

OSBA Certified Specialist in  
Labor & Employment Law

Admitted to Practice  
in Ohio, Florida and New Mexico

direct 513-698-5070  
direct fax 513-698-5071  
dmooney@ulmer.com

August 13, 2010

**BY FEDERAL EXPRESS**

State of Ohio  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup> Floor  
Columbus OH 43215-4213

**Re: Cincinnati Federation of Teachers against  
Cincinnati Board of Education - Bad Faith Bargaining**

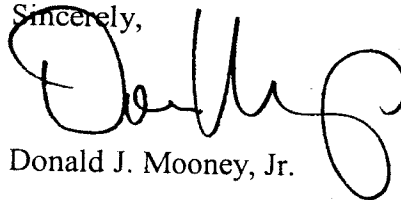
Dear Sir/Madam:

Enclosed please find the following:

1. An original and one copy of an Unfair Labor Practice Charge with attachments, and a Notice of Appearance.
2. A copy of the ULP Charge and Notice of Appearance without attachments to be filed-stamped and returned to me in the stamped self-addressed envelope I have enclosed for your convenience.

Thank you for your assistance:

Sincerely,



Donald J. Mooney, Jr.

DJM/cac  
enclosures

ulmer|berne|llp  
ATTORNEYS

August 13, 2010  
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cc: Julie Sellers (w/encl.)  
Cynthia Dillon (w/encl.)



State of Ohio  
 State Employment Relations Board  
 65 East State Street, 12<sup>th</sup> Floor  
 Columbus, Ohio 43215-4213  
 (614) 644-8573

<http://www.serb.state.oh.us/2000%20forms/ULP/ULPC.PDF>

Case No. \_\_\_\_\_

## UNFAIR LABOR PRACTICE CHARGE

**INSTRUCTIONS:** File *one original and one copy* of this form with the State Employment Relations Board at the above address. Serve *one copy* on the party against whom the charge is brought. See Ohio Administrative Code Rule 4117-1-02. If more space is required for any item, attach additional sheets; please number the items accordingly.

**NOTE:** If you wish to file unfair labor practice charges against both the employer and the union, then separate Unfair Labor Practice Charge forms must be filled out. For the form(s) to be filed against the union, fill out all sections of this form. For the form(s) to be filed against the employer, fill out all sections except section four, which is used to identify the employer for charges filed against the union or its representative(s).

**1. Party Filing Charge: (Check One)**

Employee Organization/Union     Employee     Employer     Other \_\_\_\_\_

Name: \_\_\_\_\_

Cincinnati Federation of Teachers

Address:

2721 Central Parkway, Suite B

Telephone: work (513)961-2272  
home (     )

City, County, State, Zip:

Cincinnati, Hamilton County, Ohio 45225

E-mail: \_\_\_\_\_

**2. Name of Person Representing the Party Filing Charge:**

(Representative must file a Notice of Appearance form.)

Donald J. Mooney, Jr., Esq.

Address:

Ulmer & Berne LLP, 600 Vine Street, Suite 2800

Telephone:  
(513)698-5070

City, State, Zip:

Cincinnati, Hamilton County, Ohio 45202

E-mail:

dmooney@ulmer.com

**3. Party Against Whom This Charge is Brought: (Check Only One)**

Employee Organization/Union     Employee     Employer     Other \_\_\_\_\_

Name: \_\_\_\_\_

Cincinnati Board of Education

Address:

P.O. Box 5381

Telephone:  
(513)363-0040

City, County, State, Zip:

Cincinnati, Hamilton County, Ohio 45201-5381

E-mail: \_\_\_\_\_

**4. Employer: (If different from item 1 or 3)**

Address:

Telephone:

(     )

City, County, State, Zip:

E-mail: \_\_\_\_\_

**5. Basis of Charge:** The party against whom this charge is brought was engaged in or is engaged in unfair labor practices within the meaning of Ohio Revised Code Section 4117.11. (Check appropriate subsections only.)

Charges against employers: (A)(1)  (A)(2)  (A)(3)  (A)(4)  (A)(5)  (A)(6)  (A)(7)  (A)(8)

Charges against unions or employees: (B)(1)  (B)(2)  (B)(3)  (B)(4)  (B)(5)  (B)(6)  (B)(7)  (B)(8)

6. **Statement of Facts:** Provide a clear and concise statement of the facts constituting the alleged unfair labor practice(s), including the names of individuals involved and the dates and places of the occurrences giving rise to the charge. (If more space is required, add additional sheets.)

