SERB OPINION 2022-001

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

v.

City of Cleveland,

Respondent.

Case No. 2021-ULP-09-0140

ORDER
(OPINION ATTACHED)

Before Chair Zimpher and Board Member Walter: August 10, 2022.

On September 22, 2021, the Cleveland Association of Rescue Employees, I.L.A., Local 1975 ("CARE", "Union" or "Intervenor") filed an unfair labor practice charge against the City of Cleveland ("City" or "Respondent"), alleging that the Respondent violated Section 4117.11(A)(1) and (5) of the Ohio Revised Code.

On May 19, 2022, the State Employment Relations Board ("SERB" or "Complainant") determined that probable cause existed to believe that the Respondent committed an unfair labor practice and violated Section 4117.11(A)(5), but not (1) of the Ohio Revised Code. On June 3, 2022, a Complaint was issued. The parties subsequently filed joint stipulations and joint exhibits. The parties also filed addendums and individual exhibits with the Board along with their pre-oral argument briefs. An oral argument was conducted before the full Board on July 21, 2022.

After reviewing the Unfair Labor Practice Charge, Complaint, Answer, Joint Stipulations, Joint Exhibits, Parties' Pre-Oral Argument Briefs, Parties' Affidavits, and the entirety of the information contained in the record, for the reasons set forth in the attached Opinion, *incorporated herein by reference*, the Board finds that Respondent, City of Cleveland, violated section 4117.11(A)(5), of the Ohio Revised Code by refusing to bargain collectively with the Union over the effects of the installation of dashboard cameras in the City EMS vehicles.

The City of Cleveland is ordered to:

A. CEASE AND DESIST FROM:

(1) Refusing to bargain collectively with the exclusive representative of certain of its employees in violation of their rights guaranteed in Ohio Revised Code Chapter 4117.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

(1) Bargain in good faith with the Cleveland Association of Rescue Employees, I.L.A., Local 1975 over the effects of the installation of dashboard cameras in the City EMS vehicles.

(2) Post for 60 consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees represented by the Cleveland Association of Rescue Employees, I.L.A., Local 1975 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

(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, and WALTER, 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 10th day of August 2022.

Erin E. Conn

ERIN E. CONN, ADMINISTRATIVE OFFICER

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant,

v.

City of Cleveland,

Respondent.

Case No. 2021-ULP-09-0140

OPINION

ZIMPHER, Chair:

I. INTRODUCTION

On September 22, 2021, the Cleveland Association of Rescue Employees, I.L.A., Local 1975 ("CARE", "Union" or "Intervenor") filed an unfair labor practice charge against the City of Cleveland ("City" or "Respondent"), alleging that the Respondent violated Section 4117.11(A)(1) and (5) of the Ohio Revised Code. On May 19, 2022, the State Employment Relations Board ("SERB" or "Complainant") determined that probable cause existed to believe that the Respondent committed an unfair labor practice and violated Section 4117.11(A)(5), but not (1) of the Ohio Revised Code.

On June 3, 2022, a Complaint was issued. The parties subsequently filed joint stipulations and joint exhibits. The parties also filed addendums and individual exhibits with the Board along with their pre-oral argument briefs. An oral argument was conducted before the full Board on July 21, 2022.

II. ISSUE

The issue before SERB is whether the City violated Section 4117.11(A)(5) of the Ohio Revised Code by unilaterally installing dashboard cameras in City Emergency Medical Services ("EMS") vehicles.

