

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

Nimishillen Township Board of Trustees, Stark County,

Respondent.

Case Number 2006-ULP-11-0571

**ORDER
(OPINION ATTACHED)**

Before Chairperson Brundige, Vice Chairperson Verich, and Board Member Spada:
February 11, 2010.

STATE EMPLOYMENT
RELATIONS BOARD
2010 FEB 22 P 1:00

The Utility Workers Union of America, AFL-CIO ("the Union") filed an unfair labor practice charge against the Nimishillen Township Board of Trustees, Stark County ("the Township"), alleging that the Township violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1), (A)(2), and (A)(3). The State Employment Relations Board ("the Board" or "Complainant") determined that probable cause existed to believe that the Township committed unfair labor practices, authorized the issuance of a complaint, referred the matter to hearing, and directed the parties to unfair labor practice mediation.

On April 9, 2008, a Complaint was issued. A hearing was held August 21, 2008 and September 30, 2008, wherein testimony and documentary evidence were presented. Subsequently, both parties filed post-hearing briefs. On February 11, 2009, the Administrative Law Judge issued a Proposed Order recommending that the Board find that the Township violated O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(3). The Township filed exceptions to the Proposed Order. Counsel for Complainant filed a response to the exceptions.

After reviewing the unfair labor practice charge, complaint, answer, Administrative Law Judge's Proposed Order, exceptions, and response to exceptions, the Board voted, on December 17, 2009, to amend Conclusion of Law No. 4; to adopt the Findings of Fact and Conclusions of Law, as amended, in the Proposed Order; and to issue a cease-and-desist order with a Notice to Employees to be posted for 60 days. On February 11, 2010, the Board voted to amend Conclusion of Law No. 3 to read: "Christopher Peterson was not a "public employee" as defined in O.R.C. § 4117.01(C)," as well as to amend Conclusion of Law No. 4 to read: "The Township violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(2) by interfering with employees of the Township's Road Department in their efforts to unionize; the Township did not violate Ohio Revised Code § 4117.11(A)(3) when it terminated the employment of Chris Peterson." The Board also voted to adopt additional Findings of Fact Nos. 24-28, which state:

24. From January 27, 2006 to November 9, 2006, Christopher Peterson was employed by the Nimishillen Township Board of Trustees as the Township's Road Department Superintendent. Trustees Michael Lynch and Todd Bosley testified that a

written job description for the Road Department Superintendent position was made available to Mr. Peterson and he was urged on several occasions to read the description. Mr. Peterson testified that he never viewed the written job description for the Road Department Superintendent and asserted that he learned the specifics of his position from reading the Ohio Revised Code. Mr. Peterson acknowledged during his testimony that he was responsible for performing substantially all the job duties described in the Road Department Superintendent written job description. (Transcript pages ["T."] 14-18, 52-53, 83-84, 133-134, 166-167, 254, 280, 340, 406-413; Respondent's Exhibit 3)

25. As Road Department Superintendent, Mr. Peterson was the only department employee responsible for planning the daily and monthly road maintenance work to be completed by the Road Department employees, preparing the Road Department's annual budget, and communicating with the Township Trustees regarding the activities of the Road Department. (T. 52-58, 83-84, 133-134, 236, 400-413)

26. The Township Trustees relied solely upon Mr. Peterson to direct Road Department employees in their work activities and to ensure that road maintenance work was timely and properly completed. The Township Trustees relied solely upon Mr. Peterson to handle any problems or situations that arose within the Road Department. (T. 52-58, 83-84, 133-134, 236, 406-407)

27. Mr. Peterson directed all three Road Department employees on a daily basis. (T. 221, 234-236)

28. Mr. Peterson was responsible for approving or denying employees' leave requests and signing off on employees' work logs, timecards, and leave requests before these documents were submitted to the Township's Fiscal Officer. Mr. Peterson had the authority to discipline employees but never had the occasion to use his authority. Mr. Peterson made recommendations and decisions related to hiring Road Department employees. (T. 130-134)

For the reasons set forth in the attached Opinion, incorporated by reference, the Board adopts the Findings of Fact, as amended, and Conclusions of Law, as amended, in the Proposed Order.

