[Cite as *Youngstown v. State Emp. Relations Bd.*, 2021-Ohio-4591.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO, CITY OF YOUNGSTOWN,

Appellant,

v.

STATE EMPLOYMENT RELATIONS BOARD ET AL.,

Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 21 MA 0023

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2020 CV 01040

BEFORE:
David A. D'Apolito, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:
Affirmed.

Atty. Jeffrey S. Moliterno, Assistant Law Director, and *Atty. Daniel P. Dascenzo,* Deputy Law Director, City of Youngstown, 26 South Phelps Street, 4th Floor, Youngstown, Ohio 44503, for Appellant and

Atty. David Yost, Ohio Attorney General, Criminal Justice Section, 150 East Gay Street, 16th Floor, Columbus, Ohio 43215, *Atty. Lisa A. Reid*, and *Atty. Lori J. Friedman,* Principal Assistant Attorney General, Executive Agencies Section-Labor Relations Unit, West Superior Avenue 11th Floor, Cleveland, Ohio 44113, for Appellee, State Employment Relations Board. *Atty. Ryan J. Lemmerbrock*, and *Atty. Brooks W. Boron*, Muskovitz & Lemmerbrock, LLC, 1621 Euclid Avenue, Suite 1750, Cleveland, Ohio 44115, for Appellee, Youngstown Professional Firefighters.

Dated: December 13, 2021

D'Apolito, J.

{¶1} Appellant, City of Youngstown ("City"), appeals a judgment of the Mahoning County Court of Common Pleas affirming an Order by Appellee, State Employment Relations Board ("SERB"). This R.C. 4117.13(D) appeal stems from the filing of an unfair labor practice charge by Appellee, Youngstown Professional Firefighters, IAFF Local 312 ("Union") against City. Union alleged, and SERB and the trial court found, that City violated R.C. 4117.11(A)(1) by threatening to eliminate and subsequently eliminating three Battalion Chief positions in retaliation against Union for pursuing a radio safety equipment grievance to arbitration. In this appeal, City asserts the trial court abused its discretion in upholding portions of SERB's Order and in failing to consider SERB's improper reliance on confidential mediation communications. For the reasons stated, SERB properly found that City committed an unfair labor practice by violating R.C. 4117.11(A)(1) and the trial court did not abuse its discretion in affirming SERB's Order. Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

{¶2} City is a municipality and political subdivision of the State of Ohio. City is a "public employer" as defined by R.C. 4117.01(B). Union is an "employee organization" as defined by R.C. 4117.01(D). SERB is the State agency charged with the enforcement of R.C. Chapter 4117. Union is the exclusive bargaining representative for all sworn firefighters employed by City except for the Fire Chief. City and Union are parties to a collective bargaining agreement ("CBA") effective from June 1, 2017 through May 31, 2020. The CBA contains a grievance and arbitration process that culminates in final and binding arbitration.

{¶3} Article 9, Section 3 of the CBA requires City to furnish and maintain in safe condition all tools, facilities, vehicles, and supplies and equipment required to safely carry out the duties of each Union member. In 2017, City underwent changes to the portable radio program used by the firefighters. Union President Charles Smith and Fire Chief Barry Finley testified at a later SERB record hearing regarding significant and potentially

dangerous safety issues caused by the radio equipment. Captain Tim Frease served as a liaison between City and the Fire Department. Frease obtained quotes and informed City it would cost approximately $285,000 to fix the radio equipment. City did not fix the radios.

{¶4} On January 9, 2019, Union filed Grievance 19-001 alleging City violated the CBA by failing to provide necessary turnout gear and radio equipment to the firefighters. On January 17, 2019, President Smith, Captain Tracey Wright (former Union Secretary), Chief Finley, and Deputy Law Director Dan Dascenzo met to discuss the grievance. The meeting was an open discussion concerning the problems with the radio system. City suggested that Union hold the grievance in abeyance pending finalization of City's 2019 budget. Union believed City was going to fund both the turnout gear and the radio equipment in the 2019 budget. During that meeting, City did not indicate that it may be necessary to eliminate Battalion Chief positions in order to purchase the radio equipment.

