

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD
2008 DEC -3 A 11: 37

In the Matter of

State Employment Relations Board,

Complainant,

v.

Amalgamated Transit Union Local 268,

Respondent.

Case No. 2005-ULP-12-0680

ORDER
(OPINION ATTACHED)

Before Chairperson Brundige, Vice Chairperson Verich, and Board Member Spada: November 6, 2008.

On December 30, 2005, William H. Nix filed an unfair labor practice charge against the Amalgamated Transit Union Local 268 ("the Union"), alleging that the Union violated Ohio Revised Code ("O.R.C.") § 4117.11(B)(1), (2), and (6) by restraining or coercing employees in the exercise of guaranteed rights, causing or attempting to cause the Employer to interfere with the employees' rights, and failing to represent all of the employees in the bargaining unit. This charge was dismissed on March 16, 2006, by the State Employment Relations Board ("the Board" or "Complainant"), but subsequently reinstated after reconsideration was granted.

Also, on December 30, 2005, Mr. Nix filed an unfair labor practice charge against the Greater Cleveland Regional Transit Authority ("GCRTA") in Case No. 2005-ULP-12-0681, alleging that GCRTA violated O.R.C. § 4117.11(A)(1), (2), and (8) by interfering with the rights of the bargaining-unit employees in the exercise of guaranteed rights, interfering with the formation of the Union, and attempting to cause the Union to violate the statute. On November 9, 2006, the Board found probable cause to believe that the Union violated O.R.C. §§ 4117.11(B)(1), (B)(2), and (B)(3) and that GCRTA violated O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(8).

A complaint was issued on April 10, 2007. An amended complaint was issued on June 7, 2007, and a second amended complaint was issued on July 24, 2007. On January 19, 2007, Mr. Nix filed a motion to intervene, which was granted in accordance with Rule 4117-1-07(A). On April 24, 2007, ATU Local 268 filed a motion to dismiss the complaint. On August 1, 2007, GCRTA filed a motion to dismiss the complaint. A hearing was held on August 1, 2, and 3, 2007, wherein testimonial and documentary

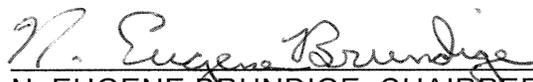
evidence was presented. Subsequently all parties filed post-hearing briefs. On March 31, 2008, the Administrative Law Judge issued a Proposed Order, recommending that the Board find that the Union violated O.R.C. §§ 4117.11(B)(1) and (B)(6), but not (B)(2), by failing to conduct a fair election. The Administrative Law Judge also recommended that the Board find that GCRTA did not violate O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(8).

On April 23, 2008, the Union filed exceptions to the Proposed Order. After timely requesting and receiving an extension of time to file responses to the exceptions, both Complainant and Mr. Nix filed responses to the exceptions on May 15, 2008, and May 16, 2008, respectively. On August 28, 2008, the Board sua sponte directed the parties to appear before it to present oral arguments. Also on August 28, 2008, pursuant to Board action, the Administrative Law Judge's Proposed Order became the order of the Board, in accordance with Ohio Revised Code § 4117.12(B)(2), since no exceptions were filed by any party. On October 23, 2008, oral arguments were presented to the Board by the parties' representatives.

After reviewing the unfair labor practice charge, amended complaint, answer, Administrative Law Judge's Proposed Order, exceptions, responses to exceptions, oral arguments, for the reasons set forth in the attached Opinion, incorporated by reference, Finding of Fact No. 73 is amended to read: "Mr. Nix was working on January 10, 2008 from 5:00 a.m. to 6:00 p.m."; Conclusion of Law No. 5 is amended to read: "The Union did not violate §§ 4117.11(B)(1) and (B)(6)."; Conclusion of Law No. 7 is adopted, which reads: "Mr. Nix did not exhaust his available remedies, as provided within the International's Constitution, when he failed to appeal the International President's decision to the International's General Executive Board."; Findings of Fact Nos. 1-15, 17-42, 45-48, 50, and 52-83, as amended, are adopted; Conclusions of Law Nos. 2, 3, 5, and 6, as amended, are adopted; the complaint is dismissed; and the unfair labor practice charge is dismissed with prejudice.

