, Lucas County ("the Township"). On January 7, 2008, the State Employment Relations Board ("the Board" or "Complainant") determined that probable cause existed for believing the Township had committed or was committing an unfair labor practice, authorized the issuance of a complaint, referred the matter to hearing, and directed the parties to the unfair labor practice mediation process.

On October 2, 2008, a complaint was issued. An answer was filed by the Township on November 6, 2008. On December 11, 2008, a hearing was conducted by an Administrative Law Judge. On April 7, 2009, the Administrative Law Judge issued a Proposed Order recommending that the Board find that the Township did not violate Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) or (A)(3) when it disciplined Sgt. Colwell and that the Township did not violate O.R.C. § 4117.11(A)(1) when it threatened to discipline Patrolman Slaman if he filed a grievance.

Counsel for Complainant filed exceptions to the Proposed Order. The Township filed a response to the exceptions.

After reviewing the unfair labor practice charge, complaint, answer, transcript, Proposed Order, exceptions, response to exceptions, and all other filings in this case, for the reasons set forth in the attached Opinion, incorporated by reference, Conclusion of Law No. 5 is amended to read: "The Township did violate Ohio Revised Code

§ 4117.11(A)(1) when it threatened to discipline Patrolman Slaman if he filed a grievance.”; the Findings of Fact, and Conclusions of Law, as amended, in the Proposed Order are adopted, finding that the Township did not violate Ohio Revised Code §§ 4117.11(A)(1) when it disciplined Sgt. Colwell and finding that the Township violated Ohio Revised Code § 4117.11(A)(1) when it threatened to discipline Patrolman Slaman if he filed a grievance.

* The Sylvania Township Board of Trustees, Lucas County is ordered to:

A. Cease and desist from:

Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by threatening an employee with discipline if he or she files a grievance, and from otherwise violating Ohio Revised Code § 4117.11(A)(1); and

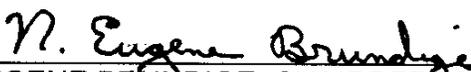
B. Take the following affirmative action:

(1) Post the Notice to Employees furnished by the State Employment Relations Board for sixty days in all of the usual and normal posting locations where these bargaining-unit employees represented by the Ohio Patrolmen’s Benevolent Association work; and

(2) Within twenty calendar days from issuance of the Order, notify the State Employment Relations Board in writing of the steps that have been taken to comply therewith.

It is so ordered.

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



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 Corrected Order was served upon each party by certified mail, return receipt requested, and upon each party's representative by ordinary U.S. mail, this 5th day of January, 2010.



SANDRA A.M. IVERSEN, 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 by threatening an employee with discipline if he or she files a grievance, and from otherwise violating Ohio Revised Code § 4117.11(A)(1); and

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

(1) Post the Notice to Employees furnished by the State Employment Relations Board for sixty days in all of the usual and normal posting locations where these bargaining-unit employees represented by the Ohio Patrolmen's Benevolent Association work; and

(2) Within twenty calendar days from issuance of the Order, notify the State Employment Relations Board in writing of the steps that have been taken to comply therewith.

SERB v. Sylvania Township Trustees, Lucas County, Case No. 2007-UPL-08-0405

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,

Complainant,

v.

Sylvania Township Trustees, Lucas County,

Respondent.

Case No. 2007-ULP-08-0405

OPINION

Spada, Board Member:

This matter comes before the State Employment Relations Board (“the Board” or “Complainant”) upon the issuance of the Administrative Law Judge’s Proposed Order, the filing of exceptions by Counsel for Complainant, and the filing by the Sylvania Township Trustees, Lucas County (“Township” or “Respondent”). For the reasons that follow, we find that the Township did not violate Ohio Revised Code (“O.R.C.”) §§ 4117.11(A)(1) or (A)(3) when it disciplined Sgt. Robert Colwell, but that the Township did violate O.R.C. § 4117.11(A)(1) when it threatened to discipline Patrolman Todd Slaman if he filed a grievance.

I. BACKGROUND

Todd Slaman was employed by the Sylvania Township Police Department for approximately twenty years, the past ten as a Detective. While working as a Detective, Mr. Slaman received a special assignment to the Northwest Ohio Fugitive Task Force, a combined FBI and local agency task force created to investigate cases with a federal

connection or nexus. Mr. Slaman served on the Task Force for approximately five years, and during that time he drove a vehicle provided by the FBI.

