

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

Rootstown Local School District Board of Education,

Respondent.

Case No. 2010-ULP-08-0333

STATE EMPLOYMENT
RELATIONS BOARD
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**ORDER
(OPINION ATTACHED)**

Before Chair Zimpher, Vice Chair Spada, and Board Member Brundige: June 16, 2011.

On August 30, 2010, Rootstown Education Association (“Charging Party” or “Intervenor”) filed an unfair labor practice charge against Rootstown Local School District Board of Education (“Charged Party” or “the School District”), alleging that the School District violated Ohio Revised Code (“O.R.C.”) §§ 4117.11(A)(1) and (A)(5) by unilaterally implementing a salary freeze and by refusing to bargain in good faith. On November 19, 2010, the State Employment Relations Board (“the Board” or “Complainant”) determined that probable cause existed to believe that Charged Party violated O.R.C. §§ 4117.11(A)(1) and (A)(5) by failing to maintain the status quo during negotiations when it implemented a salary freeze, authorized the issuance of a complaint, and referred the matter to hearing.

On December 7, 2010, a Complaint was issued. On December 10, 2010, a motion to intervene was filed by Charging Party. The motion to intervene was granted. On December 13, 2010, an Answer to the Complaint was filed by the School District. On February 8, 2011, an evidentiary hearing was held. The parties filed post-hearing briefs. On March 8, 2011, the Administrative Law Judge’s Proposed Order was issued, recommending the Board find that the School District did not violate O.R.C. §§ 4117.11(A)(1) and (A)(5) by failing to maintain the status quo during negotiations when it implemented a salary freeze.

On March 29, 2011, Intervenor filed exceptions to the Proposed Order. On March 31, 2011, Counsel for Complainant filed exceptions to the Proposed Order. On April 8, 2011, Respondent filed a response to the exceptions to the Proposed Order.

After reviewing the unfair labor practice charge, Complaint, Answer, Joint Stipulations, Proposed Order, exceptions, response to exceptions, and all other filings in this case, the Board **amends** Joint Stipulations of Fact No. 13 to read:

“At the meeting, the School District passed Resolution 2010-08-34 freezing “the movement and placement of administrative, teaching and non-teaching employees on the relevant salary/wage schedules applicable to the administrative, teaching and non-teaching employees of the Board,” effective with the start of the 2010-2011 school year (July 1, 2010), at the levels received by the employees during the 2009-2010 school year.”;

amends Conclusion of Law No. 3 to read: “The School District violated Ohio Revised Code §§ 4117.11(A)(5), but not (A)(1), when it unilaterally instituted a wage and step freeze for the 2010-2011 school year.”;

and **adopts** Joint Stipulations of Fact Nos. 1 through 12, 14, 15, and 16, as amended, Additional Findings of Fact Nos. 18 and 20, and Conclusions of Law and Joint Stipulations of Fact, as amended, in the Proposed Order, finding that the School District violated Ohio Revised Code § 4117.11(A)(5), but not (A)(1), when it unilaterally instituted a wage and step freeze for the 2010-2011 school year.

Respondent Rootstown Local School District Board of Education is hereby ordered to take the following actions:

A. CEASE AND DESIST FROM:

Refusing to bargain collectively with the exclusive representative of its employees by unilaterally changing a term of the contract during negotiations that affected the wages of bargaining-unit members by refusing to award step increases under the Collective Bargaining Agreement, and from otherwise violating Ohio Revised Code § 4117.11(A)(5).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Grant step increases to all eligible bargaining-unit members retroactive to dates such raises should have been received;

- (2) Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Rootstown Education Association, OEA/NEA work, the Notice to Employees furnished by the State Employment Relations Board stating that the Rootstown Local School District Board of Education shall cease and desist from actions set forth in paragraph (A) therein and shall take the affirmative action set forth in paragraph (B) therein; and
- (3) Notify the Board via electronic mail within 20 calendar days from the date the Order becomes final of the steps that have been taken to comply therewith.

It is so ordered.

Zimpher, Chair; SPADA, Vice Chair; and BRUNDIGE, Board Member, concur.



