SERB OPINION 2021-004

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

v.

City of Sharonville,

Respondent.

Case No. 2020-ULP-12-0247

ORDER
(OPINION ATTACHED)

Before Chair Zimpher, Vice Chair Mills, and Board Member Lumpe: November 18, 2021.

On December 30, 2020, International Association of Fire Fighters, Local 4498 ("Union" or "Intervenor") filed an unfair labor practice charge against City of Sharonville ("City" or "Respondent") alleging the City violated Section 4117.11 (A)(1), (3) and (5) of the Ohio Revised Code by failing to maintain the status quo when it unilaterally installed video/audio "surveillance" cameras, "which will be used to spy on the bargaining-unit members" and by directly dealing with its members regarding subjects in negotiations.

On February 18, 2021, the State Employment Relations Board ("SERB," "Board," or "Complainant") determined that there was probable cause to believe that the City had violated Section 4117.11(A)(1) and (5), but not (3) of the Ohio Revised Code, ordered the parties to mediation, and authorized the Board's General Counsel to issue a Complaint. On March 25, 2021, SERB's General Counsel issued a Complaint. On April 8, 2021, the Union filed a Motion to Intervene in accordance with Ohio Administrative Code 4117-1-07(A), which was deemed granted.

The matter was heard before a SERB Administrative Law Judge ("ALJ") on May 4, 2021. Following the hearing the parties filed post-hearing briefs. On October 7, 2021, the ALJ issued a Proposed Order. Subsequently, the Respondent filed exceptions on October 29, 2021, to which the Complainant and Intervenor, separately responded to on November 8, 2021.

After reviewing the Unfair Labor Practice Charge, Complaint, Answer, Proposed Order, Exceptions, Responses to Exceptions, and the entirety of the information contained in the record, the Board adopts the Finding of Fact, Analysis and Discussion,

and Conclusions of Law in the Administrative Law Judge's Proposed Order, *incorporated herein by reference*, finding that Respondent, City of Sharonville, violated section 4117.11(A)(1), and (5), of the Ohio Revised Code by refusing to negotiate over the installation and use of video/audio surveillance in the non-public areas of the Fire Department Stations, and by refusing to bargain the effects of the installation of cameras in the public areas.

The City of Sharonville is ordered to:

A. CEASE AND DESIST FROM:

(1) Interfering with, restraining, or coercing public employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by refusing to bargain collectively with the exclusive representative of certain of its employees.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

(1) Bargain in good faith with the International Association of Fire Fighters, Local 4498 over the installation and effects of the video/audio surveillance cameras installed in the non-public areas of the Fire Department in January 2021, including: the day room; the kitchen; the Lieutenant's office; the break room; the gear room; the report room; the training room; the inspector's office, and; the mezzanine.

(2) Bargain in good faith with the International Association of Fire Fighters, Local 4498 over the effects of the video/audio surveillance cameras installed in the public areas of the Fire Department in January 2021, including the reception area and the main entrance.

(3) Disable the video/audio surveillance cameras, installed in the Fire Department in January 2021, in the presence of a union representative, until the parties have completed good faith bargaining;

(4) Post for 60 consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees represented by the International Association of Fire Fighters, Local 4498 work, this Notice to Employees furnished by the State Employment Relations Board stating that the City of Sharonville shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative actions set forth in paragraph (B); and

(5) 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; MILLS, Vice Chair, and LUMPE, Board Member, concur.

W. CRAIG ZIMPHER, 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, 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, this 18th day of November, 2021.

ERIN E. CONN, ADMINISTRATIVE OFFICER

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD,	:	
Complainant,	:	**CASE NO. 2020-ULP-12-0247**
v.	:	**ROBERT E. FEKETE** **Administrative Law Judge**
CITY OF SHARONVILLE,	:	
	:	**PROPOSED ORDER**
Respondent.	:	

I. INTRODUCTION

On December 30, 2020, International Association of Fire Fighters, Local 4498 (Union/Local 4498/Charging Party) filed an unfair labor practice charge against the City of Sharonville (City/Charged Party). The Union alleges the City violated Section 4117.11 (A)(1), (3) and (5) of the Ohio Revised Code by failing to maintain the status quo when it unilaterally installed video/audio "surveillance" cameras, "which will be used to spy on the bargaining-unit members" and by directly dealing with its members regarding subjects in negotiations.