{¶5} On February 7, 2019, Chief Finley advised City Council that he had added $250,000 in the Fire Department's budget for radio equipment. However, City's Interim Finance Director, Kyle Miasek, later determined that the radio equipment would not be included in the final 2019 budget. City's finalized 2019 budget for the Fire Department maintained all six Battalion Chief positions through the remainder of 2019.

{¶6} On April 15, 2019, City informed Union that it planned to budget for the necessary turnout gear but not for the radio equipment. City's estimated cost for the radio equipment was approximately $285,000. CPA Mary Schultz testified at the SERB record hearing that City had sufficient funds to pay for the $285,000 radio upgrade. Schultz indicated City was able to purchase the radio equipment without eliminating any Battalion Chief positions.

{¶7} After no resolution, Union informed City it would be processing Grievance 19-001 to a Step 3 hearing. Union requested a copy of City's 2019 budget, but City never complied. On April 19, 2019, City issued its Step 3 response to the grievance without holding a Step 3 hearing. City did not address the merits of the grievance. Rather, City claimed for the first time that the grievance was untimely. On April 25, 2019, Union informed City it would be advancing the grievance to arbitration.

{¶8} During this time period, other disputes arose between City and Union. The relationship between the parties deteriorated and became contentious. On July 12, 2019, Union and City met to discuss labor management issues. Assistant Law Director Jeffrey Moliterno indicated that Chief Finley had a plan to pay for the radio equipment, contingent upon Union agreeing to eliminate two Battalion Chief positions though attrition.[1] Union rejected City's offer. Union believed City's proposal violated its collective bargaining rights and that eliminating the positions would create new safety issues. City never indicated at the meeting that the elimination of the Battalion Chief positions was to be part of a restructuring effort or reorganization plan for the Fire Department. Rather, as revealed, City's sole stated reason for eliminating the positions was to pay for the radio equipment.

{¶9} On July 25, 2019, City Council's Safety Committee held a public meeting. Chief Finley announced City's plan to eliminate two Battalion Chief positions in order to fund the radio equipment expenditures. Chief Finley claimed that the reduction was not a safety issue. City did not provide Union with documentation explaining its reasoning or with financial information indicating its need to reduce the Battalion Chief positions.

{¶10} At an August 5, 2019 public meeting, Chief Finley now acknowledged that reducing the Battalion Chief positions was a safety issue. Chief Finley explained that he was done conceding to cuts and that he would no longer be eliminating the two Battalion Chief positions. On August 15, 2019, President Smith and Captain Wright met with Chief Finley and the Mayor to discuss how to finance the radio equipment. City again reversed its position and the elimination of the Battalion Chief positions was back on the table.

{¶11} On September 3, 2019, Union filed an unfair labor practice charge against City alleging violations of R.C. 4117.11(A)(1), (2), (3), and (8). On October 15, 2019, a labor management meeting was held between President Smith, Captain Wright, Chief Finley, Attorney Moliterno, and Law Director Jeff Limbian. City informed Union it would be eliminating three Battalion Chief positions, instead of the originally planned two

[1] At the time of the labor management meeting, there were six Battalion Chief positions in the Fire Department. The Battalion Chief is the highest-ranked position in the bargaining unit and the highest compensated. The Department's Standard Operating Guidelines call for each shift to be assigned two Battalion Chiefs which are vital to fire responses. The Fire Department has utilized Battalion Chiefs in this capacity for over 20 years. By eliminating Battalion Chief positions, the second Battalion Chief on each shift would be eliminated, thereby presenting an immediate safety issue.

positions. City told Union for the first time that the elimination of the positions was due to a restructuring plan.[2]

{¶12} On October 31, 2019, SERB determined that probable cause existed to believe City violated R.C. 4117.11(A)(1) and (2) but not (A)(3) and (8), authorized the issuance of a complaint, and directed the matter to mediation. On November 12, 2019, Union learned that City planned to pass legislation to eliminate the three Battalion Chief positions. The next day, City Council passed Ordinance No. 19-336 to amend Section 1 of Ordinance 19-47, to abolish three Battalion Chief positions by attrition. That Ordinance was later determined to be an unlawful retaliation against Union.

