

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

City of Green,

Respondent.

Case Number 2012-ULP-11-0301

**ORDER  
(OPINION ATTACHED)**

Before Chair Zimpher, Vice Chair Schmidt, and Board Member Brundige:  
February 20, 2014.

On November 28, 2012, the Green Firefighters Association, IAFF Local 2964 ("Union" or "Intervenor") filed an unfair labor practice charge against the City of Green ("City" or "Respondent"), alleging that the City violated Ohio Revised Code (O.R.C.) §§ 4117.11(A)(1) and (A)(5) by unilaterally reassigning bargaining-unit work to part-time non-bargaining unit employees. On January 31, 2013, the State Employment Relations Board ("SERB," "the Board," or "Complainant") determined that probable cause existed to believe that the City violated O.R.C. §§ 4117.11(A)(1) and (A)(5) when it unilaterally reassigned bargaining-unit work to part-time non-bargaining unit employees, authorized the issuance of a complaint, and directed the matter to hearing.

On March 25, 2013, a complaint was issued and the matter was set for an evidentiary hearing before an Administrative Law Judge. On April 30, 2013, the Union filed a motion to intervene, which was granted pursuant to Ohio Administrative Code Rule 4117-1-07. A hearing was held on June 28, 2013. Subsequently, the parties filed post-hearing briefs. On October 31, 2013, the Administrative Law Judge issued a Proposed Order, recommending that the Board find that the City violated O.R.C. §§ 4117.11(A)(1) and (A)(5) when it unilaterally reassigned bargaining-unit work to part-time non-bargaining unit employees. On November 22, 2013, the City filed exceptions to the Proposed Order. On December 2, 2013, Intervenor and Complainant's Counsel filed separate responses to the City's exceptions to the Proposed Order.

After reviewing the unfair labor practice charge, complaint, answer, Proposed Order, exceptions, responses to exceptions, and all other filings in this case, for the

reasons set forth in the attached Opinion, which is attached hereto and incorporated by reference herein, the Board hereby adopts the Findings of Fact and Conclusions of Law in the Proposed Order, finding that the City of Green violated O.R.C. §§ 4117.11(A)(1) and (A)(5) when it unilaterally reassigned bargaining-unit work to part-time non-bargaining unit employees.

Respondent, City of Green, is hereby ordered to take the following action:

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 unilaterally reassigning bargaining unit work to part-time non-bargaining unit personnel, and from otherwise violating O.R.C. § 4117.11(A)(1).

(2) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by refusing to bargain collectively with the Union by unilaterally reassigning bargaining unit work to part-time non-bargaining unit personnel, in violation of O.R.C. § 4117.11(A)(5).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

(1) Return to the *status quo ante* the bargaining unit work of the full-time firefighters in the City of Green Fire Division prior to October 1, 2012.

(2) Post for 60 days in all of the usual and normal posting locations where bargaining unit members represented by the Union work, the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board stating that the City of Green shall cease and desist from the action set forth in paragraph (A) above.

(3) Notify the State Employment Relations Board in writing within twenty (20) calendar days from the date the order becomes final on the steps that have been taken to comply therewith.

It is ordered.

ZIMPHER, Chair, SCHMIDT, Vice Chair, and BRUNDIGE, Board Member, concur.

  
\_\_\_\_\_  
W. 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, 12<sup>th</sup> 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 20<sup>th</sup> day of February 2014.



---

ERIN E. CONN, 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 an evidentiary hearing in which all parties had an opportunity to present evidence, the State Employment Relations Board has determined that the City of Green has violated the law and has ordered City of Green to post this notice. The City of Green intends to carry out the order of the State Employment Relations Board and to do 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 unilaterally reassigning bargaining unit work to part-time non-bargaining unit personnel, and from otherwise violating O.R.C. § 4117.11(A)(1).
- (2) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by refusing to bargain collectively with the Union by unilaterally reassigning bargaining unit work to part-time, non-bargaining unit personnel, in violation of O.R.C. § 4117.11(A)(5).