The Nimishillen Township Board of Trustees, Stark 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 interfering with the Nimishillen Township Road Department employees' attempt to unionize, and from otherwise violating Ohio Revised Code § 4117.11(A)(1) and (A)(2).

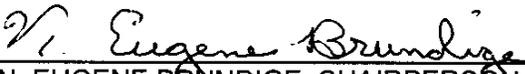
B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by interfering with the Nimishillen Township Road Department employees' attempt to unionize and from otherwise violating Ohio Revised Code §§ 4117.11(A)(1) and 4117.11(A)(2);

- (2) Post for sixty days in all of the usual and normal posting locations where bargaining-unit employees represented by the Utility Workers Union of America, AFL-CIO work, the Notice to Employees furnished by the Board stating that the Nimishillen Township Board of Trustees, Stark County, shall cease and desist from actions set forth in paragraph (1) and shall take the affirmative action set forth in paragraph (2); and
- (3) Notify the State Employment Relations Board in writing within twenty calendar days from the date the **ORDER** becomes final of the steps that have been taken to comply therewith.

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 22nd day of February, 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 State Employment Relations 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 interfering with the Nimishillen Township Road Department employees' attempt to unionize, and from otherwise violating Ohio Revised Code § 4117.11(A)(1) and (A)(2).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by interfering with the Nimishillen Township Road Department employees' attempt to unionize and from otherwise violating Ohio Revised Code §§ 4117.11(A)(1) and 4117.11(A)(2);
- (2) Post for sixty days in all of the usual and normal posting locations where bargaining-unit employees represented by the Utility Workers Union of America, AFL-CIO work, the Notice to Employees furnished by the Board stating that the Nimishillen Township Board of Trustees, Stark County, shall cease and desist from actions set forth in paragraph (1) and shall take the 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.

SERB v. Nimishillen Township Board of Trustees, Stark County, Case No. 2006-ULP-11-0571

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.

Nimishillen Township Board of Trustees, Stark County,

Respondent.

Case No. 2006-ULP-11-0571

OPINION

Brundige, Chairperson:

This matter comes before the State Employment Relations Board (“the Board” or “Complainant”) upon the issuance of Administrative Law Judge’s Proposed Order and the filing of exceptions by the Nimishillen Township Board of Trustees, Stark County (“Respondent” or “the Township”) and the Complainant’s response to the exceptions. For the reasons set forth below, we find that the Respondent violated Ohio Revised Code (“O.R.C.”) §§ 4117.11(A)(1) and (A)(2) by interfering with employees of the Nimishillen Township Road Department employees in their efforts to unionize. We further find that Respondent did not commit an unfair labor practice when it terminated the employment of Road Department Superintendent Christopher Peterson because our review of the evidence in the record reveals that Mr. Peterson was not a “public employee” pursuant to O.R.C. § 4117.01(C).

I. BACKGROUND

On November 13, 2006, the Utility Workers Union of America, AFL-CIO ("Union") filed an unfair labor practice charge against the Township, alleging that the Township violated O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(3). On April 12, 2007, the Board determined that probable cause existed to believe that the Township had committed an unfair labor practice by interfering with the employees' attempt to unionize and by terminating the employment of Christopher Peterson because he engaged in protected activity. The Board authorized the issuance of a complaint, referred the matter to hearing, and directed the parties to unfair labor practice mediation.

On April 9, 2008, a Complaint was issued. A hearing was held August 21, 2008 and September 30, 2008, wherein testimony and documentary evidence were presented. Subsequently, both parties filed post-hearing briefs. On February 11, 2009, the Administrative Law Judge issued her Proposed Order, recommending that the Board find that the Township violated O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(3).