On February 18, 2021, the State Employment Relations Board (SERB/Board) found probable cause existed to believe a violation of Section 4117.11(A)(1) and (5), but not (3), of the Ohio Revised Code was present and ordered the parties to mediation for a period not to exceed 60 days. A complaint was issued on March 25, 2021, after the parties' failed to resolve the matter in mediation. On April 8, 2021, Charging Party filed a motion to intervene in accordance with O.A.C. 4117-1-07 (A). Thereafter, a hearing was held on May 4, 2021, wherein testimonial and documentary evidence was presented. Thereafter, post-hearing briefs were timely filed, and the record was closed on July 9, 2021.

II. ISSUE

Whether the City violated Section 4117.11 (A) (1) and (5) of the Ohio Revised Code by unilaterally installing overt video/audio surveillance[1] cameras without first bargaining their implementation and/or impact, and by directly dealing with members of the bargaining unit?

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[1] The City uses the term "security cameras" in its post-hearing briefs, however, as the parties' joint stipulations utilized the term "surveillance cameras" this Proposed Order will use the term previously agreed upon by all parties.

III. FINDINGS OF FACT

Joint Stipulations of Fact

1. The City of Sharonville is a "public employer" as defined by R.C. 4117.01(B).

2. IAFF Local 4498 is an "employee organization" as defined by R.C. 4117.01(D)

3. The City and IAFF Local 4498 are parties to a Collective Bargaining Agreement ("CBA") that was effective January 1, 2017, through December 31, 2019. The parties are in the process of negotiating a successor CBA.

4. Under the CBA, IAFF Local 4498 is the certified representative for the bargaining unit consisting of all full-time Firefighters, Lieutenants, Emergency Medical Technicians, Paramedics and Inspectors classifications within the Fire Department of the City of Sharonville.

5. In 2018, Fire Department Chief Kirk Mousa alleged that certain formulas in the Excel Spreadsheet used to calculate wages and associated deductions such as taxes or credit union payments had been altered. On August 15, 2019, a bargaining unit member of IAFF Local 4498 was terminated from his employment, based on the determination by the City that he had tampered with the Excel Spreadsheet using a computer located in a Fire Department report room.

6. The grievance filed by IAFF Local 4498 regarding the bargaining unit member's termination advanced to arbitration and the Arbitration Opinion and Award of Richard W. Dissen issued on April 3, 2020, in Arbitration Proceeding on IAFF Local 4498, Federal Mediation and Service Grievance No. 190910-10798 to City of Sharonville, [...] sustained the grievance.

7. The parties stipulate to the authenticity of the May 28, 2020, letter from the City's Human Resources Director, Noah Powers, [who] sent a letter to the members of the Sharonville Fire Department, which included all bargaining unit members of IAFF Local 4498.

8. IAFF Local 4498 demanded bargaining over the installation of video surveillance cameras, and on October 6, 2020, submitted a proposal to the City regarding placement and procedures for the cameras. The parties stipulate to the authenticity of the October 6, 2020 proposal.

9. The parties stipulate to the authenticity of the December 1, 2020, email sent at 3:28 p.m., from the City of Sharonville Fire Department Chief Kirk Mousa to an email address list identified as the "Fire Department," which included all bargaining unit members of IAFF Local 4498.

10. The parties stipulate to the authenticity of the December 3, 2020, email sent at 12:42 p.m., from IAFF Local. 4498 President Gregg Shewbridge to the City of Sharonville

Fire Department Chief Kirk Mousa and Human Resources Director Noah Powers.

11. The parties stipulate to the authenticity of the December 3, 2020, email sent at 3:14 p.m., from IAFF Local 4498 President Gregg Shewbridge to the City of Sharonville Fire Department Chief Kirk Mousa and Human Resources Director Noah Powers.

