

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

In the Matter of

State Employment Relations Board,

Complainant,

v.

Massillon City School District Board of Education,

Respondent.

Case Number 2015-ULP-02-0042

**ORDER  
(OPINION ATTACHED)**

Before Chair Zimpher and Vice Chair Schmidt: December 17, 2015.

On February 24, 2015, the Massillon Education Association, OEA/NEA ("Charging Party" or "Union") filed unfair labor practice charges against the Massillon City School District Board of Education ("Respondent" or "School Board"). On July 9, 2015, the State Employment Relations Board ("SERB," "Board," or "Complainant") determined that probable cause existed to believe that Respondent had committed or was committing an unfair labor practice, authorized the issuance of a complaint, and referred the matter to a hearing before the Board. At issue is whether Respondent violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and/or (A)(5) by assigning additional job duties to its guidance counselors.

On July 27, 2015, SERB issued a Notice of Unfair Labor Practice Hearing and Prehearing Order and Complaint. On August 3, 2015, Charging Party filed a Motion to Intervene, which was granted. On August 31, 2015, SERB's General Counsel conducted a telephone prehearing conference with the parties. An evidentiary hearing was conducted by the Board on September 17, 2015, wherein testimonial and documentary evidence was presented. Complainant and Intervenor called Guidance Counselor Jamie Marceric as their witness. The School Board called Interim Special Education Coordinator Christine Dieringer as its witness. Ms. Dieringer's testimony was not properly recorded due to an equipment malfunction. The parties agreed to submit joint stipulations stipulating to Ms. Dieringer's testimony. On November 3, 2015, the parties filed joint stipulations regarding Ms. Dieringer's testimony. Subsequently, the parties filed those joint stipulations as well as post-hearing briefs.

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STATE EMPLOYMENT  
RELATIONS BOARD

The Board has reviewed all of the filings and evidence contained in the record, including the unfair labor practice charges, complaint, answer to complaint, the parties' pre-hearing statements, testimony, joint stipulations of a witness' testimony, exhibits, and post-hearing briefs. For the reasons set forth in the Findings of Fact, Discussion, and Conclusions of Law in the attached Opinion, incorporated herein by reference, the Board dismisses the complaint and dismisses with prejudice the unfair labor practice charges.

It so ordered.

ZIMPHER, Chairman, and SCHMIDT, Vice Chairman, concur.

  
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W. CRAIG ZIMPER, CHAIR

#### **TIME AND METHOD TO PERFECT AN APPEAL**

This is a final appealable Order. You are hereby notified that an appeal from this Order 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 17<sup>th</sup> day of December, 2015.

  
\_\_\_\_\_  
ERIN E. CONN, PROGRAM ADMINISTRATOR

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In the Matter of

State Employment Relations Board,

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Massillon City School District Board of Education,

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Case Number 2015-ULP-02-0042

**OPINION**

STATE EMPLOYMENT  
RELATIONS BOARD  
2015 DEC 17 P 12:06

Zimpher, Chair:

This unfair labor practice case comes before the State Employment Relations Board ("SERB," "Board," or "Complainant") upon the Massillon Education Association, OEA/NEA's ("Intervenor" or "Union") filing of unfair labor practice charges against the Massillon City School District Board of Education ("Respondent," "School Board," or "School District"), alleging that the School Board committed unfair labor practices by assigning additional job duties to its guidance counselors. A hearing before the Board was held on September 17, 2015, wherein testimonial and documentary evidence was presented.

The issues in this case are whether the unfair labor practice charges were filed within the ninety-day statutory timeframe established in Ohio Revised Code ("O.R.C.") § 4117.12(B) and, if so, whether the School Board violated O.R.C. §§ 4117.11(A)(1) and/or (A)(5) when it assigned additional job duties to its guidance counselors.

The Board has reviewed all of the filings and evidence contained in the record, including the unfair labor practice charges, complaint, answer to complaint, the parties' pre-hearing statements, testimony, joint stipulations of a witness' testimony, exhibits, and post-hearing briefs. For the reasons set forth below, we find that the unfair labor practice charges were timely filed and Respondent did not violate O.R.C. §§

4117.11(A)(1) and/or (A)(5) when it assigned additional job duties to its guidance counselors. Therefore, we dismiss the complaint and dismiss with prejudice the unfair labor practice charge.