II. ADOPTED FINDINGS OF FACT

On December 17, 2009, the Board adopted the Findings of Fact in the Administrative Law Judge's Proposed Order; they are set forth below in relevant part (without reference to Stipulations or Transcript cites on which they are based):

1. Nimishillen Township Board of Trustees, Stark County ("Township") is a "public employer" as defined by O.R.C. § 4117.01(B).
2. The Utility Workers Union of America, AFL-CIO ("Union") is an "employee organization" as defined by O.R.C. § 4117.01(D).
3. Christopher Peterson has worked for the Township Fire Department for 27 years. For the past 10 years, Mr. Peterson has worked as a Division Fire Chief, EMT, and Firefighter. From January 27, 2006 to November 9, 2006, Mr. Peterson was also employed as the Township's Road Department Superintendent, with an annual salary of \$34,000. Mr. Peterson initially served a 180-day probationary period. * * *

4. During the time period when Mr. Peterson was employed as Road Superintendent, the three Township Trustees were Lisa Shafer, Michael Lynch, and Todd Bosley.

5. As Road Department Superintendent, Mr. Peterson was one of four full-time employees in the Road Department. Mr. Peterson worked alongside the other members of the Road Department 75 percent of the time. Mr. Peterson's job duties included operating machinery; maintaining the Road Department's facilities; repairing Road Department equipment; plowing snow and salting roads; maintaining drain pipes; installing, maintaining, and repairing culverts and ditches; maintaining Township signs; mowing in Township right-of-ways; and performing manual road repair work.

6. All Road Department employees were authorized to make purchases of up to \$2,500 without the Trustees' prior permission.

7. Mr. Peterson signed Road Department employees' work logs and time cards and signed sick leave forms and vacation leave forms. Overtime was infrequent; when the need for overtime occurred, Mr. Peterson asked Road Department staff whether they wanted to work the overtime. If the employees wanted compensatory time instead of overtime, Mr. Peterson communicated this request to the fiscal office.

8. The four full-time Road Department employees were a close-knit group and got along well with each other. Mr. Peterson prepared monthly and daily work schedules for the Road Department. A typical workday included meeting for coffee as a group in the morning and then heading out to do assignments such as patching Township roads, installing a culvert, and loading compost. When Mr. Peterson was hired, each Road Department employee already had a set route for salting and plowing snow.

9. Using the prior year's list as a guideline, Mr. Peterson prepared and prioritized a list of needed Township road repairs. Mr. Peterson assessed the Road Department's equipment and recommended repair or replacement. Mr. Peterson recommended that the Trustees purchase a \$5,000 pressure pump for use in cleaning driveway culverts, but at their September 14, 2006 meeting, the Trustees declined to

follow this recommendation, concluding that such a purchase was “neither practical nor feasible.”

10. Mr. Peterson prepared and presented the Road Department report at Trustees’ meetings. Mr. Peterson wrote a Road Department column for the Township newsletter. Mr. Peterson was responsible for responding to Township resident complaints. Mr. Peterson and the Stark County Engineer communicated in writing on road-related matters including roads, ditches and signs.

11. Working with the Township’s Fiscal Officer and Assistant Fiscal Officer, Mr. Peterson prepared the Road Department’s annual budget, using the prior year’s budget as a guideline.

12. On April 13, 2006, Mr. Peterson was given a leave of absence from his position in the Fire Department. Trustee Shafer and Sharon Miller, the Township’s attorney, testified that the leave of absence was a result of an issue that arose in the Fire Department involving the Fire Chief, who is Mr. Peterson’s brother; Mr. Peterson; and a Firefighter with whom the Fire Chief was romantically involved. However, Mr. Peterson testified, and the Township’s April 13, 2006 meeting minutes reflect, that Mr. Peterson desired more time to focus on the Road Department and would be taking a leave of absence from the Fire Department.

13. From January to July 2006, Trustee Shafer was Mr. Peterson’s direct contact with the Trustees. Trustee Shafer was employed full-time in Canton, so she and Mr. Peterson communicated primarily by e-mail.

