

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

and

City of Willoughby Hills,

Respondent.

Case Number: 2018-ULP-04-0066

STATE EMPLOYMENT  
RELATIONS BOARD  
2018 DEC 20 A 11: 13

**ORDER**  
**(OPINION ATTACHED)**

Before Chair Zimpher, Vice Chair Schmidt, and Board Member Lumpe: December 20, 2018.

On April 19, 2018, The American Federation of State County and Municipal Employees, Ohio Council 8, AFL-CIO ("Charging Party" or "Intervenor" or "AFSCME"), filed an unfair labor practice charge against the City of Willoughby Hills ("City" or "Respondent") with the State Employment Relations Board ("Board" or "Complainant"). AFSCME alleged the City discriminated and retaliated against members of the newly formed AFSCME bargaining unit when 13 members of the unit were laid off shortly after the City entered into a first-time collective bargaining agreement with the union. AFSCME alleged these employees were discriminated against when they engaged in concerted and protected activity when they formed a union and negotiated a collective bargaining agreement with the City of Willoughby Hills. No other City employees, either union or non-union, were subject to layoff.

The matter was initially directed to mediation but was unsuccessful. On September 13, 2018, the Board found probable cause to believe that the City committed an unfair labor practice and directed the matter to a hearing.

On September 26, 2018, the Board issued a Complaint. AFSCME's Motion to Intervene was granted. Pursuant to agreement of the parties, Joint Stipulations of Fact were submitted to the Board and an oral argument was held on October 25, 2018. Representing the City was Mayor Robert Weger; representing AFSCME was Michelle Evans, Associate Counsel, and representing the Complainant was Michael Allen, Assistant Attorney General.

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 Willoughby Hills, violated Ohio Revised Code §§ 4117.11(A)(1), (A)(3) and (A)(5) when it discriminated against the members of the AFSCME bargaining unit by laying them off because of their participation and activities on behalf of the bargaining unit and by refusing to bargain.

Respondent, City of Willoughby Hills, is hereby **ORDERED** to take the following action:

**A. CEASE AND DESIST FROM:**

(1) Violating Ohio Revised Code §§ 4117.11(A)(1), (A)(3) and (A)(5).

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

(1) The City is Ordered to post, for a period of not less than 60 days, a Notice setting forth its violations of Ohio Revised Code §§ 4117.11 (A)(1), (A)(3) and (A)(5);

(2) The City is ordered to reinstate all of the above bargaining unit employees to their pre-layoff positions;

(3) The City is to make the above bargaining unit employees whole for all wages and benefits lost from April 30, 2018, to the date of reinstatement. These wages and benefits shall be offset subject to mitigation as permitted by law; and

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

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 they 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.

Order  
Case No. 2018-ULP-04-0066  
December 20, 2018  
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**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 20<sup>th</sup> day of December, 2018.

  
ERIN E. CONN, BOARD CLERK

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

In the Matter of

State Employment Relations Board,

Complainant,

and

City of Willoughby Hills,

Respondent.

Case No. 2018-ULP-04-0066

**OPINION**

ZIMPHER, Chair:

**I. INTRODUCTION**

On April 19, 2018, The American Federation of State County and Municipal Employees, Ohio Council 8, AFL-CIO (AFSCME or the Union), filed an unfair labor practice charge against the City of Willoughby Hills (the City) with the State Employment Relations Board (SERB). AFSCME alleged the City of Willoughby Hills discriminated and retaliated against members of the newly formed AFSCME bargaining unit when 13 members of the unit were laid off shortly after the City entered into a first-time collective bargaining agreement with the union. AFSCME alleges these employees were discriminated against when they engaged in concerted and protected activity when they formed a union and negotiated a collective bargaining agreement with the City of Willoughby Hills. No other City employees, either union or non-union, were subject to layoff.

The matter was initially directed to mediation but was unsuccessful. On September 13, 2018, SERB found probable cause to believe that the City committed an unfair labor practice and directed the matter to a hearing.

On September 26, 2018, SERB issued a Complaint. AFSCME's Motion to Intervene was granted. Pursuant to agreement of the parties, Joint Stipulations of Fact were submitted to the Board and an oral argument was held on October 25, 2018. Representing the City of Willoughby Hills was Mayor Robert Weger; representing AFSCME was Michelle Evans, Associate Counsel, and representing the Complainant was Michael Allen, Assistant Attorney General.