{¶13} Following an unsuccessful mediation session, a complaint was issued and the matter was directed to a hearing which commenced on February 12, 2020 before an Administrative Law Judge ("ALJ"). During the SERB record hearing, City confirmed that it abolished the Battalion Chief positions not because it lacked the ability to pay, but rather because it had competing priorities, a limited pool of funds, and faced a challenging fiscal environment. The parties submitted post-hearing briefs to the ALJ on April 10, 2020. One week later, the ALJ issued his Proposed Order recommending that SERB find that City violated R.C. 4117.11(A)(1). The ALJ found that City had the financial ability to have paid a part of or all of the approximate $285,000 needed to upgrade the Fire Department's radio issue. The ALJ rejected City's reorganization defense.

{¶14} On May 6, 2020, City filed exceptions to the Proposed Order. On May 14, 2020, Union filed a response. Four days later, the Ohio Attorney General's Office filed a response.

{¶15} On June 11, 2020, SERB adopted the ALJ's Proposed Order concluding that City violated R.C. 4117.11(A)(1), namely:

> [T]hat [City's] comments and actions interfered with [Union's] ability to carry out its collective bargaining rights. It would have been almost impossible for Union leadership to have ignored or cast aside the comments made by [City], as frequent, stringent, and unequivocal as they were. The evidence adduced in this matter clearly demonstrates that the reasonable likelihood

[2] City may restructure if appropriate. However, City may not retaliate.

> of harm present in this case is sufficient to support finding a violation of Section 4117.11(A)(1) of the Ohio Revised Code.

(6/11/2020 SERB Order/Opinion Adopted by SERB, p. 13).

{¶16} Specifically, SERB adopted the following conclusion of law:

> [City] violated Section 4117.11(A)(1) of the Ohio Revised Code when, in the absence of any superseding managerial right, it made statements and issued ultimatums which appeared to force [Union] into choosing between either ensuring that its members possessed proper communications equipment on the fire site or ensuring that its members were protected by the presence of a second highly trained Battalion Chief on the fire site acting as Safety Officer.

(*Id.* at 14).

{¶17} In finding that City violated R.C. 4117.11(A)(1), SERB further specified the following in its Order:

> [City] is ordered to:
>
> A. CEASE AND DESIST FROM:
>
> (1) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Chapter 4117. of the Ohio Revised Code by making statements and giving ultimatums that have the effect of forcing [Union] to choose between protecting the safety of its members on the fire site through effective radio communication and protecting the safety of its members on the fire site through the presence of a second Battalion Chief acting as a Safety Officer, and from otherwise violating Section 4117.11(A)(1) of the Ohio Revised Code; and
>
> (2) Further effectuating Ordinance 19-336, which abolishes three Battalion Chief positions upon their vacancy through attrition; since this Ordinance,

> as applied, violates the rights of [Union] set forth in Section 4117.03(A) of the Ohio Revised Code.
>
> B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:
>
> (1) Post for sixty (60) consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees represented by [Union] work, the Notice to Employees furnished by [SERB] stating that [City] shall cease and desist from the actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B);
>
> (2) Reconstitute the Battalion Chief position abolished on or about December 7, 2019 and re-assign the current Fire Captain who encumbered that position on or about December 7, 2019 to re-encumber the re-constituted Battalion Chief position.
>
> (3) Provide the former Fire Captain, who is newly re-assigned to that Battalion Chief position, with all pertinent backpay, benefits, and all other pertinent emoluments the Fire Captain would have enjoyed, had he been allowed to encumber the Battalion Chief position without interruption from his approximate December 6, 2019 appointment thereto; and
>
> (4) Notify [SERB] in writing with 20 calendar days from the date the ORDER becomes final of the steps that have been taken to comply therewith.

(6/11/2020 SERB Order, p. 2-3).

{¶18} On June 24, 2020, pursuant to R.C. 4117.13(D), City filed an appeal of SERB's Order and Opinion with the Mahoning County Court of Common Pleas, Case No. 2020 CV 01040. Legal arguments were submitted to the trial court and briefed.

