

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

and

City of Maple Heights,

Respondent.

Case No. 2016-ULP-12-0279

ORDER
(OPINION ATTACHED)

STATE EMPLOYMENT
RELATIONS BOARD
2017 MAR 21 A 11: 14

Before Chair Zimpher, Vice Chair Schmidt, and Board Member Lumpe: March 21, 2017.

On December 16, 2016, the Fraternal Order of Police, Ohio Labor Council, Inc. ("Charging Party" or "Intervenor" or "Union") filed of an unfair labor practice charge against the City of Maple Heights ("City" or "Respondent"), alleging that the City violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(5) by refusing to bargain with the Union for an initial collective bargaining agreement because the bargaining unit only contains one member.

On January 27, 2017, the State Employment Relations Board ("Board" or "Complainant") found probable cause to believe that the City had committed or was committing unfair labor practices, authorized the issuance of a complaint, and referred the matter to an expedited hearing. Upon review of the information contained in the record, the Board issued a Procedural Order through its Office of General Counsel directing that, in lieu of an evidentiary hearing, the parties submit their case directly to the Board on stipulations and briefs, followed by oral argument.

On February 23, 2017, the parties filed their stipulations and briefs. The parties appeared before the Board for oral argument on March 9, 2017.

After considering the unfair labor practice charges, the parties' stipulations and briefs, oral argument, 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 Respondent, City of Maple Heights, violated O.R.C. §§ 4117.11(A)(1) and (A)(5) by refusing to bargain with the Fraternal Order of Police, Ohio

Labor Council, Inc. for an initial collective bargaining agreement for the City's single-member bargaining unit of Records Clerks.

Respondent, City of Maple Heights, is hereby **ORDERED** to take the following action:

A. CEASE AND DESIST FROM:

- (1) Interfering with, restraining, or coercing a public employee in the exercise of his or her rights guaranteed in Ohio Revised Code Chapter 4117 by refusing to bargain collectively with the exclusive representative of certain of its employees and from otherwise violating Ohio Revised Code §§ 4117.11(A)(1) and (A)(5).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Bargain in good faith with the Fraternal Order of Police, Ohio Labor Council, Inc. to determine the wages, hours, terms and other conditions of employment and to enter into an initial collective bargaining agreement for the member of the Records Clerks bargaining unit;
- (2) Post for 60 consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees represented by the Fraternal Order of Police, Ohio Labor Council, Inc. work, the Notice to Employees furnished by the State Employment Relations Board stating that the City of Maple Heights shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative actions set forth in paragraph (B); and
- (3) Notify the State Employment Relations Board 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, and upon each party's representative by ordinary mail, on this 21st day of March, 2017.



ERIN E. CONN, BOARD CLERK



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 has determined that the City of Maple Heights violated Ohio Revised Code sections 4117.11(A)(1) and(A)(5) and has ordered that this Notice be posted. The City of Maple Heights intends to carry out the order of the State Employment Relations Board and to abide by the following:

A. CEASE AND DESIST FROM:

- (1) Interfering with, restraining, or coercing a public employee in the exercise of his or her rights guaranteed in Ohio Revised Code Chapter 4117 by refusing to bargain collectively with the exclusive representative of certain of its employees and from otherwise violating Ohio Revised Code §§ 4117.11(A)(1) and (A)(5).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Bargain in good faith the Fraternal Order of Police, Ohio Labor Council, Inc. to determine the wages, hours, terms and other conditions of employment and to enter into an initial collective bargaining agreement for the member of the Records Clerks bargaining unit;
- (2) Post for 60 consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees represented by the Fraternal Order of Police, Ohio Labor Council, Inc. work, this Notice to Employees furnished by the State Employment Relations Board stating that the City of Maple Heights shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative actions set forth in paragraph (B); and
- (3) Notify the State Employment Relations Board in writing within 20 calendar days from the date the Order becomes final of the steps that have been taken to comply herewith.

SERB v. City of Maple Heights
Case No. 2016-ULP-12-0279

BY

DATE

TITLE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This Notice must remain posted for sixty 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.

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

and

City of Maple Heights,

Respondent.

Case No. 2016-ULP-12-0279

OPINION

STATE EMPLOYMENT
RELATIONS BOARD
2017 MAR 21 A 11:14

ZIMPHER, Chair

This unfair labor practice case comes before the State Employment Relations Board ("SERB" or "Board" or "Complainant") on joint stipulations and the legal briefs of Intervenor, the Fraternal Order of Police, Labor Council, Inc. ("Union" or "FOP"), and Respondent, the City of Maple Heights ("City" or "Respondent"), and on oral argument. For the reasons set forth below, we find that the City violated O.R.C. §§ 4117.11(A)(1) and (A)(5) by refusing to bargain with the Union for an initial collective bargaining agreement because the bargaining unit only contains one member.