III. FINDINGS OF FACT[1]

1. The City of Cleveland is a "public employer" as defined by Section 4117.01(B) of the Ohio Revised Code. (S. 1)

2. The Cleveland Association of Rescue Employees, I.L.A., Local 1975 is an employee organization as defined by Section 4117.01(D) of the Ohio Revised Code, and is the exclusive bargaining representative for all full-time Emergency Medical Technicians, Emergency Medical Dispatchers, and Paramedics, employed by the City. (S. 2 and 3)

3. CARE and the City are parties to a collective bargaining agreement ("CBA") effective from April 1, 2019 through March 31, 2022. (S. 5)

4. No new agreement has been reached and the City has continued to abide by the expired agreement's terms. (City Answer ¶ 3)

5. The CBA contains a grievance arbitration process that is final and binding. (S. 6)

6. On August 30, 2021, EMS Commissioner Nicole Carlton notified then-CARE President Paul Melhuish of the EMS Division's decision to initiate a pilot program of placing dash cameras in the EMS units. (S. 7)

7. On September 1, 2021, Commissioner Carlton sent an email to Mr. Melhuish confirming her prior verbal communication with Mr. Melhuish and further informing him that the Division of EMS would be conducting a "trial project with Axon Professional Services with dash cameras." (S. 8)

8. Commissioner Carlton explained in her September 1, 2021 email that the trial project would consist of three dash cameras being placed in two EMS frontline ambulances. A camera would be installed facing forward from the cab and a camera would be installed facing into the cab with audio. The cameras were to be placed in MED17 and MED7 and installation was to start on September 7, 2021. The video and audio settings were to start for "lights/sirens, crash sensors, (activated by specific forces caused by a sudden start or stop which is common in collisions) and backing." Commissioner Carlton also explained that the settings may be adjusted throughout the trial period. Commissioner Carlton instructed Mr. Melhuish to contact her if he had any questions. (S. 9)

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[1] All references to the Joint Exhibits are indicated parenthetically by "Jt. Exh." followed by the exhibit number. All references to the Joint Stipulations of Fact are indicated parenthetically by "S." followed by the Stipulation number. References to the exhibits in the Findings of Fact are intended solely for convenience only and are not intended to suggest that such references are the sole support in the record for that related finding of fact.

9. Paramedics and EMTs work twelve (12) hour shifts with two employees in an ambulance. The bargaining unit members who are assigned to Medic Units spend the vast majority of their shift in the ambulance responding to calls. (S. 10)

10. On September 2, 2021, one day after Commissioner Carlton's email, CARE's Secretary, Timothy Sommerfelt, responded to Commissioner Carlton, setting forth, among other things, some of CARE's concerns with the installation of dash cameras and indicating its opposition to the City's planned installation and use of dash cameras. (S. 11)

11. Commissioner Carlton spoke to Union President Melhuish about Mr. Sommerfelt's email suggesting that Mr. Melhuish, as the Union President, be the contact person for the Union if the Union had questions or concerns regarding the pilot program. (S. 12)

12. On September 8, 2021, CARE followed up on its concerns and sent a letter to Commissioner Carlton and the City requesting that the City bargain the decision and effects of installing and using cameras in EMS vehicles. (S. 13)

13. On September 13, 2021, the City's attorney responded to CARE's letter, stating the City had no obligation to bargain the installation and use of dash cameras with CARE due to the enumerated rights and waiver language contained in the parties' collective bargaining agreement. The City's attorney also notified the Union's attorney that Commissioner Carlton had notified the Union President of the decision on August 30, 2021, and no request was made to meet with the City. The City's attorney also expressed a willingness to meet and confer with the Union and review any concerns or suggestions they had regarding the pilot program. (S. 14)

14. That same day, on September 13, 2021, CARE declined to meet with the City since the City refused to acknowledge its obligation to bargain, to an agreement with CARE, its decision to implement a pilot program regarding the dash cameras to be installed in the EMS vehicles. (S. 15)

15. On September 17, 2021, Commissioner Carlton emailed then-President Melhuish informing him that the cameras had been installed in Truck 17 and Truck 7 but that the cameras would not become operational until a Divisional Notice was published and first distributed to CARE. (S. 16)

16. EMS Fleet Sergeant Dave Guzowski's uncontroverted affidavit was that Truck 17 and Truck 7 cameras were activated for approximately one month and recorded approximately 30 hours of video and audio footage.

17. Among other possible uses, the City intends to use the video and audio recordings to improve the efficiency and effectiveness of the EMS Division's emergency services including in situations where its ambulances may be involved in accidents.

