

## SERB's Picketing Restrictions Ruled Unconstitutional

By Ahmer Sheriff

On the final day of 2020, the Eleventh District Court of Appeals (Portage County), held that an Ohio law which restricted the picketing of private homes and private offices of public officials was unconstitutional under both the United States and Ohio Constitutions – reversing the ruling of the Portage County Court of Common Pleas.

The appeal arose from a labor dispute between the Portage County Educators Association for Developmental Disabilities, OEA/NEA (the “Association”) and the Portage County Board of Developmental Disabilities (“Board”) and an ensuing two-month strike by the Association in 2017. During the strike, members of the Association were encouraged to, and participated in, picketing on public sidewalks and public streets in the general vicinity of the residences of six Board members, and the place of private employment of one Board member.

As a result, the Board filed an unfair labor practice charge with the State Employment Relations Board (“SERB”), based upon R.C. 4117.11(B)(7), which provides in relevant part, that it “is an unfair labor practice for an employee organization, its agents, or representatives, or public employees” to “induce or encourage any individual in connection with a labor relations dispute to picket the residence or any place of private employment of any public official or representative of the public employer.”

The Board argued that the Association violated R.C. 4117.11(B)(7) and the Association challenged the constitutionality of the statute at the hearing with SERB. SERB found that the Association had indeed violated R.C. 4117.11(B)(7) but held that SERB lacked the jurisdiction to consider the constitutionality of the statute. The Association then filed an administrative appeal in the Portage County Court of Common Pleas, arguing that R.C. 4117.11(B)(7) is “an unconstitutional content-based restriction on speech, in violation of the First Amendment of the United States Constitution.” The Court disagreed, holding that the statute is content-neutral, constitutional, and enforceable.

On appeal, the Association argued that the lower court erred in affirming SERB’s unfair labor practice determination due to the fact that both the determination and the statute upon which it was based “ban constitutionally protected picketing activity in violation of the rights of the Association and its members to free speech and equal protection.” The Appeals Court held that the law was impermissibly content-based, since a violation of the statute only occurs if the picketing is “in connection with a labor relations dispute.” As such, the entire restriction was presumed unconstitutional and subject to the most stringent judicial review, strict scrutiny. After conducting the relevant legal analysis, the Court held that the restrictions on inducing and encouraging picketing under R.C. 4117.11(B)(7) were unconstitutional restrictions on free speech and remanded the matter back to the trial court for further proceedings.

If you have any questions, please contact any of the listed Roetzel attorneys.

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