

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY	:	
COMMISSION,	:	
	:	CASE NO. 2:05-cv-00881
<i>Plaintiff,</i>	:	
	:	JUDGE SMITH
GLEN GREENWOOD,	:	
	:	MAGISTRATE JUDGE KEMP
<i>Plaintiff-Intervenor,</i>	:	
	:	
v.	:	
	:	
OHIO CIVIL SERVICE EMPLOYEES’	:	
ASSOCIATION, AFSCME Local 11, AFL-CIO,	:	
	:	
<i>Defendant,</i>	:	
	:	
and	:	
	:	
STATE OF OHIO, OHIO ENVIORNMENTAL	:	
PROTECTION AGENCY, OHIO DEPARTMENT	:	
OF ADMINISTRATIVE SERVICES, OHIO	:	
STATE EMPLOYMENT RELATIONS BOARD,	:	
	:	
<i>Rule 19 Defendants.</i>	:	

**DEFENDANT STATE EMPLOYMENT RELATIONS BOARD’S ANSWER TO  
PLAINTIFF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION’S COMPLAINT**

Plaintiff Equal Employment Opportunity Commission’s (“EEOC”) complaint contains an unnumbered paragraph immediately before paragraph 1 of EEOC’s complaint. It calls for no response from Defendant State Employment Relations Board (“SERB”).

1. Paragraph 1 of EEOC’s complaint consists solely of legal conclusions, and calls for no response by SERB.

2. SERB admits that venue is proper in this District and Division. The remainder of paragraph 2 consists solely of legal conclusions, and calls for no response by SERB.

3. SERB admits that EEOC is an agency of the United States of America, but denies that EEOC is authorized to bring this action against SERB, under 42 U.S.C. § 2000e-5(f)(1), because the United States Department of Justice has already filed an action against SERB for the same alleged acts and/or omissions. The remainder of paragraph 3 consists solely of legal conclusions, and calls for no response by SERB.

4. SERB admits the allegations in paragraph 4 of EEOC's complaint.

5. SERB admits the allegations in paragraph 5 of EEOC's complaint.

6. SERB admits that Defendant Ohio Environmental Protection Agency ("OEPA") is an agency of the State of Ohio and is a party to a collective bargaining agreement with Defendant Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO ("OCSEA"). The remainder of paragraph 6 consists solely of legal conclusions, and calls for no response by SERB.

7. SERB admits that Defendant Ohio Department of Administrative Services ("ODAS") is a Department of the State of Ohio. For want of knowledge, SERB denies that ODAS continues to administer payment of Plaintiff Glenn Greenwood's ("Greenwood") fair share fees to OCSEA under a collective bargaining agreement. The remainder of paragraph 7 consists solely of legal conclusions, and calls for no response by SERB.

8. SERB admits that it is an agency of the State of Ohio and is established under the Ohio Public Employees Collective Bargaining Act, Chapter 4117, Ohio Revised Code. SERB admits that it grants or denies public employee applications for religious exemption from becoming a member of or financially supporting an employee organization such as OCSEA, pursuant to Ohio Revised Code Section 4117.09(C). SERB denies that it is a proper party

pursuant to Fed. R. of Civ. P. 19(a). The remainder of paragraph 8 consists solely of legal conclusions, and calls for no response by SERB.

9. SERB admits that more than 30 days prior to the institution of this lawsuit, Greenwood filed a charge with EEOC alleging a violation of Title VII by OCSEA. The remainder of paragraph 9 consists solely of legal conclusions, and calls for no response by SERB.

10. For want of knowledge, SERB denies the allegations in paragraph 10 of EEOC's complaint.

11. SERB admits the allegations in paragraph 11 of EEOC's complaint.

12. SERB admits the allegations in paragraph 12 of EEOC's complaint.

13. For want of knowledge, SERB denies the allegations in paragraph 13 of Plaintiffs' complaint.

14. SERB admits that paragraph 14 of EEOC's complaint quotes, in part, Ohio Revised Code § 4117.09(C). SERB denies the remaining allegations in paragraph 14 of EEOC's complaint.