It is so ordered.

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



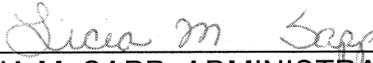
N. EUGENE BRUNDIGE, CHAIRPERSON

TIME AND METHOD TO PERFECT AN APPEAL

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 4117.13(D), by filing a notice of appeal with the court of common pleas in the county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or transacts business, by filing in the court a notice of appeal setting forth the order appealed from and the grounds of appeal within fifteen days after the mailing of the State Employment Relations Board's order. A copy of the notice of appeal must also be filed with the State Employment Relations Board, at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, pursuant to Ohio Administrative Code Rule 4117-7-07.

PROOF OF SERVICE

I certify that a copy of this document was served upon each party by certified mail, return receipt requested, and upon each party's representative by ordinary U.S. mail, this 3rd day of December, 2008.



LICIA M. SAPP, ADMINISTRATIVE ASSISTANT

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

Amalgamated Transit Union Local 268,

Respondent.

Case No. 2005-ULP-12-0680

OPINION

BRUNDIGE, Chairperson:

This matter comes before the State Employment Relations Board (“the Board” or “the Complainant”) upon the issuance of an Administrative Law Judge’s Proposed Order, the filing of exceptions and responses to the exceptions, and oral arguments that were heard on October 23, 2008. For the reasons that follow, we find that the Amalgamated Transit Union Local 268 (“Union” or “ATU Local 268”) did not violate Ohio Revised Code (“O.R.C.”) §§ 4117.11(B)(1), (B)(2), and (B)(6) by failing to conduct a fair election because William H. Nix (“Charging Party”) failed to exhaust available remedies as provided in the Amalgamated Transit Union International’s Constitution. As a result, the complaint is dismissed, and the unfair labor practice charge is dismissed with prejudice.

I. PROCEDURAL HISTORY

On December 30, 2005, Mr. Nix filed an unfair labor practice charge against ATU Local 268, alleging that the Union violated O.R.C. §§ 4117.11(B)(1), (B)(2), and (B)(6) by restraining or coercing employees in the exercise of guaranteed rights, causing or attempting to cause the Greater Cleveland Regional Transit Authority (“Employer” or “GCRTA”) to interfere with the employees’ rights, and failing to represent all of the

employees in the bargaining unit. This charge was dismissed on March 16, 2006, by the State Employment Relations Board ("SERB"), but subsequently reinstated after reconsideration was granted.

Also, on December 30, 2005, Mr. Nix filed an unfair labor practice charge (Case No. 2005-ULP-12-0680) against the GCRTA, alleging that the Employer violated O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(8). On November 9, 2006, SERB found probable cause to believe that unfair labor practices had occurred in both cases, consolidated the cases for hearing, authorized the issuance of a complaint, and directed the matter to hearing.

A complaint was issued on April 10, 2007. An amended complaint was issued on June 7, 2007, and a second amended complaint was issued on July 24, 2007. On January 19, 2007, Mr. Nix filed a motion to intervene, which was granted in accordance with Rule 4117-1-07(A). On April 24, 2007, ATU Local 268 filed a motion to dismiss the complaint. On August 1, 2007, GCRTA filed a motion to dismiss the complaint. A hearing was held on August 1, 2, and 3, 2007, wherein testimonial and documentary evidence was presented. Subsequently all parties filed post-hearing briefs.

On March 31, 2008, the Administrative Law Judge issued the Proposed Order, recommending that the Board find that the Union violated O.R.C. §§ 4117.11(B)(1) and (B)(6) by failing to conduct a fair election, that the Union did not violate O.R.C. § 4117.11(B)(2), and that the Employer did not violate O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(8). No exceptions were filed to the Proposed Order regarding the charge and complaint against the Employer in Case No. 2005-ULP-12-0681, and pursuant to O.R.C. § 4117.12(B)(2), the proposed order became the order of the Board on August 28, 2008.

