

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

STATE EMPLOYMENT
RELATIONS BOARD

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In the Matter of

State Employment Relations Board,

Complainant,

v.

Cincinnati City School District Board of Education,

Respondent.

Case Number 2007-ULP-03-0133

ORDER
(OPINION ATTACHED)

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

On March 26, 2007, the Greater Cincinnati Building and Construction Trades Council ("Charging Party") filed an unfair labor practice charge against the Cincinnati City School District Board of Education ("Respondent"). On August 23, 2007, the State Employment Relations Board ("the Board" or "Complainant") determined that probable cause existed for believing Respondent had committed or was committing an unfair labor practice, authorized the issuance of a complaint, referred the matter to an expedited hearing, and directed the parties to the unfair labor practice mediation process.

Multiple motions to intervene were filed by individual employees/carpenters; the motions were granted. A Complaint was issued on March 18, 2008. An Answer was filed by Respondent on March 28, 2008. Multiple motions for continuance and/or to change hearing dates were granted. On April 9, 2009, the parties jointly filed their "Stipulations of Parties." Motions for extension of time to file briefs and to exceed page limitations were filed and granted. On August 3, 2009, the parties agreed to stipulate the case in its entirety and filed a joint motion to transfer the case from the Hearings Section to the Board; this motion was granted on August 20, 2009.

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 Respondent violated Ohio Revised Code §§ 4117.11(A)(1), (A)(5), and (A)(8) by refusing to bargain with the Greater Cincinnati Building and Construction Trades Council concerning the wages, hours, terms, and other conditions of employment of the carpenters employed by Respondent.

The Cincinnati City 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 refusing to bargain with the Greater Cincinnati Building and Construction Trades Council concerning the wages, hours, terms, and other conditions of employment of the carpenters employed by Respondent, and from otherwise violating Ohio Revised Code § 4117.11(A)(1);
- (2) Refusing to bargain with the exclusive representative of its employees (Greater Cincinnati Building and Construction Trades Council) concerning the wages, hours, terms, and other conditions of employment of the carpenters employed by Respondent, and from otherwise violating Ohio Revised Code § 4117.11(A)(5); and
- (3) Causing or attempting to cause an employee organization, its agents, or its representatives to violate Ohio Revised Code § 4117.11(B), and from otherwise violating Ohio Revised Code § 4117.11(A)(8).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Cease and desist from interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Ohio Revised Code Chapter 4117, from refusing to bargain collectively with the exclusive representative of its carpenter employees recognized pursuant to Ohio Revised Code Chapter 4117, from causing or attempting to cause an employee organization, its agents, or its representatives to violate Ohio Revised Code § 4117.11(B), and from otherwise violating Ohio Revised Code §§ 4117.11(A)(1), (A)(5) and (A)(8);
- (2) Immediately recognize the Greater Cincinnati Building and Construction Trades Council as the exclusive representative for purposes of collective bargaining of all CPS carpenters;
- (3) Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Union work, the Notice to Employees furnished by the State Employment Relations Board stating that the Cincinnati City School District Board of Education shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
- (4) 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.

It is so ordered.

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



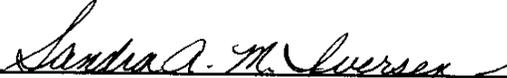
N. EUGENE BRUNDIGE, CHAIRPERSON

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 document was served upon each party by certified mail, return receipt requested, and upon each party's representative by ordinary U.S. mail, this 12th day of February, 2010.



SANDRA A.M. IVERSEN, ADMINISTRATIVE ASSISTANT

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

Cincinnati City School District Board of Education,

Respondent.

Case Number 2007-ULP-03-0133

OPINION

BRUNDIGE, Chairman:

This unfair labor practice case comes before the State Employment Relations Board (“SERB” or “Complainant”) upon the filing of joint stipulations by the parties and the subsequent filing of briefs by the parties. The issue to be decided is whether the actions taken by the Cincinnati City School District Board of Education (“CPS” or “Respondent”) constitute unfair labor practices in violation of Ohio Revised Code (“O.R.C.”) §§ 4117.11(A)(1), (A)(5), and (A)(8). For the reasons set forth below, we find that Respondent violated O.R.C. §§ 4117.11(A)(1), (A)(5), and (A)(8) by refusing to bargain with the Greater Cincinnati Building and Construction Trades Council (“GCBTC”) concerning the wages, hours, and terms and other conditions of employment of the carpenters employed by Respondent.

