

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

and

Portage County Educators Association
for Developmental Disabilities – Unit B

Respondent.

Case Nos. 2017-ULP-10-0176, 2017-ULP-10-0193, 2017-ULP-10-0194, 2017-ULP-10-0195, 2017-ULP-10-0196, 2017-ULP-10-0197, 2017-ULP-10-0198

ORDER
(OPINION ATTACHED)

Before Chair Zimpher, Vice Chair Schmidt, and Board Member Lumpe: May 3, 2018.

In October 2017, Portage County Board of Developmental Disabilities (“Charging Party” or “Intervenor” or “Employer”) filed the above referenced unfair labor practice charges against the Portage County Educators Association for Developmental Disabilities – Unit B (“Association” or “Respondent”), alleging that the Association violated Ohio Revised Code (“O.R.C.”) §§ 4117.11(B)(7) and (B)(8) by inducing or encouraging picketing Employer’s residence or business and picketing or striking without a ten (10) day written notice.

On March 22, 2018, the State Employment Relations Board (“Board” or “Complainant”) found probable cause to believe that the Association had committed or was committing unfair labor practices by inducing or encouraging picketing of the Employer’s Board members’ residences and/or places of employment in violation of O.R.C. §4117.11(B)(7); consolidated the cases; authorized the issuance of a complaint; and referred the matters to hearing.

On April 12, 2018, the parties filed their stipulations and briefs. The parties agreed to waive any evidentiary hearing in these matters.

After considering the unfair labor practice charges, the parties’ stipulations and briefs, and the entirety of the information contained in the record, the Board, for the reasons set forth in the attached Opinion, *incorporated herein by reference*, finds that

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Portage County Educators Association for Developmental Disabilities – Unit B violated Ohio Revised Code § 4117.11(B)(7) when it induced or encouraged its members to picket the private residences of six members of the Portage County Board of Developmental Disabilities in connection with a labor relations dispute and when it induced or encouraged its members to picket the place of private employment of one member of the Portage County Board of Developmental Disabilities in connection with a labor relations dispute.

Portage County Educators Association for Developmental Disabilities – Unit B, is hereby **ORDERED** to take the following action:

A. CEASE AND DESIST FROM:


- (1) Inducing or encouraging 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;

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) That the Association post the attached “Notice to Employees”, furnished by SERB, which states that the Association shall cease and desist from actions set forth in paragraph (A) and states that the Association shall take the affirmative actions set forth in paragraph (B). Further, this “Notice” shall be posted for 60 consecutive calendar days in all the usual and customary locations; and
- (2) Notify SERB in writing within 20 calendar days from the date the Order becomes final of the steps that have been taken to comply herewith.

It is so **ORDERED**.

ZIMPHER, Chair, SCHMIDT, Vice Chair, and LUMPE, 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, on this 3rd day of May, 2018.



ERIN E. CONN, BOARD CLERK

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OPINION

ZIMPHER, Chair

These unfair labor practice cases come before the State Employment Relations Board (“SERB”) on joint stipulations and the legal briefs of SERB, Intervenor, Portage County Board of Developmental Disabilities (“the DD Board”), and Respondent, Portage County Educators Association for Developmental Disabilities – Unit B (“the Association”). The parties waived their opportunity to attend Oral Argument before the full SERB Board in these matters. Alternatively, the parties chose to have these cases heard on the extant records, including on the Joint Stipulations and the briefs of the parties. For the reasons set forth below, we find that the Association violated O.R.C. § 4117.11(B)(7) by inducing and/or encouraging picketing outside the private residences of the DD Board members and also by inducing and/or encouraging picketing outside of the place of private employment of a DD Board member.

I. JOINT STIPULATIONS

The Board adopts the parties’ joint stipulations of fact, which are set forth below:

1. The Portage County Board of Developmental Disabilities is a “public employer” as defined by O.R.C. § 4117.01(B).

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2. The Portage County Educators Association for Developmental Disabilities, Unit B, OEA/NEA is an "employee organization" as defined by O.R.C. § 4117.01(D) and is the exclusive representative for all Service and Support Administrators as defined in O.R.C. §5126.15 and O.A.C. §5123:2-1-11.

3. On October 10, 2017, the DD Board filed an unfair labor practice charge with SERB, pursuant to and in accordance with O.R.C. §4117.12(B) and O.A.C. Rule 4117-7-01, alleging the Association had violated O.R.C. §§4117.11(B)(7) and (B)(8) (2017-ULP-10-0176).

4. On October 30, 2017, the DD Board filed an unfair labor practice charge with SERB, pursuant to and in accordance with O.R.C. §4117.12(B) and O.A.C. Rule 4117-7-01, alleging the Association had violated O.R.C. §§4117.11(B)(7) and (B)(8) (2017-ULP-10-0193).