The Union filed exceptions to the Proposed Order in Case No. 2005-ULP-12-0680. Mr. Nix and Counsel for Complainant filed responses to the exceptions. The Board sua sponte directed the parties to appear before it for oral arguments, which were presented on October 23, 2008.

II. BACKGROUND

ATU Local 268 is the deemed-certified exclusive representative for a bargaining unit of GCRTA's Grade 1-6 employees. Mr. Nix is employed by the GCRTA, is a "public employee" as defined by O.R.C. § 4117.01(C), and is a member of the bargaining unit represented by the Union. The GCRTA and the Union were parties to a collective bargaining agreement effective from August 1, 2003 through July 31, 2006 ("CBA"), which contained a grievance process that culminated in binding arbitration.

"Turkey Pass-Out"

Mr. Nix and Ronald Jackson were both candidates for President of the Union running in the December 6, 2005 Union primary election against the incumbent Union President, Gary Johnson, Sr. Each year, just prior to Thanksgiving, the Union holds a "Turkey Pass-Out" for its members. The Union brings in a truck full of turkeys, and members present their identification cards to pick up a free turkey. The Turkey Pass-Out in 2005 took place on November 18, 19, and 20, 2005.

Wearing a t-shirt with his picture on it and with the wording "Vote Gary Johnson for President," Mr. Johnson passed out turkeys from the back of a semi truck in the parking lot. Mr. Johnson shook members' hands and asked for their support. Some of Mr. Johnson's supporters at the "Turkey Pass-Out" handed out key chains in support of Mr. Johnson.

On November 18, 2005, Mr. Nix attempted to pass out his campaign fliers in the parking lot. Union Financial Secretary Ed Butler told Mr. Nix that campaigning was not allowed in the parking lot and that Mr. Nix had to remain on the sidewalk. Mr. Nix campaigned from the sidewalk on November 18. On November 19, Mr. Nix came to the parking lot and observed Mr. Butler wearing a Johnson t-shirt. Mr. Butler attempted to get Mr. Nix to leave by threatening to call the police. Union Business Agent David Yakimow told Mr. Nix to get off the property, but Mr. Nix remained in the parking lot campaigning all day on November 19 and all day November 20.

December 6, 2005 - Voting Issues

A primary election was held by the Union on December 6, 2005. The election of new officers was conducted under its local bylaws and the constitution of the Amalgamated Transit Union ("International"), the Union's parent body. Mr. Nix, Mr. Johnson, and Ronald Jackson were the three candidates running for Union President.

By virtue of his position as Financial Secretary/Treasurer, Mr. Butler was in charge of the election; he appointed the election committee and co-chairs. Mr. Butler appointed Clifton Cardwell as committee chairman. The other committee members were Calvin Casey, Geraldine Boone, Lester Austin, and David Holland. No candidate had input into the choice of the election committee or co-chairs.

Mr. Casey had supported Mr. Johnson in a previous election. Mr. Cardwell, Ms. Boone, and Mr. Austin all supported Mr. Johnson. Mr. Nix did not raise his concern with anyone prior to the election that the majority of the election committee had supported or was supporting Mr. Johnson.

Mr. Nix received campaign literature from Mr. Jackson in the mail. How Mr. Jackson obtained the mailing list was not established.

The GCRTA has an established practice of permitting Union members to be absent from work without pay for the purpose of conducting Union business as long as the request is made in writing by the Union and does not interfere with operational needs. The practice applies to persons who wished time off to campaign for any of the office seekers as well as other non-election related union business, including the union basketball team playing in an out-of-state tournament. A request made pursuant to this practice would not count as an absence under GCRTA's attendance policy. Mr. Nix was aware of the practice.

At the September 13, 2005 membership meeting, Mr. Nix asked Mr. Johnson about the number of observers he could have at the election. Mr. Johnson directed him to the GCRTA. Mr. Nix also asked if a third party could conduct the election and if retirees and part-timers could vote. Mr. Johnson told him that part-timers and retirees in good standing

could vote and that nothing in the International's constitution or bylaws provided for third parties conducting elections.