**B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:**

- (1) Return to the *status quo ante* the bargaining unit work of the full-time firefighters in the City of Green Fire Division prior to October 1, 2012.
- (2) Post for 60 days in all of the usual and normal posting locations where bargaining unit members represented by the Union work, the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board stating that the City of Green shall cease and desist from the action set forth in paragraph (A) above.
- (3) Notify the State Employment Relations Board in writing within twenty (20) calendar days from the date the order becomes final on the steps that have been taken to comply therewith.

**SERB v. CITY OF GREEN**

**Case No. 2012-ULP-11-0301**

\_\_\_\_\_  
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.

City of Green,

Respondent.

Case Number 2012-ULP-11-0301

**OPINION**

Zimpher, Chair:

This matter comes before the State Employment Relations Board (“the Board” “SERB” or “Complainant”) upon the issuance of the Administrative Law Judge’s Proposed Order in the above-referenced case. The City of Green (“City”) filed exceptions to the Proposed Order and the Green Firefighters Association, IAFF Local 2964 (“Union” or “Intervenor”) and Counsel for Complainant filed responses to the exceptions. For the reasons set forth below, we find that the City of Green violated Ohio Revised Code (“O.R.C.”) §§ 4117.11(A)(1) and (A)(5) when it unilaterally assigned bargaining unit work performed exclusively by full-time firefighters to part-time non-bargaining unit firefighters.

**I. BACKGROUND**

Prior to June 2001, the parties’ collective bargaining agreements (CBAs) contained references to using non-bargaining unit, part-time employees in the City’s Fire Department. As the City moved from a combination part-time and full-time firefighter staff to an exclusively full-time firefighter staff, the parties agreed to delete the references to the use of part-time employees. As of June 2001, the City’s Fire Department has been staffed exclusively with full-time firefighter/paramedics (“firefighters”) and the emergency response and related safety-service work performed in the City’s Fire Division has been performed exclusively by full-time bargaining unit members since that time.

Since April 1, 2001, the parties' CBAs have contained a minimum staffing clause that requires the City's Fire Department to be staffed each shift by full-time bargaining unit members to meet minimum staffing requirements of ten on-duty, full-time firefighters.

In 2010 and 2011, the parties negotiated a successor CBA. The City's labor negotiator, Michael Esposito, and former fire chief, Robert Calderone, represented the City during negotiations. During the first bargaining session, the City presented the Union with several proposals to modify the CBA, including proposals to delete the full-time firefighter minimum staffing level in Article 20 and add language that would allow the City to establish part-time firefighter positions. As the first bargaining session concluded, the City handed the Union a "Notice of Intent," wherein the City announced its intent: "to establish and utilize part-time firefighter/medics to assist in avoiding overtime, covering time off, meeting its service needs, and performing duties that it otherwise determines necessary." The "Notice of Intent" was not a bargaining proposal and the City considered the reintroduction of part-time firefighters in the Fire Division a separate issue from using part-time firefighters to meet the minimum staffing level.

The parties discussed the use of part-time personnel at various times during the 2010-2011 negotiations. The City remained focused on its initial proposal to eliminate the minimum staffing level of full-time bargaining unit members in order to use part-time personnel to reduce overtime costs. The parties proceeded to fact finding on eleven unresolved issues, including the issue of eliminating the minimum full-time staffing clause and the use of part-time personnel for staffing.

The City's proposal at fact finding was to eliminate minimum full-time staffing language in the CBA and add language to allow the City to establish part-time firefighter positions. In rejecting the City's proposal, the fact finder addressed the City's concerns regarding overtime costs by recommending the City utilize dayshift personnel on their regularly scheduled work hours to meet the minimum staffing requirements in the parties' CBA, and reduce the on-duty, full-time staffing level from ten to nine. The City rejected the fact finding report and the parties proceeded to conciliation.

At conciliation, the City abandoned its proposal to add language to the contract that would eliminate the minimum full-time staffing level and allow the use of part-time personnel. Instead, the City, in its final offer, proposed that the minimum full-time staffing level be reduced from ten to nine in specified circumstances. The parties participated in mediation and were able to resolve all outstanding issues, except for

health insurance. The parties' agreement regarding Article 20, Section 5 allows the City to reduce the on-duty, full-time staffing level from ten to nine in certain circumstances; there is no language in the parties' CBA that allows the City to use part-time personnel. The parties signed a tentative agreement that resolved, *inter alia*, the full-time minimum staffing/part-time personnel issue on October 18, 2011.