5. On October 30, 2017, the DD Board filed an unfair labor practice charge with SERB, pursuant to and in accordance with O.R.C. §4117.12(B) and O.A.C. Rule 4117-7-01, alleging the Association had violated O.R.C. §§4117.11(B)(7) and (B)(8) (2017-ULP-10-0194).

6. On October 30, 2017, the DD Board filed an unfair labor practice charge with SERB, pursuant to and in accordance with O.R.C. §4117.12(B) and O.A.C. Rule 4117-7-01, alleging the Association had violated O.R.C. §§4117.11(B)(7) and (B)(8) (2017-ULP-10-0195).

7. On October 30, 2017, the DD Board filed an unfair labor practice charge with SERB, pursuant to and in accordance with O.R.C. §4117.12(B) and O.A.C. Rule 4117-7-01, alleging the Association had violated O.R.C. §§4117.11(B)(7) and (B)(8) (2017-ULP-10-0196).

8. On October 30, 2017, the DD Board filed an unfair labor practice charge with SERB, pursuant to and in accordance with O.R.C. §4117.12(B) and O.A.C. Rule 4117-7-01, alleging the Association had violated O.R.C. §§4117.11(B)(7) and (B)(8) (2017-ULP-10-0197).

9. On October 30, 2017, the DD Board filed an unfair labor practice charge with SERB, pursuant to and in accordance with O.R.C. §4117.12(B) and O.A.C. Rule 4117-7-01, alleging the Association had violated O.R.C. §§4117.11(B)(7) and (B)(8) (2017-ULP-10-0198).

10. On March 22, 2018, SERB determined that probable cause existed for believing the Association had committed or was committing unfair labor practices by inducing or encouraging picketing of the DD Board members' residences and/or places of employment in violation of O.R.C. §4117.11(B)(7); consolidated case numbers 2017-ULP-10-0176, 2017-ULP- 10-0193, 2017-ULP-10-0194, 2017-ULP-10-0195, 2017-ULP-10-0196, 2017-ULP-10-0197, and 2017-ULP-10-0198; authorized the issuance of a complaint; and referred the matter to hearing. SERB dismissed all other aspects of the charge, including the O.R.C. §4117.11(B)(8) allegations, for lack of probable cause.

11. The DD Board and the Association were parties to a collective bargaining agreement effective from September 1, 2013 through August 31, 2016 ("Agreement"). The Agreement contained a grievance procedure that culminated in final and binding arbitration.

12. On or about September 28, 2016, the parties began negotiations for a successor agreement.

13. On or about March 30, 2017, the parties entered into mediation.

14. On or about October 4, 2017, the DD Board declared an impasse to negotiations pursuant to Article 2(D)(3) of the parties' Agreement.

15. On or about September 15, 2017, SERB received a Notice of Intent to Strike or Picket and the Association went on strike and began picketing on or about October 4, 2017. The strike concluded on or about November 27, 2017.

16. On or about November 28, 2017, the parties entered into a successor agreement effective from September 1, 2017 through August 31, 2020.

17. Michelle Sahr is a member of the DD Board, a public official and a representative of the DD Board. Ms. Sahr is also the owner of the Honey Gold, Co. dba "Off the Wagon." Therefore, "Off the Wagon" is a place of private employment for Ms. Sahr.

18. On or about October 5, 2017, members of the Association engaged in picketing relating to the successor contract negotiations, a labor relations dispute, on a public sidewalk outside of Ms. Sahr's place of private employment "Off the Wagon."

19. The Association members who engaged in the October 5, 2017 picketing on a public sidewalk outside "Off the Wagon" did so under the inducement and/or encouragement of the Association.

20. The members of the Association who engaged in the picketing mentioned in paragraph 18 were aware that "Off the Wagon" was a place of private employment for Ms. Sahr.

21. Ms. Sahr's residence is located in Kent, Ohio.

22. On or about October 24, 2017, members of the Association engaged in picketing relating to the successor contract negotiations, a labor relations dispute, on a public street in front of Ms. Sahr's residence.

23. The Association members who engaged in the October 24, 2017 picketing on a public street in front of Ms. Sahr's residence did so under the inducement and/or encouragement of the Association.

24. The members of the Association who engaged in the picketing mentioned in paragraph 22 were aware that they were doing so on a public street in front of Ms. Sahr's residence.

25. Ralph Kletzein is a member of the DD Board, a public official and a representative of the DD Board.

26. Mr. Kletzein's residence is in Kent, Ohio.

27. On or about October 8, 14, and 16, 2017, members of the Association engaged in picketing relating to the successor contract negotiations, a labor relations dispute, on a public street in front of Mr. Kletzein's residence.

28. The Association members who engaged in the October 8, 14, and 16, 2017 picketing on a public street in front of Mr. Kletzein's residence did so under the inducement and/or encouragement of the Association.