{¶19} On February 25, 2021, the trial court affirmed SERB's decision following a hearing. The court found that SERB's decision was supported by substantial evidence in the record and held that SERB correctly found that City violated R.C. 4117.11(A)(1), i.e., that City interfered with and retaliated against Union. Specifically, the court stated:

> The totality of the circumstances in the within appeal establishes that [City's] elimination of the Battalion Chief positions was in retaliation for [Union's] pursuing the radio equipment grievance. The evidence establishes that [City], through threat and subsequent elimination of the Battalion Chief positions, sought to deter [Union] from exercising its right to pursue a grievance.
>
> This occurred even though [City] had the economic wherewithal to purchase the radio equipment without cutting bargaining unit positions. This Court is unpersuaded by [City's] restructuring and right-sizing defenses, noting that [City] declined to call any financial expert/accountant at the SERB hearing. As a result, the Court finds those defenses were pretextual.
>
> As such, this Court concludes that SERB correctly found that [City] violated R.C. 4117.11(A)(1) by threatening and subsequently eliminating Battalion Chief positions in retaliation for [Union's] advancement of a grievance to arbitration.

(2/25/2021 Judgment Entry, p. 12).

{¶20} City filed a timely notice of appeal with this court, Case No. 21 MA 0023, and raises two assignments of error.

STANDARD OF REVIEW

> In most instances, when reviewing a trial court's decision affirming or reversing a SERB decision, an appellate court must apply an abuse of discretion test. See *Genesis Outdoor, Inc. v. Ohio Dept. of Transp.* (Nov. 12, 1996), 7th Dist. No. 95 C.A. 3095 C.A. 30. Abuse of discretion connotes more than an error of judgment; it implies that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

State Emp. Rels. Bd. v. Austintown Twp. Tr., 7th Dist. Mahoning No. 00 C.A. 133, 2002-Ohio-2995, ¶ 11.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT ABUSED ITS DISCRETION IN UPHOLDING PORTIONS OF SERB'S ORDER NOT SUPPORTED BY RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE.

{¶21} In its first assignment of error, City argues the trial court abused its discretion in upholding portions of SERB's Order because it is not supported by reliable, probative, and substantial evidence. City stresses that the trial court erred in affirming SERB's Order because SERB did not expressly determine that City's act of abolishing the Battalion Chief positions, by itself, constituted a violation of R.C. 4117.11(A)(1).

{¶22} R.C. 4117.11, "Unfair labor practices," states in part:

> (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 purposes of collective bargaining or the adjustment of grievances[.]

R.C. 4117.11(A)(1).

{¶23} A review of the totality of the circumstances in this case shows that Union was interfered with, restrained, or coerced in the exercise of its R.C. Chapter 4117 rights when City threatened and subsequently eliminated the Battalion Chief positions. *See, e.g., Hamilton Cty. Sheriff v. SERB*, 134 Ohio App.3d 654 (1st Dist.1999).

{¶24} City cites to an Eleventh District Court of Appeals decision, *State ex rel. Ohio Patrolmen's Benevolent Assoc. v. City of Warren*, 11th Dist. Trumbull No. 2015-T-0017, 2019-Ohio-5046, which was later affirmed by the Supreme Court of Ohio, 162 Ohio St.3d 176, 2020-Ohio-5372. City's reliance on *Warren* is misplaced. Unlike the case at bar, *Warren* is a mandamus case interpreting two civil service statutes with no reference

to any collective bargaining agreement; does not address an unfair labor practice nor equitable/injunctive relief under R.C. Chapter 4117; and involves an "authorized strength" ordinance.

{¶25} Unlike *Warren*, an analogous precedent to the case sub judice is *Franklin Cty. Sheriff's Dept. v. SERB*, 63 Ohio St.3d 498 (1992). In *Franklin*, three deputies pursued grievances to arbitration. Following the advancement of the grievances, the Sheriff informed two of the deputies that their qualifying for the auxiliary commission would be revoked and threatened revocation of all auxiliary commissions in the department. SERB found that the Sheriff's revocations and threatened revocations violated R.C. 4117.11(A)(1). The Supreme Court of Ohio affirmed SERB's ruling because the deputies were:

> [E]ngaged in the exercise of rights guaranteed in O.R.C. Chapter 4117. All three deputies filed grievances pursuant to the collective bargaining agreement and submitted the grievances to arbitration. Immediately thereafter, the deputies were notified that their auxiliary commissions were being revoked. The evidence demonstrated that the reasons given for the revocation were pretextual.