18. The City did not deny, in either the joint evidence or the City's own evidence, that the City could use the video and audio footage for disciplinary purposes.

IV. ANALYSIS AND DISCUSSION

The City is alleged to have violated Section 4117.11(A)(5), which provides in relevant part as follows:

> (A) It is an unfair labor practice for a public employer, its agents, or representatives to:
>
> (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. R.C. 4117.12(B)(3). For the reasons that follow and based upon the stipulations of the parties as well as the additional evidence provided at the hearing in this matter, Complainant has met its burden of proof regarding its allegation that the City violated Section 4117.11(A)(5) of the Ohio Revised Code, by refusing to bargain collectively with the exclusive representative of its employees.

A. The matter is ripe for adjudication.

The City's second affirmative defense is that the unfair labor practice charge was not ripe because the City had not activated the cameras. The City's brief argued that because the cameras were never activated CARE's charge never ripened. However, the cameras were activated. See Board's Finding of Fact 16. "A claim is not ripe if it rests on contingent events that may never occur at all." *State ex rel. Jones v. Husted*, 149 Ohio St.3d 110, 2016-Ohio-5752, ¶ 21. Here, because the event of activation of the cameras did occur, CARE's charge is ripe.

B. The City of Cleveland must bargain over the effects of the use of the dashboard cameras in its EMS vehicles.

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:

> (1) Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public

employer, standards of service, its overall budget, utilization of technology, and organizational structure;

(2) Direct, supervise, evaluate, or hire employees;

(3) Maintain and improve the efficiency and effectiveness of governmental operations;

(4) Determine the overall methods, process, means or personnel by which governmental operations are to be conducted;

(5) Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;

(6) Determine the adequacy of the work force;

(7) Determine the overall mission of the employer as a unit of government;

(8) Effectively manage the work force;

(9) Take actions to carry out the mission of the public employer as a governmental unit.

Thus, *unless otherwise* provided[2], 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 and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. Thus, if a given subject involves the exercise of inherent managerial discretion *and also* materially affects any of the factors in Section 4117.08(A), 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).

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;

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[2] This provision further provides that "[t]he employer is not required to bargain on subjects reserved to the management and direction of the governmental unit *except as affect* wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement." (emphasis added)

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.

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.* However, where a permissive subject of bargaining involving the exercise of management discretion is involved, the employer, before implementation, must bargain collectively about wages, hours, or terms and other conditions of employment affected by its decision. *Id.* Further, where an employer's decision is implemented mid-term in a collective bargaining agreement, the employer should give reasonable advance notice of both the decision to be implemented and the projected date of the implementation. Once the notice is given and mid-term bargaining is requested, the parties must bargain in good faith to a legal impasse on the wages, hours, or terms and other conditions of employment affected by the implementation of the employer's decision. *Id.* Only after the parties have reached ultimate impasse, or after the employer has made good faith attempts to bargain the matter before time constraints necessitate implementation, can the employer implement its last best offer. *Id.*

In the instant case, EMS Commissioner Nicole Carlton first notified then-CARE President Paul Melhuish of the EMS Division's decision to initiate a pilot program of placing dash cameras in the EMS units on August 30, 2021. She followed up that notification with an email on September 1, informing President Melhuish that the dash cameras would be placed in MED17 and MED7; with one camera facing forward from the cab and a second camera facing into the cab with audio. Further, according to Commissioner Carlton's email, video and audio settings would be started by the operation of the lights/sirens, crash sensors, and during backing, but could be adjusted throughout the trial period.[3] The Union subsequently responded in an email on September 2 with concerns it had with the cameras, and on September 8, the Union requested to bargain the decision and effects of installing and using the cameras. The City responded that it had no obligation to bargain the installation and use of the cameras due to the

[3] Although Commissioner Carlton's email to the Union stated that the cameras could be adjusted during the trial period, there was no evidence that this occurred.

enumerated rights and waiver language in the parties' collective bargaining agreement, but offered to meet and confer with the Union to review its concerns and suggestions. The Union rejected the offer to meet and confer and insisted on bargaining the issue.