Mr. Nix told his supporters to try to take vacation days for the primary election to be his observers. Lois Spears and Wanda Ware were able to get time off. Nicky Washington, Darius Scott, and Wayne Bender were denied by GCRTA due to operational needs. No requests for time off were made to the Union by Mr. Nix's supporters.

Ms. Washington and Ms. Scott requested time off from GCRTA for the general election. Ms. Washington and Ms. Scott did not receive the days off because there were no openings.

Mr. Nix requested the Thursday, Friday, and Monday before the election off from GCRTA as well as Election Day. Mr. Nix was first told he could not have the days off because two other individuals had requested them off. GCRTA then gave Mr. Nix Thursday and Friday off. When Mr. Nix reported to work Monday he was told he had Monday off as well.

Mr. Nix did not raise the issue of what he believed to be an insufficient number of observers for him at either the primary or general election until after the general election. Mr. Nix was able to have two observers on December 20, 2006, at the general election. Anyone off on Union business to campaign would be paid by the candidate for time lost or not paid at all.

As a result of the primary election, Mr. Nix received 559 votes, Mr. Johnson received 434 votes, and Mr. Jackson received 391 votes.

December 20, 2005 - Voting Issues

Since no candidate for President received a majority vote in the December 6, 2005 primary election, a runoff election was scheduled for December 20, 2005. Mr. Nix and Mr. Johnson were the two candidates for President.

Tellers were appointed for each voting location. Two Tellers served at each location except for the Union Hall and RTA Main office where voter turnout was generally lighter.

According to Union bylaws, Tellers were permitted to alternate their supervision of the ballot box if voter turnout was light. Tellers were chosen by the Union Executive Board members at the voting location where they served, usually based on their previous election experience. Once the Tellers were selected, the Financial Secretary requested time off for them in writing from GCRTA. GCRTA approved the Union's request to have the Tellers off for the 2005 primary and general elections. Tellers were paid by the Union.

The Tellers picked up the ballot box, supplies, and Teller instruction sheets the day before the election (either primary or general). The box contained ballots, pencils, voter sign-in sheets, and perimeter tape. Tellers were provided with tape and a lock to secure each ballot box. The instruction sheet listed Clifton Cardwell's cell phone number in case Tellers had questions.

Tellers kept ballots, box, and other information overnight at their homes, in their cars, or in the locked Executive Board room at one of the districts. Each Teller had a list of eligible voters for the location they served as Teller. The list was generated by GCRTA, given to Financial Secretary Butler, and listed every Union member eligible to vote at each location.

Retirees who were Union members in good standing were eligible to vote and were supposed to vote in the Union Hall. If retirees tried to vote at their former work location, Tellers were to call the Union Hall to check to make sure the retiree was eligible to vote since their names would not appear on the voter eligibility list for that location.

Prior to the first vote being cast, the first person voting initialed that he or she had observed that the ballot box was empty. The box was to be locked and taped, and the first voter initialed the tape to confirm the box was empty when he or she voted.

Tellers were to tape the floor at each voting location to create a 26-foot perimeter around the ballot box. Only voters, Tellers, and election observers were to be within the perimeter. No campaigning was to take place within the perimeter. Campaigners were not to be at the ballot tables. Tellers were to enforce the perimeter and to call Financial Secretary Butler or an election co-chair if a violation was observed.

In order to vote in the general election a voter was to show his or her GCRTA ID to the Tellers, who then checked the eligibility list. If the person was eligible, he or she signed the sign-in sheet, the voter's badge number was recorded on the sign-in sheet, and the stub numbers of the ballot given to the individual was recorded on the sign-in sheet. The voter was to complete the top stub portion of the ballot with his or her name, badge number, and work location, tear it off, return it to the Teller so the Tellers could count the stubs and compare the number of stubs with the number of people voting. Sometimes voters would put the entire ballot including top stub into the ballot box.

For the general election on December 20, 2005, there were ten voting locations. At each voting location an attempt had been made to tape off a 25-26 foot perimeter around the ballot box in which campaigning was not to occur. None of the voting locations provided a curtain or any other method to ensure privacy while voters cast their ballots.