29. The members of the Association who engaged in the picketing mentioned in paragraph 27 were aware that they were doing so on a public street in front of Mr. Kletzein's residence.

30. Carol Fruscella is a member of the DD Board, a public official and a representative of the DD Board.

31. Ms. Fruscella's residence is in Streetsboro, Ohio.

32. On or about October 17, 2017, members of the Association engaged in picketing relating to the successor contract negotiations, a labor relations dispute, on a public sidewalk and/or street in front of Ms. Fruscella's residence.

33. The Association members who engaged in the October 17, 2017 picketing on a public sidewalk and/or street in front of Ms. Fruschella's residence did so under the inducement and/or encouragement of the Association.

34. The members of the Association who engaged in the picketing mentioned in paragraph 32 were aware that they were doing so on a public sidewalk and/or street in front of Ms. Fruscella's residence.

35. Tim Moran is a member of the DD Board, a public official and a representative of the DD Board.

36. Mr. Moran's residence is in Kent, Ohio.

37. On or about October 16, 2017, members of the Association engaged in picketing relating to the successor contract negotiations, a labor relations dispute, on a public sidewalk in front of Mr. Moran's residence.

38. The Association members who engaged in the October 16, 2017 picketing on a public sidewalk in front of Mr. Moran's residence did so under the inducement and/or encouragement of the Association.

39. The members of the Association who engaged in the picketing mentioned in paragraph 37 were aware that they were doing so on a public sidewalk in front of Mr. Moran's residence.

40. Cheri Michael is a member of the DD Board, a public official and a representative of the DD Board.

41. Ms. Michael's residence is in Rootstown, Ohio.

42. On or about October 25, 2017, members of the Association engaged in picketing relating to the successor contract negotiations, a labor relations dispute, on a public sidewalk across the street from Ms. Michael's residence.

43. The Association members who engaged in the October 25, 2017 picketing on a public sidewalk across the street from Ms. Michael's residence did so under the inducement and/or encouragement of the Association.

44. The members of the Association who engaged in the picketing mentioned in paragraph 42 were aware that they were doing so on a public sidewalk across the street from Ms. Michael's residence.

45. John Gargan is a member of the DD Board, a public official and a representative of the DD Board.

46. Mr. Gargan's residence is in Kent, Ohio.

47. On or about October 19, 2017, members of the Association engaged in picketing relating to the successor contract negotiations, a labor relations dispute, on a public sidewalk in front of Mr. Gargan's residence.

48. The Association members who engaged in the October 19, 2017 picketing on a public sidewalk in front of Mr. Gargan's residence did so under the inducement and/or encouragement of the Association.

49. The members of the Association who engaged in the picketing mentioned in paragraph 47 were aware that they were doing so on a public sidewalk in front of Mr. Gargan's residence.

50. The parties agree to waive any evidentiary hearing in these matters and to submit these cases on Briefs and these Joint Stipulations of Fact. Additionally, since the parties have entered into mutually agreed upon stipulations and no issues of fact remain, the parties have agreed to stipulate the cases directly to SERB.

II. DISCUSSION

The sole issue before SERB in these cases is whether the Association violated O.R.C. § 4117.11(B)(7) by inducing and/or encouraging picketing outside the private residences of the DD Board members and by inducing and/or encouraging picketing outside of the place of private employment of one DD Board member.

O.R.C. § 4117.11(B)(7) provides, in relevant part:

(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;

When a violation of O.R.C. 4117.11(B)(7) is alleged, it is the burden of the Complainant to prove, by a preponderance of the evidence, that an unfair labor practice has occurred. O.R.C. 4117.12 (B)(3). In the instant cases, SERB's inquiry is a simple one: did the Association induce and/or encourage picketing of the private residences and a place of private employment of the members of the Board of DD?

In the joint stipulations of fact accepted by SERB, the Association admits that it induced and/or encouraged its members to picket the private residences of various DD Board members. (Joint Stipulations 23, 28, 33, 38, 43, 48) The Association also admits, therein, that it induced and/or encouraged its members to picket the place of private employment of a member of the DD Board. (Joint Stipulation 19) Thus, SERB may reasonably find that the Association violated O.R.C. 4117 (B)(7) on at least seven occasions (six through improperly picketing personal residence and one through improperly picketing a place of private employment) and may reasonably issue a corresponding remedy.

Based on the clear violations that have occurred, it is neither necessary nor appropriate for SERB to consider any issue relating to the constitutionality of the narrow prohibitions set forth in O.R.C. 4117.11 (B)(7). First, SERB notes that neither the general provisions of Ohio's Public Employee Collective Bargaining Act (O.R.C. 4117) nor the specific provisions of SERB's enabling act (O.R.C. 4117.02) authorize SERB to review and make a determination on the constitutionality of any statute. Therefore, even wading into a constitutional discussion regarding provisions of O.R.C. 4117 would be both an imprudent and improvident focus for SERB.

