

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matters of

State Employment Relations Board,  
Complainant,

v.

Ohio Civil Service Employees Association,  
Local 11, Chapter 2503,  
Respondent.

CASE NUMBER: 91-ULP-12-0758

and

State Employment Relations Board,  
Complainant,

v.

State of Ohio, Department of Highway Safety/  
Bureau of Motor Vehicles,  
Respondent.

CASE NUMBER: 91-ULP-12-0759

OPINION

POTTENGER, Vice Chairman:

This case comes before the Board on exceptions filed to the Hearing Officer's Proposed Order. The issue addressed in this opinion is the extent of the union's obligation to represent an uncooperative grievant.

In this particular matter, Michele Owens, an employee of the State of Ohio, Department of Highway Safety/Bureau of Motor Vehicles (BMV) and a Chief Steward with Ohio Civil Service Employees Association, Local 11, Chapter 2503 (OCSEA), filed unfair labor practice charges against both OCSEA and the BMV. In part, the charge against OCSEA was that it had

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that it had failed to fairly represent Ms. Owens in two grievance matters challenging BMV's promotion of a less senior employee.

I. STATEMENT OF THE CASE

Over the years, OCSEA has developed procedures and forms in an attempt to make the processing of grievances easier and more efficient. Cases pending arbitration are subject to a multiple review process. All chapters are required to have a stewards' committee which is responsible for overseeing grievances filed by that chapter. There is also an Arbitration Committee comprised of one union member from each bargaining unit. In those cases involving disputed contract language, the Chapter Stewards' Committee reviews the merits of a grievance and recommends whether or not to proceed to arbitration on the grievance. If the Chapter Stewards' Committee determines that it should proceed to arbitration, the grievance must then be reviewed by the Arbitration Committee. If, on the other hand, the Chapter Stewards' Committee determines that there is no substantial merit to the grievance, the Arbitration Committee does not review the grievance and the Chapter Stewards' Committee's decision is final.<sup>1</sup>

The grievance filed by Ms. Owens did not follow the processing procedure outlined above. The record indicates the Chapter Stewards' Committee review of the grievance was bypassed and that it went straight to the Arbitration Committee. On January 24, 1991, pursuant to policy, an OCSEA Staff Representative, Brenda Goheen, presented to the Arbitration Committee the merits of a grievance filed by Ms. Owens regarding the promotion of a less senior employee to a position for which Ms. Owens had applied. Noting that the information Ms. Owens provided did not contain documentation or samples of her work product necessary to prove that she met the minimum qualifications for the position sought,

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<sup>1</sup> Findings of Fact Nos. 17 & 21.

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Ms. Gohoen told the Arbitration Committee she did not have enough information to make an informed decision. The Arbitration Committee put the grievance on hold until the additional information could be obtained. On February 5, 1991, the Director of Arbitration issued a letter to Ms. Owens outlining the additional information needed by the Arbitration Committee to evaluate her grievance. The letter specifically stated that the Arbitration Committee had asked Ms. Gohoen to obtain the additional information.<sup>2</sup>

In addition to her individual grievance, Ms. Owens was also party to a group grievance involving the same issue. In her role as Chief Steward, Ms. Owens was responsible for processing this grievance. On February 1, 1991, her request that the group grievance be moved to Step 4 was forwarded to the Arbitration Department. Shortly thereafter Ms. Gohoen requested additional information from Ms. Owens and the Chapter President necessary for her presentation of the group grievance. Among the information requested from the more senior applicants, which included Ms. Owens, was the type of research they had done, length of time it took to do the research, and what type of reports they had written.<sup>3</sup>

Throughout the first half of 1991, several meetings were held at which the grievances were discussed. Having been advised by the Arbitration Committee of the need for more information, Ms. Gohoen and the Chapter Stewards' Committee informed Ms. Owens on at least three separate occasions that it needed additional information establishing that the two most senior applicants met the minimum qualifications. On April 23, 1993, the Chapter Stewards' Committee issued a decision not to pursue either the group grievance or Ms. Owens' individual grievance to arbitration because the additional information had not been supplied. However, the Chapter Stewards' Committee did give Ms. Gohoen verbal direction

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<sup>2</sup> Findings of Fact Nos. 22 & 26.

<sup>3</sup> Findings of Fact Nos. 23 & 25.