In February 2007, FBI Agent Matt Eagles, Mr. Slaman's immediate Task Force supervisor, informed Township Police Chief Robert Metzger that Mr. Slaman's vehicle had incurred some damages while in Mr. Slaman's possession. Initially, Chief Metzger did not discuss the issue with Mr. Slaman. Chief Metzger had hoped that Mr. Slaman would come to him to report the damage; Chief Metzger felt that it was more appropriate for the FBI to handle the investigation.

On May 1, 2007, Agent Eagles notified Mr. Slaman of the dent to the vehicle and told him to report it to Chief Metzger, which he did. Chief Metzger then told Mr. Slaman to write a memo about the damage and to get estimates of a repair. Mr. Slaman did as instructed and also sent a memo to Chief Metzger on May 17, 2007. Chief Metzger forwarded the memo to Agent Eagles for investigation. Following his investigation, Agent Eagles concluded that Mr. Slaman knew about the damage before May 1, 2007, and had failed to report it.

On June 13, 2007, Chief Metzger called Mr. Slaman to a meeting, attended only by Chief Metzger, Deputy Chief Robert Boehme, and Mr. Slaman, at Chief Metzger's office. During the meeting, Chief Metzger informed Mr. Slaman that, because of his dishonesty about the vehicle damage, he was being removed from the Task Force. Mr. Slaman was also informed that he was being reassigned to Road Patrol, rather than back to the Detective Bureau, because the Township had a sufficient number of Detectives at the time. To allay Mr. Slaman's concerns that the transfer would appear as discipline, Chief Metzger told Mr. Slaman that it would not appear as discipline in his file and that if another officer or employer asked about the situation, Chief Metzger would indicate that it was a transfer.

Chief Metzger then informed Mr. Slaman that if he decided to contest the transfer or file a grievance, the Township would be required to do a complete investigation, from which discipline could result. Before this statement, Mr. Slaman did not make any reference to filing a grievance or to the grievance process, nor had he previously filed a grievance or unfair labor practice charge.

On June 26, 2007, Mr. Slaman filed a grievance over his reassignment. The Township conducted a full investigation in response, and as a result, determined that no discipline should be taken. Subsequently, an arbitrator ruled that Mr. Slaman's reassignment to Road Patrol was a violation of the collective bargaining agreement and that he should have remained assigned to the Detective Bureau. Mr. Slaman was ordered to be reinstated and all reference to the investigation removed from his file.

Sgt. Robert Colwell has been employed by the Township's police department for 22 years, including nearly 10 years as a Detective. Sgt. Colwell is President of the Command Officers bargaining unit.

On January 8, 2008, Sgt. Colwell was transferred to the Road Patrol. Sgt. Colwell served Chief Metzger with Mr. Slaman's grievance regarding his transfer to the Road Patrol.

In April 2007, as a result of recommendations from an earlier study of Township operations, a policy was implemented requiring daily case logs to be filled out. The daily-activity-log requirement was created by virtue of an April 19, 2007 general order. The order required each detective to complete a daily activity log and submit it to the Detective Sergeant by the end of each work day or the beginning of the next, "especially concentrating on those activities that require a detective to be out of the building." Lunch breaks and coffee breaks were not usually recorded. On April 19, 2007, a mandatory detective meeting was held to discuss the general order. Sgt. Colwell attended the meeting.

Sgt. Colwell called Township Trustee Pam Hanley to set up a meeting with her to discuss Mr. Slaman's grievance and some other miscellaneous issues. On June 19, 2007, while on duty, Sgt. Colwell met with Trustee Hanley about Mr. Slaman's grievance. Sgt. Colwell agreed to meet with Trustee Hanley at a coffee shop a mile and a half from the station at 8:30 a.m. on June 19, 2007. The meeting lasted approximately one-half hour. Trustee Hanley told Sgt. Colwell that she thought Mr. Slaman had "messed up," that she felt Chief Metzger's actions were appropriate, and that she thought Sgt. Colwell should speak directly to Chief Metzger about the issue. Sgt. Colwell also asked Trustee Hanley if

the board of trustees had done a background check on Chief Metzger as he (Sgt. Colwell) believed Chief Metzger had had some problems in some of his other employment.