Pertinent case law further relieves SERB of the need to decide upon the constitutionality of any provision in O.R.C. 4117. "It is settled that an administrative agency is without jurisdiction to determine the constitutional validity of a statute." *State*,

ex rel. Columbus Southern Power Co., v. Sheward, 63 Ohio St.3d 78, 81, 585 N.E.2d 380, 382 (1992) (further citations omitted).

Moreover, when the Ohio General Assembly chooses to create and empower a quasi-judicial agency body, the General Assembly does so in part to relieve the Courts of Ohio of the untenable burden to deciding administrative appeals in the first instance. *Application of Milton Hardware Co.*, 19 Ohio App.2d 157, 165 (10th Dist.1969). This allows those courts to concentrate their valuable resources specifically on cases of original jurisdiction.

Quasi-judicial bodies were never intended to substitute for the Courts in Ohio. *Ohio Fresh Eggs, L.L.C. v. Boggs*, 183 Ohio App.3d 511, 518 (2009). See, also, O.R.C. § 119.12 (L) – (N). They *were and are* intended to provide the parties to an action with a final initial decision issued by a subject matter expert in a reasonable amount of time.

Thus, quasi-judicial bodies were created to serve as an administrative convenience. They were neither intended to make laws, which is the province of the General Assembly, nor review the constitutionality of laws, which is the province of the Courts of Ohio. For SERB, then, to engage in a constitutional argument would be, at best, counterproductive and, at worst, an overreach regarding SERB's authority and mission. Moreover, as it is SERB's responsibility to administer the law, we are mindful that laws enacted by the General Assembly enjoy, per O.R.C. § 1.47, constitutional validity.

III. REMEDY

Based on the foregoing, an Order with a Notice to Employees will be issued ordering the Portage County Educators Association for Developmental Disabilities – Unit B to take the following actions:

A. CEASE AND DESIST FROM:

- (1) Inducing or encouraging 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;

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) That the Association post the attached "Notice to Employees", furnished by SERB, which states that the Association shall cease and desist from actions set forth in paragraph (A) and states that the Association shall take the

affirmative actions set forth in paragraph (B). Further, this "Notice" shall be posted for 60 consecutive calendar days in all the usual and customary locations; and

- (2) Notify SERB in writing within 20 calendar days from the date the Order becomes final of the steps that have been taken to comply herewith.

IV. CONCLUSIONS OF LAW

1. The Portage County Board of Developmental Disabilities is a "public employer" as defined in O.R.C. § 4117.01(B).
2. The Portage County Educators Association for Developmental Disabilities – Unit B is an "employee organization" as defined in O.R.C. § 4117.01(D) and is the exclusive representative for the all Service and Support Administrators as defined in § O.R.C. 5126.15 and O.A.C. 5123:2-1-11.
3. The Portage County Educators Association for Developmental Disabilities – Unit B violated O.R.C. § 4117.11(B)(7) when it induced or encouraged 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 Portage County Board of Developmental Disabilities.

V. DETERMINATION

For the reasons stated above, we find that the Portage County Educators Association for Developmental Disabilities – Unit B violated Ohio Revised Code § 4117.11(B)(7) when it when it induced or encouraged its members to picket the private residences of six members of the Portage County Board of Developmental Disabilities in connection with a labor relations dispute and when it induced or encouraged its members to picket the place of private employment of one member of the Portage County Board of Developmental Disabilities in connection with a labor relations dispute. A Cease and Desist Order with a Notice to Employees shall be issued to the Portage County Educators Association for Developmental Disabilities – Unit B ordering it to take the actions set forth in the Remedy section of this Opinion.

Zimpher, Chair, Schmidt, Vice Chair, and Lumpe, Board Member, concur.



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

The State Employment Relations Board ("SERB") has determined that Portage County Educators Association for Developmental Disabilities – Unit B ("Association") has violated the law and has ordered the Association to post this notice. The Association intends 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 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;

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Post for 60 consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees represented by the Portage County Educators Association for Developmental Disabilities – Unit B work, this Notice to Employees furnished by the State Employment Relations Board stating that the Association shall cease and desist from actions set forth in paragraph (A) and states that the Association shall take the affirmative actions set forth in paragraph (B); and
- (2) Notify the State Employment Relations Board in writing within 20 days from the date the Order becomes final of the steps that have been taken to comply herewith.

SERB v. Portage County Educators Association for Developmental Disabilities – Unit B
Case Nos. 2017-ULP-10-0176, 2017-ULP-10-0193, 2017-ULP-10-0194, 2017-ULP-10-0195,
2017-ULP-10-0196, 2017-ULP-10-0197, 2017-ULP-10-0198

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