I. FINDINGS OF FACT

1. The Cincinnati City School District Board of Education is a “public employer” as defined by O.R.C. § 4117.01(B). (Stipulation [“Stip.”] 1)
2. The Greater Cincinnati Building and Construction Trades Council is a council whose members are building trade unions and/or joint district councils. SERB

has determined that GCBTC is an “employee organization” as defined by O.R.C. § 4117.01(D). (Stip. 2; Exhibit 1)

3. On April 19, 1985, SERB conducted a representation election for certain employees of Respondent in a bargaining unit that included carpenters. The results of the election were unanimous for GCBTC. Accordingly, SERB certified GCBTC as the exclusive representative of that bargaining unit (including carpenters) in Case Nos. 84-VR-09-1949 and 84-RC-05-0915. (Stip. 4; Exhibit 2)

4. Under Article III, Section 1 of the GCBTC Bylaws, “Membership in the [GCBTC] shall be Local Unions and/or Joint District Councils affiliated with National or International Building and Construction Trades Unions, affiliated with the AFL-CIO[.]” (Stip. 5)

5. Individual employees are not “members” of GCBTC. No craft employees, including carpenters, employed by CPS have ever been “members” of GCBTC. (Stip. 6)

6. Each local trade union or joint district council affiliated with GCBTC is entitled to elect delegates to GCBTC according to the procedure in Article III, Section 3 of the GCBTC Bylaws. Members of affiliated craft unions including carpenters and other craft employees of CPS are not eligible to vote to elect any of the delegates of GCBTC. (Stip. 7)

7. Under Article V of the GCBTC Bylaws, the Local Union or Joint Council affiliated with GCBTC remit quarterly payments to GCBTC based on the number of hours worked by members of affiliates, including such members at CPS. GCBTC does not collect dues from employees. (Stip. 8)

8. CPS employs approximately 40 workers in the “building trades,” including electricians, glaziers, carpenters, painters, plumbers, and tinsmith-sheet-metal workers. Most of the “building trades” employees at CPS are members of building trade unions who historically referred these individuals to employment with CPS at the request of CPS. The building trade unions are those labor organizations that represent individuals employed in the “building trades” (e.g., bricklayers, carpenters, glaziers, cement masons, electricians, laborers, painters, plumbers, sheet metal workers). (Stips. 12-13)

9. Each affiliated craft union is a separate labor organization and is affiliated with GCBTC. The affiliated craft unions/joint councils perform representative functions, such as grievance handling. GCBTC asserts that the representative functions are delegated by GCBTC to its affiliated craft unions or joint councils. (Stips. 9, 12, and 13)

10. GCBTC's Executive Secretary is the chief negotiator and spokesperson in contract negotiations, and he deals directly with CPS administrative officials during the term of the contract. It is common for a "multi-trade" public employer, such as CPS, the City of Cincinnati, Hamilton County, and the Metropolitan Housing Authority, to negotiate a single contract covering all of its building trades workers with GCBTC. Although these contracts generally set forth on their face that they are between GCBTC and the public employer, they are signed by GCBTC and each of the affiliated craft unions whose members are employed by that public employer, all of whom participate in all bargaining negotiations with the employers. Such contracts are ratified at a meeting conducted by GCBTC. CPS employees who are members of craft unions affiliated with GCBTC are entitled to vote at the contract ratification meeting. A majority vote of these employees who are in attendance at the contract ratification meeting determines whether the proposed contract is ratified. Business agents and representatives of the craft unions and GCBTC's Executive Secretary are not entitled to vote. (Stip. 14)

11. Since 1980, CPS has negotiated several collective bargaining agreements with GCBTC. The various GCBTC-affiliated trade unions, some of whose members are employed by CPS, all participated in these collective bargaining negotiations and all signed the collective bargaining agreements resulting from these negotiations. (Stip. 15)

12. At CPS, designated craft employees in the bargaining unit are on the bargaining committee and participate in negotiations of collective bargaining agreements. Bargaining-unit employees serve on the employee benefits committee established by CPS. (Stip. 45)

13. Prior to December 2001, carpenters employed by CPS, except Intervenors John C. Zimmer, Michael Ewing, and Robert Leach, were members of the local unions affiliated with the Southwest Ohio District Council of Carpenters ("Carpenters Union"),

which was a District Council affiliated with GCBTC. Prior to December 2001, the Carpenters Union participated in negotiations for collective bargaining agreements that included carpenters employed by CPS; executed collective bargaining agreements along with the other crafts; historically investigated and processed grievances of carpenters employed by CPS; and collected dues from carpenter members as authorized by the collective bargaining agreements and the CPS carpenters. (Stip. 19)

14. By 2001, a majority of the carpenters employed by CPS had resigned their membership in the Carpenters Union. (Stip. 20)

15. On March 20, 2001, SERB issued a "Dismissal of Petition for Representation Election" setting forth that GCBTC remains the Board-certified exclusive representative of the employees in the multi-craft bargaining unit, including the carpenters (Case No. 2000-REP-04-0093). (Exhibit 8)

16. On April 24, 2001, Intervenors John C. Zimmer, Robert Leach, and Michael Ewing employed by CPS filed an unfair labor practice charge (Case No. 2001-ULP-04-0249) against the Carpenters Union. (Stip. 22)

17. On December 20, 2001, the CPS carpenters and the Carpenters Union agreed to a settlement of the unfair labor practice charge in Case No. 01-ULP-04-0249. As a part of the settlement agreement, the Carpenters Union disclaimed all interest in representing carpenters at CPS. Since the date of the settlement, the Carpenters Union has not participated in any dealing with the GCBTC in relation to CPS or with CPS directly. (Stip. 24)