I. FINDINGS OF FACT

The Board adopts the parties' joint stipulations, which are set forth below:

1. The City of Maple Heights is a "public employer" as defined in R.C. 4117.01(B). (Joint Stipulation ["J. Stip."] 1)
2. The Fraternal Order of Police, Ohio Labor Council, Inc. is an "employee organization" as defined in R.C. 4117.12(D) and is the SERB-certified exclusive representative for the bargaining unit of full-time Records Clerks employed by the City. (J. Stip. 2)

3. On or about August 5, 2015, the FOP filed a Request for Recognition with SERB for a bargaining unit of "All full-time Records Clerks" of the City (Case No. 2015-REP-08-0076), stating that the approximate number of employees in the bargaining unit was two (2). The City did not file objections to the proposed bargaining unit. (J. Stip. 3)
4. The City filed an Alphabetical List of Employees in the proposed bargaining unit that consisted of one (1) employee. Since at least August 5, 2015, when the FOP filed the Request for Recognition, through to the present, the City has only employed one (1) person in the position of Records Clerk, Stacey Dennison. (J. Stip. 4)
5. The City did not at that time either object or file substantial evidence that the bargaining unit was inappropriate because it consisted of a single employee. (J. Stip. 5)
6. On October 29, 2015, SERB certified the FOP as the exclusive representative of all Full-time Records Clerks in the unit. (J. Stip. 6)
7. On or about April 8, 2016, the FOP filed a Notice to Negotiate with SERB for the purpose of negotiating an initial collective bargaining agreement (Case No. 2016-MED-04-0478), which Notice to Negotiate stated that the approximate number of employees in the bargaining unit was two (2). (J. Stip. 7)
8. The FOP and the City engaged in negotiations on August 17, 2016 and September 7, 2016, with a third date scheduled for September 19, 2016. At the August 17th and September 7th negotiations sessions, the bargaining unit was represented by FOP Staff Representative Chuck Aliff and the City was represented by Michael Esposito of Clemans, Nelson & Associates. (J. Stip. 8)
9. On or about September 16, 2016, the City's new Law Director, Frank Consolo, notified Mr. Esposito that he and his firm would no longer be representing the City in any of its labor matters, including any negotiations with the FOP. Mr. Esposito notified Mr. Aliff that he would no longer be representing the City in negotiations and that the new Law Director, Frank Consolo, would be representing the City. (J. Stip. 9)
10. Mr. Aliff arrived at City Hall for the pre-scheduled September 19th negotiation session. Due to some form of miscommunication, the meeting was cancelled. (J. Stip. 10)
11. On or about October 6, 2016, Mr. Aliff emailed Mr. Consolo requesting dates for additional negotiations. Mr. Consolo did not respond. (J. Stip. 11)

12. On or about October 14, 2016, Mr. Aliff emailed Mr. Consolo again requesting dates for negotiations. Mr. Consolo did not respond. (J. Stip. 12)
13. On or about October 27, 2016, Mr. Aliff telephoned Mr. Consolo requesting additional dates for negotiations. During this conversation, Mr. Consolo questioned the appropriateness of the one-person bargaining unit. Mr. Aliff subsequently emailed Mr. Consolo again requesting dates for negotiations. (J. Stip. 13)
14. On or about November 16, 2016, the FOP sent a request to SERB to provide a fact-finding panel to the parties. SERB provided the parties with a panel; however, Mr. Consolo refused to participate in the selection of a fact-finder. (J. Stip. 14)
15. On or about November 23, 2016, the FOP requested that SERB make a discretionary appointment of a fact-finder. That same day, SERB appointed Michael King as the parties' fact-finder.
16. On or about November 23, 2016, Mr. Consolo emailed SERB's General Counsel a letter stating "the reason why the City has refused, and is continuing to refuse in selecting a fact-finder is that it is our belief that since this is a single employee bargaining unit it is not an appropriate unit for collective bargaining under RC Chapter 4117. Therefore, going forward please be advised that the City will continue to refuse to bargain." Mr. Consolo noted that "... the City's previous representative had failed to file an objection to the request for representation. Notwithstanding that failure, it is the City's position that as a matter of law this single employee requested bargaining unit is not appropriate."
17. On December 16, 2016, the FOP filed an unfair labor practice charge with SERB, pursuant to and in accordance with R.C. 4117.12(B) and O.A.C. 4117-7-01, alleging that the City had violated R.C. 4117.11(A)(1) and (A)(5).
18. On January 26, 2017, SERB determined that probable cause existed to believe that the City had committed or was committing unfair labor practices, authorized the issuance of a complaint and referred the matter to an expedited hearing.
19. On January 27, 2017, the Board issued a complaint and notice of hearing for the matter to be submitted on stipulations and briefs followed by oral argument before the Board.