14. In July 2006, Mr. Peterson’s probationary period was extended for an additional 90-day period. Trustees Bosley and Lynch voted in favor of the extension; Trustee Shafer voted against it because she wanted to terminate Mr. Peterson’s employment as Road Superintendent. Trustee Shafer was unhappy with Mr. Peterson’s work on the “Groffre Project,” which involved tree clearing and wood removal.

15. On August 11, 2006, the Trustees developed a list of three objectives intended as guidance for Mr. Peterson after his probation was extended. Because his regular work as an owner of local pizza shops kept him in close daily proximity, Trustee

Lynch was assigned the responsibility of working with Mr. Peterson and overseeing Mr. Peterson's progress on the objectives.

16. Mr. Peterson and the three other Road Department employees signed Union "showing-of-interest" cards on September 22, 2006. On October 15, 2006, the Union filed a Request for Recognition, seeking to represent a bargaining unit of "All Road Department Employees." On November 3, 2006, the Union re-filed the Request for Recognition because the first filing did not include the original "showing-of-interest" cards.

17. After the Township received the Union's Request for Recognition, Township Trustee Lynch held a meeting with Road Department employees Jamie May, Brad Bair, and Dan Wayt at the Firehouse Restaurant. At the meeting, Trustee Lynch asked the employees what it would take for the union organizing efforts to go away. Trustee Lynch told the employees that the cost of health insurance would increase if the department organized.

18. Trustee Lynch spoke separately with Mr. Peterson. Trustee Lynch told Mr. Peterson that he, Trustee Lynch, was upset that Mr. Peterson did not bring the union organizing efforts to the Trustees' attention, and that this could jeopardize Mr. Peterson's job. During a discussion with Mr. Peterson about other matters, Trustee Lynch stated that the union organizing efforts needed to go away, and that he did not know if Mr. Peterson's job could be saved.

19. Trustee Lynch told a local newspaper that there was no place in the Township for a union.

20. On November 9, 2006, at a public meeting, the Township Trustees voted 2-1 to terminate Chris Peterson's employment as Road Superintendent. Trustee Bosley cast the dissenting vote. Trustees Shafer and Lynch told Mr. Peterson that he was being terminated because of the union and because of poor performance.

21. Within an hour after the November 9, 2006 meeting, Trustee Lynch telephoned Mr. Peterson. Trustee Lynch expressed regret for Mr. Peterson's termination, offered to help Mr. Peterson find other employment, and told Mr. Peterson

that the union issue was one of the reasons for his termination. Upset, Mr. Peterson terminated the telephone conversation.

22. On November 13, 2006, the Township filed a Petition for Representation Election-Employer. On April 22, 2007, after a secret-ballot election, SERB certified the Union as the exclusive representative for the bargaining unit of all full-time and part-time employees of the Township's Road Department.

23. Mr. Peterson's leave of absence from the Fire Department ended on August 5, 2006. Mr. Peterson continues to be employed as a Division Fire Chief in the Fire Department.

III. ADDITIONAL FINDINGS OF FACT

On February 11, 2010, the Board adopted the Additional Findings of Fact set forth below:

24. From January 27, 2006 to November 9, 2006, Christopher Peterson was employed by the Nimishillen Township Board of Trustees as the Township's Road Department Superintendent. Trustees Michael Lynch and Todd Bosley testified that a written job description for the Road Department Superintendent position was made available to Mr. Peterson and he was urged on several occasions to read the description. Mr. Peterson testified that he never viewed the written job description for the Road Department Superintendent and asserted that he learned the specifics of his position from reading the Ohio Revised Code. Mr. Peterson acknowledged during his testimony that he was responsible for performing substantially all the job duties described in the Road Department Superintendent written job description. (Transcript pages ["T."] 14-18, 52-53, 83-84, 133-134, 166-167, 254, 280, 340, 406-413; Respondent's Exhibit 3)