12. The parties stipulate to the authenticity of the December 3, 2020, email sent at 4:16 p.m., from City of Sharonville Fire Department Chief Kirk Mousa and Human Resources Director Noah Powers to IAFF Local President 4498 President Gregg Shewbridge.

13. The parties stipulate to the authenticity of the December 3, 2020, email sent at 4:19 p.m., from IAFF Local 4498 President Gregg Shewbridge to the City of Sharonville Fire Department Chief Kirk Mousa and Human Resources Director Noah Powers.

14. The parties stipulate to the authenticity of the December 3, 2020, email sent at 4:42., from IAFF Local 4498 President Gregg Shewbridge to the City of Sharonville Human Resources Director Noah Powers.

15. The parties stipulate to the authenticity of the December 3, 2020, email sent at 7:36 p.m., from the City of Sharonville Fire Department Chief Kirk Mousa to an email address list identified as the "Fire Department," which included all bargaining unit members of IAFF Local 4498.

16. The parties stipulate to the authenticity, but not admissibility, of the Arbitration Opinion and Award of Mitchell B. Goldberg issued on December 4, 2020, in Arbitration Proceeding between IAFF Local 4498 and the City of Sharonville.

17. The parties stipulate to the authenticity of the December 16, 2020, email sent at 9:37 a.m., from the City of Sharonville Mayor Kevien M. Hardman to an email address list identified as the "Fire Department," which included all bargaining unit members of IAFF Local 4498.

18. The City of Sharonville began installing visible, interior video/audio surveillance cameras in the Sharonville Fire Department on January 8, 2021.

19. The parties stipulate to the authenticity, but not admissibility, of the Affidavit of Noah Powers dated January 25, 2021.

Additional Findings of Fact

20. The City installed video/audio surveillance cameras in the following areas: the day room; the kitchen; the Lieutenant's office; the break room; the gear room; the report room; the training room; the inspector's office; the mezzanine; the reception area, and the main entrance. Office cameras were only placed in the offices utilized by bargaining unit members.

21. Many of the areas in which cameras have been placed are secured by locked doors.

22. There was testimony From Gregg Shewbridge that he personally knew that the camera in the day room was able to pick up audio from the adjoining bunk room if the door was open.

IV. ANALYSIS AND DISCUSSION

Complainant alleges that the City violated Section 4117.11(A)(1) and (5), which provides as follows:

> (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 purpose 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;

It is the burden of Complainant to demonstrate by a preponderance of the evidence that an unfair labor practice has been committed. O.R.C. § 4117.12(B) (3). For the reasons that follow and based upon the stipulations of the parties as well as the testimony presented and evidence provided at the hearing in this matter, Complainant has met its burden of proof regarding its allegation that the City violated R.C. 4117.11 (A)(1) and (5), by refusing to bargain collectively with the exclusive representative of its employees.

A. The installation and use of the video/audio surveillance cameras was a mandatory subject of negotiation.

1. When a management decision implicates management rights and the right to bargain wages, hours, or terms and other conditions of employment, SERB will apply a balancing test.

Section 4117.08(C) of the Ohio Revised Code provides that, unless it agrees otherwise, a public employer's rights and responsibilities are unimpaired in certain matters. Among these areas are the right and responsibility to determine matters of inherent managerial policy that include areas of discretion or policy such as standards of service, to direct and supervise employees, to maintain and improve the efficiency and effectiveness of governmental operations, to determine the overall methods, process, and

means by which governmental operations are to be conducted, to assign and schedule employees, to effectively manage the work force, and to take actions to carry out the mission of the public employer as a governmental unit. Thus, *unless otherwise provided*, public employers maintain the authority to determine matters of inherent managerial policy as outlined in Section 4117.08(C) of the Ohio Revised Code. However, this authority is not unfettered, and is established and controlled by settled legal precedent.