Chief Metzger solicited union comments and suggestions on a proposed disciplinary policy and held a meeting on June 26, 2007, to obtain input. Sgt. Colwell attended the June 26, 2007 meeting, at which he expressed his belief that Chief Metzger's proposed disciplinary policy violated the CBA and the Ohio Revised Code. The proposed disciplinary policy became effective in August 2007, and incorporated some of the comments and criticisms received on June 26, 2007.

Approximately 30 minutes after the June 26, 2007 meeting, Administrative Lieutenant Frank Arvay, who supervised the Detectives, gave Sgt. Colwell a one-day suspension for failing to put his June 19, 2007 meeting with Trustee Hanley on his log. The log made it appear that Sgt. Colwell was in the office during the time that he was out of the office meeting with Trustee Hanley.

Sgt. Colwell grieved the suspension. The arbitrator ordered back pay and that the discipline be removed from his personnel file. Sgt. Colwell had two prior disciplines when he received the one-day suspension. Sgt. Colwell had no discipline before Chief Metzger became Chief.

The CBA allows on duty time to discuss union business if permission is obtained prior to doing so. Chief Metzger did not charge or discipline Sgt. Colwell for failing to obtain permission to discuss union business on duty time. Sgt. Colwell called Trustee Hanley after their meeting to tell her about the log violation and told her that he had been protecting her since he did not think she would want Chief Metzger to know they had had a meeting.

Trustee Hanley did not understand Sgt. Colwell's statement as she had no problem with Chief Metzger knowing that they had met. Trustee Hanley talked to Township Administrator Hugh Thomas prior to and after her meeting with Sgt. Colwell. Administrator Thomas called Chief Metzger, told him that Sgt. Colwell had just had a meeting with Trustee Hanley, and that Chief Metzger should look into it. Chief Metzger then asked Lt. Arvay to investigate.

After consulting with counsel and Lt. Arvay and reviewing Lt. Arvay's investigation, Chief Metzger decided on June 22, 2007, what action to take. On June 25, 2007, Chief Metzger told Lt. Arvay to give Sgt. Colwell a one-day suspension because Sgt. Colwell's daily log for June 19, 2007, did not show him being out of the building to meet with Trustee Hanley. Chief Metzger told Lt. Arvay to issue the discipline after the June 26, 2007 meeting, since Sgt. Colwell would be present at the meeting. Lt. Arvay followed Chief Metzger's order.

On October 2, 2008 a Complaint was issued. A hearing was held December 11, 2008, wherein testimony and documentary evidence were presented. Subsequently, both parties filed post-hearing briefs. On April 7, 2009, the Administrative Law Judge issued her Proposed Order, recommending that the Board find that the Township did not violate O.R.C. §§ 4117.11(A)(1) or (A)(3).

III. DISCUSSION

The Township is alleged to have violated O.R.C. §§ 4117.11(A)(1) and (A)(3), which provide 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 or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

(3) Discriminate in regard to hire or tenure of employment or any term or condition of employment on the basis of the exercise of rights guaranteed by Chapter 4117. of the Revised Code.

In the Proposed Order, the Administrative Law Judge recommended that the Board find that the Township did not violate O.R.C. § 4117.11(A)(1) when it threatened to discipline Todd Slaman if he filed a grievance. We reach a different conclusion regarding the Township's conduct toward Mr. Slaman.

Complainant has the burden to prove by a preponderance of the evidence that an unfair labor practice has been committed. O.R.C. § 4117.12(B)(3). When a violation of O.R.C. § 4117.11(A)(1) is alleged, the appropriate inquiry is an objective rather than subjective one. *In re Pickaway County Human Services Dept.*, SERB 93-001 (3-24-93), *aff'd sub nom. SERB v. Pickaway Human Services Dept.*, 1995 SERB 4-46 (4th Dist. Ct. App., Pickaway, 12-7-95); *In re Tuscarawas Township Board of Trustees, Stark County*, SERB 2009-001 (8-31-2009). A violation will be found if, under the totality of the circumstances, it can be reasonably concluded that the employees were interfered with, restrained, or coerced in the exercise of their O.R.C. Chapter 4117 rights by the public employer's conduct. *In re Hamilton County Sheriff*, SERB 98-002 (1-23-98), *aff'd sub nom. Hamilton County Sheriff v. SERB*, No. A98-00714 (Mag. Dec., CP, Hamilton, 10-9-98); *In re Tuscarawas Township Board of Trustees, Stark County*, *supra*.