At the Triskett location during the December 20, 2005 election, numerous tables were pushed back approximately ten feet from the table holding the ballot box. Individuals were passing out literature, wearing t-shirts, or speaking to voters in support of Mr. Johnson. Some of Mr. Nix's supporters were talking to voters.

Mr. Nix did not observe a lock on the box at Triskett during the voting. He brought this observation to the attention of one of the Tellers who said someone must have walked off with it. By the time the ballot box appeared for counting, it had a lock on it.

Individuals at Triskett were voting in the kitchen or on a nearby counter. Campaigners were talking to voters in the kitchen. These areas were outside the taped perimeter.

Voter John Bornoff was confronted by three people campaigning for Mr. Johnson as he walked up to the table to get his ballot. They tried to convince him Mr. Nix was not a good candidate. Voter Diana Barnes observed campaigners attempting to influence votes after they had ballots and Tellers doing nothing to stop it.

At the Hayden location during the December 20, 2005 election, although campaigners stayed 10 feet away from the perimeter, they were yelling across the room

“you know who to vote for” or “we know who you voted for.” Campaigners approached individuals who had picked up ballots to try to convince them to vote for Mr. Johnson. Campaigners for Mr. Johnson handed out literature for Mr. Johnson to the voters.

At the Harvard location during the December 20, 2005 election there was not a 25-foot taped perimeter. Voters cast their ballots at lunch tables, at tables by the television or in the pool room. Voters were able to cast their ballots in the pool room free of campaigners.

The ballot box in the Union Hall location was in Mr. Johnson’s office, a room that contains Mr. Johnson’s desk and a large conference room table. Only one Teller was at this location.

The Count

The polls closed at 6:00 p.m. The Tellers were to take the ballot boxes to the Holiday Inn by 6:30 p.m. for counting. The ballot box from the Rail Shop did not arrive until approximately 7:00 p.m. Eric Ross, one of the Tellers at the Rail Shop, explained that he had been delayed by assisting in getting a spill kit for a janitor at Tower City for a clean-up and also because he stopped to get gas.

The ballot boxes were all taped upon arrival. Mr. Nix witnessed the arrival of the boxes. All boxes were placed on the floor in the middle of the counting room. The election chairs carried the boxes to the count tables, removed the tape, and unlocked the boxes. Before each box was counted, the co-chairs would open the boxes, point the box toward the observers, and then empty the ballots on the table where they were sorted into two piles, one for each candidate.

One person at each table called out the votes while three Tellers recorded the vote. Counters who served as Tellers did not count the ballots from their own location. When the Counters reached the same result, the Tellers and callers signed off on the tally sheet. The vote was then taken to the Union’s Office Manager, who verified the Tellers had

reached the same result. Candidates and observers including Mr. Nix and his observers were able to observe the count and keep their own counts.

At the December 20, 2005 run-off election between Mr. Nix and Mr. Johnson, Mr. Nix received 694 votes, and Mr. Johnson received 708 votes. The only complaint made by Mr. Nix and his observers at the count was the late ballot box from the Rail Shop. Mr. Nix indicated he was satisfied with Mr. Ross's explanation. Neither the International's constitution nor the Union's bylaws provide for an automatic recount. Mr. Nix has never requested a recount.

Challenge Issues

On December 28, 2005, Mr. Nix filed a timely challenge to the election results under the constitution of the International Union. Section 14.8 of the International's constitution and General Laws provides as follows: "Challenges. Any member who is entitled to vote may challenge the conduct or results of an election by filing, within ten (10) days of the counting of the ballots, a challenge to the incumbent S. T. of his or her L. U.¹ to such effect. The S.T. shall submit the challenge for decision to the executive board, subject to final ruling by the membership."

On December 28, 2005, Mr. Nix filed a challenge to the election results. The challenge was mailed, faxed, and hand delivered to Mr. Butler and was mailed to the International. Mr. Butler prepared a response to Mr. Nix's challenge for the Executive Board.