Section 4117.08(A) of the Ohio Revised Code requires public employers to bargain with an exclusive representative on all matters relating to wages, hours, or terms and other conditions of employment. Thus, if a given subject involved the exercise of inherent managerial discretion and also materially affects any of these factors, a balancing test must be applied to determine whether the subject is a mandatory or permissive subject of bargaining. *In re SERB v. Youngstown City School Dist Bd of Ed*, SERB 95-010 (6-30-95). Those management decisions which are found, on balance, to be mandatory subjects must be bargained before implementation, upon notice by the employer and a timely request by the employee organization, except where emergency situations render prior bargaining impossible. *Id.*

Under the *Youngstown* test, the following factors must be balanced:

1) The extent to which the subject is logically and reasonably related to wages, hours, terms, and conditions of employment;

2) The extent to which the employer's obligation to negotiate may significantly abridge its freedom to exercise those managerial prerogatives set forth in and anticipated by O.R.C. 4117.08(C), including an examination of the type of employer involved and whether inherent discretion on the subject matter at issue is necessary to achieve the employer's essential mission and its obligations to the general public; and

3) The extent to which the mediatory influence of collective bargaining and, when necessary, any impasse resolution mechanisms available to the parties are the appropriate means of resolving conflicts over the subject matter.

Id. at 3-76 – 3-77.

As SERB has no precedent on the installation of video/audio surveillance cameras, the parties have offered cases from the National Labor Relations Board (NLRB) and various State labor relations agencies. First, I note that NLRB precedent is of limited application in Ohio Labor Law cases, and that cases provided by the parties involve hidden surveillance cameras. Additionally, the rights and responsibilities of public sector employers and their employees differ from those of the private sector. Whereas a private sector employer is concerned with the businesses' economic viability, public sector employers have a duty to ensure that public resources are being protected. A review of how employment relations agencies in other states have analyzed this issue may be helpful in striking the right balance between management and labor rights.

In *Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO v. Nanuet Union Free School District*, Case No. U-27650, 45 PERB ¶ 3007 (Jan. 24, 2011), the New York Public Employment Relations Board ("PERB") reviewed a school district's decision to install camera surveillance systems inside and outside of its buildings to address security and safety issues. The PERB found the installation of the cameras in that instance to be a mandatory subject of negotiation as it "bears a direct and significant relationship to working conditions." *Id.* at p. 7. In discussing its analysis, the PERB stated:

> To determine whether a particular decision to utilize videotape surveillance in the workplace is mandatorily negotiable under the Act, however, requires a fact-specific examination of employer and employee interests. Among the factors that must be considered are the nature of the workplace, and the employer's core mission. For example, in a correctional facility, unlike a civilian workplace, videotaping may be integral to the employer's core mission, and therefore the subject may be nonmandatory if the videotaping is necessary and proportional for meeting that mission. In other workplaces, where videotape surveillance is not integral to the employer's mission, we will balance the respective interests of the employer and the employee to determine whether the videotaping significantly or unnecessarily intrudes upon the protected interests of unit employees. Among the factors that we will consider in applying that balance is the scope and length of the videotaping, and the availability of the images to third parties. (Citations omitted.)

Id at p. 8.

Demonstrating the fact-specific balancing that must be conducted when reviewing the installation of surveillance cameras, in *City of Paterson and PBA Local 1*, 33 NJPER ¶ 7, 2007 WL 7563517 (Jan. 25, 2007) ("*Paterson* 1") a Hearing Examiner found that the installation of surveillance cameras in a public safety complex was not a mandatory subject of negotiation. As explained in the Hearing Examiner's report, the City had installed cameras for the purpose of protecting people and property, after multiple incidents where visitors to the complex had wandered into non-public areas, where civilian employees had routinely propped open secured doors to the outside of the complex, and "particularly in light of the heightened security concerns raised by the events of '9/11'". *Id.* at p. 43. In affirming the Hearing Examiner's Report and Recommended Decision, the New Jersey Public Employment Relations Commission ("PERC") found it significant that the City was unable to restrict the public from entering many areas of the complex, and, as such, prohibiting cameras in non-public areas would have significantly interfered with the City's ability to secure its public safety complex. *City of Paterson and PBA Local 1*, 33 NJPER ¶ 50, 2007 WL 7563485 (May 31, 2007) (*"Paterson 2"*). Additionally, the PERC noted that the cameras were placed in "hallways, elevator lobbies and entrances/exits" and were "not installed in private areas such as bathrooms, break rooms, locker rooms or offices, where employee privacy interests would be greater." *Id.* at pp. 3-4. Further, it is worth noting that, despite finding no duty to bargain the implementation of the cameras, the Hearing Examiner stated in her report that "[i]n the

future, the unions may demand negotiations on any impact flowing from the managerial decision to install and use overt cameras in the safety complex." *Paterson 1* at p. 43.