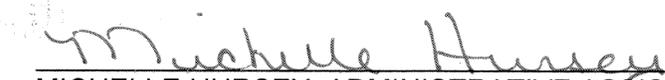
W. CRAIG ZIMPHER, CHAIR

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 7th day of July, 2011.



MICHELLE HURSEY, ADMINISTRATIVE ASSISTANT

**STATE OF OHIO
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Rootstown Local School District Board of Education,

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OPINION

ZIMPHER, Chair:

This unfair labor practice case comes before the State Employment Relations Board (“the Board,” “Complainant,” or “SERB”) upon the issuance of the Administrative Law Judge’s Proposed Order, the filing of exceptions to the Proposed Order by both Intervenor, Rootstown Education Association, OEA/NEA (“the Union”), formerly known as the Rootstown Teachers Association, and Counsel for Complainant, and the filing of a response to the exceptions by Respondent, Rootstown School District Board of Education (“Respondent” or “the School District”). The issue to be decided is whether Respondent violated Ohio Revised Code (“O.R.C.”) §§ 4117.11(A)(1) and (A)(5) by unilaterally instituting a wage and step freeze for the 2010-2011 school year. For the reasons set forth below, we find that Respondent violated O.R.C. § 4117.11(A)(5), but not (A)(1), when it unilaterally instituted a wage and step freeze for the 2010-2011 school year prior to exhausting the dispute resolution procedure for a successor agreement.

I. BACKGROUND

The material facts in this case are not in dispute. The Union and the School District are parties to a Collective Bargaining Agreement (“CBA”) effective by its terms from August 1, 2007 through July 31, 2010. The CBA contains a grievance-arbitration procedure that culminates in final and binding arbitration. The Union is the deemed-certified bargaining representative for employees identified in Article 1, Section A of the CBA.

The CBA required, and the bargaining-unit employees always received, automatic annual step increases pursuant to the salary schedule and procedure contained in Articles 25 and 26 of the CBA. Since the expiration of the CBA, the parties substantially complied with the provisions of the expired agreement, except for the step and education increases.

On February 25, 2010, the Union filed a Notice to Negotiate with the School District. The parties began negotiations for a successor CBA on or about April 27, 2010.

The School District presented the Union with its initial proposals, which included a proposal to maintain the base salary in existence for the previous 2009-2010 school year, eliminate step increment movement for the 2010-2011 school year, but permit salary schedule movement for additional educational training for the 2010-2011 school year. This proposal was rejected by the Union on May 13, 2010. The School District resubmitted that proposal as a counterproposal on June 14, 2010.

On August 13, 2010, the School District’s Legal Counsel verbally notified the Union’s Chief Negotiator Anne Thomas that the School District intended to pass a resolution on August 16, 2010, to freeze the bargaining-unit members’ salaries at the 2009-2010 levels. On August 16, 2010, prior to the scheduled School District meeting, the Union delivered a letter to Superintendent Andrew Hawkins demanding that the School District cease and desist from unilaterally freezing the bargaining-unit members’ salaries. At the scheduled meeting later that day, Respondent passed Resolution 2010-08-34 freezing “the movement and placement of administrative, teaching and non-teaching employees on the relevant salary/wage schedules applicable to the

administrative, teaching and non-teaching employees of the board.” The freeze was effective with the start of the 2010-2011 school year (July 1, 2010) at the levels received by the employees during the 2009-2010 school year.

At the time the School District passed Resolution 2010-08-34 on August 16, 2010, the parties had not reached a successor agreement and had not reached ultimate impasse. The parties continued to conduct negotiations after the passage of Resolution 2010-08-34 by meeting for approximately three negotiating sessions after Respondent acted to unilaterally to freeze the salary and steps, with the last session taking place in early November 2010.

II. DISCUSSION

Respondent is alleged to have violated O.R.C. §§ 4117.11(A)(1) and (A)(5), which state 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 or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

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

The Complainant has the burden of demonstrating by a preponderance of the evidence that the Respondent has committed an unfair labor practice. O.R.C. § 4117.12(B)(3). Good-faith bargaining is determined by the totality of the circumstances. *In re Dist 1199/HCSSU/SEIU, AFL-CIO*, SERB 96-004 (4-8-96). The duty to bargain does not compel either party to agree to a proposal or require either party to make a concession, pursuant to O.R.C. § 4117.01(G). A circumvention of the duty to bargain, regardless of subjective good faith, is unlawful. *In re Mayfield City School Dist Bd. of Ed.*, SERB 89-033 (12-20-89).