### **I. FINDINGS OF FACT**

*The State Employment Relations Board's Findings of Fact set forth below are based upon a thorough review of the record evidence as a whole and, where relevant, credibility determinations of witness' testimony.*

1. The School Board is a "public employer" as defined by O.R.C. § 4117.01(B).
2. The Union is an "employee organization" as defined by O.R.C. § 4117.01(D) and is the exclusive representative for the employees identified in Article 1.015 of the parties' collective bargaining agreement. The parties' agreement is effective through June 30, 2017, and culminates in final and binding arbitration.
3. Article 11, Section 11.01 of the parties' collective bargaining agreement provides that the Massillon City School District's school year consists of 184 days.
4. On February 23, 2015, the Union filed unfair labor practice charges with SERB, alleging that the School District violated O.R.C. §§ 4117.11(A)(1) and (A)(5) when it unilaterally assigned additional job duties to its guidance counselors. On June 4, 2015, SERB determined that probable cause existed to believe the School Board had committed or was committing unfair labor practices, authorized the issuance of a complaint, and referred the matter to hearing.
5. During the 2014-2015 school year, the School District employed eight full-time guidance counselors. Guidance counselors work a 7.5 hour workday. Two guidance counselors were assigned to the elementary grades, three counselors were assigned to the intermediate and junior high grades, and three counselors were assigned to the high school grades. The School District has one high school, Washington High School ("WHS").
6. The School District's eight guidance counselors assist and support students with concerns and/or problems and serve as a resource for students, parents and staff. Guidance counselors maintain accurate and complete records as required by law. Guidance counselors provide individual guidance to students to promote their educational development, attend parent/teacher conferences, collaborate with colleagues, and perform other duties as assigned.
7. The three guidance counselors assigned to the high school ("WHS guidance counselors") are responsible for the development and implementation of the

School District's high school guidance program. The WHS guidance counselors coordinate several longstanding programs that have been implemented at WHS to promote the educational development of students. These programs include the Flex Credit Program, College Credit Plus Program, and the PLATO Credit Recovery Program. WHS guidance counselors also administer PSAT assessments and Advanced Placement exams and they developed the WHS Program of Studies to guide students through the college application process. WHS guidance counselors assist in student placement and retention decisions and oversee the foreign exchange student program.

8. The School District provides special education services and accommodations for students with disabilities in accordance with state and federal law. The School District has implemented Individual Education Plans ("IEP") for children with disabilities who need special education services. The School District has also implemented Section 504 Education Plans ("504 Plans"). IEP Plans involve special education services and 504 Plans generally involve lesser types of accommodations. 504 Plans are developed and implemented for qualified students who have a physical or mental impairment that substantially limits one or more major life activity. 504 Plans often involve the provision of accommodations designed to meet the individual needs of students, but do not involve specialized instruction of the type provided for in IEPs. 504 Plans are put in place by the student's general education teacher and can include extra time to complete assignments, reading instruction, or a quiet room to take tests. An Intervention Assistance Team ("IAT") is the first step in the assessment process to determine whether a particular child is eligible for a 504 Plan. IATs are also used for other situations where a student is struggling in the educational setting. An IAT is generally composed of a guidance counselor, a school psychologist and/or school nurse, a teacher or teachers, and the building principal.
9. 504 Plans are developed and implemented following detailed and comprehensive state and federal laws, rules, regulations, and policies.
10. During the 2014-2015 school year, the School District implemented three new 504 Plans in the elementary school grades, twenty-two new 504 Plans in the intermediate and junior high grades, and one new 504 Plan at the high school. There were also six existing 504 Plans at the high school.
11. Prior to the 2014-2015 school year, school psychologists coordinated the School District's 504 Plans and performed the assessments. Guidance counselors were involved in certain aspects of the 504 Plans process, including attending team meetings, interacting with parents, working with students on a daily basis, and monitoring students' general educational progress.