25. As Road Department Superintendent, Mr. Peterson was the only department employee responsible for planning the daily and monthly road maintenance work to be completed by the Road Department employees, preparing the Road Department's annual budget, and communicating with the Township Trustees regarding the activities of the Road Department. (T. 52-58, 83-84, 133-134, 236, 400-413)

26. The Township Trustees relied solely upon Mr. Peterson to direct Road Department employees in their work activities and to ensure that road maintenance work was timely and properly completed. The Township Trustees relied solely upon Mr. Peterson to handle any problems or situations that arose within the Road Department. (T. 52-58, 83-84, 133-134, 236, 406-407)

27. Mr. Peterson directed all three Road Department employees on a daily basis. (T. 221, 234-236)

28. Mr. Peterson was responsible for approving or denying employees' leave requests and signing off on employees' work logs, timecards, and leave requests before these documents were submitted to the Township's Fiscal Officer. Mr. Peterson had the authority to discipline employees but never had the occasion to use his authority. Mr. Peterson made recommendations and decisions related to hiring Road Department employees. (T. 130-134)

IV. DISCUSSION

The Township is alleged to have violated O.R.C. §§ 4117.11(A)(1), (A)(2), 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 rights guaranteed in Chapter 4117[.];

(2) Initiate, create, dominate, or interfere with the formation or administration of any employee organization[.];

(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[.]

In the Proposed Order, the Administrative Law Judge ("the ALJ") recommended that the Board find that: (1) Christopher Peterson was a "public employee" within the meaning of O.R.C. § 4117.01(C); (2) the Township terminated Mr. Peterson's employment as Road Department Superintendent because he exercised rights guaranteed under Chapter 4117 of the Revised Code; and (3) the Township interfered

with the Road Department employees' efforts to unionize, in violation of O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(3). When Trustee Lynch met with the bargaining-unit employees in the Road Department following the filing of the Request for Recognition, asked them what it would take to make the union go away, and then told them that their health insurance costs would increase if they organized, the Township interfered with, restrained, and coerced them in the exercise of their rights under O.R.C. Chapter 4117, thereby violating O.R.C. § 4117.11(A)(1) and were clearly an attempt to interfere with the formation of the Union, thereby violating O.R.C. § 4117.11(A)(2) as well.

For the reasons set forth below, we disagree with the ALJ's recommendation that Christopher Peterson was a "public employee" within the meaning of O.R.C. § 4117.01(C), and, instead, find that there is substantial evidence in the record demonstrating that Mr. Peterson was a "supervisor" and a "management level employee" as defined by O.R.C. §§ 4117.01(F) and (L). As a "supervisor" and a "management level employee," Mr. Peterson did not have any rights under O.R.C. Chapter 4117. Therefore, we find that the Township did not violate Ohio Revised Code § 4117.11(A)(3) when it terminated Mr. Peterson's employment.

A. Christopher Peterson was a "Supervisor"

O.R.C. § 4117.01(F) defines the term "supervisor" as follows:

"Supervisor" means any individual who has authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees; to responsibly direct them; to adjust their grievances; or to effectively recommend such action, if the exercise of that authority is not of a merely routine or clerical nature but requires the use of independent judgment.

As SERB has recognized since *In re University of Cincinnati*, SERB 89-028 (10-12-89) at p. 3-192:

The determination regarding whether individuals should be accorded supervisory status is a difficult question due to the infinite gradations of authority between the employer and the rank and file. The degrees of difference in the case of "supervisors" and "employees" can be so subtle

that deciding who is a supervisor must practically involve a large measure of discretion.

Three factors must be reviewed to determine whether a position is excluded from the coverage of O.R.C. Chapter 4117. As SERB found in *In re Mahoning County Dept. of Human Services*, SERB 92-006 (6-5-92) at p. 3-19, an individual will be excluded from a bargaining unit, pursuant to O.R.C. § 4117.01(F), "so long as the record contains substantial evidence that the employee has the authority to perform *one or more* of the functions listed in that section, actually exercises that authority and uses independent judgment in doing so."

