

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Initial: MJH

State Employment Relations Board,

APR 8 2013

RECEIVED

Complainant,

v.

City of Toledo,

Respondent.

STATE EMPLOYMENT
RELATIONS BOARD
2013 APR -4 P 1:27

Case No. 2010-ULP-05-0147 (SERB Opinion 2011-001)

**ORDER PURSUANT TO REMAND FROM
LUCAS COUNTY COURT OF COMMON PLEAS**

Before Chair Zimpher and Board Member Brundige: April 4, 2013.

This matter is before the State Employment Relations Board ("SERB" or "Board") on remand from the Lucas County Court of Common Pleas "to address the appropriate remedy for Appellee City of Toledo's violations of R.C. 4117.11." (Case No. CI11-3235) The Lucas County Court of Common Pleas has retained jurisdiction over this matter "for any further proceedings or review necessary for determination and entry of a final order, with the understanding that all parties preserve any objections they may have to any order entered in this action prior to the Court's entry of a final order."

We note that the trial court's remand to SERB to provide the Toledo Police Command Officers' Association (TPCOA) with a remedy for the City's violations of Ohio Revised Code ("O.R.C.") § 4117.11 is based upon the court's reversal of SERB's April 28, 2011 final order, which dismissed this case by a majority vote finding no violation of O.R.C. § 4117.11. While we intend to comply with the court's order, SERB reserves its right to appeal the Lucas County Court of Common Pleas' decision reversing SERB. Accordingly, SERB hereby incorporates, in their entirety, by reference SERB's April 28, 2011 order, opinion, and dissenting opinion in SERB Case No. 2010-ULP-05-0147, and expressly reserves its right to appeal the Lucas County Court of Common Pleas' decision reversing SERB's April 28, 2011 final order in this case.

FACTUAL AND PROCEDURAL BACKGROUND

On May 3, 2010, TPCOA filed an unfair labor practice charge against the City of Toledo pursuant to O.R.C. § 4117.12(B). SERB conducted an evidentiary hearing to determine whether the City of Toledo violated O.R.C. §§ 4117.11(A)(1) and (A)(5) when it unilaterally made mid-term changes to the terms of the collective bargaining agreement between the City and TPCOA.

On April 29, 2011, SERB issued a final order and opinion, finding that the City of Toledo *did not* violate O.R.C. §§ 4117.11(A)(1) or (A)(5) when it modified its existing collective bargaining agreement with the TPCOA without negotiation by and agreement of both parties because immediate action was necessary due to exigent circumstances that were unforeseen at the time of negotiations. Since the Board found no violation of O.R.C. §§ 4117.11(A)(1) or (A)(5), there was no remedy and the complaint and unfair labor practice charge were dismissed.

On May 11, 2011, TPCOA appealed SERB's final order to the Lucas County Court of Common Pleas. On December 30, 2011, the trial court issued a decision and judgment reversing SERB's final order. The judgment entry was journalized on January 3, 2012. Although the Lucas County Court of Common Pleas reversed SERB, it did not provide a remedy. On January 13, 2012, TPCOA filed a motion with the trial court for an amendment of judgment pursuant to Civ. R. 59, requesting that the court provide a remedy to TPCOA. The City of Toledo and SERB opposed TPCOA's motion for amendment of judgment pursuant to Civ. R. 59.

On or about January 27, 2012, SERB and the City of Toledo appealed the January 3, 2012 judgment to the Sixth District Court of Appeals. TPCOA filed a cross-appeal. On February 7, 2012, TPCOA filed a notice in the Sixth District Court of Appeals suggesting that its "Civ. R. 59" motion in the trial court should require the appeals court to remand the case to the trial court and to stay appellate proceedings.

On October 2, 2012, the Lucas County Court of Common Pleas granted TPCOA's motion for amendment of judgment and ordered the case remanded to SERB for further proceedings consistent with its judgment on the merits filed December 30, 2011 and journalized January 3, 2012. As a result of that remand order, SERB filed a motion to amend its January 27, 2012 notice of appeal to include an appeal of the order of remand. On June 12, 2012, the Sixth District Court of Appeals dismissed SERB and the City's appeals and TPCOA's cross-appeal based on its determination that the Lucas County Court of Common Pleas' December 30, 2011 decision/judgment entry was not a final appealable order.

Although the court did not mandate oral argument, the parties' representatives were given the opportunity to present their arguments regarding the appropriate remedy in oral argument before SERB on March 14, 2013. No additional evidence or exhibits were admitted. The Board's remedy, as set forth below, is based upon the record developed at the January 24, 2011 evidentiary hearing.

REMEDY

Respondent, City of Toledo is hereby ordered to take the following actions:

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 failing to maintain the status quo and by unilaterally making mid-term changes to the terms of the collective bargaining agreement between the City of Toledo and the Toledo Police Command Officers' Association, and from otherwise violating Ohio Revised Code § 4117.11(A)(1);
2. Refusing to bargain collectively with the exclusive representative of Police Command Officers employed by the City of Toledo by unilaterally making mid-term changes to the terms of the collective bargaining agreement between the City of Toledo and the Toledo Police Command Officers' Association, and from otherwise violating Ohio Revised Code § 4117.11(A)(5).

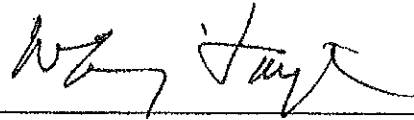
B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

1. Post for sixty (60) consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees represented by the Toledo Police Command Officers' Association work, the Notice to Employees furnished by the State Employment Relations Board stating that the City of Toledo shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative actions set forth in paragraph (B);
2. Rescind the mid-term changes to the collective bargaining agreement between the City of Toledo and the Toledo Police Command Officers' Association via budget ordinances implemented on March 31, 2010, return to the *status quo ante*, including providing equitable relief to Toledo Police Command Officers' Association bargaining-unit members for any losses sustained as a result of the mid-term changes, and bargain in good faith with the Toledo Police Command Officers Association, in accordance with the statutory procedures set forth in Chapter 4117; and
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.

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It is so ordered.

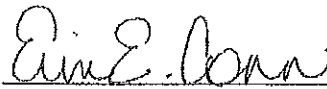
ZIMPHER, Chair, and BRUNDIGE, Board Member, concur.



W. CRAIG ZIMPHER
CHAIR

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 04th day of April, 2013.



ERIN E. CONN
ADMINISTRATIVE ASSISTANT

SERB

"Promoting Orderly and Constructive
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W. Craig Zimpher, Chair
N. Eugene Brundige, Board Member

John R. Kasich, Governor

Christine A. Dietsch, Executive Director

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(Court Case No. C111-3235)

CERTIFICATION

I, the undersigned Executive Director for the State Employment Relations Board, hereby certify that the attached document is a true and exact reproduction of the original Order of the State Employment Relations Board entered on its journal, on the 4th day of April, 2013.

A handwritten signature in cursive script, reading "Christine A. Dietsch", is written over a horizontal line.

CHRISTINE A. DIETSCH
Executive Director