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to allow the grievants additional time to submit the requested information.<sup>4</sup>

The Chapter Stewards' Committee and/or Ms. Goheen sought information establishing that Ms. Owens met the minimum qualifications for the position and specifically requested examples of her work product. Ms. Owens never complied with the Arbitration Committee's request for additional information and never submitted any samples of her work product as requested. Additionally, Ms. Owens engaged in several heated exchanges with Ms. Goheen over this matter and also regarding what party had what burden of proof. Ms. Owens claimed that it was management's burden to prove that the employee they had selected for the position was "demonstrably superior" to the other job candidates.<sup>5</sup>

In May of 1991, Ms. Owens was notified that the Chapter Stewards' Committee had decided not to pursue her individual grievance and had withdrawn it from arbitration due to her failure to provide documents that had been requested three times.<sup>6</sup> The group grievance, however, did proceed to the Arbitration Committee because one of the grievants had provided the requested information. Ultimately, the Arbitration Committee decided to not pursue the group grievance and no appeal was filed.<sup>7</sup>

## II. ANALYSIS

In determining that OCSEA had not breached its duty of fair representation, the Hearing

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<sup>4</sup> Finding of Fact No. 28.

<sup>5</sup> Findings of Fact Nos. 28 & 29.

<sup>6</sup> At the SERB hearing, Owens did produce precisely the types of documents that OCSEA had sought from her and thereby this proved she was capable of gathering these documents all along. (Hearing Officer Proposed Order; pg. 29).

<sup>7</sup> Findings of Fact Nos. 30 & 31.

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Officer concluded, among other things, that Ms. Owens had created most of her own distress by refusing to provide requested information. We agree.

A union has the discretion to settle or not appeal a grievance pending arbitration as long as it does not act arbitrarily, discriminatorily or in bad faith.<sup>5</sup> Here, OCSEA's decision not to process Ms. Owen's grievance through to arbitration was neither arbitrary, discriminatory nor in bad faith. Instead, the Union's decision was reasonably based on the likelihood of success without certain necessary information to support its case. Ms. Owen's refusal to supply the requested information to either the Chapter Stewards' Committee or the Arbitration Committee was the direct cause of her individual grievance not going forward on the merits and not any wrongdoing on OCSEA's behalf.

When grievants refuse, for whatever reason, to cooperate with the union they have sought to represent their interests, the union, without the necessary evidence, is placed in the precarious position of battling the merits of the grievance with the employer on the one hand and battling the grievants for information on the other. Obviously, such a situation is untenable.

Other labor boards have held similarly. In United Teachers of Los Angeles, 14 PERC ¶21077 (Ca. PERB, 1990) an employee had twice failed to supply requested information to the union in support of the grievance they had filed and had been warned the second time that if such information was not provided there would be no choice but to withdraw the grievance. The California Employment Relations Board held that the employee's charge that the union unlawfully refused to pursue the grievance to arbitration did not state a prima facie violation of the Educational Employment Relations Act where evidence indicated that the employee's own conduct in refusing to disclose the contents of a certain settlement, which the school

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<sup>5</sup> In re Ohio Civil Service Employees Association, SERB 93-019 (12-20-93).

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district asserted as a defense to the grievance, prevented the union from evaluating the need for arbitration. In Teamsters, Local 214 2 MOPER 120057, (MERC 1989), the Michigan Employment Relations Commission dismissed an individual's unfair labor practice charge alleging that the union breached its duty of fair representation in the handling of a grievance contesting discipline for failing to report to work, where the individual failed to present any evidence he had supporting his defense. And finally, the New York Employment Relations Board dismissed a petition filed in In re Elise Parker and CWA Civil Service Division, Local 1180, 6 NPER 34-14027 (NY PERB 1983) by an employee against her union official charging, among other things, a breach of fair representation by failing to adequately prepare her for a Stop III conference and by pressuring her into abandoning her grievance. The union's response to these charges had been that the "petitioner had contributed to any inadequacy by her own unwillingness to cooperate and furnish information essential to her defense" and that it was "only when the petitioner absented herself from the arbitration and refused to participate further in her own defense that the case was withdrawn from arbitration."

### III. CONCLUSION

In matters such as the present case, it is implicit that the duty of fair representation encompass not only the union's duty to act in the best interest of the grievant, but also that the grievant not hinder this duty and assist when so requested. Grievants who act otherwise may later find themselves unsuccessful with charging the union with violating its duty of fair representation. In this matter, OCSEA has not acted arbitrarily, discriminatorily or in bad faith. Accordingly, the charges against OCSEA in this case are dismissed.

Fohler, Chairman, and MASON, Board Member, concur.