12. Christine Dieringer was employed by the Stark County Educational Service Center during the 2014-2015 school year. Ms. Dieringer has a total of thirty-five years of education experience, including twelve years experience as Director of Special Education working with guidance counselors; fourteen years in high school administration supervising guidance counselors; and four years as a guidance counselor. During the 2014-2015 school year, Ms. Dieringer was assigned to the Massillon City School District Board of Education as the Interim Special Education Coordinator. As Interim Special Education Coordinator, Ms. Dieringer conducted a review of the District's procedures governing 504 Plans. Ms. Dieringer made recommendations to improve the efficiency of the 504 Plan process. Based upon Ms. Dieringer's recommendations and predicated on maximum effectiveness and efficiency in program administration, the School Board exercised its managerial prerogative and made the decision to shift responsibility for coordinating 504 Plans from the school psychologists to the guidance counselors to increase efficiencies. The School Board charged Ms. Dieringer with implementing the new procedures for coordinating 504 Plans.
13. On September 23, 2014, Ms. Dieringer sent an email to all of the School District's guidance counselors, school psychologists, nurses, and building principals, notifying them of the impending changes to the 504 Plan process and arranging a meeting to discuss the changes to their roles and responsibilities. Ms. Dieringer met with the WHS guidance counselors on October 9, 2014, and she met with the elementary and middle school guidance counselors on October 13, 2014.
14. All three WHS guidance counselors attended the October 9, 2014, which lasted approximately two hours. During this meeting, Ms. Dieringer informed the WHS guidance counselors that they were responsible for coordinating 504 Plans. Ms. Dieringer explained the procedures and duties involved and provided an informational packet that included sample 504 Plan forms. Ms. Dieringer reviewed the guidelines for completion of the 504 Plans forms. Ms. Dieringer informed the WHS guidance counselors that she would continue to be available to provide guidance and answer questions regarding the 504 Plan process.
15. On October 23, 2014, Ms. Dieringer sent an email to all of the School District's guidance counselors instructing them to review any current and future 504 Plan accommodations that would impact school transportation. If a plan had such an impact, the guidance counselors were instructed to contact the transportation coordinator and send him a copy of the plan.
16. On November 3, 2014, Ms. Dieringer sent an email to all guidance counselors regarding the 504 Plan shared folder and the process for accessing and completing the applicable forms. In her email, Ms. Dieringer expanded upon her

previous instructions regarding the 504 Plans and provided other resources for guidance.

17. A potential 504 Plan is initiated when a parent contacts the school/guidance counselor with issues involving a child that may require a 504 Plan. The 504 Plan duties assigned to the guidance counselors are as follows: (1) Based upon the issue raised by the parent, the guidance counselor refers the student to the school nurse or psychologist for an assessment. The guidance counselor may gather information from teachers to assist the team in determining the student's needs. (2) After the assessment is completed, the guidance counselor schedules a meeting with both the IAT team and the parents to discuss whether the student qualifies for a 504 Plan. (3) If the student qualifies, the team develops the plan. (4) The nurse or psychologist determines the disability or disabilities and develops the medical or psychological components of the plan. (5) The guidance counselor enters all necessary personal and plan information into a 504 plan template, generates a written version of the 504 Plan, obtains appropriate signatures, and distributes final plan to appropriate teachers, school administrators, and the parents. (6) The guidance counselor monitors the student during the school year and schedules periodic team reviews of the student's 504 Plan.
18. The 504 plan template consists of five pages. The demographic information is pre-populated. The last page is a signature page. The three remaining pages consist of spaces for accommodations developed from drop down menus that suggest the language to include. Guidance counselors were provided with completed 504 Plans and hands-on training.
19. Based on Ms. Dieringer's extensive experience regarding 504 Plans, she estimated that once an individual becomes familiar with the plan template and the basic 504 Plan process, it takes approximately one to one and one-half hours to enter data in the five-page template to create a new 504 Plan.
20. On or about December 10, 2014, WHS Guidance Counselor Jamie Marceric received account information for "IEP Anywhere," which is a program that allows School District personnel to access and manage student special education documents online. Mr. Marceric met with School Psychologist Michelle Burch to review the program.
21. On or about December 10, 2014, Ms. Burch assigned a 504 Plan renewal to Mr. Marceric. Mr. Marceric created a handwritten document detailing the time he spent on this 504 Plan renewal. (Exhibit N) Mr. Marceric indicated that it took one hour for Ms. Burch to complete the initial template evaluation and plan and one-half hour for him to update the personal information/signature page. Mr. Marceric indicated that he contacted the parent(s) and arranged a team

meeting. Mr. Marceric attended the meeting, which lasted approximately one hour. Mr. Marceric indicated that he spent two hours scanning, copying, and emailing the renewed plan to Central Office, the parents, and teachers. Although not part of his assigned job duties, Mr. Marceric stated that he spent one and one-half hours researching medical conditions and printing off websites regarding the student's medical condition.