## **II. ISSUE**

Whether the City of Willoughby Hills violated R.C. 4117.11(A)(1), (3) and (5) when it laid off AFSCME employees after they had engaged in the protected activity of forming a union and negotiating a first contract.

## **III. FINDINGS OF FACT**

The City of Willoughby Hills, AFSCME and SERB jointly submit their stipulations of facts and joint exhibits, as set forth below:

1. The City is a "public employer" as defined by Ohio Revised Code ("O.R.C.") § 4117.01(B).
2. Ohio Council 8 is an "employee organization" as defined by O.R.C. § 4117.01(D). Ohio Council 8 is the exclusive bargaining representative for certain employees of the City.
3. On October 27, 2016, SERB certified Ohio Council 8 as the exclusive representative of a bargaining unit of employees of the City in SERB Case Number 2016-REP-06-0060.
4. The City did not file any objections or otherwise voice any opposition to the proposed bargaining unit in SERB Case No. 2016-REP-06-0060.
5. On June 6, 2017, the City and Ohio Council 8 entered into a tentative agreement (TA) for a first collective bargaining agreement (CBA).
6. The TA became a binding CBA between the City and Ohio Council 8 when, after it was presented to the legislative body of Willoughby Hills (City Council), the City Council did not take action to reject the TA within thirty (30) days pursuant to O.R.C. § 4117.10(B). (Joint Exhibit 2).
7. On January 4, 2018, Robert Weger, Mayor of Willoughby Hills (Mayor Weger or Mayor), signed the first CBA covering employees in the bargaining unit that is represented by Ohio Council 8. (Joint Exhibit 3).
8. Pursuant to R.C. 4117.10(C), the Mayor is the City's lawful representative in matters relating to collective bargaining and labor relations.
9. On or around January 8, 2018, City Council passed Ordinance No. 2017-88, appointing Council President as Acting Mayor, and authorizing City Council to hire attorney Joseph N. Gross (Gross) of Benesch, Friedlander, Coplan and Aronoff, LLP, as special counsel in labor relations matters. (Joint Exhibit 4). On or around

January 10, 2018, Mayor Weger vetoed Ordinance No. 2017-88. (Joint Exhibit 5). The veto was overridden by City Council on January 11, 2018.

10. On or around February 8, 2018, City Council passed Ordinance No. 2018-6 to appropriate funds necessary to engage the services of Gross. (Joint Exhibit 6). On or around February 12, 2018, Mayor Weger vetoed Ordinance No. 2018-6. (Joint Exhibit 7). The veto was overridden by City Council on February 22, 2018.
11. By letter dated February 9, 2018, Gross informed counsel for Ohio Council 8 that he represented the City; that the City was "disappointed with how the certification of this unit came to be and how the subsequent so-called collective bargaining proceeded"; and requested that the City and Union meet to confer about the City's issues. (Joint Exhibits 8-A and 8-B).
12. By letter dated March 29, 2018, Gross notified Ohio Council 8 that City Council was looking at budget cuts that would result in the layoff of bargaining unit employees. (Exhibit 8-C and 8-D).
13. On or about March 29, 2018, City Council passed a budget ordinance, Ordinance No. 2018-13, which eliminated the classifications listed in paragraph 18, below.
14. Using a line-item veto, the Mayor vetoed the proposed budget portions that eliminated the full-time positions. This veto was overridden by City Council on or around April 2, 2018. (Joint Exhibits 9 and 10).
15. On March 29, 2018, Willoughby Hills City Council passed Ordinance 2018-19, which eliminated the classifications listed in paragraph 18, below. (Joint Exhibit 11).
16. By letter dated April 4, 2018, Mayor Weger notified Ohio Council 8 and SERB that City Council did not have authority to appoint Gross and that the Mayor was representing the City. (Joint Exhibit 12).
17. On or around April 9, 2018, Mayor Weger vetoed Ordinance No. 2018-19. (Joint Exhibit 13). The veto was overridden by City Council on April 12, 2018.