This objective inquiry must necessarily entail a thorough review of the circumstances under which the alleged misconduct occurred and its likely effect on the guaranteed rights of employees. Because it is not a subjective test, Chief Metzger's intent and Mr. Slaman's subjective view of Chief Metzger's statements are not a part of SERB's consideration. The statements should be viewed in the context of the totality of the conduct and the circumstances under which they were made. *In re Springfield Local School Dist Bd of Ed*, SERB 97-007 (5-1-97); *In re Vandalia-Butler City School Dist Bd of Ed*, 90-003 (2-9-90).

Pursuant to O.R.C. § 4117.11(A)(1), a public employer commits an unfair labor practice when it interferes with, restrains, or coerces employees in the exercise of the rights guaranteed in O.R.C. Chapter 4117. To establish this violation, the Complainant must prove two elements: (1) that the activity that the employer is alleged to have discouraged is a right protected by O.R.C. Chapter 4117, and (2) that the employer's conduct with respect to the exercise of that right sufficiently amounts to interference, restraint, or coercion.

As to the first inquiry, it is well-established that filing a grievance is a protected right under O.R.C. Chapter 4117. In O.R.C. § 4117.03(A)(2), the filing of grievances pursuant to

a collective bargaining agreement falls under the statutory right of public employees to “[e]ngage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.” *In re Bryan City Bd. of Ed.*, SERB 97-003 (3-14-97) (finding that the grievance process is both an extension of and an integral part of the collective bargaining process). In O.R.C. § 4117.03(A)(5), public employees have the right to “[p]resent grievances and have them adjusted.” Because Chief Metzger’s statements may have a discouraging or chilling effect on the right to file a grievance, the Complainant has satisfied the first element.

Having answered the first inquiry in the affirmative, our second step is to determine whether the conduct amounts to interference, restraint, or coercion. A violation will be found if, under the totality of the circumstances, an employee would reasonably perceive the actor’s conduct as interfering with, restraining, or coercing an employee in the exercise of his O.R.C. Chapter 4117 rights.

Because we conclude that the primary purpose of O.R.C. § 4117.11(A)(1) is to prevent the impact of certain conduct, as well as the conduct itself, the focus of our inquiry here is on the employee; the intent of the actor is not the controlling factor. O.R.C. § 4117.11 is not intended to handcuff the employer in objectively communicating important information about the effects of contemplated action, but only to prevent the exploitation of such consequences in a manner that could well dissuade or prevent a reasonable employee from exercising his or her rights. Our inquiry is therefore objective, rather than subjective. An objective standard is especially apt here because it avoids the uncertainties and unfair discrepancies that can plague a judicial effort to determine an individual’s unusual subjective feelings. *Burlington Northern and Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006).

An employee’s subjective perception is not wholly irrelevant. In many cases, it may help to inform our objective inquiry. To the extent that our prior case law creates any confusion as to the relevance of the employee’s subjective interpretations of employer conduct, we clarify that the employee’s perception is not controlling, but it is not irrelevant. As with any indicia of reasonableness, the employee’s subjective view must be judged in

accordance with the totality of the circumstances; thus, it will necessarily be determined on a case-by-case basis.

We turn next to apply the facts of this case. Mr. Slaman alleges that Chief Metzger made certain statements that amounted to threatening discipline or adverse action as a consequence of filing a grievance. This Board and the National Labor Relations Board (“N.L.R.B.”) recognize that a threat of consequences for engaging in protected activity may constitute interference, restraint, or coercion. This Board also recognizes, consistent with the United States Supreme Court’s interpretation of the National Labor Relations Act (“NLRA”), that not all employer communications conveying potential, adverse consequences for engaging in protected activity will amount to a threat. For example, in *N.L.R.B. v. Gissel Packaging Co.*, 395 U.S. 575, 617 (1969), the U.S. Supreme Court noted that § 8(c) of the NLRA “merely implements the First Amendment” by establishing “an employer’s free speech right to communicate his views to his employees.” The Court also observed, however, that “[a]ny assessment of the precise scope of employer expression ... must be made in the context of its labor relations setting,” and that “an employer’s rights cannot outweigh the equal rights of the employees to associate freely.” *Id.*

The question is whether a reasonable person would perceive the employer’s communication as a threat, or as merely an objective prediction or statement contemplating adverse consequences. In this case before us, we find the nexus between the discussion at hand and the statement highly probative. At one extreme, if Chief Metzger and Mr. Slaman had been discussing a matter wholly unrelated to the grievance and Chief Metzger had told Mr. Slaman that he would be disciplined if he filed a grievance, there would be no question that a reasonable person would perceive the statement as a threat. At the other end of the spectrum, a reasonable person would likely not find threatening the same response to a direct question by the employee about the consequences of filing a grievance.