22. Ms. Dieringer stated that the guidance counselors are not responsible for researching medical issues or assessing student's medical conditions. Ms. Dieringer did not agree with Mr. Marceric's assessment that it takes one and one-half hours to scan, copy, and distribute a 504 Plan.
23. Based upon Findings of Fact Nos. 17 through 20, the creation and implementation of a new 504 Plan takes approximately three hours. The steps involved take place at various times during the school year.

## **II. DISCUSSION**

The issues in this case are whether the unfair labor practice charges were filed within the ninety-day statutory period pursuant to O.R.C. § 4117.12(B) and, if so, whether Respondent violated O.R.C. §§ 4117.11(A)(1) and/or (A)(5) when it assigned additional job duties to its guidance counselors.

### **A. The Unfair Labor Practice Charges Were Filed Within the Ninety-Day Statutory Period Set Forth In O.R.C. § 4117.12(B).**

O.R.C. § 4117.12(B) states, in relevant part:

...The board may issue a notice of hearing based upon any unfair labor practice occurring more than ninety days prior to the filing of the charge with the board, unless the person aggrieved thereby is prevented from filing the charge by reason of service in the armed forces, in which event the ninety-day period shall be computed from the day of his discharge....

In *In re City of Barberton*, SERB 88-008 (7-5-88), SERB determined that the ninety-day period for filing an unfair labor practice charge begins to run when: (1) the charging party knows or has constructive knowledge of the practice and (2) actual damage to the charging party is caused by the practice. The ninety-day time period for filing an unfair labor practice charge is not jurisdictional but rather a statute of limitations. See *Cincinnati Metro. Hous. Auth. v. State Emp. Relations Bd.*, 53 Ohio



St.3d 221, 227, 1990 SERB 4-67 (“... [A] statute of limitations begins to run when an unlawful act occurs, not upon advance notice of the act.”); *In re Cleveland Heights-University Heights Board of Education* 97-005 (3-28-97) (the actual date that the billing duties took place was when “actual damage” occurred). See also *In re City of South Euclid* 91-004 (3-21-91) (“Promises, threats, announcements and various formal or informal decisions constitute, in most cases, “advance notice” which does not trigger the ninety-day statute of limitations.”); *In re Columbus Bd of Health, City of Columbus*, SERB 96-003, (3-21-96) (staff meetings and memorandum regarding change of job duties categorized as “advance notice”; “actual damage” did not occur until the employee’s job duties changed).

In this case, the evidence establishes that the Union had “knowledge” of the additional job duties on October 9, 2014 and October 13, 2014, when the guidance counselors attended meetings where they were given the responsibility to coordinate 504 Plans.<sup>1</sup> During those meetings, Interim Special Education Coordinator Christine Dieringer informed the guidance counselors that they would be responsible for coordinating 504 Plans, described the tasks involved, and provided an informational packet that included sample 504 Plan forms. Despite being informed that they would now be responsible for coordinating 504 Plans, the testimony and documentary evidence presented indicates that the alleged “actual damage” occurred on December 10, 2014, when WHS Guidance Counselor Jamie Marceric was assigned an existing 504 Plan and instructed to perform tasks related to coordinating the plan. Therefore, since the alleged “actual damage” under the second prong of *In re City of Barberton* did not occur until December 10, 2014 and the unfair labor practice charges were filed with SERB on February 23, 2015, the charges were filed within the ninety-day period set forth in O.R.C. § 4117.12(B).

The Respondent argues, however, that emails sent by Ms. Dieringer on October 23, 2014 and November 3, 2014 show that the guidance counselors had been assigned 504 Plan duties prior to December 10, 2014. The Respondent cites *In re City of South Euclid*, SERB 92-004 (6-7-91) in support of its argument. *In re City of South Euclid* is not applicable as SERB’s holding in that case is limited to situations that involve ordinances. No ordinances are involved in the case before us.

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<sup>1</sup> The three WHS guidance counselors attended the October 9, 2014 meeting. The guidance counselors assigned to the elementary and the middle and junior high schools attended the October 13, 2014 meeting.