18. As a result of the enactment of Ordinance Nos. 2018-13 and 2018-19, the following classifications were eliminated, and the following employees were laid off effective April 30, 2018:

| Classification                     | Employee(s)   |
|------------------------------------|---|
| Building/Service Department Clerk  | Denise Edwards  |
| Clerk-Recreation Commission        | (Vacant)  |
| Clerk Stenographer                 | Katherine Lloyd<br>Gretchen Weitbrecht  |
| Executive/Administrative Assistant | Gloria J. Majeski   |
| Finance Assistant                  | Sharen M. Michney-Halkiewicz  |
| Mayor's Court Clerk of Courts      | Sandra Formick<br>Janeen Mullin   |
| Property Staff Member              | Brian Anderson<br>Sylvia A. Carter-Naylor<br>Jamil Hairston<br>Mackenzie Hupp<br>Alexis S. Nelson<br>John Spuzzillo |

19. Only classifications that are included in the bargaining unit represented by Ohio Council 8 were selected to be eliminated by the City in Ordinance Nos. 2018-13 and 2018-19.

20. On or around April 5, 2018, City Council passed Ordinance No. 2018-21 (as amended) to permit the appointment of Gross for the purpose of defending the City in labor and employment disputes, including disputes relating to the implementation of the budget. The Mayor vetoed the Ordinance as amended, and on or around April 12, 2018, City Council overrode the Mayor's veto. (Joint Exhibit 14).

21. By letter dated April 9, 2018, Mayor Weger notified Gross of the Mayor's objections to City Council's enactment of Ordinance No. 2018-21 and appointment of Gross as counsel to represent the City in labor matters. (Joint Exhibit 15).

22. On or around May 17, 2018, City Council passed Ordinance No. 2018-27 to remove the Mayor as the representative of the City pursuant to R.C. 4117.20(B). On or around May 24, 2018, the Mayor vetoed Ordinance No. 2018-27. On or around May 24, 2018, City Council overrode the Mayor's veto. (Joint Exhibit 16).

23. Effective May 24, 2018, Katherine Lloyd was recalled by the City to the position of part-time PCABR and BZA Clerk.

24. With the exception of Katherine Lloyd, all employees listed in Paragraph 18, above, remain laid off from their positions with the City.

25. On or around April 12, 2018, employees affected by the layoffs filed grievances alleging they were discriminated against because they formed a union and also because the budget carryover was in excess of one million dollars. Grievances that were filed by Denise Edwards, Sandra Formick, Mackenzie Hupp, Katherine Lloyd, Gloria Majeski, Sharen Michney, Janeen Mullin, Alexis Nelson, John Spuzillo III, and Gretchen Weitbrecht are attached as (Joint Exhibits 17-A, 17-B, 17-C, 17-D, 17-E, 17-F, 17-G, 17-H, 17-I, and 17-J, respectively). The grievances remain pending arbitration.
26. On April 19, 2018, the Union filed an unfair labor practice charge (ULP) with Complainant in accordance with R.C. 4117.12(B) and O.A.C. Section 4117-7-01.
27. In that ULP charge, the Union alleged that the Employer eliminated 7 of 11 classifications included in the bargaining unit represented by the Union because those employees had engaged in protected activity. The Union further alleged that no non-union classifications were eliminated by the Employer.
28. On September 13, 2018, Complainant determined that probable cause existed to believe that the Employer had committed or was committing a ULP.
29. Attached as Joint Exhibit 18 is a payroll report for all laid-off employees listed in paragraph 18, above, for the last pay period immediately preceding their layoffs.
30. Attached as Joint Exhibit 19 is a payroll report for Katherine Lloyd for the pay period ending September 22, 2018.
31. At the time of their layoffs, the employees listed in paragraph 18, above, were regularly scheduled to work the number of hours per week as indicated:

| Employee                     | Hours Per Week |
|------------------------------|----------------|
| Brian Anderson               | 8              |
| Sylvia A. Carter-Naylor      | 25             |
| Denise Edwards               | 40             |
| Sandra Formick               | 25             |
| Jamil Hairston               | 20             |
| Mackenzie Hupp               | 8              |
| Katherine Lloyd              | 12             |
| Gloria J. Majeski            | 40             |
| Janeen Mullin                | 40             |
| Sharen M. Michney-Halkiewicz | 40             |
| Alexis S. Nelson             | 8              |
| John Spuzillo                | 20             |
| Gretchen Weitbrecht          | 37.5           |



