

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

Harrison Hills Teachers Association, OEA/NEA,

Respondent.

Case Number 2007-ULP-10-0525

STATE EMPLOYMENT
RELATIONS BOARD
2010 MAR 31 P 1:39

**ORDER
(OPINION ATTACHED)**

Before Chairperson Brundige, Vice Chairperson Verich, and Board Member Spada: March 24, 2010.

On October 9, 2007, the Harrison Hills City School District Board of Education ("Charging Party") filed an unfair labor practice charge against the Harrison Hills Teachers Association ("Respondent"). On January 24, 2008, 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 hearing, and directed the parties to participate in the unfair labor practice mediation process. At issue is whether Respondent violated Ohio Revised Code § 4117.11(B)(7) by engaging in picketing related to a labor relations dispute at the place of private employment of Harrison Hills City School District Board of Education Board member Judy Crawshaw prior to a strike.

On July 6, 2009, the parties filed "Joint Stipulations of Fact." One of the stipulations was that the parties agreed to waive an evidentiary hearing and submit the case directly to the Board on joint stipulations and briefs. Subsequent to filing their "Joint Stipulations of Fact," the parties filed their respective briefs. In accordance with the aforementioned stipulation of the parties, this matter was transferred from the Hearings Section to the Board for a decision on the merits.

After reviewing the "Joint Stipulations of Fact", the parties' briefs, and all other filings in this case, for the reasons set forth in the attached Opinion, incorporated by reference, Respondent Harrison Hills Teachers Association, OEA/NEA violated Ohio Revised Code § 4117.11(B)(7) by engaging in picketing related to a labor relations dispute at the place of private employment of Harrison Hills City School District Board of Education Board member Judy Crawshaw on or about September 26, 2007.

Respondent Harrison Hills Teachers Association, OEA/NEA is ordered to:

A. Cease and desist from:

(1) Inducing or encouraging its members to engage in activity that violates Ohio Revised Code § 4117.11(B)(7) by engaging in picketing related to a labor relations dispute at the place of private employment of any public official or representative of the public employer, and from otherwise violating Ohio Revised Code § 4117.11(B)(7).

B. Take the following affirmative action:

(1) Post the Notice to Employees furnished by the State Employment Relations Board for sixty days in all of the usual and normal posting locations where bargaining-unit employees represented by the Harrison Hills Teachers Association, OEA/NEA work;

(2) Provide all bargaining-unit employees represented by the Respondent with a copy of the posting;

(3) Provide **The Health Plan of the Upper Ohio Valley** with a copy of the posting; 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 ordered.

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

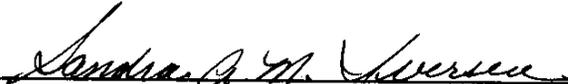

N. EUGENE BRUNDIGE, CHAIRPERSON

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 setting forth the order appealed from and the grounds 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, 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 mail, this 31st day of March, 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**

By agreement of the parties in this matter, this case was submitted to the State Employment Relations Board on joint stipulations and briefs. Upon review of the parties' joint stipulations and briefs, the State Employment Relations Board has determined that the Harrison Hills Teachers Association, OEA/NEA violated the law and has ordered us to post this notice. We, the Harrison Hills Teachers Association, OEA/NEA, intend to carry out the order of the State Employment Relations Board and to do the following:

A. CEASE AND DESIST FROM:

(1) Inducing or encouraging its members to engage in activity that violates Ohio Revised Code § 4117.11(B)(7) by engaging in picketing related to a labor relations dispute at the place of private employment of any public official or representative of the public employer, and from otherwise violating Ohio Revised Code § 4117.11(B)(7).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Post this 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 Harrison Hills Teachers Association, OEA/NEA work;
- (2) Provide all bargaining-unit employees represented by the Harrison Hills Teachers Association, OEA/NEA with a copy of the posting;
- (3) Provide **The Health Plan of the Upper Ohio Valley** with a copy of the posting; 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. Harrison Hills Teachers Association, OEA/NEA, Case No. 2007-ULP-10-0525

BY _____

DATE _____

TITLE

This Notice must remain posted for 60 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.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

Harrison Hills Teachers Association, OEA/NEA,

Respondent.

Case Number 2007-ULP-10-0525

OPINION

BRUNDIGE, Chairperson:

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. For the reasons set forth below, we find that Harrison Hills Teachers Association, OEA/NEA ("Respondent" or "the Association") violated Ohio Revised Code ("O.R.C.") Section 4117.11(B)(7) when its members engaged in picketing related to successor contract negotiations on a public street outside the place of private employment of Harrison Hills City School District Board of Education ("School Board") Board member Judy Crawshaw on or about September 26, 2007.