Although Ms. Dieringer's October 23, 2014 and November 3, 2014 emails reference examination of existing 504 Plans and procedures related to new 504 Plans, there is no evidence in these emails that establishes a date or dates school psychologists gave any 504 Plans to guidance counselors to review, create or coordinate. In fact, there is evidence that WHS School Psychologist Michelle Burch was still actively involved in coordinating 504 Plans in December 2014 and February 2015. On December 10, 2014, Ms. Burch gave Guidance Counselor Jamie Marceric a 504 Plan renewal and instructed him to schedule a meeting with the parents and participate as a team member. On February 10, 2015, Ms. Burch sent an email to WHS Guidance Counselor Kathy Jo Wells that instructed her to attend a 504 Plan renewal meeting and indicated that she needed to show Ms. Wells how to complete a 504 Plan evaluation. While Ms. Dieringer's emails indicate that she expected the guidance counselors to start performing 504 Plan duties in October and November 2014, the evidence shows that the guidance counselors were not assigned a 504 Plan until December 10, 2014. Therefore, the evidence is insufficient to establish that the actual damage allegedly suffered by the guidance counselors occurred prior to December 10, 2014 as Respondent argues.

**B. The School Board Did Not Violate O.R.C. §§ 4117.11(A)(1) Or (A)(5) When It Assigned Additional Job Duties To Its Guidance Counselors.**

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.

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(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;

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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(8)(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).

The issue in this case is whether the School District violated O.R.C. §§ 4117.11(A)(1) and/or (A)(5) when it assigned the job duty to coordinate 504 Plans to its guidance counselors. The parties have set forth several arguments in their post-hearing briefs, including waiver and failure to bargain over a mandatory subject of bargaining. Upon review of the parties' arguments and the evidence contained in the record, we find that the dispositive issue is whether Respondent had any obligation to bargain under the facts of this case.

Pursuant to O.R.C. § 4117.08, a public employer is required to bargain with an exclusive representative on all matters pertaining to wages, hours or other terms and conditions of employment. In *In re SERB v. Youngstown City School Dist Bd of Ed*, SERB 95-010 (6-30-95), SERB adopted a three-part balancing test to determine whether certain subjects are mandatory or permissive subjects of bargaining and a standard for application of the test:

In establishing what issues must be submitted to the process of collective bargaining, the legislature had no expectation that the elected exclusive representative would become an equal partner in the running of the business enterprise in which the employee organization's members are employed. \*\*\* The statute's aim is not realized by requiring bargaining over every management decision that affects employee working conditions. The aim of the statute is better realized by adopting a standard, in the form of a balancing test to identify those subjects about which public employers must bargain in Ohio.

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Only those subjects that both have a material influence upon wages, hours or terms and other conditions of employment and involve the exercise of inherent managerial discretion are subject to the three-part balancing test. The balancing test analysis is not necessary when the subject matter at issue is an inherently managerial prerogative not affecting

wages, hours or terms and conditions of employment, pertains only to wages, hours, or terms and conditions of employment or is preempted by legislation. [Emphasis added.]

Upon review of O.R.C. § 4117.08(C), we find that the assignment/reassignment of job duties is an inherently managerial prerogative because this action falls within the Employer's responsibility to effectively manage its workforce, improve efficiencies, and determine the overall process, means, and personnel by which its operations are to be conducted. Thus, the issue becomes whether the reassignment of the 504 Plan job duties had a *material* influence upon the guidance counselors' wages, hours or terms and other conditions of employment.

At the outset, the Board notes and fully appreciates that the provision of services under a 504 Plan is an important contributor to student success. However, in considering the nature of the 504 Plan coordination duties assigned to the guidance counselors, we find that the evidence demonstrates that these job duties have no material influence upon the guidance counselors' wages, hours or terms and other conditions of employment. The tasks involved in coordinating 504 Plans are largely clerical and administrative and the guidance counselors already perform many of these tasks. The 504 Plan process is initiated when a parent contacts the school or a guidance counselor regarding a potential disability issue. The guidance counselor refers the student in question to the school nurse or school psychologist for assessment based upon the issue raised by the parent. After the assessment is completed, the guidance counselor schedules a 504 Plan meeting with both the assessment team and the parents to discuss whether the child qualifies for a 504 Plan. If the child qualifies, the team develops the plan. Although the guidance counselor may gather information from teachers regarding the student's issues, it is the nurse or psychologist who determines the disability and the medical components of the plan. The guidance counselor enters all necessary personal and plan information into a 504 Plan template, gathers appropriate documents, obtains appropriate signatures, and distributes the 504 Plan to the student's teachers and parents and to the appropriate school administrators. After the 504 Plan is implemented, the guidance counselor monitors the student during the school year and schedules periodic reviews.