As discussed below, the Board finds that the installation of the cameras in the City's EMS vehicles is a permissive subject of negotiation. However, the City was required to bargain over the use of the cameras to the extent that they affect wages, hours, and terms and conditions of employment.

1. The installation of cameras in the City's EMS vehicles implicate both management rights and the terms and conditions of employment.

The first question to be answered is whether the installation of cameras in the EMS vehicles is a matter of inherent managerial policy, thereby necessitating the application of the *Youngtown* test. The City started a pilot program to install dashboard cameras in EMS vehicles. According to the City it was exercising its rights under an inherent managerial policy – i.e., utilizing technology to assist in ensuring and monitoring the safe, effective, and efficient delivery of EMS services and to protect the City against liability in the delivery of those services via the use of dash cameras. *See* City of Cleveland's Pre-Oral Argument Brief in Support of its Position, at p. 10.[4] The installation of the cameras does implicate management rights. However, as discussed above, this does not end the Board's analysis. The Board must next look to see whether the Employer's decision to install cameras *materially* affects wages, hours, or terms and other conditions of employment.

As stipulated by the parties, the City's Paramedics and EMTs assigned to the Medic units spend the vast majority of their shift in an ambulance responding to calls. The City did not deny, either in joint evidence or its own evidence, that the City may use the video and audio recordings for disciplinary purposes. Additionally, the Union raised potential privacy concerns with the recordings which may well result from the City's installation of the cameras, including the possibility that the recording devices could capture protected concerted activity. Thus, the City's decision to install the cameras materially affects the factors set forth in Section 4117.08(A) of the Ohio Revised Code. Because matters of inherent managerial policy relate to wages, hours, or terms and other conditions of employment, applying the *Youngstown* test is appropriate.

2. Application of the *Youngstown* balancing test shows that the installation of the cameras in the City's EMS vehicles is a permissive subject of negotiation, however, the City must bargain over the effects of their use.

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[4] In addition to the management rights preserved under section 4117.08(C) of the Ohio Revised Code, the City pointed to the management rights clause of the parties' collective bargaining agreement, which reserves many of the same management rights.

The first prong of the *Youngstown* balancing test requires a look at the extent to which the subject is logically and reasonably related to wages, hours, terms, and conditions of employment. In this case, the first prong of the *Youngstown* test supports the Union's position. The parties have stipulated that the City's paramedics and EMT's spend much of their shift in an ambulance responding to calls. Thus, there is an opportunity for the recording devices to pick up conversations about protected activity and also for the recordings to be used in disciplinary matters. However, as discussed below, these recordings are primarily limited to when the EMS personnel are engaged in the essential mission of providing emergency services.

Under the second prong of the *Youngstown* test, the Board examines 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 Section 4117.08(C) of the Ohio Revised Code, 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. Recently, the Board elaborated on this prong of the *Youngstown* test in *SERB v. City of Sharonville*, SERB 2021-004 (11-18-21). In *Sharonville*, SERB was faced with a matter in which the City of Sharonville unilaterally installed audio/video surveillance cameras throughout a Fire Station, including in non-public areas such as the day room, staff kitchen, and bargaining unit members' offices. The Board applied the *Youngstown* test to the facts of that case and determined that the installation of cameras was a mandatory subject of negotiation. As it relates to the second prong of the *Youngstown* Test, SERB determined that the City of Sharonville had not shown that the installation of the cameras in the non-public areas of the Fire Station was necessary to the mission of the Fire Department and its obligations to the general public. However, SERB noted that the video/audio recording of fire personnel during an emergency operation or in the lobby of the Fire Station where the Fire Department's personnel interact with the public may well be considered essential to its mission and obligations to the general public, such that their installation may not be a mandatory subject of negotiation, "although the impact of their use may still be a negotiable subject." *Id.* at page 8.