32. Pursuant to Article 27 of the CBA, Denise Edwards received \$225.00 per month, payable the first pay period of a month, for declining health insurance coverage. A true and exact copy of Edwards' pay stub for the pay period ending April 7, 2018 is attached as Joint Exhibit 19 and evidences the monthly \$225.00 payment that Edwards received for declining health insurance coverage.
33. At the time of their layoffs effective April 30, 2018, Edwards was enrolled in accidental, critical care insurance coverage through AFLAC, which coverage included wellness benefits. Subsequent to Edwards' layoff, she and two other family members had annual health screenings/immunizations, which would have resulted in AFLAC's payment of \$180.00 (or \$60.00 per screening), had Edwards' AFLAC coverage not terminated.
34. At the time of their layoffs effective April 30, 2018, Gloria Majeski and Janeen Mullin received health care coverage pursuant to Article 27 of the CBA.
35. After her layoff effective April 30, 2018, Gloria Majeski enrolled in continuing health care coverage (COBRA), at a cost of approximately \$1,500.00 per month.
36. After her layoff effective April 30, 2018 Janeen Mullin became enrolled through her husband's health insurance, at an additional cost of \$141.00 per pay period.
37. After her layoff effective April 30, 2018, Mullin incurred out-of-pocket medical expenses in the amount of \$854.10 for prescription medications that would have been covered under Mullin's health care coverage with the City.

#### **IV. ANALYSIS AND DISCUSSION**

##### **A. THE MAYOR**

The crux of this case is whether the City of Willoughby Hills interfered with, restrained, or coerced employees when it laid off the AFSCME bargaining unit employees after they had engaged in the protected activity of forming a union and negotiating a first-time labor agreement.

At the outset, there is disagreement in the City of Willoughby Hills about the respective roles the Mayor and City Council have regarding the conduct of labor relations for the City. The Mayor's office occupies the executive branch while the City Council constitutes the legislative branch. Courts have previously had the opportunity to review the respective obligations of these offices vis-a-vis collective bargaining. In *SERB v. Martins Ferry*, 1991 SERB 4-62 (7<sup>th</sup> Dist. Ct. App, Belmont, 8-23-89), the Court held that:

Pursuant to R.C. 4117.10(C), the public employer's Chief Executive Officer is responsible for negotiations. The legislative body may accept or reject a proposed collective bargaining agreement but has no other function in the bargaining process. 4-62

*Coyne v. Salvatore*, 8<sup>th</sup> District Cuyahoga Nos. 79507, 79509, 79510, 2002-Ohio-5819, 2002 Ohio App LEXIS 5671 is similarly instructive. *Coyne* explains that pursuant to R.C. 4117.10 (C) a municipal mayor "is responsible for negotiations in the collective bargaining process" and city council's role is limited to accepting or rejecting a proposed collective bargaining agreement. *Id.* at 88-94. "Union negotiations are the exclusive domain of the executive branch, and council may only reject or deny the entire labor agreement after the mayor and union agree on it."

It is, therefore, a well-established tenant of Ohio law that as Chief Executive Officer of a municipal corporation, a mayor is the "public employer" who engages in negotiations and acts separately and apart from the legislative body. R.C. 4117.10 (C). A city council acts only in accepting or rejecting a proposed collective bargaining agreement. See *State ex rel. Ohio Patrolmen's Benevolent Ass'n v. State Empl. Rels. Bd.*, 10<sup>th</sup> Dist. Franklin No. 05AP-526, 2006-Ohio-3263, 2006 Ohio App. LEXIS 3184 at 11; *State Employment Relations Board v. Martins Ferry*, 7<sup>th</sup> Dist. Belmont No. 90-B-37, 1991 Ohio App LEXIS 2600 (6-6-91). See also *In re Columbiana County Bd of Commrs*, SERB 99-019 (June 30, 1999-30-99); *In re Franklin County Sheriff*, SERB 86-007 (2-26-86).

Another consideration is noted in *In re Fairfield County Human Service Dept.*, SERB 99-020 (6-30-99). There, SERB held if the legislative body gets involved before the process comes to them to accept or reject, it takes on a new role- the employer. They cannot be permitted to accept an agreement in the role of employer and then reject it in the role of the legislative body. *Id.* at 3-127.