On January 5, 2006, Mr. Nix wrote a letter to Mr. Johnson, as local President, requesting to be present and to present evidence of his election challenge at the Executive Board meeting and the membership meeting. No written procedures existed for conducting the general election (other than the teller instruction sheet), to challenge the results of the election, for the ballot count, and to challenge the eligibility of voters. Other than his written

¹ According to Section Two, "Abbreviations," of the ATU's Constitution and General Laws, "S. T." stands for Secretary-Treasurer and "L. U." stands for Local Union.

challenge, Mr. Nix had no opportunity to present witnesses, documents, or other evidence to the Executive Board.

A fax was sent to Attorney John Masters on January 10, 2006, at 10:04 a.m. from Attorney Robert E. Davis's office, stating: "Mr. Nix should be at Local 268 office at 3:00 p.m. today for the Executive Board meeting." It was not established if or when the fax was received.

Mr. Nix was working on January 10, 2006, from 5:00 a.m. to 6:00 p.m. Mr. Butler told the Executive Board that Mr. Nix had been notified of the meeting but chose not to attend.

Mr. Nix appeared at the General Membership meeting. Mr. Butler read the challenges to the membership. As Mr. Nix attempted to take the podium to speak, Mr. Jackson made a motion not to hear the challenges. The motion was seconded but not voted upon. Mr. Nix reached the podium and spoke for approximately three minutes when he was interrupted by Mr. Johnson, who said Mr. Nix was out of order because there was a motion on the floor. Mr. Johnson called for a vote by dividing the house. Mr. Johnson told members who wanted to hear the challenges to go to one side of the room and those who did not want to hear the challenges to go to the other side of the room.

Mr. Butler told the membership the vote was not for a new election, it was a vote only on whether or not to hear Mr. Nix's challenge. Mr. Johnson said the vote was to determine whether to proceed with the challenge and to allow Mr. Nix to bring witnesses, collect evidence, and testify. Mr. Bornoff, who was also present at the membership meeting, understood that the vote was to accept the ballots as read.

By letter dated March 16, 2006, Mr. Nix filed a further appeal as to the conduct of the December 2005 Union election to International President Warren S. George. By a letter dated May 9, 2006, International President George denied Mr. Nix's appeal. Mr. George concluded that "while some minor irregularities may have occurred, there is no evidence that they had an adverse impact on the outcome of the election. Based on a careful review of the information provided, we find that insufficient evidence was provided

to establish that any of the election procedures or local Union actions impacted the election in such a way to warrant overturning the election.”

The International’s constitution provides for the following additional levels of appeal, which Mr. Nix did not pursue:

- a. Appeal of the International President’s decision to the International’s General Executive Board and;
- b. Appeal of the International’s General Executive Board’s decision to the regular Convention of the International.

The next regular Convention of the International was to be held in September 2007. Mr. Nix did not file any further appeals pursuant to the International’s constitution. The time for Mr. Nix to file further appeals pursuant to the International constitution has lapsed.

III. DISCUSSION

The Union is alleged to have violated O.R.C. §§ 4117.11(B)(1), (B)(2), and (B)(6), which provide as follows:

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

(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117 of the Revised Code. This division does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances[.]

(2) Cause or attempt to cause an employer to violate division (A) of this section.

(6) Fail to fairly represent all public employees in a bargaining unit[.]

1. The O.R.C. § 4117.11(B)(2) allegation

The Union is alleged to have violated O.R.C. § 4117.11(B)(2), which provides that it is an unfair labor practice for an employee organization to cause or attempt to cause an employer to violate division (A) of O.R.C. § 4117.11. No evidence was introduced at hearing to prove the Union caused or attempted to cause GCRTA to violate O.R.C. § 4117.11(A).

Individuals wanting time off to participate in the election process could obtain such time off one of two ways. They could request any paid leave they might be entitled to in accordance with the CBA. Three supporters of Mr. Nix chose this route and were granted time off. Persons wishing time off could also avail themselves of the GCRTA's practice that allowed Union members to be absent from work without pay for the purpose of conducting Union business as long as the request is made in writing by the Union and does not interfere with operational needs. This request could be for campaigning, working, or for observing at an election or other non-election-related union business. This practice has been in effect for ten years, and Mr. Nix was aware of the practice.