18. GCBTC was not a party to the unfair labor practice charge in Case No. 2001-ULP-04-0249 or the settlement agreement resolving that charge. (Stip. 24)

19. CPS has not remitted union dues or fair-share fees on behalf of carpenters employed by CPS to the Carpenters Union, GCBTC, or any other entity from 2002 to the present. GCBTC has claimed entitlement to a fair-share fee on behalf of carpenters employed by CPS since the 2001 Settlement Agreement in Case No. 2001-ULP-04-0249, and CPS has rejected that claim. (Stip. 28)

20. In 2003, the CPS carpenters initiated a lawsuit against the Carpenters Union. The 2003 litigation concerned the carpenters' efforts to recover dues improperly

collected by the Carpenters Union. This litigation did not involve GCBTC as a party and did not address the efficacy of GCBTC's status as the Board-certified exclusive representative of the CPS carpenters. (Stips. 31 and 32)

21. CPS asserts that at some point during the summer of 2004 it received an undated petition signed by CPS carpenters indicating that they considered themselves unrepresented; the petition was never presented to GCBTC prior to this case. Neither CPS nor the carpenters communicated with GCBTC regarding this petition. This petition was not filed with SERB. (Stip. 33; Exhibit 16)

22. From March 2005 through September 2005, representatives for GCBTC and CPS communicated via letters and telephone calls regarding the matter of the fair-share-fee provisions of the collective bargaining agreement. On June 13, 2005, GCBTC also filed a grievance regarding the issue of fair-share fees but could not pursue this action because the collective bargaining agreement did not contain an arbitration clause. (Exhibits 17 – 23)

23. On December 27, 2005, GCBTC filed an unfair labor practice charge (Case No. 2005-ULP-12-0674) against CPS. On April 15, 2006, SERB dismissed the unfair labor practice charge as untimely filed. (Stip. 52; Exhibit 31)

24. On August 10, 2006, GCBTC filed an unfair labor practice charge (Case No. 2006-ULP-08-0400) against CPS. On January 22, 2007, SERB dismissed the unfair labor practice charge as untimely filed. (Stip. 53; Exhibit 32)

25. On December 8, 2006, GCBTC and CPS began negotiating for a successor collective bargaining agreement. On December 8, 2006, negotiators for CPS met with the chief spokesperson for GCBTC – GCBTC Executive Secretary Joseph Zimmer – and with representatives from some of the other trade unions whose members were employed by CPS. The Carpenters Union did not participate in this meeting or any subsequent negotiation sessions. (Stip. 46)

26. On December 8, 2006, GCBTC and CPS exchanged initial proposals for contract negotiations. CPS gave Mr. Zimmer a contract proposal that, among other changes, would remove the “carpenter” job classification from the recognition provision in Article 1. Mr. Zimmer responded by informing CPS negotiators on December 8,

2006, that GCBTC was the exclusive representative for all employees in the bargaining unit, including carpenters. Mr. Zimmer further informed CPS negotiators that it was clearly unlawful for the carpenters to be excluded from the bargaining unit. CPS responded that it did not consider the carpenters to be in the bargaining unit. (Stips. 47 and 48; Exhibit 29)

27. Mr. Zimmer left the December 8, 2006 meeting with the impression that CPS would review the legality of its position regarding representation of the CPS carpenters. (Stip. 48)

28. On January 25, 2007, CPS met with GCBTC and representatives from all other trade unions whose members are employed by CPS except for the Carpenters Union. At this bargaining session, CPS negotiators told GCBTC's representative that the carpenters employed by CPS could not be represented by GCBTC. (Stip. 50)

29. On February 9, 2007, CPS met with GCBTC and representatives from all other trade unions whose members are employed by CPS, except for the Carpenters Union. At this bargaining session, CPS negotiators informed GCBTC's representative that CPS would bargain separately with the carpenters employed by CPS. (Stip. 50)

30. On March 26, 2007, GCBTC filed an unfair labor practice charge with SERB pursuant to and in accordance with O.R.C. § 4117.12(B) and Ohio Administrative Code ("O.A.C.") Rule 4117-7-01. (Stip. 54)

31. On August 23, 2007, SERB determined that probable cause existed for believing Respondent had committed or was committing an unfair labor practice, authorized the issuance of a complaint, referred the matter to an expedited hearing, and directed the parties to unfair labor practice mediation. (Stip. 55)

32. On March 18, 2008, a Complaint and Notice of Expedited Hearing was issued. An Answer was filed by Respondent on March 28, 2008. Multiple motions for continuance and/or to change hearing dates were granted. On April 9, 2009, "Stipulations of Parties" were jointly filed. On April 28, 2009, one of the intervening carpenters filed a motion to dismiss. On May 18, 2009, the motion was denied by the administrative law judge.

33. On August 3, 2009, the parties filed a joint motion to transfer the case from the Hearings Section to the Board. The joint motion was granted, and this case was transferred to the Board for a decision on the merits.

34. The parties agreed to waive the evidentiary hearing in this matter and to submit the case on Briefs, Joint Stipulations of Fact, and Stipulations of Evidence directly to the State Employment Relations Board members.