In the present case, Respondent is alleged to have engaged in bad-faith bargaining in violation of O.R.C. §§ 4117.11(A)(1) and (A)(5) when it failed to maintain the status quo ante during negotiations for a successor collective bargaining agreement with the Union. Respondent and the Administrative Law Judge assigned to this case recommend that SERB modify established legal precedent relating to the status quo ante because of the economic challenges facing many public entities in the State of Ohio, including Respondent, and ultimately find that Respondent did not violate O.R.C. §§ 4117.11(A)(1) or (A)(5) when it unilaterally instituted a wage and step freeze prior to exhausting the dispute resolution procedure for a successor agreement.

For the reasons that follow, we decline to alter the established legal precedent relating to the status quo ante rule and, instead, will continue to follow such legal precedent, including but not limited to, that set forth in *In re Cuyahoga County Commrs.*, SERB 89-006 (3-15-89); *In re University of Cincinnati*, SERB 93-007 (5-13-93); *In re City of Circleville*, SERB 2005-007 (10-5-2005); *In re Crestline Exempted Village School Dist Bd of Ed*, SERB 2006-003 (3-21-2006); *In re City of Reynoldsburg*, SERB 2010-003 (3-30-2010); and *In re Clark County Bd of Developmental Disabilities*, SERB 2010-014 (8-19-2010).

We begin our analysis with a review of several significant SERB opinions regarding the status quo ante rule. In *In re Crestline Exempted Village School Dist Bd of Ed*, SERB 2006-003 (3-21-2006) (“*Crestline*”), SERB addressed a fact pattern essentially identical to the one presented in this case, specifically, the failure of the Crestline School Board to honor the status quo ante regarding step increases during negotiations for a successor CBA. In *Crestline*, SERB began by distinguishing the facts it was considering from those of *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.* (1998), 82 Ohio St.3d 222, 1998-Ohio-249. “The record does not support a finding that the Employer has manifested a similar intention to no longer be bound by the terms of the expired agreement. Instead, the Employer continued to honor most of the terms of the expired CBA except for several about which grievances were filed and with regard to the step increases contained in the salary index incorporated into the CBA. Thus, we are not presented with a *Boggs* scenario.” SERB then concluded: “We find that when the Employer unilaterally changed a term or condition of employment by

refusing to award step increases under the collective bargaining agreement, which directly affected the wages of bargaining-unit members, the Employer committed an unfair labor practice in violation of O.R.C. §§ 4117.11(A)(1) and (A)(5).”

In *Crestline*, SERB cited *In re Cuyahoga County Commrs.*, SERB 89-006 (3-15-89), which provides the rationale for the status quo ante rule:

Freezing the status quo ante after a collective bargaining agreement has expired promotes industrial peace by fastening a non-coercive atmosphere that is conducive to serious negotiations on a new contract. Thus, an employer’s failure to honor the terms and conditions of an expired collective bargaining agreement pending negotiations on a new agreement constitutes bad faith bargaining. [Citing *Laborers Health & Welfare Trust v. Advanced Lightweight Concrete*, 779 F. 2d 497 (9th Cir. 1985); *NLRB v. Haberman Construction Co.*, 618 F. 2d 288, 105 LRRM 2059 (5th Cir. [NLRB] 1980); and *NLRB v. Katz* 369 U.S. 736, 82 S.Ct. 1107, 8 LEd(2d) 230, 50 LRRM 2177 (1962)]

Prior to *Crestline*, SERB noted in *In re University of Cincinnati*, SERB 93-007 (5-13-93) the following regarding the impact of the expiration of a parties’ contract on their negotiations for a successor agreement: “It is a well-established principle of collective bargaining law that even after contract expiration, parties can change employment terms only through mutual agreement or, if ultimate impasse is reached, through the employer’s implementation of its last best offer.” (Citing *NLRB v. Katz*, supra)

In *In re City of Circleville*, SERB 2005-007 (10-5-2005), SERB provided additional guidance regarding the status quo ante rule. “The *status quo ante* includes carryover of all prior contract provisions in an expired contract because O.R.C. Chapter 4117, unlike most other labor statutes, requires bargaining over the ‘deletion of an existing provision of a collective bargaining agreement.’ O.R.C. § 4117.01(G). Thus, a contract provision such as the one at issue, stating that the contract is ‘exhausted’ on its expiration date unless the contract is extended by mutual agreement, does not affect or operate to waive the separate *status quo ante* rule.”