At the outset, we note that the public employer in this case, the Nimishillen Township Board of Trustees, is a small, part-time legislative body. We also note that this case involves the Nimishillen Township Road Department, which is a small department comprised of four employees. Our analysis begins with an examination of the organizational structure of the Road Department in relation to Christopher Peterson's role as Road Department Superintendent and in relation to the public employer (the Board of Trustees). The testimony and evidence presented at the record hearing established that, during the time period relevant to this case, the Road Department was composed of four full-time employees, including Mr. Peterson.

The Township appointed one employee, Mr. Peterson, to the position of Road Department Superintendent. As Road Department Superintendent, Mr. Peterson reported directly to the Board of Trustees on a monthly basis at the Board's Township meetings. There were no other supervisors or management-level employees above Mr. Peterson in the Road Department's organizational structure. The testimony established that none of the Township Trustees oversaw or otherwise directly managed the Road Department employees in their work.

Instead, the Township Trustees relied solely upon Mr. Peterson to direct the activities of the Road Department and to report its activities at the Board's monthly meetings. With these factors in mind, we turn our analysis to the scope and nature of the job duties assigned to Mr. Peterson. The testimony presented at record hearing established that Mr. Peterson held the position of Road Department Superintendent for

approximately ten months. Mr. Peterson spent approximately seventy-five percent of his work time working alongside the Road Department employees performing road maintenance duties.

The testimony also established that Mr. Peterson had additional responsibilities as Road Department Superintendent. Specifically, Mr. Peterson was responsible for approving or denying employees' leave requests and signing off on employees' work logs, timecards, and leave requests before these documents were submitted to the Township's Fiscal Officer. Mr. Peterson was responsible for preparing the department's annual budget and submitting the budget to the Township's Fiscal Officer. Mr. Peterson utilized the previous year's budget as a guideline and worked with the Fiscal Officer and Assistant Fiscal Officer in preparing the Road Department's annual budget.

Mr. Peterson was also responsible for utilizing his technical expertise to assess roads and determine the order that the Township's road work would be completed. Mr. Peterson reported to the Stark County Engineer with respect to the Township's road maintenance. Mr. Peterson prepared and prioritized a list of needed Township road repairs and submitted it to the Township Trustees. Mr. Peterson assessed the Road Department's equipment and recommended repair or replacement.

Five witnesses offered testimony at the record hearing regarding Mr. Peterson's authority to direct employees' work and make recommendations and decisions regarding hiring and disciplining employees. During his testimony, Mr. Peterson acknowledged that he had the authority to direct the Road Department employees in their work. He also acknowledged that he had authority to determine whether or not to pursue disciplinary action against an employee and to make recommendations and decisions regarding hiring employees.

Trustees Michael Lynch, Lisa Shaffer, and Todd Bosley confirmed that Mr. Peterson was given the authority to direct Road Department employees in their work, to make recommendations regarding hiring, and to discipline employees, if needed. Road Department employee Brad Bair also offered testimony regarding Mr. Peterson's authority. Mr. Bair testified that Mr. Peterson directed the work of the employees in the Road Department. While Mr. Bair viewed the employees in the Road

Department as a team that worked together, he did affirm that he followed Mr. Peterson's work directions.

Although the testimony presented indicated that Mr. Peterson did not have to closely manage the Road Department employees, who were familiar with the work that needed to be done and who worked well together, we find it significant that Mr. Peterson, Mr. Bair, and all three Township Trustees testified that Mr. Peterson had the authority to direct employees in their work, as needed, and to make changes in work schedules when he determined it necessary to do so, such as during weather situations that impacted roads. Similarly, the testimony indicated that Mr. Peterson had the authority to determine whether to approve or deny leave requests in the context of scheduled road maintenance and he had the authority to determine if employees needed to work overtime to complete road maintenance work.