II. DISCUSSION

The issue presented in this case is whether Respondent committed unfair labor practices in violation of O.R.C. §§ 4117.11(A)(1), (A)(5), and (A)(8) by refusing to bargain with GCBTC concerning wages, hours, and terms and other conditions of employment for employees classified as “carpenters” on January 25, 2007, and February 9, 2007. 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 Revised Code[;]

* * *

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

* * *

(8) Cause or attempt to cause an employee organization, its agents, or representatives to violate division (B) of this section.

CPS does not dispute that it refused to bargain with GCBTC concerning the wages and other conditions of employment of the CPS carpenters on January 25, 2007, and February 9, 2007. The parties stipulated that they began negotiations for a successor collective bargaining agreement on December 8, 2006. At that time, the parties exchanged initial contract proposals.

The initial contract proposal from CPS contained several changes, including the removal of the carpenter classification from the recognition clause of the collective bargaining agreement. GCBTC’s representative objected to the removal of the

carpenter classification and informed CPS' representatives that it was unlawful for CPS to unilaterally change the composition of the bargaining unit during contract negotiations. CPS's representatives responded that CPS did not consider the carpenters to be in the multi-craft bargaining unit.

GCBTC's representative left the December 8, 2006 meeting with the impression that CPS would review the matter regarding representation of the carpenters. CPS's representatives do not recall indicating that they would review the matter. CPS stipulated that its representatives apprised GCBTC's representative during contract negotiations on January 25, 2007, that the carpenters employed by CPS could not be represented by GCBTC. CPS stipulated that its representatives informed GCBTC's representative during a bargaining session on February 9, 2007, that CPS would bargain separately with the carpenters.

Respondent argues in its brief that: (1) the charges in this case were untimely filed pursuant to O.R.C. § 4117.12(B), or in the alternative, the charges are time barred by the doctrine of laches; (2) GCBTC is not an "employee organization" within the meaning of O.R.C. § 4117.01(D); (3) the CPS carpenters have been unrepresented since December 20, 2001; and (4) the charges in this case are barred by the principles of res judicata. For the reasons set forth below, we find Respondent's arguments without merit.

A. The Charges in this Case Are Timely Filed Pursuant to O.R.C. § 4117.12(B) and O.A.C. Rule 4117-7-01(A) and Are Not Barred by the Doctrine of Laches.

1. O.R.C. § 4117.12(B) and O.A.C. Rule 4117-7-01(A)

Pursuant to O.R.C. § 4117.12(B) and O.A.C. Rule 4117-7-01(A), an unfair labor practice charge shall be filed with this Board within ninety days after the alleged unfair labor practice was committed. The ninety-day time limit begins once two conditions are met: (1) the Charging Party obtains actual or constructive knowledge of the alleged unfair labor practice; and (2) the alleged unfair labor practice charge caused actual damage to the Charging Party. *In re City of Barberton*, SERB 88-0008 (7-5-88); *aff'd sub nom. SERB v. City of Barberton*, 1990 SERB 4-46 (CP, Summit, 7-31-90).

Respondent argues that GCBTC has had more than adequate notice that CPS did not consider GCBTC to be the carpenters' bargaining representative. CPS points out that it has not remitted union dues or fair-share fees to the Carpenters Union, GCBTC, or any other employee organization on the carpenters' behalf since 2002. CPS claims that based on its refusal to remit union dues or fair share fees, GCBTC knew, or should have known, that CPS was refusing to recognize GCBTC as the lawful representative of the carpenters.

CPS contends that the correspondence exchanged between CPS and GCBTC from approximately March 2005 to September 2005, proves that GCBTC knew that CPS did not recognize GCBTC as the carpenters' representative. In reading the correspondence between the parties (Exhibits 17 through 23), we note that the focus of this correspondence is on GCBTC's claim that it is entitled to fair-share fees for the CPS carpenters under the terms of the collective bargaining agreement. The correspondence reflects that GCBTC claimed it was entitled to fair-share fees for the CPS carpenters under the terms of the contract and that CPS repeatedly denied that the contract provisions provided for such fees for GCBTC.

CPS never stated in its correspondence that GCBTC was not the craft employees' exclusive representative. Instead, CPS took the position that, under the terms of the collective bargaining agreement, GCBTC was not contractually entitled to fair-share fees. We note that CPS asked for proof of GCBTC's status as exclusive representative, but CPS then disregarded the document submitted by GCBTC. This document plainly demonstrated that GCBTC is the Board-certified exclusive representative of the CPS carpenters.

We note that GCBTC filed a grievance concerning the fair-share fees issue on June 13, 2005, but CPS never met with GCBTC regarding the grievance. GCBTC was unable to pursue the grievance because the collective bargaining agreement did not provide for arbitration. We also note that at the same time this correspondence is being exchanged, CPS carpenters remained covered under the collective bargaining agreements in all respects as in the past, including the 2004 – 2006 collective bargaining agreement. Therefore, we conclude that the correspondence and other

communications and actions by the parties in 2005, taken as a whole, are insufficient to put GCBTC on notice that CPS did not recognize GCBTC as the carpenters' exclusive representative and would not bargain collectively with GCBTC concerning the terms and conditions of employment of the CPS carpenters.