I. FINDINGS OF FACT

1. The Harrison Hills City School District Board of Education ("the School Board") is a "public employer" as defined by O.R.C. § 4117.01(B). (Joint Stipulation of Fact ["J. Stip."] 1)

2. The Harrison Hills Teachers Association, OEA/NEA ("Respondent" or "the Association") is an "employee organization" as defined by Ohio Revised Code § 4117.01(D) and is the exclusive bargaining representative for a bargaining unit consisting of all regular part-time and full-time certified/licensed teaching employees of the Harrison Hills City School District. (J. Stip. 2)
3. On October 9, 2007, the School Board filed an unfair labor practice charge with SERB pursuant to and in accordance with O.R.C. §§ 4117.11(B) and 4117.12(B) and Ohio Administrative Code Rule 4117-7-01, alleging that the Association had violated O.R.C. §§ 4117.11(B)(7) and (B)(8). The unfair labor practice charge also alleged that the members of the Association who engaged in the September 26, 2007 picketing at Judy Crawshaw's private place of employment carried an eight-foot sign. (J. Stip. 3)
4. On January 24, 2008, SERB determined that probable cause existed for believing the Association had committed an unfair labor practice by engaging in picketing outside the private place of employment of a School Board member in violation of O.R.C. § 4117.11(B)(7), authorized the issuance of a complaint, referred the matter to hearing, and directed the parties to unfair labor practice mediation. SERB dismissed all other aspects of the charge, including the O.R.C. § 4117.11(B)(8) allegation, for lack of probable cause. (J. Stip. 4).
5. The School Board and the Association were parties to a collective bargaining agreement effective from July 1, 2004 through June 30, 2007 ("Agreement"); the Agreement contained a grievance process that culminated in final and binding arbitration. (J. Stip. 5)
6. On or about April 16, 2007, the Association filed a Notice to Negotiate with the School Board for a successor agreement. (J. Stip. 6)
7. On or about January 7, 2008, the parties entered into a collective bargaining agreement effective from July 1, 2007 through June 30, 2010. (J. Stip. 7)
8. Judy Crawshaw is a publicly elected member of the School Board, and as such she is a public official. (J. Stip. 8)

9. As a member of the School Board, Judy Crawshaw served on the School Board's negotiating team, and as such she was a representative of the School Board. (J. Stip. 9)
10. In addition to her public sector position with the School Board, Judy Crawshaw holds a private sector position with a company known as The Health Plan of the Upper Ohio Valley. Therefore, The Health Plan of the Upper Ohio Valley is Judy Crawshaw's place of private employment. The Health Plan of the Upper Ohio Valley is located at 52160 National Road, East St. Clairsville, Ohio, 43950. (J. Stip. 10)
11. On or about September 26, 2007, members of the Association engaged in picketing relating to the successor contract negotiations, a labor relations dispute, on a public street outside of Judy Crawshaw's place of private employment, The Health Plan of the Upper Ohio Valley. (J. Stip. 11)
12. The Association members who engaged in the September 26, 2007 picketing outside of Judy Crawshaw's place of private employment did so under the inducement and/or encouragement of the Association's governing body. (J. Stip. 12)
13. The members of the Association who engaged in picketing mentioned in paragraph 11 were aware that The Health Plan of the Upper Ohio Valley was Judy Crawshaw's place of private employment. (J. Stip. 13)
14. On September 12, 2007, the Association issued a Notice of Intent to Strike indicating that its member would commence a strike against the School Board on October 1, 2007. (J. Stip. 14)
15. The Association's members/bargaining-unit employees engaged in a strike from October 1, 2007 through October 11, 2007. (J. Stip. 15)
16. On or about October 11, 2007, the Association and the School Board tentatively agreed on a successor agreement. (J. Stip. 16)
17. The parties agreed to waive the evidentiary hearing in this matter and to submit this case on briefs and joint stipulations of fact directly to the State Employment Relations Board members. (J. Stip. 17)

II. DISCUSSION

The issue presented in this case is whether Respondent Harrison Hills Teachers Association violated O.R.C. § 4117.11(B)(7) by engaging in picketing related to successor contract negotiations on a public street outside of Harrison Hills City School District Board of Education School Board member Judy Crawshaw's place of private employment on or about September 26, 2007.

O.R.C. § 4117.11(B)(7) provides as follows:

(B) It is an unfair labor practice for an employee organization, its agents, or representatives, or public employees to:

(7) Induce or encourage any individual in connection with a labor relations dispute to picket the residence or any place of private employment of any public official or representative of the public employer[.]