I find the above decisions from these employment relations agencies to be in accord with SERB's own test under *Youngstown* and therefore helpful to the analysis of this issue. As discussed, below, I find that the City violated Section 4117.11(A)(5) by refusing to bargain with Intervenor, International Association of Fire Fighters, Local 4498, over the video/audio surveillance cameras installed in the Fire Department Stations in January 2021.

2. The City was required to bargain over the video/audio surveillance cameras installed in the Fire Department.

On May 28, 2020, in a letter sent to all employees of the Sharonville Fire Department, including bargaining-unit members of IAFF Local 4498, the City's Human Resources Director, Noah Powers, announced that the City would be installing video/audio surveillance cameras in the Fire Stations. Subsequently, the Union asked to bargain over the cameras and submitted a proposal to the City as the parties were then-engaged in negotiations for a successor collective bargaining agreement. However, the City refused to bargain over the matter claiming that it was a management right.

The first prong of the *Youngstown* balancing test requires a look at the extent to which the installation and use of the video/audio surveillance cameras is logically and reasonably related to wages, hours, terms, and conditions of employment. In this case, the use of such cameras in the workplace directly affects employees' terms and conditions of employment. Not only could the information collected be used in the discipline of employees, but it could reveal concerted protected activities protected under Chapter 4117.

It is important to note that where many of the cases cited by the parties in their briefs involved camera video only, the cameras installed by the City of Sharonville also have audio. Thus, conversations held in range of the cameras would be picked up and recorded, regardless of whether it is a business communication or a protected-activity communication. Furthermore, there was unrebutted testimony that if the doors to the day room were open, the cameras were able to pick up audio from the adjoining bunk room. Thus, it is not unreasonable to believe that cameras in the other locations might also pick up audio from adjacent rooms making it is all the more likely that the cameras will record the protected-activity communications of bargaining unit members. Indeed, the video/audio surveillance cameras in this case were so pervasive that they were likely to capture everything that happened within the Fire Stations, including protected concerted activity.

The second prong of the balancing test looks at whether the employer's obligation to negotiate significantly abridges its freedom to exercise its management prerogatives and includes an examination of the type of employer involved and whether inherent discretion on the subject matter at issue is necessary to achieve the employer's essential mission and its obligations to the general public. The employer involved in the instant

case is a City Fire Department. The core mission of a fire department is to provide fire protection and emergency services to the population it serves. Thus, the video/audio recording of fire personnel during an emergency operation or in the lobby of the Fire Stations where fire personnel interact with the public may well be considered essential to its mission and obligations to the general public, such that implementation of the cameras is not a mandatory subject of negotiation, although the impact of their use may still be a negotiable subject.

However, the same cannot be said for surveilling the employees in their break rooms and offices. The City states that it installed the cameras to ensure the safety and security of the employees and the public buildings. There was no evidence presented at the hearing that the Fire Stations had been subject to unauthorized individuals entering restricted areas or other issues necessitating the installation of the cameras. The City's claims at an arbitration, that somebody had altered an Excel Spreadsheet used to calculate wages and associated deductions such as taxes or credit union payments, were never substantiated. (Stip. 5-6). In fact, the Arbitrator found that the change to the Excel Spreadsheet could have been the result of a corruption of the file, unrelated to human intervention. Further, while the City offered testimony that the Fire Stations "could" have an "open house" where the public would be invited to tour the Fire Stations, none of the witnesses could remember the last time that such an event happened. Moreover, if such a limited-time event did occur it does not appear reasonable that the City could not take precautions other than installing permanent video/audio surveillance cameras throughout the Fire Stations. Accordingly, the evidence does not show that the installation of the video/audio surveillance cameras is necessary to achieve the City Fire Department's essential mission and its obligations to the general public.