Respondent further argues that GCBTC received notice on December 8, 2006, during the parties' initial meeting to begin contract negotiations for a successor agreement. The initial contract proposal from CPS contained several changes, including the removal of the carpenter classification from the recognition clause of the collective bargaining agreement. GCBTC's representative objected to the removal of the carpenter classification and informed CPS's representatives that it was unlawful for CPS to unilaterally change the composition of the bargaining unit during contract negotiations. CPS's representatives responded that CPS did not consider the carpenters to be in the multi-craft bargaining unit.

Although CPS's representatives informed GCBTC's representative at the December 8, 2006 meeting that CPS considered the carpenters to be unrepresented, CPS' representatives apparently left GCBTC's representative with the impression that CPS would review the legality of their position regarding the CPS carpenters' representation. On January 25, 2007, CPS' representatives notified GCBTC during contract negotiations that the carpenters employed by CPS could not be represented by GCBTC. On February 9, 2007, CPS's representatives informed GCBTC's representative during a bargaining session that CPS would bargain separately with the carpenters.

With regard to the actions of the CPS carpenters, we find that the evidence establishes that GCBTC did not learn that a majority of the CPS carpenters considered themselves unrepresented until CPS presented a copy of an undated petition. The petition appeared to have been signed by a number of CPS carpenters, and it indicated that they considered themselves unrepresented. GCBTC did not know of this petition until CPS presented a copy during the drafting of stipulations in this case.

CPS asserts that at some point during the summer of 2004 it received the undated petition. No evidence was presented to establish that this petition was ever

presented to GCBTC prior to this case, that CPS or the carpenters communicated with GCBTC regarding this petition prior to this case, or that this petition was filed with SERB as a Petition for Decertification Election in accordance with O.A.C. Rule 4117-5-01(D).

Additionally, we note that there was litigation between certain CPS carpenters and the Carpenters Union, which was initiated by the CPS carpenters in 2003. The 2003 litigation concerned the carpenters' efforts to recover dues improperly collected by the Carpenters Union. This litigation did not involve GCBTC as a party and did not address the efficacy of GCBTC's status as the Board-certified exclusive representative of the CPS carpenters.

Based on the above analysis, we conclude that the 2003 litigation and the covert 2004 petition did not provide GCBTC with notice that CPS did not recognize GCBTC as the exclusive representative and therefore would not bargain collectively with GCBTC concerning the wages and other conditions of employment of the CPS carpenters. Therefore, it was not until CPS unequivocally stated to GCBTC's representative during contract negotiations on January 25, 2007, that CPS would not allow GCBTC to act as the exclusive representative of the CPS carpenters that GCBTC received notice that CPS was refusing to bargain collectively with GCBTC concerning the terms and conditions of employment of the CPS carpenters.

When CPS refused to recognize GCBTC as the exclusive representative of the CPS carpenters during contract negotiations on January 25, 2007 and February 9, 2007, GCBTC suffered actual damage when it was prevented from fully representing all of the members of the multi-craft bargaining unit at that time. GCBTC filed an unfair labor practice charge on March 26, 2007, sixty-one days after CPS refused to bargain with GCBTC over hours, wages, and terms and other conditions of employment of the CPS carpenters. Thus, GCBTC's unfair labor practice charge was timely filed within the ninety-day time limit set forth in O.R.C. § 4117.12(B) and O.A.C. Rule 4117-7-01(A).

2. Doctrine of Laches.

Respondent argues that the charges in this case are barred by the equitable doctrine of laches because GCBTC unreasonably delayed in filing a claim concerning

its representative status of the CPS carpenters. *Black's Law Dictionary*, Eighth Edition, defines the term "laches" as follows:

1. Unreasonable delay in pursuing a right or claim – almost always an equitable one – in a way that prejudices the party against whom relief is sought...
2. The equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed in asserting the claim, when that delay has prejudiced the party against whom relief is sought...

The elements of a laches defense are: (1) unreasonable delay or lapse of time in asserting a right; (2) absence of an excuse for such delay; (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party. *State ex rel. Meyers v. City of Columbus*, 71 Ohio St.3d 603 (1995). Prejudice will not be inferred from a mere lapse of time. *State ex rel Chavis v. Sycamore City School Dist. Bd. of Edn.* (1994), 71 Ohio St.3d 26.

As discussed above, we have determined that the unfair labor practice charges set forth in the Complaint in this case occurred on January 25, 2007, and February 9, 2007, and that GCBTC timely filed its unfair labor practice charge regarding these actions approximately sixty days later on March 26, 2007. Respondent presented no evidence to establish that sixty days was an unreasonable delay in filing the unfair labor practice charge in this case or that CPS was materially prejudiced by the sixty-day "delay." Accordingly, Respondent has not established the elements of the laches defense.