The City has provided evidence that the cameras and audio recording would only be triggered when the lights/sirens, and crash sensors are activated, and when backing, therefore limiting the recording time primarily to when the paramedics and EMT's are engaged in emergency operations. This is further bolstered by the evidence from the Union that during the one month that the recording devices were in operation only around 30 total hours of video and audio footage were recorded. As the recording devices were installed in two ambulances, and each shift is twelve (12) hours, this averages out to around thirty (30) minutes per shift during which the devices were activated. Thus, this is not a situation, like in *Sharonville*, where an employer is engaged in constant and pervasive surveillance of its employees. It is indisputable that responding to emergency calls is necessary to the mission of the City's EMS Division. As the camera and audio

recording devices are only activated during the above-listed conditions, the cameras would be recording when the paramedics and EMT's are directly engaged in the EMS Division's *essential* mission. Thus, these recordings could be used by the EMS Division to directly improve the efficiency, safety, and effectiveness of the EMS Division's emergency services mission. This factor supports the City's position.

Finally, as to the third prong of the *Youngstown* test, the City's management rights are so entwined with its essential mission under the facts of this case, that it would not be appropriate to require collective bargaining on the question of installation of the cameras. Taking into account the City's stated objective for its decision to proceed with the installation of the cameras, which the Board accepts as candid, accurate, and clearly related to the City's interests in safe, efficient, and effective emergency operations, as well as the fact that the City's decision to use this technology plainly falls within the purview of statutorily described managerial policy and the parties' collective bargaining agreement in the areas of utilization of technology, programs, or methods of the employer, it is evident that the City's decision primarily relates to and represents a legitimate exercise of managerial rights. Further, there is evidence in the record that the Union opposed any installation of the cameras, thus bargaining on their installation was unlikely to produce an agreement or affect the outcome.

The Board finds that the decision to implement the installation of the cameras was a permissive subject of bargaining. However, this does not mean that there is nothing for the parties to address at the bargaining table. Because the terms and conditions of employment are affected, the Union has the right to engage in effects bargaining. While the City did not improperly refuse to bargain over its decision to use the disputed technology, it did commit an unfair labor practice by its refusal to bargain the effects of its decision in violation of its good faith bargaining obligations. Accordingly, the parties must commence the effects bargaining process by meeting to define and agree upon appropriate effects bargaining proposals and subjects. Examples of this include, but are not limited to, employee privacy concerns stemming from the recording of video and audio, notice and procedure in the event data may or will be used in conjunction with employee evaluation or discipline, and similar matters consistent with the findings and determinations made in this Opinion. Since the parties are currently engaged in negotiations for a successor agreement, now is an opportune time to bargain over this matter.

C. CARE did not waive its rights to bargain the effects of the City installing and activating the cameras in the EMS units.

The City's first affirmative defense is that the parties' collective bargaining agreement waived CARE's rights to bargain, and that CARE's refusal to meet and confer with the City also waived CARE's rights.

First, the City argues that Section 4117.08 of the Ohio Revised Code gives it management rights to install and activate the cameras without bargaining the effects. Further, the City argues that "zipper" language in the last two paragraphs of Article 3 of the parties' collective bargaining agreement is CARE's clear and unmistakable waiver of its right to bargain the effects of the City installing and activating the cameras.

The Board finds that CARE did not clearly and unmistakably waive, through the zipper clause, its statutory and contractual rights to bargain the effects of the City installing and activating the cameras. This ruling is supported by SERB and Court precedents.

SERB examined a similar zipper clause in *In re City of North Ridgeville*, SERB 2000-008 (6-22-00). SERB stated generally that zipper "clauses are intended to protect the status quo rather than provide justification for unilaterally changing the employment relationship." *Id.* at 3-52. The zipper clause in *North Ridgeville* that SERB found did not waive bargaining rights is essentially the same as the next to last paragraph in Article 3 of the parties' collective bargaining agreement herein. In this case not bargaining the effects of installing and activating the cameras is a unilateral change to the employment relationship. The zipper clause in the parties' collective bargaining agreement does not waive CARE's right to bargain the effects of the City installing and activating the cameras.