15. SERB admits that during at least parts of 2002, Greenwood was employed by OEPA and was subject to the State of Ohio's 2000-2003 collective bargaining agreement with OCSEA. For want of knowledge, SERB denies the remaining allegations in paragraph 15 of EEOC's complaint.

16. For want of knowledge, SERB denies the allegations in paragraph 16 of EEOC's complaint.

17. On July 15, 2002, Greenwood filed with SERB an Application for a Religious Exemption, SERB Case No. 2002-RLX-07-0001 that, if granted, would have allowed

Greenwood, in lieu of OCSEA's fair share fee, to pay an amount of money equal to the fair share fee to a non-religious charitable fund exempt from taxation under § 501(C)(3) of the Internal Revenue Code mutually agreed upon by Greenwood and OCSEA, pursuant to Ohio Revised Code § 4117.09(C). SERB admits that Greenwood stated he is a member of the First Presbyterian Church in Lancaster, Ohio. SERB admits that Greenwood stated that the Presbyterian Church has no historically held conscientious objection to its members joining or financially supporting an employee organization. SERB admits that Greenwood stated that the basis of his request was one of personal conviction concerning association with OCSEA.

18. SERB admits that on September 19, 2002 it denied Greenwood's Application for Religious Exemption. SERB admits that its denial stated that Greenwood submitted a letter stating that the basis for his filing was personal, and that he failed to file verification of his church's historically held conscientious objections to joining or financially supporting an employee organization, as required pursuant to Ohio Revised Code § 4117.09(C).

19. For want of knowledge, SERB denies the allegations in paragraph 19 of EEOC's complaint.

20. SERB denies the allegations in paragraph 20 of EEOC's complaint.

21. Paragraph 21 consists solely of legal conclusions, and calls for no response by SERB.

22. Paragraph 22 consists solely of legal conclusions, and calls for no response by SERB.

#### **FIRST AFFIRMATIVE DEFENSE**

23. SERB has not been properly named as a party pursuant to Fed. R. Civ. P. 19(a).

**SECOND AFFIRMATIVE DEFENSE**

24. Greenwood did not exhaust his remedies, under Ohio Revised Code Chapter 4117.

**THIRD AFFIRMATIVE DEFENSE**

25. Ohio Revised Code § 4117.09(C) does not violate any portion of the Civil Rights Act, and has not been invalidated, either in whole or in part, by any court of competent jurisdiction, since it was enacted.

**FOURTH AFFIRMATIVE DEFENSE**

26. EEOC's complaint fails to state a claim for which relief can be granted.

WHEREFORE, Defendant State Employment Relations Board respectfully requests that the Court dismiss all of Plaintiff Equal Employment Opportunity Commission's claims against Defendant State Employment Relations Board, for its costs expended herein and for whatever other relief the Court deems appropriate.

Respectfully submitted,

JIM PETRO (0022096)  
Attorney General

**/s/ Michael D. Allen**  
MICHAEL D. ALLEN (0020693)  
Principal Assistant Attorney General  
*Counsel of Record*  
Executive Agencies Section  
Labor Relations Unit  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
(614) 644-8462  
(614) 728-9470 (fax)  
[mallen@ag.state.oh.us](mailto:mallen@ag.state.oh.us)

Counsel for Defendant  
State Employment Relations Board

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this foregoing was made via electronic mail with the Clerk of the United States District Court, Southern District of Ohio, Eastern Division, using the CM/ECF system, which will send notification of such filing to the parties listed below this 15<sup>th</sup> day of November, 2005:

Donald C. Brey, Counsel for Intervenor Plaintiff

Bruce N. Cameron, Counsel for Intervenor Plaintiff

C. Larry Watson, Regional Attorney, Counsel for Plaintiff

Lawrence Mays, Supervisory Trial Attorney, Counsel for Plaintiff

Jeffrey A. Stern, Trial Attorney, Counsel for Plaintiff

Sandra F. Bell, Counsel for Defendant, OCSEA, AFSCME Local  
11, AFL-CIO

Jack W. Decker, Counsel for Defendants Trial Counsel for State of  
Ohio, Ohio Department of Administrative Services, Ohio  
Environmental Protection Agency

**/s/ Michael D. Allen**  
MICHAEL D. ALLEN  
Assistant Attorney General