Respondent further argues that the doctrine of laches is also applicable in this case because CPS relied on the terms of the 2001 Settlement Agreement in Case No. 2001-ULP-04-0249. Respondent's argument is wholly without merit for the following reasons. The 2001 Settlement Agreement in *State Employment Relations Board v. Southwest Ohio District Council of Carpenters*, Case No. 2001-ULP-04-0249, settled a dispute between SERB, the Carpenters Union, and the CPS carpenters. Specifically, the agreement disclaimed the Carpenters Union's interest in representing the CPS carpenters. With regard to GCBTC, it is important to note that GCBTC was not a party to the agreement *and* the agreement was silent on the issue of GCBTC's

representative status. Therefore, because the 2001 Settlement Agreement addressed neither the composition of the multi-craft bargaining unit at CPS nor GCBTC's representative status with respect to this bargaining unit, the 2001 Settlement Agreement did not provide any type of notice or statement regarding these subjects.

B. GCBTC Is an "Employee Organization" as Defined by O.R.C. § 4117.01(D).

Respondent argues that GCBTC is not an "employee organization" as defined by O.R.C. § 4117.01(D) as to the CPS carpenters. Respondent acknowledges in its brief that SERB has certified GCBTC as the exclusive representative of the multi-craft bargaining unit that includes CPS carpenters. "If GCBTC is a representative at all, it is undeniably 'Board certified.' In 1985, prior to the Settlement Agreement, GCBTC was nominally certified as the exclusive bargaining representative for CPS's craft employees[.]" Brief of Respondent Cincinnati Public Schools, page 18.

Respondent is correct with regard to GCBTC's status as the Board-certified exclusive representative of the CPS multi-craft bargaining unit. In 1985, SERB issued a Certification of Election Results and of Exclusive Representative in the case captioned, *In the Matter of Greater Cincinnati Building and Construction Trades Council and Cincinnati Board of Education*, Case Nos. 84-VR-09-1949 and 84-RC-05-0915. SERB certified the multi-craft bargaining unit as a unit appropriate for the purposes of collective bargaining to include several crafts, including carpenters.

SERB also certified GCBTC as the exclusive representative of *all* of the trades employees in the multi-craft bargaining unit at CPS. Moreover, we note that SERB confirmed GCBTC's status as the exclusive representative of *all* of the trades employees in the multi-craft bargaining unit at CPS, including the carpenters. The bargaining-unit description was included in the Consent Election Agreement that preceded the secret-ballot election.

On March 20, 2001 SERB issued a "Dismissal of Petition for Representation Election" in *In the Matter of Cincinnati Public Schools Carpenters, and Southwest Ohio District Council of Carpenters, and Cincinnati Board of Education*, Case No. 00-REP-04-0093. The March 20, 2001 Dismissal set forth that GCBTC remains the Board-certified

exclusive representative of the employees in multi-craft bargaining unit, including the carpenters. No appeal of that decision was perfected. Therefore, the dismissal remained in effect, and this issue had not been raised with SERB since that time.

Because SERB has certified GCBTC as the exclusive representative of the multi-craft bargaining unit that includes carpenters, the parties in this case are bound by the provisions of O.R.C. Chapter 4117 and O.A.C. Chapter 4117-5 with respect to bargaining with the Board-certified exclusive representative and with respect to changing the composition of this bargaining unit or its exclusive representative. There is no evidence that the carpenter classification has been removed from the multi-craft bargaining unit or that GCBTC as the Board-certified representative has been changed through any type of petition action set forth in O.R.C. Chapter 4117 and O.A.C. Chapter 4117-5.

Notwithstanding GCBTC's status as the Board-certified representative of the multi-craft bargaining unit at CPS, Respondent argues that GCBTC is not an "employee organization" within the meaning of O.R.C. § 4117.01(D) because GCBTC's bylaws lack an individual membership provision and dues deduction provision, because no craft employees at CPS have ever been members of GCBTC, and because GCBTC does not perform representative functions other than assisting with negotiations.

O.R.C. § 4117.01(D) defines the term "employee organization" as follows: "Employee organization" means any labor or bona fide organization in which public employees participate and which exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, hours, terms, and other conditions of employees."

SERB has consistently interpreted the above definition of "employee organization" broadly. For example, in *In re City of Port Clinton*, SERB 95-002 (2-27-95), SERB found that a group of 325 local entities affiliated with an international union that represented public and private nonprofit employees in collective bargaining is an "employee organization" within the meaning of O.R.C. § 4117.01(D). In that case, SERB noted that it did not matter that the group had no constitution, by-laws, elected officials, or other formal structures. In *In re City of Cleveland*, SERB 88-004 (4-19-88),

SERB found that the rival organization met the statutory definition of an "employee organization" even though the organization lacked a constitution, elected officers, membership meetings, and dues collection. In that case, SERB noted that the employees participated in the organization and the organization had the purpose of bargaining over wages and other conditions of employment.

In this case, the evidence established that craft employees at CPS have both participated in negotiations lead by GCBTC and also participated in the administration of the collective bargaining agreements negotiated by GCBTC since 1980. Because GCBTC is an organization in which public employees participate and because GCBTC exists, in whole or in part, for the purpose of collective bargaining, GCBTC fulfills the statutory definition of an "employee organization" set forth in O.R.C. § 4117.01(D). Further, we note that GCBTC has historically functioned as an employee organization representing public- and private-sector employees and has been determined by SERB in various cases over the years to be an "employee organization" within the meaning O.R.C. § 4117.01(D).