In *In re City of Reynoldsburg*, SERB 2010-003 (3-30-2010), SERB provided guidance regarding the effect of an established pattern or practice on the status quo ante rule. “When annual changes to a condition of employment are part of an

established pattern or practice, the existence of such changes is, in fact, part of the current situation.” Therefore, as part of the current situation, annual changes to a condition of employment, such as wage increases, must be maintained under the status quo ante rule.

In *In re Clark County Bd of Developmental Disabilities*, 2010-014 (8-19-2010), SERB considered a situation involving the status quo of an annual wage increase where the amount varied from year-to-year. “The mere fact that *the amount* of the annual increase varies somewhat from year to year is without consequence.” (Emphasis added). In that case, SERB found that there was an established pattern of granting a wage increase that included an identifiable fixed factor, which was timing. As a result, the employer was obligated to continue to award increases until the parties either reached a successor agreement or ultimate impasse. “Ultimate impasse” had already been defined as the point at which good-faith negotiations toward reaching an agreement had been exhausted. *In re Vandalia-Butler City School Dist Bd of Ed*, SERB 90-003 (2-9-90) (“*Vandalia-Butler*”), *aff’d sub nom. Vandalia-Butler City School Dist Bd of Ed. v. SERB*, 1990 SERB 4-90 (CP, Montgomery, 10-1-90), *aff’d* 1991 SERB 4-81 (2d Dist Ct App, Montgomery, 8-15-91).

In the case before us, the evidence established that the parties’ CBA required, and the bargaining-unit members always received, automatic annual step increases pursuant to the salary schedule and procedure contained in Articles 25 and 26 of the CBA. In accordance with the established legal precedent cited, *supra*, step increases for years of service and education are annual changes of employment that are part of an established pattern or practice agreed to by both parties in their CBA. The annual increases are part of the current situation, and as such, they must be maintained under the status quo ante rule until the parties reach a successor agreement or until ultimate impasse.

The record reflects that since the expiration of the parties’ CBA, the parties have complied with the provisions of the expired agreement, except for the step and education increases. There is no dispute that, on August 16, 2010, while the parties were still engaged in negotiations for a successor CBA, Respondent passed Resolution 2010-08-34 unilaterally instituting a wage and step freeze for the 2010-2011

school year. There is no dispute that Respondent had not made a last, best, and final offer to the Union, nor had the parties reached ultimate impasse when Respondent passed Resolution 2010-08-34 on August 16, 2010. Moreover, the evidence reflects that the parties continued to conduct negotiations after Respondent passed Resolution 2010-08-34 by meeting for approximately three negotiating sessions.

Therefore, under the holding in *Crestline*, as well as in the line of SERB opinions cited above, we find that Respondent violated O.R.C. § 4117.11(A)(5) when it unilaterally instituted a wage and step freeze during negotiations prior to exhausting the dispute resolution procedure for a successor agreement. With respect to the alleged O.R.C. § 4117.11(A)(1) violation, we note that prior to 2009 SERB considered violations of other O.R.C. § 4117.11(A) sections to carry a “derivative” violation of O.R.C. § 4117.11(A)(1). See, e.g., *In re Amalgamated Transit Union, Local 268*, SERB 93-013 (6-25-93).

The derivative-violation practice was abandoned in *In re Tuscarawas Twp Bd of Trustees*, SERB 2009-001 (8-31-2009) at 3-8, wherein SERB stated:

In addition, we must address the finding of derivative violations since it was mentioned in the Administrative Law Judge’s Proposed Order. In *In re Amalgamated Transit Union, Local 268*, SERB 93-013 (6-25-93), at n.14, the Board stated that a violation of O.R.C. § 4117.11(A)(1) is a derivative violation of O.R.C. § 4117.11(A)(5); the Board also stated that a violation of O.R.C. § 4117.11(B)(1) was not a derivative violation of other violations of O.R.C. § 4117.11(B). This approach appears to hold that each subsection of O.R.C. § 4117.11(A) or (B) does not stand on its own, which is contrary to the expressed language and purpose of O.R.C. Chapter 4117. Therefore, we now expressly reject the previous practice concerning so-called derivative violations in favor of review of each individual charge.