In addition to the above, the City argued that other City buildings have cameras installed and they are bringing the Fire Stations in line with those other locations. However, whether the City has placed cameras in other City buildings does not abrogate its responsibility to negotiate in the instant case nor does it extinguish the rights of the employees' exclusive representative to negotiate over matters reasonably related to wages, hours, terms, and other conditions of employment. There was no clear and unmistakable waiver by the Union over the issue. Rather, the Union made the request to bargain over the implementation before the installation of the cameras. Thus, the second prong of the balancing test weighs in favor of bargaining.

Finally, the third prong of the balancing test requires the consideration of the extent to which the mediatory influence of collective bargaining and, when necessary, any impasse resolution mechanisms available to the parties are the appropriate means of resolving conflicts over the subject matter. Here, the City and the Union were engaged in negotiations for their successor collective bargaining agreement during the time the City announced it would be installing the cameras. The Union asked to bargain over the issue and provided a proposal during negotiation for the successor agreement.

The proposal provided that:

> The City may place video surveillance cameras in the following areas of the station: the bays, the report room, the offices and any publicly [sic] area accessible without a key or electronic lock door. Each area that has a camera shall have a prominent sign indicating the area is under video surveillance. Video surveillance recordings may be retained for up to seven days and shall not be reviewed by anyone in the absence of a legitimate reason. There shall be no audio surveillance or recording of audio.

Complainant Exhibit A, Bates # C0022. However, the City refused to bargain and provided no counterproposal, claiming the matter was a management right. Had the parties negotiated the issue it may have been agreed-upon and, if necessary, gone to the appropriate impasse procedure where it would have been resolved.[2] Thus, I find that there is no evidence that the issue of the camera installation would not benefit from the mediatory influence of collective bargaining and, if necessary, the appropriate impasse resolution mechanisms.

Considering the foregoing, I find that the City violated Section 4117.11(A)(1) and (5) by refusing to bargain with the Union regarding the installation and effects of the video/audio surveillance cameras installed in the non-public areas of the Fire Stations in January 2021, and by refusing to bargain the effects over the cameras installed in the public areas.

B. The City's decision to install video/audio surveillance cameras was not reasonably calculated to interfere, restrain, or coerce employees in the exercise of their Chapter 4117 rights.

Whether an employer has violated section 4117.11(A)(1) of the Ohio Revised Code is determined objectively. The question is "whether under all the facts and circumstances one could reasonably conclude the employees were interfered with, restrained, or coerced in the exercise of their Chapter 4117 rights." *In re Pickaway Cty. Human Servs. Dept.*, SERB 93-001 (3-24-93), aff'd sub nom. *State Emp. Relations Bd. v. Pickaway Human Servs. Dept.*, 1995 SERB 4-46 (4th Dist. Ct. App., Pickaway, 12-7-95). The appropriate inquiry is an objective one rather than a subjective one. This inquiry includes a "thorough review of the circumstances under which the alleged misconduct occurred and its likely effect on the guaranteed rights of employees." *Id.* In order to demonstrate a violation of Section 4117.11 (A)(1) of the Ohio Revised Code, "[t]he Complainant must demonstrate not only the reasonable tendency of the complained action to interfere, restrain, or coerce employees in the exercise of their rights, but that the interference, restraint, or coercion outweighs any competing legitimate managerial right." *In re Harrison Hills School Dist. Bd. of Ed.*, SERB 2010-011 (8-12-10) at p. 7. However, establishing that a violation of Section 4117.11(A)(1) of the Ohio Revised Code occurred does not depend on whether the interference, restraint, or coercion succeeded

[2] In the case of public employees, who are members of a fire department, the impasse procedure ultimately culminates in a hearing before a conciliator who issues a binding conciliator's award. See Section 4117.04 of the Ohio Revised Code.

or failed. Interference, restraint, or coercion can be established solely by demonstrating that the employer's action reasonably tends to interfere with, restrain, or coerce employees in the exercise of their protected activity. As SERB has held "[t]o require actual evidence of interference would punish the resilient employee whose unwavering conviction refuses deterrence." *Id.* at p. 5.