We note that the evidence in the record indicates that hiring actions and overtime situations within the Road Department were infrequent occurrences and that Mr. Peterson routinely approved leave requests and never had the occasion to exercise his authority regarding employee discipline. The infrequency of such personnel actions in this case is not unusual when one considers that there were only three other employees besides Mr. Peterson in the Road Department, that these employees worked extremely well together, and that Mr. Peterson's tenure as Road Department Superintendent lasted only ten months. Although Mr. Peterson did not have the occasion to discipline an employee, we find that the testimony presented at record hearing established that the Township Trustees gave Mr. Peterson the authority to take such action if needed.

We further note that the ALJ viewed Mr. Peterson's role as Road Department Superintendent as that of a "leadman" rather than a "supervisor." We disagree. While many of Mr. Peterson's duties were routine in nature and were not supervisory duties, the above analysis clearly indicates that certain of Mr. Peterson's duties were supervisory in nature, as contemplated by O.R.C. § 4117.01(F). Specifically, Mr. Peterson's responsibility to direct employees' work in order to ensure that the road maintenance work was timely and properly completed. The fact that Mr. Peterson did

not have to exercise his supervisory authority often does not diminish his authority in this regard. As previously noted, the Township Trustees relied solely upon Mr. Peterson to direct the activities of the Road Department by planning the daily and monthly road maintenance jobs to be completed by the department's employees, to report the department's activities at the Board's monthly meeting, and to handle any problems or situations that arose within the Road Department.

Based upon the foregoing, we conclude that there is substantial evidence in the record to establish that Christopher Peterson, in his position as Nimishillen Township's Road Department Superintendent, was a "supervisor" within the meaning of O.R.C. § 4117.01(F).

B. Christopher Peterson was a "Management Level Employee"

O.R.C. § 4117.01(L) defines the term "management level employee" as follows:

"Management level employee" means an individual who formulates policy on behalf of the public employer, who responsibly directs the implementation of policy, or who may reasonably be required on behalf of the employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or have a major role in personnel administration. [Emphasis added.]

In determining whether Mr. Peterson's role as Road Department Superintendent was a "management level employee" within the meaning of O.R.C. § 4117.01(L), we remain mindful that this case involves a small, part-time governmental body and a small department of four employees. In our analysis of Mr. Peterson's job duties in relation to the Board of Trustees, we find that some of the same responsibilities that demonstrate Mr. Peterson was a "supervisor" pursuant to O.R.C. § 4117.01(F) also indicate that Mr. Peterson played a major role in personnel administration and was expected to serve the Township Trustees with respect to personnel matters, including collective bargaining. Specifically, we find it significant that the Board of Trustees assigned Mr. Peterson the responsibility to direct the activities of the Road Department, supervise department employees, and report the activities of the department directly to the Board

of Trustees. There were no other supervisors or management level employees above Mr. Peterson in the organizational structure of the Road Department.

The evidence in the record established that Mr. Peterson was responsible for keeping payroll records, including approving or denying employees' leave requests and signing off on employees' work logs and timecards. Mr. Peterson was also responsible for scheduling vacations and overtime within the Road Department and making recommendations regarding hiring and discipline. We find that Mr. Peterson's aforementioned job duties demonstrate that he played a major role in personnel administration within Nimishillen Township.

With regard to the responsibility "to assist in the preparation for the conduct of collective negotiations" as described in O.R.C. § 4117.01(L), we interpret this phrase to include within the preparation process early activities related to collective bargaining, including employee discussions regarding organizing under O.R.C. Chapter 4117. The testimony and documentary evidence established that Mr. Peterson, as the Township's Road Department Superintendent, was responsible for directing activities of the Road Department and reporting department activities directly to the Township's Board of Trustees.