II. DISCUSSION

The sole issue before the Board in this case is whether Respondent, City of Maple Heights, violated O.R.C. §§ 4117.11(A)(1) and (A)(5) by refusing to bargain with

the Union for an initial collective bargaining agreement because the bargaining unit only contains one member.

O.R.C. §§ 4117.11(A)(1) and (A)(5), provides, 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 Revised Code or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

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

When a violation of O.R.C. § 4117.11(A)(1) is alleged, the appropriate inquiry is an objective rather than subjective one. *In re Pickaway County Human Services Dept.*, SERB 93-001 (3-24-93), *aff'd sub nom. SERB v. Pickaway Human Services Dept.*, 1995 SERB 4-46 (4th Dist. Ct. App., Pickaway, 12-7-95); *In re Tuscarawas Township Board of Trustees, Stark County*, SERB 2009-001 (8-31-2009).

A circumvention of the duty to bargain under O.R.C. § 4117.11(A)(5), regardless of subjective good faith, is unlawful. *In re Mayfield City School Dist Bd of Ed*, SERB 89-033 (12-20-89); *NLRB v. Katz*, 369 U.S. 736, 82 S.Ct. 1107 (1962).

This case comes before us on the parties' legal briefs and oral argument. Respondent admits that it has refused to bargain with the Union for an initial collective bargaining agreement for a single-employee bargaining unit of the City. It is Respondent's position that a single-employee bargaining unit is not an appropriate unit for collective bargaining under O.R.C. Chapter 4117. Respondent argues that O.R.C. § 4117.04(A) refers to bargaining units composed of "employees" and includes the term "collective bargaining," both of which indicate that more than one employee is needed to constitute a bargaining unit. In support of its argument, Respondent cites decisions from other states and the National Labor Relations Board that hold that single-member bargaining units are not appropriate and will not be recognized in their jurisdictions.

Respondent's arguments have been addressed and rejected by SERB in two prior cases, *In re City of Wauseon*, SERB 88-019 (12-23-88) ("*Wauseon*") and *In re City of Munroe Falls*, SERB 2011-005 (7-12-11) ("*Munroe Falls*").

In *Wauseon*, SERB rejected the employer's objections to a petition for representation election where the proposed bargaining unit was composed of one full-time police sergeant. In that case, one of the employer's arguments was that certain terms and phrases used in O.R.C. §§ 4117.03 and 4117.04 relate only to actions taken by more than one person. SERB disagreed and found that the use of the plural term "employees" did not exclude single-employee bargaining units. In its Opinion, SERB stated:

*** The use of plural terminology does not preclude the possibility of a single-employee unit; the wording of the statute merely reflects the reality that nearly all bargaining does involve groups of employees. *** O.R.C. § 4117.06(B) must be taken as a whole. Single words or phrases cannot be read in isolation from the entire section or chapter.

In *Munroe Falls*, SERB revisited the issue regarding whether a single-employee bargaining unit is appropriate under O.R.C. Chapter 4117. The case involved an unfair labor practice charge made against the employer for its refusal to bargain with a single-member bargaining unit that consisted of one full-time police sergeant. SERB applied its holding in *Wauseon* and reaffirmed that the use of the plural term "employees" and the phrase "collective bargaining" do not preclude single-employee bargaining units under O.R.C. Chapter 4117. SERB found that the City's refusal to bargain was a violation of O.R.C. §§ 4117.11(A)(1) and (A)(5). SERB's Decision in *Munroe Falls* was affirmed by the Ninth District Court of Appeals (See *City of Munroe Falls v. State Employment Relations Board, et al.*, 9th Dist. Summit No. 26330, 2012-Ohio-6212, 2012 SERB 4-77.).

The City argues that *Wauseon* and *Munroe Falls* are distinguishable from the instant case as they involved the statutory prohibition against the inclusion of sergeants in a bargaining unit with the rank and file members of a police department under O.R.C. § 4117.06(D)(6). We disagree.