Id. at 507.

{¶26} The same analysis as *Franklin* applies here. City's reasoning for the elimination of the Battalion Chief positions was pretextual. No reorganization or restructuring plan was discussed prior to the Union's exercise of its right to grievance and arbitration. No City financial documentation or economic justification for its decision to eliminate the positions was provided. In fact, Union's financial expert opined that City was financially well able to pay for the radio equipment without eliminating the positions. Union even attempted to assist City by presenting financial proposals. City, however, did not implement any of Union's options and did not respond to Union's proposals. Rather, over Union's objection, City eliminated three Battalion Chief positions.

{¶27} The record establishes that City's threats and subsequent elimination of the positions were frustrated responses to Union's exercise of its contractual right to proceed to arbitration. SERB's Order confirms that it found City's statements, threats, ultimatums,

and actions interfered with Union's ability to carry out its collective bargaining rights in violation of R.C. 4117.11(A)(1). The actions cited in SERB's Order refer to City Council's abolishment of the three Battalion Chief positions upon their vacancy through attrition as effectuated through Ordinance 19-336. Specifically, SERB's Order indicates:

> Thus, neither an inability to pay nor an overarching need to fund competing City priorities constitute meritorious defense against the claim that [City] lacked a managerial business reason for eliminating three Battalion Chief positions.
>
> * * *
>
> However, based on the totality of the pertinent record in this case, a reasonable observer would not agree that [City] has engaged in mid-term bargaining over the issue of elimination of various Battalion Chief positions. More importantly, based on that same record, a reasonable observer would not conclude that [City's] somewhat tenuous and unilateral forays into reorganization of the Fire Department constitute a meritorious defense against the claim that [City] lacked a legitimate managerial reason for eliminating three Battalion Chief positions.
>
> * * *
>
> I have found, above, that [City's] comments and actions interfered with [Union's] ability to carry out its collective bargaining rights.
>
> * * *
>
> I find that Complainant has demonstrated that Respondent's interference far outweighs any legitimate managerial right [City] asserts to justify its actions.

(6/11/2020 SERB Order/Opinion Adopted by SERB, p. 7-14).

{¶28} Thus, contrary to City's position, SERB determined, and the trial court affirmed, that City's comments and actions were intended to interfere with Union's ability to carry out its collective bargaining rights. Similar to *Franklin, supra,* as stated, City's reasons here for eliminating the Battalion Chief positions were pretextual.

{¶29} Again, City may restructure if appropriate. However, City may not retaliate. City claims it enacted a reduction in rank through attrition. City's alleged plan was to pay for the radios by using projected savings from the elimination of the Battalion Chief positions through attrition. However, instead of an actual restructuring plan, City eliminated the Battalion Chief positions in retaliation of Union advancing a grievance to arbitration, and only claimed "restructuring" in the face of the instant unfair labor practice charge in an attempt to hide its patently unlawful conduct.

{¶30} City's alleged inability to pay did not constitute a managerial business reason for eliminating the positions. The record supports SERB's determination that City's claim that its elimination of bargaining unit positions was a part of City's restructuring or reorganizing plan for the Fire Department was baseless and not a legitimate reason to eliminate the three positions. In fact, City failed to provide details or supporting information for its "restructuring" plan. Also, the total 2019 call data illustrates that fire calls were not decreasing over the past six years. SERB clearly determined City's proffered reasons for eliminating the positions were pretextual and thus, Ordinance 19-336, i.e., the "attrition" Ordinance, was an unlawful retaliation against Union for advancing a grievance to arbitration.[3]

{¶31} The record further establishes that SERB met its burden in demonstrating by a preponderance of the evidence that an unfair labor practice was committed. R.C. 4117.12(B)(3). Because SERB found that City violated R.C. 4117.11(A)(1), SERB had the authority to issue a remedy requiring City to cease and desist from effectuating Ordinance 19-336 and order the reinstatement of the positions. R.C. 4117.12 permits SERB to issue a cease and desist order from actions it determines to be unfair labor practices and to take further actions, including the reinstatement of employees with back

[3] The ALJ found that there was not substantial evidence to support an R.C. 4117.11(A)(2) charge. However, SERB's determination that City did not violate R.C. 4117.11(A)(2) does not equate to a holding that City is absolved of wrongdoing by passing Ordinance 19-336. City was still found to have retaliated against Union when it eliminated the bargaining unit positions.

pay in order to accomplish the purpose of R.C. Chapter 4117. *See State Employment Relations Bd. v. East Palestine City School Dist. Bd. of Educ.*, 7th Dist. Columbiana No. 87-C-40, 1988 WL 70884 (June 29, 1988).