The Complainant and Intervenor argue that the City's decision to install video/audio surveillance cameras in the Fire Stations was in retaliation for the Union prevailing over the City during the arbitration over the alleged tampering with an Excel Spreadsheet. First, I note that this matter was referred to hearing on alleged violations of section 4117.11(A)(1) and (5), not (3). Thus, the presence of "union animus" is not required to find a violation. The proper analysis here requires an objective test. i.e., Whether the City's actions were reasonably calculated to interfere with, restrain, or coerce employees in the exercise of their Chapter 4117 rights. In support of its argument, the Union points to a May 28, 2020, letter that was sent to all employees of the Fire Department by the City's Human Resources Direct, Noah Powers (approximately two months after the issuance of the Arbitration Award). In the letter, Mr. Powers stated:

> As you may be aware, a recent arbitrator's decision resolved a dispute between the City and the IAFF. In that dispute resolution, the arbitrator's decision made clear that City Administration has failed to adequately monitor and manage the employees of the Fire Department. I want to assure you that City Administration takes this responsibility seriously, and to resolve this error will be instituting a variety of technical upgrades to improve our monitoring and management of the department and its' membership.
>
> To that end you will notice some changes to the Sharonville Fire Stations. These will include video and audio recording devices in common areas which will record continuously, enhanced access control to the facilities, greater scrutiny over computer access, and other additional measures as necessary to ensure the safety of employees, the city's computer operations, and physical facilities.

The City refutes the Union's claims. Asked about the installation of the cameras, the Mayor of Sharonville, Kevin Hardman, testified:

> [T]he cameras are set up in order to ensure the safety of our employees, the public that engages with our employees and within our city buildings, as well as the safety of our property. So they're deployed for the purpose of observing what's going on within city buildings, not necessarily to monitor or watch the ongoing behaviors of City employees, but to maintain the safety and security of the buildings and the people that come and are a part of those buildings, whether it be employees, residents, members of the public who interact with our employees.

(Transcript ("Tr.") p. 132:4-15). Mayor Hardiman further testified that the day rooms, dining rooms, and recreation areas of the Fire Stations are accessible by both bargaining unit members and non-bargaining unit employees. Further, asked about how the Arbitrator's Award regarding the Excel Spreadsheet affected the decision to install cameras, HR Director Powers testified that the Award caused the City to believe that there were gaps in their security. He further testified that "it's not what the outcome of his [the Arbitrator's] ruling was. It was that he recognized we have this problem, that we failed to properly secure our facilities." (Tr. p. 158:14-4).

In addition to the above, the record shows that the City has previously placed cameras in other City buildings. According to Mr. Powers, the City places cameras in city buildings in connection with renovations and other projects. Some of the buildings where cameras have been placed include the Sharonville Recreation Center as well as the City Building, where there are cameras on both the administrative side and police side of the building – some of which are capable of both video and audio. (Tr. 148:17-149:1). As discussed above, this does not show a clear and unmistakable waiver of the right to negotiate with regard to the Union in this matter. Further, while "anti-union animus" is not an element under the above-objective test, to the extent it was alleged, the above-facts show that the City acted in good faith, and not out of anti-union animus, by continuing its goal to install cameras in City buildings during renovations and other projects.

Based upon the evidence in the record and upon the credibility of the City's witnesses, I find that the Complainant/Intervenor did not meet its burden to show a Section 4117.11(A)(1) violation of the Ohio Revised Code. Furthermore, the Arbitration Opinion and Award of Mitchell Goldberg that was issued on December 4, 2020, is irrelevant to this issue, as it was issued after the cameras were ordered and their installation was coordinated by the City.

C. It is unnecessary to reach the additional allegations of the Complainant/Intervenor because they are remediated by an order to bargain collectively.

The Complainant and Intervenor have made additional arguments against the City. Specifically, they claim that the City failed to maintain the status quo as it announced the installation of the video/audio surveillance cameras while the parties were engaged in negotiations for their successor agreement. The Complainant and Intervenor further argue that the City engaged in direct-dealing with bargaining unit members by sending emails to the employees of the fire department providing information about the cameras.