The City also argues that the last paragraph of Article 3 of the parties' collective bargaining agreement waives all of CARE's statutory bargaining rights. However, *City of Lakewood v. St. Emp. Relations Bd.*, 66 Oh. App.3d 387 (8th Dist. 1990), holds otherwise.

In *Lakewood* the issue was the employer's unilateral altering of the union members' scheduling system. "Unless a collective bargaining agreement specifically eliminates a right provided an employee by statute, an employee retains his entitlement to the right... Further,... ' a waiver must be "clear and unmistakable" from the terms of an agreement and ... where an alleged waiver is based upon negotiations, the evidence must be clear that the union consciously yielded its statutory right.' *American Cyanamid Company* (1970), 185 N.L.R.B. No. 135." *Id.* at 392. Applying this principle to the facts in *Lakewood*, "the union twice rejected the city's proposals to change to the three platoon system. There is nothing in the record or the agreement to show the union yielded its statutory right. No language in the management rights clause clearly gives the city the unilateral right to change the scheduling system. We hold that SERB correctly concluded that this clause did not contain a specific waiver of the right to bargain over the changes ordered by the city." *Id.* at 393.

Applying *Lakewood's principles* to this case, the general language in the last paragraph of the parties' collective bargaining agreement is not a specific nor a clear and

unmistakable waiver of CARE's statutory right to bargain the effects of the City installing and activating the cameras.[5] Further, CARE requested that the City bargain.

Finally, the City argues that CARE's refusal to "meet and confer" also constituted waiver, even where CARE's refusal was because meet and confer was all the City would do, rather than actually bargain. However, *In re Youngstown State University*, SERB 93-011 (6-30-93), holds otherwise.

In *Youngstown*, the union requested that the employer bargain, but the employer "offered only to meet and confer. The offer was too little, too late. The union's failure to pursue it does not constitute waiver." *Id.* at 3-72. Likewise, in this case the Board also holds that CARE's refusal to meet and confer did not waive its right to bargain the effects of the City installing and activating the cameras.

V. CONCLUSIONS OF LAW

1. City of Cleveland is a "public employer" as defined in Section 4117.01(B) of the Ohio Revised Code. (S. 1)

2. Cleveland Association of Rescue Employees, I.L.A., Local 1975 is an "employee organization" as defined in Section 4117.01(D) of the Ohio Revised Code. (S. 2)

3. The City of Cleveland violated Section 4117.11(A)(5) of the Ohio Revised Code by refusing to bargain the effects of the installation of dashboard cameras in the City's EMS vehicles.

VI. REMEDY

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

A. CEASE AND DESIST FROM:

(1) 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 Cleveland Association of Rescue Employees, I.L.A., Local 1975 over the effects of dashboard

[5] Because *Lakewood* is a Cuyahoga County Court of Appeals decision, this Board is following a decision that is binding on all three parties in this particular case.

cameras installed in the City EMS vehicles used by its bargaining unit members.

(2) Post for 60 consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees represented by the Cleveland Association of Rescue Employees, I.L.A., Local 1975 work, this Notice to Employees furnished by the State Employment Relations Board stating that the City of Cleveland 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.

VII. DETERMINATION

For the reasons stated above, the Board finds that the City of Cleveland violated Section 4117.11(A)(5) of the Ohio Revised Code. A Cease and Desist Order with a Notice to Employees shall be issued to the City of Cleveland ordering it to take the actions set forth in the Remedy section of this Opinion.

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

W. CRAIG ZIMPHER, CHAIR

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) Refusing to bargain collectively with the exclusive representative of certain of its employees in violation of their rights guaranteed in Ohio Revised Code Chapter 4117.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

(1) Bargain in good faith with the Cleveland Association of Rescue Employees, I.L.A., Local 1975 over the effects of the installation of dashboard cameras in the City EMS vehicles.

(2) Post for 60 consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees represented by the Cleveland Association of Rescue Employees, I.L.A., Local 1975 work, this Notice to Employees furnished by the State Employment Relations Board stating that the City of Cleveland 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 CLEVELAND
Case No. 2021-ULP-09-0140

_____ _____
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