The Conciliator's Final Offer Settlement Award was issued on November 7, 2011. On July 18, 2012, the City's former fire chief, Robert Calderone, issued a memorandum announcing that the City "...will begin using part-time fire medics to supplement our response shift staffing in the very near future...." The Union immediately requested to bargain the issue. The City refused to bargain. In October 2012, the City hired part-time firefighters to perform emergency response work.

## II. DISCUSSION

The sole issue in this case is whether the City violated O.R.C. §§ 4117.11(A)(1) and (A)(5) by unilaterally assigning bargaining unit work performed exclusively by full-time firefighters to part-time non-bargaining unit firefighters.

O.R.C. § 4117.11 states, in relevant part:

(A) It is an unfair labor practice for a public employer, its agents or representatives to:

(1) Interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117 of the Ohio Revised Code or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

\*\*\*

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

\*\*\*

The Board agrees with the Administrative Law Judge's conclusion that the evidence contained in the record establishes that the City violated O.R.C. §§ 4117.11(A)(1) and (A)(5) when it unilaterally assigned bargaining unit work performed exclusively by full-time firefighters to part-time non-bargaining unit firefighters. We take this opportunity to review the case law regarding this issue.

We begin by noting that in its Exceptions to the Proposed Order, the City relies on *SERB v. Youngstown City School Dist. Bd. of Ed.*, SERB 95-010 to argue that its decision to assign bargaining unit work to non-bargaining unit part-time employees is entirely within its management rights under O.R.C. § 4117.08(C). The analysis to determine whether a subject is a mandatory subject of bargaining set forth in *Youngstown* is inapplicable in this case. The controlling case in this matter is *Lorain City School Dist. Bd. of Educ. v. State Employment Relations Board*, 40 Ohio St.3d 257 (1988). In *Lorain*, the Ohio Supreme Court held that the reassignment of bargaining unit work to non-bargaining unit employees is a mandatory subject of bargaining under O.R.C. § 4117.08. The Court addressed this issue as follows:

...[a] review of the letter and intent of R.C. 4117.08, as well as the case law, demonstrates that SERB correctly concluded that the reassignment of bargaining unit work to non-bargaining unit persons is a mandatory subject of bargaining. The elimination of bargaining unit work comes within the meaning of “terms and conditions of employment.”

Therefore, we hold that public employer must bargain with its employees regarding a management decision to the extent that such decision “affects wages, hours, terms and conditions of employment.” Thus, *the reassignment of work previously performed by members of a bargaining unit to persons outside the unit is a mandatory subject for collective bargaining under R.C. 4117.08(A) and (C)*. Contrary to the appellee’s admonitions, this does not mean that management rights would be abrogated. Requiring appellee to bargain does not require that an agreement be reached. It does, however, provide a process whereby employees will be consulted about decisions which have a profound impact on them and, thus, industrial peace will be preserved and promoted. [Emphasis added.]

*Id.* at 262

SERB has consistently followed *Lorain*. See *In re City of Akron*, SERB 99-014 (6-24-99) (“it is the unilateral ‘reassignment of work previously performed by members of a bargaining unit,’ not the erosion of the bargaining unit, that violates O.R.C. §§ 4117.11(A)(1) and (A)(5)”), citing *Lorain*; *In re Brookfield Local School Dist Bd of Ed*, SERB 2008-006 (11-18-2008) (“the Ohio Supreme Court held at Syllabus 3: ‘The reassignment of work previously performed by members of a bargaining unit to persons

outside the unit is a mandatory subject for collective bargaining under RC 4117.08(A) and (C).’ A subject of bargaining is not rendered less than mandatory under *Lorain* due to an employer’s alleged financial exigencies”); *SERB v. Canton School Dist Bd of Ed*, SERB HO 1995-HO-010 (11-23-94), syllabus (“reassignment of bargaining unit work to non-bargaining unit employees is a mandatory subject of bargaining under RC 4117.08(A) and 4117.08(C); clearly, exclusive performance of certain work by bargaining unit employees for a full year gives rise to an obligation on the employer’s part to bargain before transferring the work outside the unit”).