As a threshold consideration, these arguments necessarily turn upon whether the installation and/or use of the cameras is a mandatory subject of negotiation. The recommended standard remedy already addresses the issue of direct dealing because Respondent must return conditions to status quo ante and then bargain the issue of the cameras to ultimate impasse with the Union before implementation of any new surveillance equipment.

V. CONCLUSIONS OF LAW

1. The City of Sharonville is a public employer as defined by R.C. 4117.01(B).

2. The International Association of Fire Fighters, Local 4498 is an "employee organization" as defined by 4117.01(D).

3. The City of Sharonville violated Section 4117.11(A)(1) and (5) of the Ohio Revised Code by interfering with, restraining, or coercing public employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by refusing to negotiate over the installation and use of video/audio surveillance in the non-public areas of the Fire Department Stations, and by refusing to bargain the effects of the installation of cameras in the public areas.

VI. RECOMMENDATIONS

The following is respectfully recommended:

1. The State Employment Relations Board adopt the Findings of Fact, Analysis and Discussion, and Conclusions of Law set forth, above.

2. The State Employment Relations Board issue an ORDER, pursuant to Section 4117.12(B)(3) of the Ohio Revised Code, requiring the City of Sharonville to do the following:

   A. CEASE AND DESIST FROM:

      (1) Interfering with, restraining, or coercing public employees in the exercise their rights guaranteed in Ohio Revised Code Chapter 4117 by refusing to bargain collectively with the exclusive representative of certain of its employees.

   B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

      (1) Bargain in good faith with the International Association of Fire Fighters, Local 4498 over the installation and effects of the video/audio surveillance cameras installed in the non-public areas of the Fire Department in January 2021, including: the day room; the kitchen; the Lieutenant's office; the break room; the gear room; the report room; the training room; the inspector's office, and; the mezzanine.

      (2) Bargain in good faith with the International Association of Fire Fighters, Local 4498 over the effects of the video/audio surveillance cameras installed in the public areas of the Fire Department in January 2021, including the reception area and the main entrance.

(3) Disable the video/audio surveillance cameras, installed in the Fire Department in January 2021, in the presence of a union representative, until the parties have completed good faith bargaining;

(4) Post for 60 consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees represented by the International Association of Fire Fighters, Local 4498 work, this Notice to Employees furnished by the State Employment Relations Board stating that the City of Sharonville shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative actions set forth in paragraph (B); and

(5) 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.

ISSUED and **SUBMITTED** to the State Employment Relations Board in accordance with O.A.C. 4117-1-15 and **SERVED** on all parties listed below by Certified U.S. Mail, return receipt requested, this 7 day of October, 2021.

R E Fekete

ROBERT E. FEKETE
Administrative Law Judge

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Representing Intervenor

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 a hearing in which all parties had an opportunity to present evidence, the State Employment Relations Board has determined that we have violated the law and has ordered us to post this notice. We intend to carry out the order of the State Employment Relations Board and to do the following:

A. CEASE AND DESIST FROM:

(1) Interfering with, restraining, or coercing public employees in the exercise their rights guaranteed in Ohio Revised Code Chapter 4117 by refusing to bargain collectively with the exclusive representative of certain of its employees.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

(1) Bargain in good faith with the International Association of Fire Fighters, Local 4498 over the installation and effects of the video/audio surveillance cameras installed in the non-public areas of the Fire Department in January 2021, including: the day room; the kitchen; the Lieutenant's office; the break room; the gear room; the report room; the training room; the inspector's office, and; the mezzanine.

(2) Bargain in good faith with the International Association of Fire Fighters, Local 4498 over the effects of the video/audio surveillance cameras installed in the public areas of the Fire Department in January 2021, including the reception area and the main entrance.

(3) Disable the video/audio surveillance cameras, installed in the Fire Department in January 2021, in the presence of a union representative, until the parties have completed good faith bargaining;

(4) Post for 60 consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees represented by the International Association of Fire Fighters, Local 4498 work, this Notice to Employees furnished by the State Employment Relations Board stating that the City of Sharonville shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative actions set forth in paragraph (B); and

(5) 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 SHARONVILLE
Case No. 2020-ULP-12-0247

_____ _____
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