The evidence establishes that during the 2014-2015 school year, the School District had a total of thirty-two 504 Plans (twenty-six new plans and six existing plans).<sup>2</sup> There were eight guidance counselors in the School District during the 2014-2015 school year. Assuming even distribution, each guidance counselor would have been responsible for four plans during that school year. Each plan takes approximately three hours of work time each school year. With a 184-day school year and a 7.5-hour workday, the guidance counselors would spend, on average, less than one percent of their work time on 504 Plans for the entire school year. In *In re Cleveland Heights-University Heights, supra*, SERB determined that the employer's Medicaid billing process which took minutes to complete had no material influence on wages, hours or terms and other conditions of employment. While the amount of time considered in this case involves more time than that of *In re Cleveland Heights-University Heights*, the time element is still minimal, involving less than one percent of work time over the entire school year.

Therefore, given the clerical and administrative nature of many of the 504 Plan coordination duties, and given that many of these duties overlap with duties already performed by the guidance counselors, we find that the changes in job duties do not involve significant changes to the guidance counselors' existing job duties and are thus *de minimis*. With regard to the guidance counselors' existing job duties, we note that the evidence shows that guidance counselors already interact with students, teachers, administrators, and parents to coordinate efforts to provide assistance to students who are struggling in school. Guidance counselors refer students to the school nurse or psychologist for assessments. Guidance counselors monitor students as a major function of their position. Guidance counselors maintain complete and accurate records as required by law. Guidance counselors already work with 504 Plans when participating in "IAT" meetings.

Complainant and Intervenor argue that the 504 Plan duties are not *de minimis* because they require extensive training, experience, and time to perform medical research. This argument lacks merit for several reasons. First, the evidence shows that the School District provided expert training through Ms. Dieringer and the school psychologists, who provided examples, outlines, hands-on training, and one-on-one guidance whenever it was needed. Second, Ms. Dieringer explained that the layout of the 504 Plan template is such that proficiency in this task is achieved through actual

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<sup>2</sup> The elementary schools implemented three new plans, the intermediate and junior high school implemented twenty-two new plans, and the high school implemented one new plan. For purposes of this analysis, the existing 504 Plans were also estimated to take three hours each school year to monitor.

performance. Third, as previously noted, the guidance counselors already perform many of the tasks involved in coordinating 504 Plans, including participating in IAT meetings, monitoring students in the learning environment, and coordinating with parents, students, and teachers to provide assistance to struggling students. Fourth, the evidence establishes that the guidance counselors are not responsible for researching medical issues and determining disabilities as part of their 504 Plan duties; those are duties performed by the school nurse or the school psychologist. Fifth, the evidence shows that the guidance counselors are familiar with other types of educational assistance plans and have been able to learn those plan processes and implement the plans as part of their job duties.

Complainant and Intervenor further argue that the guidance counselors' workload is such that they do not have *any* amount of work time to assume additional duties. Although there was some testimony regarding the guidance counselors' workloads, no evidence was presented to establish the workload of any of the eight guidance counselors. Therefore, we find that the evidence is insufficient to conclude that the guidance counselors cannot incorporate the additional 504 Plan duties into their normal workday.

Lastly, the Union asserts that Respondent violated O.R.C. § 4117.11(A)(1) when Interim Special Education Coordinator Christine Dieringer informed WHS guidance counselors that there would be no negotiating the additional job duties. During her testimony, Ms. Dieringer denied making such a statement. No other evidence was presented with regard to the alleged (A)(1) violation. Therefore, we find that the evidence is insufficient to support a conclusion that the School Board interfered, restrained, or coerced the guidance counselors in the exercise of their rights under O.R.C. Chapter 4117.

### **III. CONCLUSION**

For the foregoing reasons, we conclude that the unfair labor practice charges are timely and Massillon City School District Board of Education did not violate O.R.C. §§ 4117.11(A)(1) or (A)(5) when it assigned the duty to coordinate 504 Plans to its guidance counselors. Accordingly, we dismiss the complaint and dismiss with prejudice the unfair labor practice charges.

Zimpher, Chair, and Schmidt, Vice Chair, concur.