

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SEBB OPINION 88-018

In the Matter of
State Employment Relations Board,
Complainant,
v.
Northeast Ohio Regional Sewer District,
Respondent.

CASE NUMBER: 86-ULP-10-0398

ORDER
(Opinion attached.)

Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;
June 30, 1988.

On October 27, 1986, Leslie J. Olsieski (Charging Party) filed an unfair labor practice charge against Northeast Ohio Regional Sewer District (Respondent).

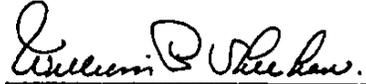
Pursuant to Ohio Revised Code (O.R.C.) 4117.12, the Board conducted an investigation and found probable cause to believe that an unfair labor practice had been committed. Subsequently, a complaint was issued alleging that the Respondent had violated O.R.C. 4117.11(A)(1), (3) and (6) by failing to process the Charging Party's grievances. The case was heard by a Board hearing officer.

The Board has reviewed the record, the hearing officer's proposed order and exceptions. For the reasons stated in the attached opinion, incorporated by reference, the Board adopts the Admissions, Stipulations of Fact, Conclusions of Law and Recommendations, but not the Analysis and Discussion.

The complaint and the charge are dismissed.

It is so ordered.

SHEEHAN, Chairman; DAVIS, Vice Chairman; and LATANE, Board Member,
concur.


WILLIAM P. SHEEHAN, CHAIRMAN

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I certify that this document was filed and a copy served upon each party
on this 3rd day of November, 1988.

Cynthia L. Spanski
CYNTHIA L. SPANSKI, CLERK

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OPINION

Latané, Board Member:

I

The issue in the instant case arose when the Charging Party, Leslie J. Olsieski had a grievance filed on his behalf by AFSCME, Local 2798 which was denied at the Step 1 level.¹ AFSCME Local 2798 filed an appeal on behalf of Mr. Olsieski on October 21, 1986 so that the grievance could proceed to Step 2.²

AFSCME stated that the appeal was placed in Respondent's (Northeast Ohio Regional Sewer District) interoffice mail system.³ Respondent stated that it did not receive the appeal and therefore did not process the grievance.⁴

On October 27, 1986 an unfair labor practice charge was filed by Leslie J. Olsieski, alleging that Respondent, (Northeast Ohio Regional Sewer

¹Admissions in the Answer #7.

²Stipulations of Fact #8.

³Stipulations of Fact #8.

⁴Stipulations of Fact #8.

District) failed to process Charging Party's grievances in violation of O.R.C. Sec. 4117.11(A)(1), (3), and (6).

The parties waived a hearing and submitted the case to the Hearing Officer on post-hearing briefs and Stipulations of Fact.

II

The issue is whether the Respondent violated O.R.C. Sec 4117.11(A)(1), (3), and (6) by not processing a grievance HL-8613-W which it did not receive.

The Hearing Officer found no violation and recommended dismissal of the charge.

III

The Hearing Officer found that the burden of responsibility to establish that documentation is received in the grievance procedure should be placed on the party which initiates the use of the system, in this case the Charging Party. He reasoned that to find a violation in this case would hold the Respondent to the untenable standard of being charged with constructive receipt of documents put into the inter-office mail system. The Board concurs with the Hearing Officer's Recommendation to dismiss the case but disagrees with the Hearing Officer's analysis and discussion.

IV

The method of transmittal of documents relating to the grievance procedure is not spelled out in the collective bargaining agreement. The parties should develop a mutually acceptable fail-safe method of communications exchange. The Board finds that it is the joint responsibility of both parties to establish an agreed upon method of transmitting documents with adequate notification if receipt of documents is

not achieved. The parties relied on a system that was satisfactory to both until it failed. The record establishes that the employer processed numerous grievances in a timely manner in the past, including grievances filed by the Charging Party, Leslie J. Olsieski. There is no indication of refusal by the employer to process the grievance.⁵

The Board adopts the Hearing Officer's Findings of Facts, Conclusions of Law and the Recommendations.

Sheehan, Chairman, and Davis, Vice Chairman, concur.

⁵Stipulations of Fact #12.