The GCRTA received numerous requests from the Union for time off around the primary and general elections. The requests did not signify which candidate the requestor was supporting. Mr. Nix's supporters and others who requested time off from GCRTA were either granted the time off or not depending upon GCRTA's operational needs. It was never proven that GCRTA knew that the Union was using its requests for time off for Union business in an inherently coercive or discriminatory fashion or that GCRTA was part of some conspiracy in that regard. The GCRTA simply dealt with the leave requests it received pursuant to the CBA and the requests it received from the Union for time off for union business.

Mr. Johnson told Mr. Nix his request for observers was "between him and GCRTA." Neither Mr. Johnson's actions nor his role in the process were under the control of GCRTA. Although Mr. Nix testified he was aware of the process but thought Mr. Johnson's

statement meant he could not avail himself of the process, Mr. Nix did not make a request to Mr. Johnson or anyone else in the Union to request time off for observers nor did he bring this issue to GCRTA's attention.

Thus, the alleged collusion between the Union and the GCRTA to somehow conspire against Mr. Nix was not proven. The alleged attempts on the Union's part to cause GCRTA to violate O.R.C. § 4117.11(A) were also never proven by a preponderance of the evidence.

2. The O.R.C. §§ 4117.11(B)(1) and (B)(6) allegations

Under O.R.C. § 4117.03(A)(a), public employees have the right to “[f]orm, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in, except as otherwise provided in Chapter 4117. of the Revised Code, any employee organization of their own choosing.” Internal union policies or practices can violate rights guaranteed by O.R.C. § 4117.03, and thereby constitute unfair labor practices, despite the fact that they arise in the course of internal union affairs.

The issues presented in this case are whether the Union violated O.R.C. §§ 4117.11(B)(1) or (B)(6) by conducting its election for president in the manner in which it did or by the way it handled the appeals filed regarding that election. The Union asserts that SERB lacks the subject matter jurisdiction to decide this issue. We disagree. SERB has made it clear in *ATU* that its reluctance to involve itself in union affairs does not absolve unions from their statutory obligations to their members, and internal union policies that violate O.R.C. Chapter 4117 rights are not immune from SERB scrutiny simply because they arose in the exercise of internal union affairs. Quite simply, SERB has subject-matter jurisdiction of any activity that may constitute an unfair labor practice even if it occurs in the context of internal union affairs.

O.R.C. §§ 4117.11(B)(1)-(B)(8) offer protection and redress to employees who feel their rights have been infringed upon by their exclusive representative. While SERB has always shown a reluctance to interfere in internal union affairs, that reluctance does not

relieve the SERB of its statutory duty to assure members' rights are protected. SERB clearly does have the jurisdiction to decide this case.²

SERB has previously articulated its practice of restraint concerning matters involving internal union affairs. *In re Northeast Ohio Sewer Dist*, SERB 85-031 (6-24-85), *In re Adkins*, SERB 85-064 (12-31-85), *In re Mad River-Green Local Bd of Ed*, SERB 86-029 (7-31-86), *In re Sycks*, SERB 87-008 (5-15-87), and *In re Amalgamated Transit Union, Local 268*, SERB 93-013 (6-25-93) (“*ATU*”). “[T]his practice does not, and has never, absolved employee organizations from their statutory obligations to their membership. Internal union policies or practices that violate rights protected under Chapter 4117 are not immune from scrutiny as violations of O.R.C. § 4117.11(B)(1) simply because they arise in the course of internal union affairs.” *ATU* at 3-82. Union policies that prevent certain employees from attending union meetings, electing a representative to the union board, or seeking any type of elected office, restrain the employees in the exercise of their O.R.C. § 4117.03 rights and may constitute an unfair labor practice under O.R.C. § 4117.11(B)(1). *Id.*

Mr. Nix had the O.R.C. § 4117.03 right to participate in the employee organization by running for office. A review of the Findings of Fact point to several problematic areas of union behavior. These include the lack of attention that was given to providing voting locations that comport with both the letter and the spirit of O.R.C. Chapter 4117 by providing the ability for a voter to exercise a meaningful secret ballot. Privacy for the voters was virtually non-existent at the voting locations. In addition, the Union did not follow its own written procedures while conducting its election as evidenced by the Tellers' actions. Likewise, any internal appeals process that has the victorious candidate presiding presents, at the very least, an appearance of impropriety.