C. The CPS Carpenters Have Been Represented by GCBTC as the Board-Certified Exclusive Representative of All Employees in the Multi-Craft Bargaining Unit at CPS Since 1985.

Respondent argues that the CPS carpenters were rendered unrepresented by the terms of the 2001 settlement agreement in *State Employment Relations Board v. Southwest Ohio District Council of Carpenters*, Case No. 2001-ULP-04-0249 (2001 Settlement Agreement). Upon careful review of the parties involved and the terms of the 2001 Settlement Agreement, we find that this agreement has no impact on Respondent's duty to bargain collectively with GCBTC concerning wages and terms and other conditions of employment of the CPS carpenters. GCBTC was not a party to the 2001 Settlement Agreement; this agreement only disclaims the Carpenter Union's interest in representing the CPS carpenters; and this agreement is silent on the issue of GCBTC's status as the Board-certified exclusive representative of the multi-craft bargaining unit established by SERB.

While the 2001 Settlement Agreement settled a dispute between SERB (as the Complainant in an unfair labor practice proceeding), the Carpenters Union, and the CPS carpenters, the agreement did not change GCBTC's status as the Board-certified exclusive representative of this multi-craft bargaining unit or alter the composition of the multi-craft bargaining unit. Once the Carpenters Union disclaimed interest in performing any representative functions for the CPS carpenters, GCBTC, as the Board-certified exclusive representative, was required by O.R.C. Chapter 4117 to assume *all* representative functions for the CPS carpenters as well as to continue to represent the other job classifications that comprise the multi-craft bargaining unit.

Additionally, the evidence indicates that GCBTC continued to act as the exclusive representative of the CPS carpenters by negotiating with CPS concerning the carpenters' rate of pay and other working conditions under successor collective bargaining agreements, including the 2004-2006 collective bargaining agreement. Respondent contends that the CPS carpenters have not been covered by any successor collective bargaining agreements since the 2001 Settlement Agreement and were inadvertently left in the recognition clause of the 2004-2006 collective bargaining agreement.

Although Respondent contends that the CPS carpenters have not been covered by any successor collective bargaining agreements since 2001, CPS presented no evidence to rebut GCBTC's assertion that the CPS carpenters received from CPS the wages, benefits, and working conditions as set forth in the 2004-2006 collective bargaining agreement. Given that the CPS carpenters apparently received the wages and benefits of the contract, we find Respondent's claim that the CPS carpenters were not covered by successor collective bargaining agreements unpersuasive.

Similarly, we are not persuaded by Respondent's argument that the contracts' recognition provisions have never included GCBTC and therefore CPS is not required to recognize GCBTC as the exclusive representative of the employees in the multi-craft bargaining. Respondent cited no case law or provision in O.R.C. Chapter 4117 that would allow CPS to unilaterally decide to recognize and deal directly with an ad-hoc, but

formally unrecognized, employee organization, and expressly exclude the Board-certified bargaining representative.

D. The Charges in This Case Are Not Barred by the Principle of Res Judicata.

Lastly, Respondent argues that the charges in this case are barred by the principles of res judicata, specifically, the doctrines of issue preclusion and claim preclusion. Respondent notes that in *SERB v. Fraternal Order of Police, Ohio Labor Council*, 9 OPER ¶ 1228 (March 5, 1992), SERB determined that the doctrines of issue and claim preclusion apply in SERB proceedings.

Black's Law Dictionary, Eighth Edition, defines the term "res judicata" as follows:

. . . 1. An issue that has been definitively settled by judicial decision. 2. An affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been – but was not – raised in the first suit. The three essential elements are (1) an earlier decision on the issue, (2) a final judgment on the merits, and (3) the involvement of the same parties, or parties in privity with the original parties. Restatement (Second) of Judgments §§ 17, 24 (1982).

Respondent argues that the charges in this case are barred by the doctrine of issue preclusion because these charges raise the same issues as were raised in Case Nos. 2005-ULP-12-0674 and 2006-ULP-08-0400. The evidence in the record establishes that the unfair labor practice charges in Case Nos. 05-ULP-12-0674 and 06-ULP-08-0400 involved the same parties as the present case and concerned GCBTC's claim that it was entitled to receive fair share fees under the terms of the collective bargaining agreement. The recognition issue raised in the present case was not raised in the two prior cases. Additionally, SERB dismissed Case Nos. 2005-ULP-12-0674 and 2006-ULP-08-0400 as untimely filed and thus did not issue any judgments on the merits of the issues raised in these two cases. Accordingly, the doctrine of issue preclusion does not apply to bar the Complaint in this case.

Respondent argues that even if SERB were to find that the recognition issue was not raised in the prior cases, the recognition issue certainly could have been raised and is part of the same transaction or occurrence that gave rise to the fair-share-fees issue.