While it is true that the case before us does not involve a single-employee sergeant's unit, the Decisions in *Wauseon* and *Munroe Falls* were based upon a number of factors, including SERB's exclusive jurisdiction to determine the appropriate

unit for bargaining under O.R.C. § 4117.06. In both *Wauseon* and *Munroe Falls*, SERB specifically noted that there is no language in O.R.C. Chapter 4117 that precludes single-employee bargaining units. Indeed, a long established rule of legislative and statutory construction and interpretation, as provided for in O.R.C. § 1.43, prescribes that “the plural includes the singular and the singular includes the plural.” Thus, the meaning of “employee” or “employees” contained in O.R.C. Chapter 4117 must therefore be interpreted in conformity with the above-referenced section of the Ohio Revised Code.

In this case, Respondent has stipulated that it refused to bargain collectively with the exclusive representative of a SERB-certified single-employee bargaining unit because the unit is not appropriate. Respondent also has stipulated that the parties followed the recognition process set forth in O.R.C. §§ 4117.05 and 4117.06, and stipulated that at no time during this process did it file objections to the proposed bargaining unit or provide any substantial evidence to show that the bargaining unit was inappropriate. In fact, Respondent filed its Alphabetical List of Employees in the proposed bargaining unit that consisted of one employee. Moreover, Respondent initially participated in two negotiation sessions before refusing to bargain with the Union.

O.R.C. § 4117.04(B) provides that once SERB has certified a bargaining unit, the public employer is obligated to bargain collectively with the exclusive representative designated under O.R.C. § 4117.05. In this case, SERB certified the Union as the exclusive representative of the City’s Records Clerks bargaining unit on October 29, 2015, triggering the City’s duty to bargain collectively with the Union, and the Union filed its Notice to Negotiate on April 8, 2016. Because SERB certified the Union as the exclusive representative, the City has a continuous and ongoing duty to bargain with the Union. See *State Emp. Relations Bd. v. Miami Univ.* (1994), 71 Ohio St.3d 351, 1994-Ohio-189, 1995 SERB 4-1 (“The duty to bargain with an exclusive representative continues so long as the representative maintains its exclusive status. Once certified, the representative’s exclusive status is maintained until the representative is displaced in accordance with the procedures set forth in R.C. 4117.01.”).

III. REMEDY

Based on the foregoing, an Order with a Notice to Employees will be issued ordering the City of Maple Heights to take the following actions:

A. CEASE AND DESIST FROM:

- (1) Interfering with, restraining, or coercing a public employee in the exercise of his or her rights guaranteed in Ohio Revised Code Chapter 4117 by refusing to bargain collectively with the exclusive representative of certain of its employees and from otherwise violating Ohio Revised Code §§ 4117.11(A)(1) and (A)(5).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (2) Bargain in good faith with the Fraternal Order of Police, Ohio Labor Council, Inc. to determine the wages, hours, terms and other conditions of employment and to enter into an initial collective bargaining agreement for the member of the Records Clerks bargaining unit;
- (3) Post for 60 consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees represented by the Fraternal Order of Police, Ohio Labor Council, Inc. work, this Notice to Employees furnished by the State Employment Relations Board stating that the City of Maple Heights shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative actions set forth in paragraph (B); and
- (4) Notify the State Employment Relations Board 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 City of Maple Heights is a "public employer" as defined in O.R.C. § 4117.01(B).
2. The Fraternal Order of Police, Ohio Labor Council, Inc. is an "employee organization" as defined in O.R.C. § 4117.01(D) and is the SERB-certified exclusive representative for the bargaining unit of Records Clerks of the City of Maple Heights.
3. The bargaining unit of Records Clerks, which consisted at the time of certification and continues to consist of a single employee, is an appropriate bargaining unit under O.R.C. § 4117.06.
4. SERB determined the bargaining unit of Records Clerks was appropriate when it certified the Fraternal Order of Police, Ohio Labor Council, Inc. as the exclusive representative on October 29, 2015.

5. The City of Maple Heights violated O.R.C. §§ 4117.11(A)(1) and (A)(5) when it refused to bargain with the Fraternal Order of Police, Ohio Labor Council, Inc. for an initial collective bargaining agreement for the member of the Records Clerks bargaining unit.

V. DETERMINATION

For the reasons stated above, we find that the City of Maple Heights violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(5) when it refused to bargain with the Fraternal Order of Police, Ohio Labor Council, Inc. A Cease and Desist Order with a Notice to Employees shall be issued to the City of Maple Heights 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.