Accordingly, while the evidence clearly established that Respondent’s actions in this case violated O.R.C. § 4117.11(A)(5), we must consider as a separate issue whether Respondent’s actions violated O.R.C. § 4117.11(A)(1). When a violation of O.R.C. § 4117.11(A)(1) is alleged, the appropriate inquiry is an objective one rather than a subjective one. *In re Pickaway County Human Services Dept.*, SERB 93-001 (3-24-93), *aff’d sub nom. SERB v. Pickaway Human Services Dept.*, 1995 SERB 4-46 (4th

Dist. Ct. App., Pickaway, 12-7-95). A violation will be found if, under the totality of the circumstances, it can be reasonably concluded that the employees were interfered with, restrained, or coerced in the exercise of their O.R.C. Chapter 4117 rights by the public employer's conduct. *In re Hamilton County Sheriff*, SERB 98-002 (1-23-98), *aff'd sub nom. Hamilton County Sheriff v. SERB*, No. A98-00714 (Mag. Dec., CP Hamilton, 10-9-98), *aff'd* No. C-990040 (1st Dist Ct App, Hamilton, 8-27-99). In considering the totality of the circumstances presented in this case, we find that Respondent's actions did not interfere with, restrain, or coerce bargaining-unit employees in the exercise of their O.R.C. Chapter 4117 rights in violation of O.R.C. § 4117.11(A)(1).

We now turn to Respondent's argument that it did not have the duty to maintain the status quo ante until the parties reached a successor agreement or until ultimate impasse. First, Respondent argued in its post-hearing brief and its response to exceptions to the Proposed Order that it had statutory authority to implement a unilateral uniform wage reduction pursuant to O.R.C. Chapter 3319, most particularly, O.R.C. § 3319.12.

Respondent's assertion is without merit. O.R.C. § 4117.10(A) unequivocally states that O.R.C. Chapter 4117 prevails over any and all other conflicting laws except as otherwise specified by the Ohio General Assembly. In *State ex rel. Parsons v. Fleming* (1994), 68 Ohio St.3d 509, 513, 628 N.E.2d 1337, the Ohio Supreme Court stated: "Except for laws specifically exempted, the provisions of a collective bargaining agreement entered into pursuant to R.C. Chapter 4117 prevail over conflicting laws." Therefore, since there is no preemption language contained in the sections of O.R.C. Chapter 3319 cited by Respondent and since O.R.C. § 4117.08 mandates that the continuation, modification, or deletion of an existing provision of a collective bargaining agreement is subject to collective bargaining, Respondent was obligated to continue its annual step increase during negotiations for a successor agreement until the parties reached a successor agreement or ultimate impasse.

Respondent also argues in its exceptions to the Proposed Order that SERB should consider whether "exigent circumstances" were present when Respondent acted to unilaterally freeze the salary and steps of bargaining-unit members. We disagree. The principle of "exigent circumstances" within the context of O.R.C. Chapter 4117 is

set forth in *In re Toledo City School Dist Bd. of Ed.* SERB 2001-005 (10-1-01). In that case, SERB determined that the presence of “exigent circumstances,” which *may* allow for the unilateral modification of a collective bargaining agreement, is only applicable to situations that involve mid-term bargaining. “A party cannot modify an *existing* collective bargaining agreement without the negotiation by and agreement of both parties unless immediate action is required due to (1) exigent circumstances that were unforeseen at the time of negotiations[.]” Therefore, since the matter before us does not involve mid-term bargaining, the “exigent circumstances” principle is not applicable.

Finally, we address two arguments put forth by the Administrative Law Judge in her Proposed Order. First, the Administrative Law Judge argues that freezing employee salaries at the rate paid the last year of the expired contract does maintain the status quo ante, and second, she argues that the current legal precedent and governing statutes could result in Respondent being tied to an expired contract whose terms could continue for *ad infinitum*.