This case is a closer call because Mr. Slaman had asked whether his transfer would appear as discipline on his file. He did not, however, inquire about the effects of

challenging the decision to transfer him; yet, Chief Metzger proceeded, *unsolicited*, to communicate the possible effects of filing a grievance. Under these circumstances, a reasonable person would find that the employer's statement was sufficiently threatening to dissuade Mr. Slaman from the full exercise of his guaranteed rights.

Therefore, we find that the Township did violate O.R.C. § 4117.11(A)(1) when it threatened to discipline Mr. Slaman if he filed a grievance. Consequently, we amend Conclusion of Law No. 5 to read: "The Township did violate O.R.C. § 4117.11(A)(1) when it threatened to discipline Patrolman Slaman if he filed a grievance."

The appropriate remedy for this violation of O.R.C. § 4117.11(A)(1) is to issue a cease-and-desist order, with a Notice to Employees, ordering the Township to: (1) cease and desist from interfering with, restraining, or coercing employees in the exercise of rights guaranteed in O.R.C. Chapter 4117 by threatening an employee with discipline if he/she files a grievance and from otherwise violating O.R.C. § 4117.11(A)(1); (2) post the Notice to Employees furnished by the Board for sixty days in all of the usual and normal posting locations where these bargaining-unit employees represented by the Ohio Patrolmen's Benevolent Association work; and (3) notify the Board in writing within 20 calendar days from the date that the Order becomes final of the steps that have been taken to comply therewith.

In the Proposed Order, the Administrative Law Judge recommended that the Board find that the Township did not violate O.R.C. §§ 4117.11(A)(1) or (A)(3) when it disciplined Sgt. Colwell. As President of the Command Officers unit, Sgt. Colwell filed various grievances on behalf of members, including Mr. Slaman, and served the grievances on Chief Metzger. Sgt. Colwell responded to Chief Metzger's request for input from the Union on a new proposed disciplinary policy. Therefore, Sgt. Colwell was involved in union activity that was known by the Township.

The evidence, however, does not support a finding that Sgt. Colwell's union activity was the basis for Sgt. Colwell's discipline for a log-book violation. Sgt. Colwell argues that his criticism of Chief Metzger's proposed disciplinary policy resulted in Sgt. Colwell receiving the discipline. The evidence fails to support this theory for several reasons.

First, on the proposed disciplinary policy, as well as other policies, Chief Metzger sought input and suggestions, which he was not required to do.

The evidence also reflects that the decision to discipline Sgt. Colwell for the activity-log violation predated the meeting at which Sgt. Colwell states that he criticized Chief Metzger's proposed policy. Shortly after Sgt. Colwell's meeting with Trustee Hanley, Chief Metzger became aware from the Township Administrator that the meeting had occurred and that Chief Metzger should "look into it." Whether Chief Metzger routinely monitored for activity-log violations is irrelevant since the Township Administrator's notification provided a legitimate, non-discriminatory reason to take action.

Through Administrative Lt. Arvay, Chief Metzger imposed a discipline that was more severe than an arbitrator later deemed permissible under the CBA. Since the discipline was decided by Chief Metzger on June 22, 2007, and was communicated to Lt. Arvay on June 25, 2007, the discipline was not related to Sgt. Colwell's union activity. The meeting that Sgt. Colwell argued was the basis for the Chief's discipline did not take place until June 26, 2007.

Also, Sgt. Colwell was in the wrong with regard to the activity log. The CBA provided for release time for union business if it was approved in advance by the supervisor. Even if his meeting with Trustee Hanley constituted union business, Sgt. Colwell did not request release time or prior approval as required by the CBA. Sgt. Colwell told Trustee Hanley that he had been protecting her by not putting the meeting on his log. Consequently, this statement demonstrated Sgt. Colwell's understanding that the meeting should have been included on his log, and it also weakened the Complainant's argument that Sgt. Colwell should not have been disciplined because the activity-log requirement was fairly new, was the first in the Township in 15 years, and they were still working "the bugs" out of it.