² A strong argument can be made in this case that the evidence shows the Union failed to comply with O.R.C. § 4117.19(C)(4). But such a complaint is not pending before this body. Instead the Charging Party has chosen to utilize the unfair labor practice process.

Before SERB considers the merits of an alleged O.R.C. § 4117.11(B)(1) violation, internal union remedies must be exhausted. *Id.* With only a ninety-day statute of limitations for filing an unfair labor practice charge, a matter may not be resolved through internal union means within this period. Charging parties must file their charges with SERB in a timely manner while they pursue the exhaustion of internal union remedies. Whether to hold in abeyance the investigation of the charge (while a charging party exhausts the internal union remedies) will be determined by SERB on a case-by-case basis.

Mr. Nix filed a challenge to the election results on December 28, 2005. Mr. Nix filed his unfair labor practice charge in this matter on December 30, 2005. The Union's Executive Board denied the challenge. Mr. Nix's challenge was the subject of a chaotic membership meeting on January 9, 2006, which resulted in his challenges not proceeding. During the membership meeting, Mr. Nix was able to address the membership only for a few minutes before he was interrupted by Mr. Johnson, the winning candidate who called for a vote. Mr. Nix filed another appeal with the International Union that was denied on May 9, 2006, incredibly enough, citing insufficient evidence.

Mr. Nix's next options were to appeal the International President's decision to the International's General Executive Board and then to appeal that decision to the International's regular convention. The final step in the Union appeals process would not have occurred until the International convention in 2007. Mr. Nix did not pursue these options internally with the Union.

Notwithstanding the concerns raised in the hearing process, SERB has been consistent in insisting that the person who has brought the charge is duty bound to exhaust all available remedies prior to presenting the matter to SERB. In this case, Mr. Nix failed to appeal the International President's decision to the International's General Executive Board, which was the next step in the Appeal process pursuant to the International's Constitution. An unfair labor practice charge can be filed to preserve the statutory time limits concurrent with the exhaustion of an available internal remedy. Because Mr. Nix did not exhaust his available remedies it would be an unwarranted intervention into internal

union business for SERB to decide whether an unfair labor practice has been committed. Thus, we do not reach the question whether the Union violated O.R.C. § 4117.11(B)(1) or (B)(6) because the internal union remedies were not exhausted.³

IV. CONCLUSION

For the reasons above, we fail to find that Amalgamated Transit Union Local 268 violated Ohio Revised Code §§ 4117.11(B)(1) or (B)(6) when William H. Nix failed to exhaust available remedy as provided in the International's Constitution. We also find that the ATU did not cause or attempt to cause the Greater Cleveland Regional Transit Authority to violate O.R.C. § 4117.11(A), and therefore ATU did not violate Ohio Revised Code § 4117.11(B)(2). As a result, the complaint is dismissed, and the unfair labor practice charge is dismissed with prejudice.

Verich, Vice Chairperson, concurs; Spada, Board Member, abstains.

³ When an employee organization's actions are so egregious and continuous that they render both the election and the election-appeals process meaningless, the actions have, in essence, totally denied an employee the right to participate in the employee organization. Although we do not reach that question in this case, our restraint should not be construed as approval of the Union's actions in this matter.

SERB

"Promoting Orderly and Constructive
Labor Relations Since 1984"

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Ted Strickland, Governor

Case No. 2005-ULP-12-0680

CERTIFICATION

I, the undersigned General Counsel and Assistant Executive Director for the State Employment Relations Board, hereby certify that the attached document is a true and exact reproduction of the original Order (with Opinion Attached) of the State Employment Relations Board entered on its journal, on the 3rd day of December, 2008.

J. Russell Keith
General Counsel and Assistant Executive Director
December 3, 2008