Respondent admits that it engaged in picketing related to successor contract negotiations, a labor relations dispute, on a public street outside of Harrison Hills City School District Board of Education member Judy Crawshaw's place of private employment on or about September 26, 2007 in violation of O.R.C. § 4117.11(B)(7). (Joint Stipulation #11, #12, and #13)

In its post-hearing brief, Respondent argues that the unfair labor practice charge in this case should be dismissed because O.R.C. § 4117.11(B)(7) is unconstitutional on its face and as applied. First, we note that this is not the proper forum in which to raise a constitutional claim as SERB is an administrative agency without authority to declare any portion of its enabling statute unconstitutional. "SERB, like other administrative agencies, does not have jurisdiction to determine [constitutional] claims." *State ex rel. Rootstown Local School Dist. Bd. of Edn. v. Portage Cty. Court of Common Pleas* (1997), 78 Ohio

St.3d 489, 494 (citations omitted) and *SERB v. United Electrical, Radio and Machine Workers of America* (SERB 95-014). Second, we note that it is axiomatic that all legislative enactments enjoy a presumption of constitutionality. *Benevolent Assn. v. Parma* (1980), 61 Ohio St.2d 375, 377. A court must, where possible, interpret a statute to avoid constitutional difficulty. *Frisby v. Schultz* (1988), 487 U.S. 483. "An enactment of the General Assembly is presumed to be constitutional, and before a court may declare it unconstitutional it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible." *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142. SERB, likewise, must interpret and apply the statutory provision[s] in a constitutional manner and must presume that the statutory provisions are constitutional. *In re Dist 1199/HCSSU/SEIU, AFL-CIO*, SERB 96-044 (4-8-96).

The facts in this case are not in dispute. Respondent is an "employee organization" as defined by O.R.C. § 4117.01(D), and ("the School Board") is a "public employer" as defined by O.R.C. § 4117.01(B). Judy Crawshaw is a publicly elected member of the School Board, and as such she is a public official. On or about April 16, 2007, Respondent filed a Notice to Negotiate with the School Board for a successor agreement. On September 12, 2007, Respondent issued a Notice of Intent to Strike, indicating that its members would commence a strike against the School Board on October 1, 2007. On or about September 26, 2007, members of Respondent engaged in picketing related to successor contract negotiations, a labor relations dispute. Therefore, the record has established that Respondent's conduct at the place of private employment of School Board member Judy Crawshaw on or about September 26, 2007 was in violation of Ohio Revised Code § 4117.11(B)(7).

III. CONCLUSIONS OF LAW

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

2. The Harrison Hills Teachers Association, OEA/NEA is an "employee organization" as defined by O.R.C. § 4117.01(D) and is the exclusive representative for a bargaining unit for a bargaining unit consisting of all regular part-time and full-time certified/licensed teaching employees of the Harrison Hills City School District.
3. The Harrison Hills Teachers Association, OEA/NEA violated O.R.C. § 4117.11(B)(7) by picketing the place of private employment of School Board member Judy Crawshaw, a public official or representative of the public employer, on or about September 26, 2007.

IV. DETERMINATION

For the reasons set forth above, we find that Respondent Harrison Hills Teachers Association, OEA/NEA has committed an unfair labor practice in violation of Ohio Revised Code § 4117.11(B)(7) by engaging in picketing related to a labor relations dispute at the place of private employment of School Board member Judy Crawshaw on or about September 26, 2007.

Respondent Harrison Hills Teachers Association, OEA/NEA is ordered to:

A. Cease and desist from:

- (1) Inducing or encouraging its members to engage in activity that violates Ohio Revised Code § 4117.11(B)(7) by engaging in picketing related to a labor relations dispute at the place of private employment of any public official or representative of the public employer, and from otherwise violating Ohio Revised Code § 4117.11(B)(7).

B. Take the following affirmative action:

- (1) Post the Notice to Employees furnished by the State Employment Relations Board for sixty days in all of the usual and normal posting

locations where bargaining-unit employees represented by the Harrison Hills Teachers Association, OEA/NEA work;

(2) Provide all bargaining-unit employees represented by the Harrison Hills Teachers Association, OEA/NEA with a copy of the posting;

(3) Provide **The Health Plan of the Upper Ohio Valley** with a copy of the posting; 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.

Vice Chairperson Verich and Board Member Spada concur.



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B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

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SERB v. Harrison Hills Teachers Association, OEA/NEA, Case No. 2007-ULP-10-0525

BY _____

DATE _____

TITLE _____

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SERB

"Promoting Orderly and Constructive
Labor Relations Since 1984"

**State
Employment
Relations
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. 2007-ULP-10-0525

CERTIFICATION

I, the undersigned 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 21st day of March, 2010

Sherrie Passmore
Executive Director

SERB OPINION 2010-007
Case 07-ULP-10-0525
SERB v. Harrison Hills Teachers Association, OEA/NEA

The 03/31/2010 Directive was served as follows:

Certified Mail to:

Case 07-ULP-10-0525

R. Brent Minney, Esq.
Pepple and Waggoner, Ltd.
5005 Rockside Road, Suite 260
Cleveland, Ohio 44131-6808

Case 07-ULP-10-0525

Ira J. Mirkin, Esq.
Green, Haines, Sgambati Co., L.P.A.
P.O. Box 849
16 Wick Avenue, Suite 400
Youngstown, Ohio 44501-0849

Regular Mail to:

Case 07-ULP-10-0525

Case 07-ULP-10-0525

Interoffice AG Pick-Up to:

Case 07-ULP-10-0525

Brian Edwards
Assistant Ohio Attorney General
Labor Relations Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

*Hand Delivered to:

Case 07-ULP-10-0525