The City further argues that the evidence presented at the hearing failed to establish that there was a reassignment of work previously done by the bargaining unit employees, as required by *Lorain*. Contrary to the City’s assertion, the evidence contained in the record is sufficient to support the conclusion that the City did reassign work previously performed exclusively by the full-time firefighters’ bargaining unit members to non-bargaining unit personnel. The testimony of the City’s former fire chief and the testimony of Firefighter Matthew Craddock established that emergency response and related safety-service work performed in the City’s Fire Division has been performed exclusively by the Union’s full-time bargaining unit members from June 2001 until October 1, 2012, when the City began to use part-time, non-bargaining unit firefighters to perform emergency response work. The Union submitted a copy of a memorandum from Lt. H. Wilson that contains the work schedule of part-time, non-bargaining unit personnel in the Fire Division. Captain Jeff Funai testified that he was responsible for training the part-time, non-bargaining unit personnel and he stated that these part-time employees are performing the emergency response work previously performed exclusively by the Union’s bargaining unit members. The City did not rebut any of this evidence.

The City also argues that the evidence demonstrates that the City “thoroughly bargained” the use of part-time personnel during the parties’ contract negotiations. We disagree. A review of the testimonial and documentary evidence reveals that the City did not bargain with the Union regarding the employment of part-time personnel to supplement the full-time emergency response shift staffing in the Fire Division. Although the City provided a “Notice of Intent” regarding the use of part-time personnel at the beginning of negotiations, the City indicated that the “Notice of Intent” was not a proposal. During his testimony, the City’s former fire chief explained that the “Notice of Intent” was not a bargaining proposal and that the City considered eliminating minimum staffing for full-time bargaining unit members and instead utilizing part-time non-bargaining unit employees a separate issue from hiring part-time employees to

supplement existing full-time minimum staffing. The former fire chief acknowledged that he did not make this distinction clear to the Union's bargaining team during negotiations.

With regard to the City's bargaining proposals on the subject of part-time personnel, it is important to note that the City's proposals were always made in conjunction with the City's goal to eliminate the minimum staffing level of full-time bargaining unit members. The parties proceeded to fact finding on eleven unresolved issues, including the minimum staffing clause/part-time personnel issue. The City's proposal at fact finding was to eliminate the minimum full-time staffing language in the CBA and add language to allow the City to establish part-time fire/medics in the Fire Division. In rejecting the City's proposal, the fact finder addressed the City's concerns regarding overtime costs by recommending the City utilize dayshift personnel on their regularly scheduled work hours to meet the minimum staffing requirements in Article 20 and reduce on-duty full-time staffing to nine. The City rejected the fact finding report and the parties proceeded to conciliation.

Conciliation hearings were held on October 18, 2011 and October 21, 2011. The parties requested that the conciliator mediate the outstanding issues on October 18<sup>th</sup>, and that day was devoted to mediation. The parties were able to resolve all outstanding issues, except for health insurance. The City's labor negotiator testified that at conciliation the City abandoned its proposal to eliminate the CBA's full-time minimum staffing and did not pursue adding language to the contract regarding the use of part-time personnel. Instead, the City proposed that the full-time minimum staffing level be reduced from ten to nine in certain circumstances. The parties signed a tentative agreement that changed the language in Article 20, Section 5 to allow the City to reduce the full-time minimum staffing level from ten to nine under specified circumstances.

Based on the parties' October 18, 2011 agreement, the Union considered the issue of the use of part-time personnel resolved at conciliation. However, on July 18, 2012, the City's former fire chief issued a memorandum announcing that the City "...will begin using part-time fire medics to supplement our response shift staffing in the very near future...." The Union requested to bargain the issue. The City refused to bargain. In October 2012, the City hired part-time firefighters to perform emergency response work.

Lastly, the City argues that Green City Ordinance 242.01 authorizes the use of part-time employees and takes precedence over the collective bargaining laws contained in O.R.C. Chapter 4117. The City's argument is not well-taken.