Please see attached.

A failure to provide the above information could result in the charge being dismissed for failure to provide a clear and concise statement.

**DECLARATION**

I declare that I have read the contents of this Unfair Labor Practice Charge and that the statements it contains are true and correct to the best of my knowledge and belief.

To distinguish originals, please do not use black ink for signatures.

*Julie Sellers*

8-13-10

Signature of Person Attesting to Content of Form

Date

Julie Sellers, President, Cincinnati Federation of Teachers

Print or Type Name

**THIS UNFAIR LABOR PRACTICE CHARGE WILL NOT BE ACCEPTED FOR FILING UNLESS THE PROOF OF SERVICE IS FULLY COMPLETED AND BEARS AN ORIGINAL SIGNATURE OF A REPRESENTATIVE OF THE PARTY FILING THE CHARGE.**

**PROOF OF SERVICE**

I certify that an exact copy of the foregoing Unfair Labor Practice Charge has been sent or delivered to:

*Cynthia Dillon, General Counsel, Cincinnati Public Schools*

(Name and complete address of party against whom this charge is brought)

*Education Center, 2651 Burnet Ave., Cuh. Ohio 45219*

By  Regular U.S. Mail  Certified U.S. Mail  Hand Delivery  Other \_\_\_\_\_

this 13 (day) of August (month), 2010 (year).

*Donald J. Mooney, Jr.*

Donald J. Mooney, Jr.

Signature of Person Attesting to Service of Form

Print or Type Name

## **STATEMENT IN SUPPORT OF UNFAIR LABOR PRACTICE CHARGE**

### **I. INTRODUCTION.**

The Cincinnati Federation of Teachers (CFT), a deemed certified bargaining unit, has represented teachers and other professionals employed by the Cincinnati Board of Education (The Board and/or CPS) for four decades, successfully negotiating a series of successor collective bargaining agreements over those years. Bargaining has not always gone smoothly, and the parties have sometimes resorted to fact finding to bridge final differences. But there has not been a strike of Cincinnati Public School teachers since 1977.

Unfortunately, bargaining for a contract to replace the agreement set to expire on December 31, 2009 is the first in CFT's history that involves a plain and obvious failure by the CPS to bargain in good faith. That failure constitutes a violation of R.C. 4117.11.

While it remains unclear exactly when the Board chose to engage in surface, bad faith bargaining, the facts set forth below show that by June, 2010, the Cincinnati Board of Education had elected to make a radical departure from a long history of effective and (often) collaborative negotiations, to an approach designed to scuttle any real possibility to enter into a new contract. Sadly, the apparent objective of the Board is the unilateral implementation of changes in salaries and the terms and conditions of employment for the approximately 2500 teachers represented by CFT, a process which has already begun, despite the Board's continuing obligation to honor the existing contract.

### **II. HISTORY OF 2009-10 BARGAINING.**

The current collective bargaining agreement was effective on January 1, 2007, and was set to expire on December 31, 2009 (Ex. A, p. 80). It called for a salary reopener for the final year of the contract, which was resolved by an agreement to freeze salaries (other than step

increases) for the final year of the contract, the 2009-10 school year. Teachers have received no salary increase since January, 2008.

CFT and its related bargaining unit, ACPSOP, gave timely notice of an intent to bargain a successor agreement on October 21, 2009. However, formal negotiations did not begin until January 21, 2010.

The parties initially agreed to engage in a mutual gains style of bargaining, with training and assistance provided by mediator Earle Leonhardt of the Federal Mediation and Conciliation Service. The parties agreed to certain bargaining ground rules (Ex. B), and began what was a long tortuous effort to reach an agreement.

Using mutual gains procedures recommended by the Federal Mediator, the parties exchanged no more than ten "interests" on January 15, 2010, which were supposed to summarize the scope of their bargaining objectives. See Exs. C (Board interests) and D (CFT interests). CFT proceeded in good faith with the expectation that the issues the Board planned to raise were within the scope of the 10 goals presented on its behalf on January 15, 2010.

Initially, the Board negotiating team was assisted by Chicago attorney James Zuehl, a veteran of effective teacher collective bargaining efforts, who had represented public school districts in Illinois for many years. CFT was told that Mr. Zuehl was brought into the negotiations by the Board because he had represented the New Haven, Connecticut School District in negotiating what had been described as a landmark "reform" contract, which allowed more flexibility for work rules, and the length of the school day and year in failing schools; and for the consideration of academic achievement in the evaluation and compensation of teachers.