Respondent contends that such a finding is all that is necessary for the present charges to be barred by the doctrine of claim preclusion. The two prior cases cited by Respondent were not litigated. Thus, SERB did not issue any decision on the issues or judgments on the merits. Accordingly, the doctrine of claim preclusion does not apply to bar the charges in this case.

In summary, Respondent CPS violated O.R.C. §§ 4117.11(A)(1), (A)(5), and (A)(8) by refusing to bargain with the Greater Cincinnati Building and Construction Trades Council ("GCBTC") concerning the wages, hours, and terms and other conditions of employment of the carpenters employed by Respondent CPS. Specifically, Respondent CPS interfered with the exercise of rights guaranteed in O.R.C. Chapter 4117 by refusing to bargain collectively with GCBTC, the Board-certified exclusive bargaining representative of the multi-craft bargaining unit that includes carpenters, and Respondent CPS interfered with GCBTC's ability to represent these bargaining-unit members by choosing to deal directly with the carpenters.

III. CONCLUSIONS OF LAW

1. The Cincinnati School District Board of Education is a "public employer" as defined by O.R.C. § 4117.01(B).

2. The Greater Cincinnati Building and Construction Trades Council is an "employee organization" as defined by O.R.C. § 4117.01(D) and is the Board-certified exclusive representative for the bargaining unit of the Cincinnati School District Board of Education's building trades employees, including "carpenters." See Case Nos. 84-VR-09-1949 and 84-RC-05-0915.

3. On January 25, 2007 and February 9, 2007, the Cincinnati School District Board of Education violated O.R.C. §§ 4117.11(A)(1), (A)(5), and (A)(8) by refusing to bargain with the Greater Cincinnati Building and Construction Trades Council concerning the wages, hours, terms, and other conditions of employment of the carpenters employed by the School Board.

IV. DETERMINATION

For the reasons set forth above, we find that the Cincinnati City School District Board of Education committed unfair labor practices when they violated O.R.C. §§ 4117.11(A)(1), (A)(5), and (A)(8) by refusing to bargain with the Greater Cincinnati Building and Construction Trades Council concerning the wages, hours, terms, and other conditions of employment of the carpenters employed by Respondent on January 25, 2007 and February 9, 2007. The Respondent 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, from refusing to bargain collectively with the exclusive representative of its carpenter employees recognized pursuant to Ohio Revised Code Chapter 4117, from causing or attempting to cause an employee organization, its agents, or its representatives to violate Ohio Revised Code § 4117.11(A)(8), and from otherwise violating Ohio Revised Code §§ 4117.11(A)(1), (A)(5), and (A)(8); (2) immediately recognize the Greater Cincinnati Building and Construction Trades Council as the exclusive representative for purposes of collective bargaining of all CPS carpenters; (3) 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 bargaining-unit employees represented by the Greater Cincinnati Building and Construction Trades Council work, stating that Respondent Cincinnati Public Schools shall cease and desist from the action set forth in paragraph (1) and shall take affirmative action set forth in paragraph (2); and (4) 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.

Verich, Vice Chairperson, and Spada, Board Member, concur.

SERB

"Promoting Orderly and Constructive
Labor Relations Since 1984"

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Michael G. Verich, Vice Chairperson
Robert F. Spada, Board Member

Ted Strickland, Governor

Sherrie J. Passmore Executive Director

Case No. 2007-ULP-03-0133

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 12th day of February, 2010.

J. Russell Keith
General Counsel and Assistant Executive Director
February 12, 2010

The 02/12/2010 Directive was served as follows:

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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 State Employment Relations 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 refusing to bargain with the Greater Cincinnati Building and Construction Trades Council concerning the wages, hours, terms, and other conditions of employment of the carpenters employed by Respondent, and from otherwise violating Ohio Revised Code Section 4117.11(A)(1);
- (2) Refusing to bargain with the exclusive representative of its employees (Greater Cincinnati Building and Construction Trades Council) concerning the wages, hours, terms, and other conditions of employment of the carpenters employed by Respondent, and from otherwise violating Ohio Revised Code Section 4117.11(A)(5); and
- (3) Causing or attempting to cause an employee organization, its agents, or its representatives to violate Ohio Revised Code § 4117.11(A)(8), and from otherwise violating Ohio Revised Code Section 4117.11(A)(8).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Cease and desist from interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Ohio Revised Code Chapter 4117, from refusing to bargain collectively with the exclusive representative of its carpenter employees recognized pursuant to Ohio Revised Code Chapter 4117, from causing or attempting to cause an employee organization, its agents, or its representatives to violate Ohio Revised Code § 4117.11(A)(8), and from otherwise violating Ohio Revised Code §§ 4117.11(A)(1), 4117.11(A)(5), and 4117.11(A)(8);
- (2) Immediately recognize the Greater Cincinnati Building and Construction Trades Council as the exclusive representative for purposes of collective bargaining of all CPS carpenters;
- (3) Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Greater Cincinnati Building and Construction Trades Council work, the Notice to Employees furnished by the State Employment Relations Board stating that the Cincinnati City School District Board of Education shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and
- (4) 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. Cincinnati City School District Board of Education, Case No. 2007-ULP-03-0133

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.