We find that Mr. Peterson's responsibility to direct the activities of the Road Department and to report the department's activities to the Township Trustees strongly demonstrate that the Board of Trustees reasonably expected Mr. Peterson would report efforts to unionize the Road Department and that Board of Trustees would be able to call upon Mr. Peterson to assist in the preparation for the conduct of collective negotiations as unionization progressed. The fact that testimony at hearing revealed that the Board of Trustees was upset with Mr. Peterson for failing to notify it that Road Department employees were discussing unionizing supports our conclusion that Mr. Peterson was expected to serve the Board of Trustees as a management level employee responsible for communicating matters related to collective bargaining within the Road Department in order to assist in the preparation for the conduct of collective negotiations. Based upon the foregoing, we conclude that there is substantial evidence in the record to establish that Christopher Peterson, in his position as Nimishillen

Township's Road Department Superintendent, was a "management level employee" within the meaning of O.R.C. § 4117.01(L).

In determining whether a particular individual is a "supervisor" pursuant to O.R.C. § 4117.01(F) and/or a "management level employee" pursuant to O.R.C. § 4117.01(L) in situations that involve small governmental bodies, such as the Nimishillen Township Board of Trustees, the Board will take into consideration the following factors: (1) the size of the public employer; (2) the chain of command within distinct departments of the Employer's organizational structure; and (3) the scope and nature of the job duties assigned to the position alleged to be a supervisory and/or management level position under the aforementioned statutory definitions. Based upon the foregoing, we conclude that there is substantial evidence in the record to establish that Christopher Peterson, in his position as Nimishillen Township's Road Department Superintendent, was a "supervisor" within the meaning of O.R.C. § 4117.01(F) and a "management level employee" within the meaning of O.R.C. § 4117.01(L).

V. CONCLUSIONS OF LAW

On December 17, 2009, the Board amended Conclusion of Law No. 4 and adopted the Conclusions of Law, as amended, in the Administrative Law Judge's Proposed Order. On February 11, 2010, the Board amended Conclusion of Law No. 3 and adopted the Conclusions of Law, as amended, in the Administrative Law Judge's Proposed Order. The Conclusions of Law, as amended, are set forth below:

1. The Township is a "public employer" as defined in [O.R.C.] § 4117.01(B).
2. The Union is an "employee organization" as defined by [O.R.C.] § 4117.01(D).
3. Christopher Peterson was not a "public employee" as defined in [O.R.C.] § 4117.01(C).
4. The Township violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(2) by interfering with employees of the Township's Road Department in their efforts to unionize; the Township did not violate Ohio Revised Code § 4117.11(A)(3) when it terminated the employment of Chris Peterson.

VI. DETERMINATION

For the reasons set forth above, we find that the Nimishillen Township Board of Trustees, Stark County did not commit an unfair labor practice when it terminated the employment of Road Department Superintendent Christopher Peterson because our review of the evidence in the record reveals that Mr. Peterson was not a "public employee" pursuant to Ohio Revised Code § 4117.01(C). We further find that the Respondent committed unfair labor practices in violation of Ohio Revised Code §§ 4117.11(A)(1) and (A)(2) by interfering with the Nimishillen Township Road Department employees' attempt to unionize. The Respondent is ordered to: (1) cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by interfering with the Nimishillen Township Road Department employees' attempt to unionize and from otherwise violating Ohio Revised Code §§ 4117.11(A)(1) and 4117.11(A)(2); (2) 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 Nimishillen Township Board of Trustees, Stark County, shall cease and desist from actions set forth in paragraph (1) and shall take the affirmative action set forth in paragraph (2); and (3) notify the State Employment Relations Board in writing within twenty calendar days from the date the Order becomes final of the steps that have been taken to comply therewith.

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

SERB

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State
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Board



65 East State Street, 12th Floor
Columbus, Ohio 43215-4213
Phone 614.644.8573
Fax 614.466.3074
www.serb.state.oh.us

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

Ted Strickland, Governor

Sherrie J. Passmore Executive Director

Case No. 2006-ULP-11-0571

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 22nd day of February, 2010.

J. Russell Keith
General Counsel and Assistant Executive Director
February 22, 2010