Sgt. Colwell was not confused about the policy and its requirements; he purposefully kept the meeting out of his log, purportedly because he thought Trustee Hanley would not want Chief Metzger to know that she and Sgt. Colwell had a meeting. Instead, it appeared that Sgt. Colwell was the one who did not want Chief Metzger to know about the meeting

where Sgt. Colwell called Chief Metzger's employment history into question. Sgt. Colwell's activity log reflected that he was in the office, on the premises during the time he was out of the building meeting with Trustee Hanley. Rather than a half-hour gap of undesignated time, the activity log reflected a situation that was inaccurate.

Complainant failed to show that Sgt Colwell was treated differently than other similarly situated employees. No evidence of disparate treatment was presented. Complainant also attempted to show that Chief Metzger failed to follow progressive discipline with regard to Sgt. Colwell, but the evidence reflected that progressive discipline was only applicable with regard to the attendance policy.

Sgt. Colwell had no discipline from 1987-2006 until Chief Metzger arrived. Since 2006, Sgt. Colwell received two written reprimands prior to the discipline relating to the activity log. Chief Metzger can be stricter than previous chiefs so long as his conduct is not based on a discriminatory reason. A nexus was not shown to exist between the discipline Sgt. Colwell received and his union activity.

Lt. Arvay testified that he probably would have given Sgt. Colwell something less than a one-day suspension for the log-book violation. "The punishment may be harsher than the Union, the Complainant, another employer, or even this Administrative Law Judge would have recommended, but SERB will not question the severity of the punishment so long as it was not meted out because of [the employee's] protected activity." *In re Brimfield Twp*, SERB 2001-003 (4-30-01) at 3-19. In the absence of evidence of anti-union animus, "the fact is that the employee knowingly committed the offense and took his chances on the employer's punishment." *Id.*

The Township articulated a legitimate, non-discriminatory reason for the action it has taken against Sgt. Colwell. Complainant failed to show that the reason has no basis in fact, did not actually motivate the challenged conduct or was insufficient to warrant the challenged conduct. The Complainant failed to prove by a preponderance of the evidence that the Township took adverse action against Sgt. Colwell because of his exercise of protected activity or that the Township's actions interfered with, restrained, or coerced Sgt

Colwell in the exercise of his O.R.C. Chapter 4117 rights. Thus, no violation was established for this conduct.

III. CONCLUSION

For the reasons set forth above, we find that the Sylvania Township Trustees, Lucas County did not violate Ohio Revised Code §§ 4117.11(A)(1) or (A)(3) when it disciplined Sgt. Robert Colwell, but that the Sylvania Township Trustees, Lucas County did violate Ohio Revised Code § 4117.11(A)(1) when it threatened to discipline Patrolman Todd Slaman if he filed a grievance. The Township is ordered to: (1) cease and desist from interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Ohio Revised Code Chapter 4117 by threatening an employee with discipline if he or she files a grievance and from otherwise violating Ohio Revised Code § 4117.11(A)(1); (2) post the Notice to Employees furnished by the Board for sixty days in all of the usual and normal posting locations where these bargaining-unit employees represented by the Ohio Patrolmen's Benevolent Association work; and (3) notify the Board in writing within 20 calendar days from the date that the Order becomes final of the steps that have been taken to comply therewith.

Brundige, Chairperson, and Verich, Vice Chairperson, concur.

Directive/Opinion from December 17, 2009 Board Meeting:

Each party via Certified Mail:

Case No. 07-ULP-08-0405

Sylvania Township Board of Trustees
c/o Hugh Thomas
4927 Holland Sylvania Road
Sylvania, Ohio 43560

Case No. 07-ULP-08-0405

Kevin Powers, Esq.
Ohio Patrolmen's Benevolent Association
10147 Royalton Road, Suite J
P.O. Box 338003
North Royalton, Ohio 44133

Each party's representative via Certified Mail:

Case No. 07-ULP-08-0405

Justin D. Burnard, Esq.
Allotta, Farley & Widman Co., LPA
2222 Centennial Road
Toledo, Ohio 43617

Case No. 07-ULP-08-0405

William F. Schmitz, Esq.
Johnson, Miller & Schmitz, LLP
635 W. Lakeside Ave., Suite 600
Cleveland, Ohio 44113

Via Interoffice:

Case No. 07-ULP-08-0405

Anne Light Hoke
Assistant Ohio Attorney General
Labor Relations Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215