{¶32} Accordingly, the trial court did not abuse its discretion in affirming SERB's Order finding it to be supported by substantial evidence in the record because City violated R.C. 4117.11(A)(1) by threatening and subsequently eliminating three Battalion Chief positions in retaliation for Union's advancement of a grievance to arbitration.

{¶33} City's first assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO CONSIDER SERB'S IMPROPER RELIANCE ON CONFIDENTIAL MEDIATION COMMUNICATIONS WHICH TAINTED THE PROCESS AGAINST THE CITY.

{¶34} In its second assignment of error, City contends the trial court abused its discretion in failing to consider that SERB improperly relied on confidential mediation communications which tainted the unfair labor practice process against City.

{¶35} R.C. Chapter 2710 encompasses Ohio's Uniform Mediation Act. R.C. 2710.07, "Confidentiality," provides that "mediation communications are confidential to the extent agreed by the parties or provided by other sections of the Revised Code or rules adopted under any section of the Revised Code." Ohio's Uniform Mediation Act also expressly recognizes that "a mediation communication is privileged * * * and is not subject to discovery or admissible in evidence * * * unless [the privilege is] waived or precluded as provided in section 2710.04 Revised Code." R.C. 2710.03(A).

{¶36} In the instant case, City cites to confidential mediation statements from a July 2019 labor relations meeting between the parties and challenges the ALJ's framing of the issues based on SERB's Investigator's Report. It appears, however, that City is mainly dissatisfied with the outcome of the SERB record hearing. No statements from a July 2019 meeting are referenced in the ALJ's findings of fact. Also, SERB's findings were based on City's threats and actions independent of any alleged mediation session.

{¶37} Pursuant to various motions in limine that were adjudicated, the ALJ excluded certain evidence referenced in the Investigator's Report on the basis, inter alia, that the meetings took place in the presence of a SERB mediator. Prior to the SERB record hearing, the ALJ granted City's motion in limine excluding any and all confidential mediation statements. The ALJ indicated at the record hearing that mediation statements were in fact inadmissible and excluded. The ALJ specifically stated:

> Also, since it's public record I can tell you, Mr. Esposito, I've already ruled that anything that was a consequence of the mediation or a part of it does not come in under the Uniform Mediation Act and also under SERB's rules regarding confidentiality of mediation activities. So nothing in there and nothing that was developed previously in the record in this case that dealt with the mediation will be coming in.

(2/13/2020 SERB Record Hearing T.p., p. 372).

{¶38} Contrary to City's position in this appeal, there is no concrete, credible evidence that any alleged mediation statements in SERB's Investigator's Report were the basis for the probable cause finding or SERB's Order. In fact, during the SERB record hearing, City's counsel himself indicated that the record from the SERB investigation was not included in the SERB record hearing, stating: "This is a proceeding de novo. We're not carrying forward the record from the SERB investigation into this proceeding. The record here will rise and fall on its own." (2/12/2020 SERB Record Hearing T.p., p. 159). Thus, the SERB investigation was not included as part of the record at the SERB record hearing.

{¶39} The record demonstrates that neither SERB nor the ALJ considered or relied on any confidential mediation statements. As addressed, SERB's Order and the trial court's affirmation of SERB's Order were based on properly admitted, substantial evidence. Thus, we fail to find that the SERB record hearing process was tainted in any manner. Accordingly, the trial court did not abuse its discretion because SERB did not improperly rely on any confidential mediation communications when issuing its Order.

{¶40} City's second assignment of error is without merit.

CONCLUSION

{¶41} For the foregoing reasons, City's assignments of error are not well-taken. The judgment of the Mahoning County Court of Common Pleas affirming SERB's Order is affirmed.

Donofrio, P.J., concurs.

Waite, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.