In the case before us, City Council attempted to usurp the power of Mayor Wegner when they passed Ordinance No. 2017-88 that appointed the City Council President as Acting Mayor and hired a Labor Attorney to represent City Council in labor matters. (Joint Ex. 4). The Mayor vetoed this legislation and his veto was subsequently overridden by Council. In his veto message, Mayor Wegner noted that the action appointing legal counsel for union matters is "...[n]ot a legislative authority." (Joint Ex. 5, at 1). Further, the Mayor also cited O.R.C. 731.05 that limits the powers of the legislative branch to exclude that body from performing administrative duties or appointing employees. *Id.* at 5.

This Board has not been presented with any authority, nor has the argument been made, that Mayor Weger has been stripped of his office. In fact, Joint Ex. 24 is a Common Pleas decision wherein Judge Fuhry invalidated attempts to usurp the power of Mayor Weger, a *second time*. *Weger v. Willoughby Hills City Council, et al.*, Case No. 18 CV 000964, C.P. Lake County, Sept. 17, 2018. (Court pointing out that Mayor Weger and City Council had litigated an almost identical issue several months earlier regarding City Council's attempt to usurp Mayor Weger's authority to negotiate with the AFSCME

bargaining unit). In the *Weger* case, Judge Furhy granted Mayor Weger's request for a temporary restraining order and preliminary injunction finding that the "usurpation of the executive authority by the council majority without good cause inflicts irreparable harm because it deprives the City of the voice of its duly elected Mayor in negotiations he is mandated to conduct." *Id.* at 3-4.

It is abundantly clear to this Board that Mayor Weger is the Executive in charge of labor relations for the City of Willoughby Hills.

## **B. CITY COUNCIL**

City Council's actions giving rise to this charge were the elimination of funding for 13 positions in what is also referred to as the "Secretaries Union". Ostensibly it was because of necessary budget cuts. (Joint Ex. 8-C). At oral argument, the Mayor stated that the City had a budget carryover in excess of \$1 million and that no other group of employees was subject to similar reductions or layoffs. (Oral Argument Recording at 39 minutes.)

The onset for this sequence of events started with the certification of the AFSCME bargaining unit on October 26, 2016. This was followed by negotiation of a first-time labor agreement. City Council took no action on the agreement, allowing it to take effect pursuant to O.R.C. 4117.10(B). It was subsequently signed by the Mayor on January 4, 2018.

Shortly thereafter, City Council appointed the Council President as "Acting Mayor" and hired their own Labor Attorney. Under the aegis of the Acting Mayor, the new Labor Attorney informed the union the City was disappointed with the certification of the bargaining unit and the "so called collective bargaining" and wanted to meet with the union. (Joint Ex. 8-A and 8-B).

On January 11, 2018, City Council passed Ordinance 2017-88 and appointed City Council President Nancy Fellows Acting Mayor because Robert Weger was unable to perform his duties due to a conflict of interest, that conflict being: he was subject to an investigation allegedly for colluding with union representatives. (Joint Ex. 4).

Ordinance 2018-19, passed by City Council on March 29, 2018, laid off the employees in the AFSCME unit citing budget constraints. The Council President signed the Ordinance as President of Council, not as Acting Mayor. No employees in other units were removed.

On May 24, 2018, City Council passed Ordinance 2018-27 and again appointed Nancy Fellows as Acting Mayor. In the Ordinance, City Council restated its allegation that Robert Weger "has an interest in the outcome of the bargaining, which interest is in conflict with the public employer." That interest is alleged to contravene O.R.C. 4117.20(A) because no one who has such an interest may participate in collective

bargaining. Thus, per Ordinance 2018-27, Nancy Fellows was again appointed Acting Mayor. (Joint Ex.16).