The City cannot use Green City Ordinance 242.01 to circumvent its duty to bargain under O.R.C. Chapter 4117. O.R.C. § 4117.10(A) expressly states that “[t]his chapter prevails over any and all other conflicting laws, resolutions, provisions, present or future, except as otherwise specified in this chapter or as otherwise specified by the general assembly.” In *City of Kettering v. SERB* (1986), 26 Ohio St.3d 50, the Ohio Supreme Court determined that the concerns addressed in O.R.C. Chapter 4117 are of statewide concern and the provisions of this chapter prevail over any conflicting laws or ordinances of a municipal corporation. See also *Franklin County Law Enforcement Ass’n v. Fraternal Order of Police, Capital City Lodge No. 9* (1991), 59 Ohio St. 3d 167, 170.

Pursuant to O.R.C. § 4117.08(A), all matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the public employer and the exclusive representative. As noted above, case law has established that the reassignment of work exclusively performed by bargaining unit employees to non-bargaining unit employees affects terms and conditions of employment and therefore is a mandatory subject of bargaining under O.R.C. § 4117.08. *Lorain, supra* at 262. The evidence established that the City did not bargain the reassignment of bargaining unit work performed exclusively by full-time firefighters to part-time non-bargaining unit firefighters. The City’s refusal to bargain constitutes a violation of both O.R.C. §§ 4117.11(A)(1) and (A)(5). *Id.*

It is important to note that SERB’s decision in this case does not render the management rights set forth in O.R.C. § 4117.08(C) meaningless, as the City contends. Rather, this decision reaffirms legal precedent that O.R.C. Chapter 4117 requires all public employers and employee organizations to bargain in good faith regarding mandatory subjects of bargaining. The duty to bargain in good faith does not require that the parties reach an agreement; rather, it requires that the parties engage in meaningful discussions regarding clearly defined proposals. See *SERB v. Akron City School Dist Bd of Ed*, 1994 SERB 4-5 (3-3-94); See also *Lorain, supra* at 262.

### III. CONCLUSION

Based on the foregoing, we conclude that that the City violated O.R.C. §§ 4117.11(A)(1) and (A)(5) when it unilaterally assigned bargaining unit work performed exclusively by full-time firefighters to part-time non-bargaining unit firefighters. A cease

and desist order with a Notice to Employees shall be issued to the City of Green as follows:

Respondent, City of Green is hereby 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 unilaterally reassigning bargaining unit work to part-time non-bargaining unit personnel, and from otherwise violating O.R.C. § 4117.11(A)(1).

(2) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by refusing to bargain collectively with the Union by unilaterally reassigning bargaining unit work to part-time non-bargaining unit personnel, in violation of O.R.C. § 4117.11(A)(5).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

(1) Return to the *status quo ante* the bargaining unit work of the full-time firefighters in the City of Green Fire Division prior to October 1, 2012.

(2) Post for 60 days in all of the usual and normal posting locations where bargaining unit members represented by the Union work, the NOTICE TO EMPLOYEES furnished by the State Employment Relations Board stating that the City of Green shall cease and desist from the action set forth in paragraph (A) above.

(3) Notify the State Employment Relations Board in writing within twenty (20) calendar days from the date the order becomes final on the steps that have been taken to comply therewith.

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

# SERB

"Promoting Orderly and Constructive  
Labor Relations Since 1984"

**State  
Employment  
Relations  
Board**



65 East State Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215-4213  
Phone 614.644.8573  
Fax 614.466.3074  
[www.serb.state.oh.us](http://www.serb.state.oh.us)

W. Craig Zimpher, Chair  
Aaron A. Schmidt, Vice Chair  
N. Eugene Brundige, Board Member

John R. Kasich, Governor

Christine A. Dietsch, Executive Director

*State Employment Relations Board v. City of Green*  
SERB Case No. 2012-ULP-11-0301

## CERTIFICATION

I, the undersigned General Counsel for the State Employment Relations Board, hereby certify that the attached document is a true and exact reproduction of the original Order of the State Employment Relations Board entered on its journal, on the 20<sup>th</sup> day of February, 2014.

\_\_\_\_\_  
DONALD M. COLLINS  
General Counsel