From January 2010 through late May 2010, the two negotiating teams, or subcommittees of them, met on about 40 occasions for more than 300 hours. A list of the dates and approximate times of those meetings is attached as Ex. E.

Over those months, the CFT believed that substantial progress had been made on the CPS's "reform" priorities, including a series of "one text" agreements that summarized in contract changes that would allow more flexibility at the building level, and adjust evaluation criteria to include measurement of student performance. (Ex. F hereto, summary of one text language that CFT believed resulted in discussions through May, 2010).

By mid-May 2010, the CFT was led to believe that the only real obstacle to a settlement by the end of the Board fiscal year on June 30, 2010, was agreement on financial and benefits issues; and to put into more formal contract language the framework agreements that CFT had negotiated with CPS through the assistance of Mr. Zuehl.

CFT was told that Mr. Zuehl was to meet with the Cincinnati Board of Education (the "Board") on May 19, 2010 to present the terms of provisional "reform" agreements that the teams had worked on for nearly five months.

On May 17, 2010, Mr. Zuehl – who was the Board's lawyer – sent CFT President Sellers an email that said:

Attached is a selective summary of our provisional agreements. This focuses on elements that are likely to be viewed most positively by a management-side audience. I believe Gary<sup>1</sup> is in something of a hurry to receive this because he would like to discuss it with his education Task Force tomorrow....Hopefully you will have a chance to give this a quick review today and let me know if you are comfortable with it."

(Ex. G).

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<sup>1</sup> "Gary" is Gary Lindgren, the Executive Director of the Cincinnati Business Committee ("CBC"), a group of CEO's for major Cincinnati companies. The CBC has an Education Task Force that has long attempted to influence the operation of the Cincinnati Public Schools.

CFT President Sellers responded to Zuehl by agreeing that she was comfortable with this outline.

The meeting on May 19, 2010 between the Board and their lawyer is cloaked in secrecy because it was held in executive session. But we do know what happened next: *Mr. Zuehl's engagement by CPS apparently was ended.* He has not appeared at any negotiating session since May 16, 2010. CFT was later told the provisional agreement it negotiated with the Board's attorney was "not transformative enough" in the view of a majority of the school board.

On learning that the Board had dumped the lawyer who had been hired to lead the negotiation effort, CFT pushed for an executive session with the full Board of Education. CFT hoped the Board would explain what it is they were after in contract negotiations that would be sufficiently "transformative". The Board declined such a meeting, though a meeting with a smaller group including Board members Chris Nelms and Melanie Bates did occur.

On or about June 1, 2010, the next scheduled bargaining session after Mr. Zuehl's disengagement, Board members Melanie Bates and Vanessa White made appearances at different times. In addition, Board Member Eve Bolton also attended, and now appeared to be in charge of the CPS bargaining team. Bolton, a retired school teacher from the tiny Wyoming, Ohio suburban school district, had played a role in her Ohio Education Association (OEA) Chapter.

Bolton explained to CFT's team that what had been produced over five months of negotiations simply did not capture the Board's desire for a "transformative" contract with CFT. When pressed for details she indicated that she had been working up a new proposal as an "example" of what the Board had in mind. CFT asked to see her new proposal but was told it was not ready.

*In other words, after five months of negotiations, the Board had yet to put its proposals for changes to the current agreement on the table.*

Despite these discouraging signals, CFT was still hopeful that a new contract could be tentatively agreed upon before the end of the fiscal year, which would give the Board some additional flexibility to agree to some type of a cost-of-living raise for teachers. All day negotiating sessions were scheduled for June 21-27, 2010, to allow time for an agreement before July 1<sup>st</sup>.

On June 21, 2010, Bolton finally presented the Board's new contract proposal. (Ex. H). It included a "sea of red" highlighted removals or edits from and to the current contract. For the first time, CFT learned that the Board no longer even wanted to refer to its teachers as "teachers" in the contract, but as "Bargaining Unit Members" (BUM's).

The CFT team was dumbfounded to discover the Board now wanted hundreds of proposed changes that had never been discussed from January, 2010 through June 20, 2010, including such radical notions as the elimination of the long existing right to arbitrate teacher dismissals and disciplines; the shrinking of the bargaining unit to exclude substitute teachers long represented by CFT; and the apparent elimination of a teacher's right to earn a continuing contract, or tenure. The Board also wanted to increase the school year by five additional days (about 2.5%) without adding a dime to teacher pay.