### **C. THE LAYOFF OF THE EMPLOYEES IN THE AFSCME BARGAINING UNIT**

The test for determining unlawful or improper motive of an employer, charged with an unfair labor practice, was announced in *State Emp. Relations Bd. v. Adena Local School Dist. Bd. Dist. Of Edn.* 66 Ohio St. 3d. 485, 613 N.E. 2d 605, 144 L.R.R.M (BNA) 2495 (1993). The court held the "in part" test to be used to determine the actual motivation of the employer. The steps are:

1. The proponent of the charge has the initial burden of showing that the action of the employer was taken to discriminate against the employee for the exercise of protected rights.
2. A prima facie case is established when the proponent meets that burden, creating the presumption of anti-union animus.
3. The employer is then given the opportunity to present evidence that the action was taken for reasons other than anti-union animus. *Id. at 485.*

The test for a prima facie case was revised by *In re Rehabilitation Services Commission*, SERB 2005-004 (4-21-2005). Under O.R.C. 4117.11(A)(3), the Complainant must establish:

1. The individual was a public employee employed by respondent.
2. The individual engaged in concerted protected activity under O.R.C. 4117 which was known to respondent.
3. The respondent took action against the individual which if left un rebutted could lead to the inference that Respondent's action was taken related to the individuals' exercise of protected activity under O.R.C 4117.

In this matter, the City of Willoughby Hills acted through council to eliminate employees who had engaged in the protected activity of forming a union and negotiating a first-time contract. That the City, acting through Council, was hostile to the union can hardly be in dispute. City Council has voiced its opposition to the union on several occasions by its statements and passing Ordinances that were critical of the union and accusing the Mayor of a conflict of interest for negotiating a Labor agreement.

To be clear, Ohio law and public policy created by the General Assembly permits public employees to form unions and negotiate labor agreements governing the terms and conditions of employment with their employer. In this instance, as outlined above, it is the Mayor who negotiates the labor agreement.

City Council may reject a tentative labor agreement that the Mayor has negotiated for the City. Under O.R.C. 4117.10(B), the tentative agreement is submitted to the legislative body for action. If no action is taken within 30 days to approve or disapprove what the Mayor has done, the matter is deemed accepted and the parties are bound by the agreement. The aforementioned section further provides that;

If the legislative body rejects the submission of the public employer, either party may reopen all or part of the entire agreement.

The above provides the opportunity to for City Council to veto whatever agreement the Mayor negotiated for the City. City Council did not take the opportunity to reject or seek modification of the proposed agreement. Instead, they waived their rights. Rejecting the proposed agreement was their opportunity to weigh in on the matter. Through the aforementioned actions, it appears the City, through City Council, attempted to do indirectly what it failed to do directly. The union has established a prima facie case.

In rebuttal for the City, the Mayor admitted at oral argument that the City was not in financial distress, had a carryover in excess of \$1 million and in fact was hurt economically by the elimination of revenue generation operations such as the Mayor's Court. That activity has now shifted to the Municipal Court and resulted in a revenue loss of over \$40,000 per month. This statement undermines the alleged financial constraints facing the City, which City Council claims required budget cuts. (Joint Ex. 8-C).

Pursuant to established law and our analysis above, we find the City of Willoughby Hills, acting through City Council, violated O.R.C. 4117.11 (A)(1) and (A)(3) when it laid off 13 employees represented by AFSCME. They have established anti-union animus that is un rebutted.

#### **D. FAILURE TO BARGAIN**

It is axiomatic in SERB jurisprudence that, at some point, an employer is required to engage in bargaining over layoffs. The purpose is that the parties may discuss proposed arrangements with the employees being removed or any alternatives to displacement of the employees.

The sum and substance of this point is set out on page 12 of the Union brief:

The decision to eliminate bargaining unit classifications affect the wages, hours, and terms and conditions of affected employees. That the parties had engaged in collective bargaining with respect to a layoff provision in the parties initial CBA illustrates both that collective bargaining over layoffs was appropriate, and that engaging in collective bargaining would not have abridged Respondents' freedom to exercise its management rights under

the act. *In re SERB v. Youngstown City Sch. Dist. Bd. Of Ed.*, SERB 95-010 (6-30-95).

The union further noted, nevertheless, Respondent did not provide notice or an opportunity to bargain, and did not engage in “effects” bargaining, prior to the passage of Ordinances 2018-13 and 2018-19. In this case there is no dispute that the City did not engage in bargaining of any kind with the union prior to layoff.

Here the City of Willoughby Hills, through City Council, violated O.R.C. 4117.11(A)(5) when it failed to bargain with the union either over the decision to layoff employees or the impact of the layoff itself.