With regard to the status quo ante rule, we note that the parties’ CBA, the testimony presented, and applicable legal precedent plainly establish that the status quo ante is to grant annual step increases pursuant to the salary schedule and procedure contained in parties’ expired agreement. This situation is evidenced by the fact that Respondent had to pass a resolution to institute a wage and step freeze for the 2010-2011 school year. Respondent has absolutely no discretion in the matter according to the terms of the contract. A wage freeze deviates from the specific terms of the salary schedule and from the established practice and custom of granting annual step increases. See *In re In re Cuyahoga County Commrs.* SERB 89-006 (3-15-89); *In re City of Circleville*, SERB 2005-007 (10-5-2005); *In re Crestline Exempted Village School Dist Bd of Ed*, SERB 2006-003 (3-21-2006); and *In re City of Reynoldsburg*, SERB 2010-003 (3-30-10).

Additionally, we note that case law has established the fact that the percentage of annual step increases are not fixed for each year of a three-year contract is without significance when determining the status quo ante. See *In re Clark County Bd of Developmental Disabilities*, SERB 2010-014 (8-19-2010), *supra*. In this case, according to Articles 25 and 26 of the parties’ expired CBA, the amount of the base salary would

be fixed at \$32,795.00, with a 2.9% annual percentage increase, *until* such time as the parties reached a successor agreement or ultimate impasse.

With regard to the Administrative Law Judge's concern that Respondent could be tied to an expired contract whose terms could continue *ad infinitum*, it is well established that the status quo ante period exists only until ultimate impasse is reached, and that ultimate impasse is reached under Ohio Administrative Code Rule 4117-9-02(E) when the statutory dispute resolution procedures or a mutually agreed upon dispute resolution procedure is exhausted. Thus, Respondent was under no obligation to maintain the status quo ad infinitum.

The testimony and evidence in the record establish that Respondent failed to honor an express term of the parties' expired collective bargaining agreement prior to exhausting the dispute resolution procedure for a successor agreement.

III. REMEDY

Based upon the foregoing, an Order with a Notice to Employees should be issued ordering the Rootstown School District Board of Education to do the following:

A. Cease and desist from:

Refusing to bargain collectively with the exclusive representative of its employees by unilaterally changing a term of the contract during negotiations that affected the wages of bargaining-unit members by refusing to ward step increases under the Collective Bargaining Agreement, and from otherwise violating Ohio Revised Code § 4117.11(A)(5).

B. Take the following affirmative action:

- (1) Grant step increases to all eligible bargaining-unit members retroactive to dates such raises should have been received;
- (2) Post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Rootstown Education Association, OEA/NEA work, the Notice to Employees furnished by the State Employment Relations Board stating that Rootstown 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

- (3) Notify the State Employment Relations Board via electronic mail within 20 calendar days from the date the **ORDER** becomes final of the steps that have been taken to comply therewith.

IV. CONCLUSION

For the reasons set forth above, we find that the Respondent, Rootstown School District Board of Education violated Ohio Revised Code § 4117.11(A)(5), but not (A)(1), when it unilaterally instituted a wage and step freeze for the 2010-2011 school year prior to exhausting the dispute resolution procedure for a successor agreement. An Order with a Notice to Employees shall be issued to the School District ordering it to cease-and-desist from refusing to bargain collectively with the exclusive representative of its employees by unilaterally changing a term of the contract during negotiations that affected the wages of bargaining-unit members by refusing to ward step increases under the Collective Bargaining Agreement, and from otherwise violating Ohio Revised Code § 4117.11(A)(5); and ordering it to take the following affirmative action: (1) grant step increases to all eligible bargaining-unit members retroactive to dates such raises should have been received; (2) post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Rootstown Education Association, OEA/NEA work, the Notice to Employees furnished by the Board stating that the School District Board of Education shall cease and desist from actions set forth in paragraph (A) therein and shall take the affirmative action set forth in paragraph (B) therein; and (3) notify the Board via electronic mail within 20 calendar days from the date the Order becomes final of the steps that have been taken to comply therewith.

Spada, Vice Chair, and Brundige, Board Member, concur.