Mediator Leonhardt, who had labored along with the two teams since January, reacted with similar disbelief. He advised CFT to consider filing an unfair labor practice against the Board for bad faith bargaining, and suggested that the Union abandon the mutual gains ground rules, which had proven fruitless. At the suggestion of the Mediator, the parties agreed to abandon their mutual gains bargaining process on June 23, 2009. Correspondence from Counsel

for CFT the Board's Counsel (Ex. I) and from the CFT President to the Superintendent (Ex. J) document the CFT's response to this strange turn of events.

Nevertheless, CFT continued to explore whether this new radical departure from past bargaining was merely a feint. Unfortunately, despite more hours of meetings on July 15, 16, 28, 29, 30 and August 6, 7 and 8 (Ex. E), it has become clear that the Board remains firmly on a path designed not to reach an agreement with CFT. The latest iteration of their proposal, attached as Ex. F, includes the following proposals that were not within the framework negotiated with Mr. Zuehl in the first five months of bargaining. Indeed, many of these proposals had never been discussed at all:

- **Shrink Bargaining Unit.** Delete Daily Rate and Long Term Substitute Teachers that have long been in this deemed certified unit.
- **More Work Without More Pay.** The Board wants to add five days to the work year without any additional pay.
- **Restricts CFT Right to Visit Schools.** Limit school visits to times when specifically requested by a teacher, and subject to the same conditions as visits by the public.
- **LSDMC's at Risk.** Local School Decision Making Committee's (LSDMC's), would no longer have to be organized consistent with a uniform board policy, subjecting the Committee to manipulation by a Principal.
- **Devaluation of Teaching Teams and Team Leadership.** Guts requirements that teaching team members are certified and well qualified in core areas. Eliminates additional pay for team leaders. Takes power to form teams away from a school's Instructional Leadership Team (ILT).
- **School Based Budgeting Ended.** In further effort to centralize administrative power, CPS would no longer be required to adhere to school based budgeting. The proposal would eliminate the role of the ILT's at each school in setting budget priorities or deciding which teaching specialists to seek for the school.
- **Eliminating CFT Role in Planning.** Eliminates CFT's right to participate in long range planning for the district.

- **Guts Academic Freedom.** Curbs the rights of teachers in the classroom long guaranteed by the contract.
- **End to Career in Teaching Program.** Ends program long in contract to encourage teachers to expand their skills and performance through additional education, training, certification and financial incentives.
- **Ends Summer Professional Development.** Fund. The fund has long helped teachers increase their skills to better serve students.
- **Eliminates Spending Transparency.** Eliminates the Budget Commission's role in determining that money budgeted is spent the way it was supposed to be spent.
- **Cuts School Supply Guarantees.** Eliminates the requirement that money allocated for school supplies is actually used to buy supplies, creating the risk of unmonitored slush funds at schools and the central office.
- **Eliminates Rights of Teachers to Earn Continuing Contracts.** Simply deletes the section about how a teacher can earn tenure ( a continuing contract), with the apparent intent to eliminate tenure. Only teachers who earned tenure elsewhere would be able to get a continuing contract at CPS, after working in the district for 5 years. (as opposed to two years in current contract.)
- **Abandons Model Evaluation Program.** Proposal abandons the groundbreaking comprehensive evaluation system (TES) implemented by CFT and CPS only a few years ago, and reduces the frequency of teacher evaluations. Also makes the process more adversarial and arbitrary, by eliminating common courtesies like the requirement that the evaluator first introduce herself before a first observation.
- **Denies Due Process to Terminated Teachers.** Rather than the right to an arbitration, a teacher's only appeal would be to the Principal who decided to terminate her, and then to the Board of Education.
- **Guts Peer Review Process.** This landmark program is seen as cutting edge reform in some Cities. But the Board wants to gut the program, taking away CFT's role in establishing the guidelines, eliminating the stipend for consulting teachers, or the guarantee that a minimum number of teachers will be in the program.
- **Arbitrary Discipline Options with No Due Process.** Current contract limits suspensions to three days. Board proposal would allow an indefinite suspension without pay, and eliminate the right to file a grievance to contest a suspension. The only appeal would be to the school board.
- **Seniority Devalued.** For transfers, surplus, or RIF considerations, Board's proposal would make seniority secondary to "student achievement and growth