#### **V. CONCLUSIONS OF LAW**

1. The City of Willoughby Hills is a “public employer” as defined by O.R.C. 4117.01(9).
2. AFSCME Ohio Council 8 is an “employee organization” as defined by O.R.C. 4117.01(D) and is the exclusive representative for the subject employees herein.
3. At all times relevant, Brian Anderson, Sylvia Carter-Naylor, Denise Edwards, Sandra Formick, Jamil Hairston, Mackenzie Hupp, Katherine Lloyd, Gloria Majeski, Sharen Michney-Halkiewicz, Janeen Mullin, Alexis Nelson, John Spuzillo, and Gretchen Weitbrecht were public employees as defined under O.R.C. 4117.01(C).
4. The City violated O.R.C. 4117.11(A)(1) when it discriminated against the above bargaining unit by laying them off because of their participation and activities on behalf of the bargaining unit.
5. The City violated O.R.C. 4117.11(A)(3) when it discriminated against the above bargaining unit employees by laying them off because of their participation and activities on behalf of the bargaining unit.
6. The City violated O.R.C. 4117.11(A)(5) when it discriminated against the above bargaining unit employees by laying them off and refusing to bargain.

## **VI. REMEDY**

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

### **A. CEASE AND DESIST FROM:**

- (1) Violating O.R.C. 4117.11(A)(1), (A)(3) and (A)(5).

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

- (1) The City is Ordered to post, for a period of not less than 60 days, a Notice setting forth its violations of Ohio Revised Code §§ 4117.11 (A)(1), (A)(3) and (A)(5);
- (2) The City is ordered to reinstate all of the above bargaining unit employees to their pre-layoff positions;
- (3) The City is to make the above bargaining unit employees whole for all wages and benefits lost from April 30, 2018, to the date of reinstatement. These wages and benefits shall be offset subject to mitigation as permitted by law; and
- (4) Any other relief which SERB deems appropriate.

## **V. DETERMINATION**

For the reasons stated above, we find that the City of Willoughby Hills violated Ohio Revised Code §§ 4117.11(A)(1), (A)(3) and (A)(5). A Cease and Desist Order with a Notice to Employees shall be issued to the City of Willoughby Hills ordering it to take the actions set forth in the Remedy section of this Opinion.

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



# NOTICE TO EMPLOYEES FROM THE STATE EMPLOYMENT RELATIONS BOARD

POSTED PURSUANT TO AN ORDER OF  
THE STATE EMPLOYMENT RELATIONS BOARD  
AN AGENCY OF THE STATE OF OHIO

After submission of stipulated Findings of Fact and Oral Argument in which all parties had an opportunity to present arguments in support of their case, the State Employment Relations Board has determined that the City of Willoughby Hills has violated the law and has ordered the City to post this notice. The City is directed to carry out the order of the State Employment Relations Board and do the following:

## A. CEASE AND DESIST FROM:

- (1) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by laying off Brian Anderson, Sylvia Carter-Naylor, Denise Edwards, Sandra Formick, Jamil Hairston, Mackenzie Hupp, Katherine Lloyd, Gloria Majeski, Sharen Michney-Halkiewicz, Janeen Mullin, Alexis S. Nelson, John Spuzillo, and Gretchen Weitbrecht because of their participation and activities on behalf of the bargaining unit in violation of O.R.C. § 4117.11(A)(1) and (A)(3); and
- (2) Discriminating against bargaining unit employees by laying them off and refusing to bargain over the layoff in derogation of O.R.C. § 4117.11(A)(5).

## B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Offer reinstatement to the above employees to their full-time positions with full back pay, benefits, and seniority, retroactive to their date of layoff, April 30, 2018, and subject to offset;
- (2) Post for sixty (60) consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees work, represented by the AFSCME Ohio Council 8, the Notice to Employees furnished by the State Employment Relations Board stating that the City of Willoughby Hills shall cease and desist from the actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B);
- (3) Notify the State Employment Relations Board in writing within twenty (20) calendar days from the date the ORDER becomes final of the steps that have been taken to comply therewith.

**SERB v. City of Willoughby Hills, Case No. 2018-UPL-04-0066**

\_\_\_\_\_  
BY

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this Notice or compliance with its provisions may be directed to the State Employment Relations Board.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED**