

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

District 1199, Service Employees International Union, AFL-CIO,
Michele Gray, and Deborah Perkins,

Respondents.

CASE NOS. 2000-ULP-01-0044 & 2000-ULP-01-0045

**ORDER
(OPINION ATTACHED)**

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich:
March 1, 2001.

On January 21, 2000, Ms. Pauline Bryant filed an unfair labor practice charge against District 1199 Service Employees International Union, AFL-CIO, ("Union"), Ms. Michelle Gray and Ms. Deborah Perkins (collectively "Respondents"), alleging that the Respondents violated Ohio Revised Code Sections 4117.11(B)(1) and (B)(6). On July 11, 2000, the State Employment Relations Board ("SERB" or "Complainant") determined that probable cause existed to believe that the Respondents violated Ohio Revised Code Sections 4117.11(B)(1) and (B)(6) by filing a grievance that did not include all potential grievants, failing to adhere to the grievance process, and failing to represent all bargaining-unit members equally. On August 4, 2000, a Complaint was issued.

A hearing was held on September 6, 2000, wherein testimonial and documentary evidence was presented. All parties filed post-hearing briefs on October 18, 2000. On November 21, 2000, the Administrative Law Judge issued the Proposed Order, recommending that SERB find that the Respondents had violated Ohio Revised Code Sections 4117.11(B)(1) and (B)(6) by settling a grievance without including a known grievant who was a member of the affected class. The recommended remedy was the issuance of a cease-and-desist order with the posting for sixty days of a Notice to Employees, and the payment to the affected employee for missed overtime opportunities arising between May 31, 1999 and June 16, 1999, in accordance with the terms of the settlement agreement.

On December 13, 2000, the Respondents filed exceptions to the Proposed Order. On December 14, 2000, the State of Ohio, Office of Collective Bargaining, filed an amicus brief. On December 29, 2000, the Complainant filed its response to the exceptions.

After reviewing the record, the parties' exceptions and responses, and all other filings, SERB finds for the reasons stated in the attached Opinion, incorporated by reference, that District 1199 Service Employees International Union, AFL-CIO, Michele Gray, and Deborah Perkins violated Ohio Revised Code Sections 4117.11(B)(1) and (B)(6) by settling a class grievance without including a known member of the affected class in the settlement.

We hereby order the Respondents to:

A. Cease and desist from:

1. Restraining or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 and from otherwise violating Ohio Revised Code Section 4117.11(B)(1); and
2. Failing to fairly represent all public employees in a bargaining unit and from otherwise violating Ohio Revised Code Section 4117.11(B)(6).

B. Take the following affirmative action:

1. Post the attached Notice to Employees furnished by the State Employment Relations Board for sixty days in all of the usual and normal locations where employees represented by District 1199, Service Employees International Union, AFL-CIO work, stating that District 1199, Service Employees International Union, AFL-CIO, Michele Gray, and Deborah Perkins shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B);
2. Pay Ms. Bryant in accordance with the terms of the November 8, 1999, settlement agreement for missed overtime opportunities arising between May 31, 1999 and June 16, 1999; and

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Case Nos. 2000-ULP-01-0044 & 2000-ULP-01-0045
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3. Notify the State Employment Relations Board in writing twenty calendar days from the date the Order becomes final of the steps that have been taken to comply therewith.

It is so ordered.

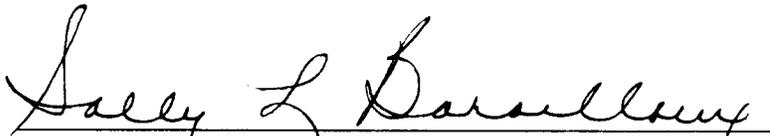
POHLER, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.



SUE POHLER, CHAIRMAN

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 4117.13(D) by filing a notice of appeal with the State Employment Relations Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the court of common pleas in the county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or transacts business, within fifteen days after the mailing of the State Employment Relations Board's order.

I certify that this document was filed and a copy served upon each party by certified mail, return receipt requested, on this 1st day of March, 2001.



SALLY L. BARAILLOUX, EXECUTIVE SECRETARY



NOTICE TO EMPLOYEES

FROM THE STATE EMPLOYMENT RELATIONS BOARD

POSTED PURSUANT TO AN ORDER OF THE STATE EMPLOYMENT
RELATIONS BOARD AN AGENCY OF THE STATE OF OHIO

After a hearing in which all parties had an opportunity to present evidence, the State Employment Relations Board has determined that we have violated the law and has ordered us to post this Notice. We intend to carry out the order of the State Employment Relations Board and abide by the following:

District 1199, Service Employees International Union, AFL-CIO, Michele Gray, and Deborah Perkins, are hereby ordered to:

A. Cease and desist from:

1. Restraining or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 and from otherwise violating Ohio Revised Code Section 4117.11(B)(1); and
2. Failing to fairly represent all public employees in a bargaining unit and from otherwise violating Ohio Revised Code Section 4117.11(B)(6).

B. Take the following affirmative action:

1. Post the attached Notice to Employees furnished by the State Employment Relations Board for sixty days in all of the usual and normal locations where employees represented by District 1199, Service Employees International Union, AFL-CIO work, stating that District 1199, Service Employees International Union, AFL-CIO, Michele Gray, and Deborah Perkins shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B);
2. Pay Ms. Bryant in accordance with the terms of the November 8, 1999, settlement agreement for missed overtime opportunities arising between May 31, 1999 and June 16, 1999; and
3. Notify the State Employment Relations Board in writing twenty calendar days from the date the Order becomes final of the steps that have been taken to comply therewith.

SERB v. District 1199, Service Employees International Union, AFL-CIO, Michele Gray, and Deborah Perkins, Case Nos. 2000-ULP-01-0044 & 2000-ULP-01-0045

BY

DATE

TITLE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This Notice must remain posted for sixty consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this Notice or compliance with its provisions may be directed to the State Employment Relations Board.

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

District 1199, Service Employees International Union, AFL-CIO,
Michele Gray, and Deborah Perkins,

Respondents.

CASE NOS. 2000-ULP-01-0044 & 2000-ULP-01-0045

OPINION

VERICH, Board Member:

This unfair labor practice case comes before the State Employment Relations Board ("SERB" or "Complainant") upon the filing of exceptions and responses to the exceptions to the Administrative Law Judge's Proposed Order issued on November 21, 2000. For the reasons below, we find that District 1199, Service Employees International Union, AFL-CIO ("Union"), Ms. Michele Gray, and Ms. Deborah Perkins violated Ohio Revised Code ("O.R.C.") §§ 4117.11(B)(1) and (B)(6) by settling a class grievance without including a known member of the affected class in the settlement.

I. SUMMARY OF FACTS

Ms. Pauline Bryant is employed by the Ohio Corrections Medical Center ("CMC") as a Registered Nurse 2 ("RN 2") within the bargaining unit represented by the Union, of which she is a member. She is also a "public employee" as defined by O.R.C. § 4117.01(C). Ms. Deborah Perkins and Ms. Michele Gray are Union delegates who serve approximately 30 employees. Ms. Gray is the more senior delegate.

The CMC and the Union are parties to a collective bargaining agreement (“CBA”) effective August 3, 1997 through May 31, 2000. The CBA contains a grievance procedure that culminates in final and binding arbitration. The CBA’s grievance procedure allows for the filing of a class grievance at Step 3 as specified in Article Seven, Section 7.04 of the CBA, which provides in part as follows:

7.04 Grievant

When a group of bargaining unit employees desires to file a grievance involving an alleged violation that affects more than one (1) employee in the same way, the grievance may be filed by the Union. A grievance so initiated shall be called a Class Grievance.

The Union shall identify the class involved, including the names if necessary, if requested by the agency head or designee.

Class grievances can be filed in several ways. They can be marked “class action,” they can be considered a class grievance by listing a number of names of similarly situated grievants, or they can be called a class grievance with no specific names listed.

Article 24.03 of the CBA discusses how overtime is to be offered, and it states:

In institutional settings when the agency determines that overtime is necessary, overtime shall be offered on a rotating basis, at least to the first five (5) qualified employees with the most state seniority who usually work the shift where the opportunity occurs.

In order to implement Article 24.03 of the CBA, the Union and CMC management originated an overtime “call sheet.” During the time period in question, management was required to use the call list when offering voluntary overtime. Opportunities for overtime were to be offered on a rotating basis, according to seniority, among those employees on the call list. The eligible employees on the call list from May 21, 1999 to June 16, 1999, included John Kershner, Michelle Gray, Pauline Bryant, Kevin Swords, Toni Brady, and Lesa Morris.

On June 16, 1999, Ms. Perkins, in her capacity as a Union delegate, filed a grievance relative to the denial of overtime. The grievance alleged a violation of Article 24.03 of the CBA. Under "Statement of the Grievance," Ms. Perkins wrote, "Management did not contact any staff members on any shifts regarding overtime opportunities on all shifts that resulted from call offs or other staff shortages." Ms. Perkins also wrote the names of the following employees in the space provided for "Grievant's Name": Mary Phillians, Ramon Perez, Kevin Swords, John Kershner, Lesa Morris, and Toni Brady. Ms. Perkins and Lesa Morris were the only persons to sign the grievance. Ms. Gray was out of the office at the time the grievance was filed. Ms. Bryant was not specifically named as a grievant although she was an RN 2 who was named on the overtime call list and was eligible to work overtime during the time period covered by the grievance.

Grievants Swords, Kershner, Morris, and Brady all personally asked Ms. Perkins to file a grievance on their behalf. Another Union delegate told Ms. Perkins about Grievants Phillians and Perez; they were included in the grievance. Ms. Perkins filed the grievance as a class grievance at Step 3 of the CBA's grievance procedure as specified in Article Seven, Section 7.04 of the CBA. At the time the grievance was filed, Ms. Perkins was aware of a call sheet listing Kershner, Gray, Bryant, Swords, Brady, Morris, and C. Campbell.¹

On August 12, 1999, a Step 3 hearing was held. The grievance was denied. At mediation, Grievants Phillians and Perez were dropped from the grievance because their complaints were the subject of a separate grievance. Ms. Perkins attempted to add

¹Although the name C. Campbell appears on both the call lists from May 21 - June 2, 1999 and June 3-16, 1999, the name was crossed out on the list and the designation "no number" appeared on both lists. C. Campbell was not used in calculating the eventual settlement of the grievance. Michelle Gray was not eligible for the overtime grievance because she was on disability leave during the time the overtime policy was not followed.

Ms. Bryant to the grievance at the mediation stage but was not successful. The mediator would not allow Ms. Bryant to be added because her name was not on the grievance.

On September 22, 1999, Ms. Perkins filed a grievance on behalf of Grievants Brady, Morris, Bush, Swords, and Bryant for missed overtime opportunities since September 12, 1999. Ms. Bryant had not approached Ms. Perkins about this grievance.

On November 8, 1999, at Step 4 of the grievance procedure, the Union and CMC entered into a settlement agreement for the June 16, 1999 grievance. In mid-December 1999, Ms. Bryant became aware of the grievance and asked Ms. Perkins why she was not included. Ms. Perkins told Ms. Bryant that although Ms. Bryant had not approached her about filing a grievance, she would try to get her added to the grievance. In conjunction with the settlement of the grievance, the parties met on December 21, 1999, to determine what amounts were due to the four remaining named grievants for missed overtime opportunities. Ms. Gray was present at this meeting as a Union delegate.

Ms. Perkins and Ms. Gray asked to have Ms. Bryant included in the November 8, 1999 grievance settlement and drafted an amendment to the grievance to include her, but the CMC refused. Under the terms of the grievance settlement agreement, Ms. Bryant was denied overtime for seven, eight-hour shifts payable at the time-and-a-half rate. Ms. Bryant's hourly pay rate at the time overtime was denied was \$22.18.

On January 11, 2000, the Union and CMC entered into a settlement of the September 22, 1999 grievance. The grievants were awarded appropriate overtime from September 12, 1999 to December 31, 1999, based on the rotation.

On January 21, 2000, Ms. Bryant filed this unfair labor practice charge against the Union, Ms. Gray, and Ms. Perkins (collectively "Respondents"), alleging that the

Respondents violated O.R.C. §§ 4117.11(B)(1) and (B)(6). On July 11, 2000, the Board determined that probable cause existed to believe that the Respondents had violated O.R.C. §§ 4117.11(B)(1) and (B)(6) by filing a class grievance that did not include all known members of the class as grievants, failing to adhere to the grievance process, and failing to represent all bargaining-unit members equally.

II. DISCUSSION

A. The Respondents Did Not Violate O.R.C. §§ 4117.11(B)(1) and (B)(6) by Filing a Class Grievance That Did Not List the Names of All Grievants in the Affected Class.

The Respondents are alleged to have violated O.R.C. §§ 4117.11(B)(1) and (B)(6), which state in relevant part as follows:

(B) It is an unfair labor practice for an employee organization, its agents, or representatives to:

(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117.11 of the Ohio Revised Code [.]

* * *

(6) Fail to fairly represent all public employees in a bargaining unit[.]

When an unfair labor practice charge alleges that a Union has violated its duty of fair representation, SERB will look to see if the Union's actions are arbitrary, discriminatory, or in bad faith. A breach of the duty exists if any of these elements is found. *In re OCSEA/AFSCME LOCAL 11*, SERB 98-010 (7-22-98).

In the case before us, the unfair labor practice charge does not allege that the Union discriminated against Ms. Bryant, or that it acted in bad faith, during the processing and settling of the class grievance. The complaint also does not allege discrimination or bad faith by the Union. The remaining question is whether the Union's actions were arbitrary.

In determining whether conduct is arbitrary, we have adopted the analysis of the U.S. Sixth Circuit Court of Appeals in *Vencl v. Int'l Union of Operating Engineers*, 137 F. 3d 420, 426, 157 L.R.R.M. 2530 (6th Cir. 1998), citing *Ruzicka v. General Motors Corp.*, 649 F. 2d 1207, 1209 (6th Cir. 1981): “Absent justification or excuse, a Union’s negligent failure to take a basic and required step, unrelated to the merits of the grievance, is a clear example of arbitrary and perfunctory conduct which amounts to unfair representation.” *In re OCSEA/AFSCME Local 11, supra* at 3-58. A union has certain basic and required steps that it must take when fulfilling its duty of fair representation. The specific steps will vary depending upon the nature of the representation being provided; a non-exhaustive list of these representation functions includes filing a grievance, processing a grievance, and deciding whether to take a grievance to arbitration. *Id.* Failure to take a basic and required step while performing any of these representation functions creates a rebuttable presumption of arbitrariness. The articulated criteria to consider when looking at the issue include, but are not limited to, what steps were basic and required, how severe the mistake or misjudgment was, what the consequences of the Union’s acts were, and what the Union’s reasons for its acts were. *Id.*

The negotiations process involved in settling a grievance short of arbitration also contains certain basic and required steps. The basic and required steps do not include a requirement that the Union explicitly label a grievance as a “class grievance” and list the names of everyone in the affected class when it is first filed.

The Complainant has the burden to show that the Union failed to take a basic and required step, thereby acting arbitrarily and failing in its duty of fair representation. Once the burden is met, the Union must present justification or viable excuse for its actions or inactions. *In re OCSEA/AFSCME Local 11, supra.*

Four bargaining-unit members came to Ms. Perkins to file a grievance. She listed their names and requested relief for *all* of the RN 2s who missed overtime opportunities as a result of management's failure to contact them for overtime work. The grievance was not specifically labeled a "class grievance." Before she filed the grievance, Ms. Perkins added additional names based on information received from another Union delegate. Ms. Bryant's name was not listed on the grievance.

In our review of what constitutes arbitrary acts, we are not requiring union officials to endlessly search for all potential unnamed grievants to determine if any of them wishes to file a grievance on a particular issue before filing a grievance. Under many collective bargaining agreements, the time period for initiating a grievance is relatively brief. Also, the filling out of a grievance form will fall within the union's discretion. "Union discretion is essential to the proper functioning of the collective bargaining system." *Foust v. Electrical Workers*, 442 U.S. 42, 51, 101 L.R.R.M. 2365 (1979).

In the present case, the CBA requires the Union to identify the class members by name only when requested by the Agency Head or designee. Under "Statement of the Grievance" Ms. Perkins wrote: "Management did not contact *any* staff members on *any* shifts regarding overtime opportunities on *all* shifts that resulted from call offs or other staff shortages." (Emphasis added). The essential elements of a class grievance under the CBA are met when more than one bargaining-unit member files a grievance alleging a violation that affects more than one member in the same way. Although the grievance in question was not labeled a class grievance, it falls within the description of a class grievance according to the CBA's terms.

The documents acknowledging receipt of the grievance and rescheduling the grievance both refer to it as a class action. See Complainant's Exhibits 4 and 15. The grievance itself lists six names and a statement of the grievance that makes it clear that

it is applicable to all eligible class members. The grievance was filed at Step 3 in accordance with the CBA requirement for class grievances. The absence of the specific words "class grievance" on the original grievance is immaterial to the grievance's actual status as a class action. Ms. Perkins' failure to write "class grievance" on the grievance did not deprive it of its status as a class grievance. The omission of Ms. Bryant's name did not deprive Ms. Bryant of her status as a member of the affected class.

The Complainant failed to meet its burden of proof concerning the filing of the grievance. The grievance filed by the Union and Ms. Perkins described a class grievance, and Ms. Bryant was a member of the affected class of RN 2s. Thus, under the facts of this case, the Union did not act arbitrarily when it filed the June 16, 1999 grievance even though it did not specifically name Ms. Bryant as a grievant.

B. The Respondents Violated O.R.C. §§ 4117.11(B)(1) and (B)(6) By Settling a Grievance Without Including a Known Grievant Who Was a Member of the Affected Class.

Ms. Bryant and the Complainant have demonstrated that the Union violated O.R.C. §§ 4117.11(B)(1) and (B)(6) when it acted arbitrarily and did not fairly represent Ms. Bryant when it agreed to exclude Ms. Bryant in the grievance settlement when she was a known member of the affected class. Before November 8, 1999, Ms. Perkins knew that Ms. Bryant was an unnamed grievant who was entitled to the relief sought by the other members of the class of RN 2s. She asked the mediator to include Ms. Bryant, but the mediator would not. She prepared a proposed amendment to the grievance specifically naming Ms. Bryant, but the Employer refused to include Ms. Bryant in the settlement. Notwithstanding the CBA's language about class grievances, the Union then agreed to settle the case on November 8, 1999, without including Ms. Bryant. In conjunction with the settlement, the parties agreed to meet on December 21, 1999, to review overtime call sheets and rosters to determine when the listed grievants were available for work but were

not called. The Union took no action when its request to add Ms. Bryant to the grievance settlement was denied.

The record demonstrates that the parties had treated the grievance as a class grievance. The documents acknowledging receipt of the grievance and rescheduling the grievance both refer to it as a class action. The grievance itself lists six names and a statement of the grievance that is broadly written to apply to “any staff members on any shifts regarding overtime opportunities on all shifts that resulted from call offs or other staff shortages.” The grievance was filed at Step 3 in accordance with the CBA requirement for class grievances. The absence of the specific words “class grievance” on the original grievance does not deprive it of its status as a class grievance. The CBA does not require the grievance to be marked as a class grievance to be treated as such. Ms. Perkins’ failure to specifically list Ms. Bryant’s name did not deprive Ms. Bryant of her status as an eligible member of the affected class. By settling the grievance without including Ms. Bryant and without pursuing all avenues to include her, the Union failed to take a basic and required step to fulfill its duty of fair representation and, therefore, acted arbitrarily. By unequally representing the members of the bargaining unit, the Union breached its duty of fair representation.

Once the Complainant met its burden to show that the Union acted arbitrarily, the Union was then required to provide justification for its actions or inactions. From the record, the only justification for its actions was that the mediator had not agreed to include Ms. Bryant in the grievance, and that the CMC had refused to agree to include her in the settlement. When looking at the severity of the mistake or misjudgment, the consequences of the Union’s acts, and the Union’s stated reasons for its acts, a violation of the duty of fair representation is evident. *In re OCSEA/AFSCME Local 11, supra*. The Union’s actions in not exhausting all avenues to include Ms. Bryant in the settlement were deliberate. It knew it was settling the grievance without including her and took that action for reasons

unknown. As a result, an eligible member of the class was denied her portion of the settlement.

The Respondents contend that they were entitled to rely upon the advice of the mediator and that the administrative law judge simply did not agree with the merits analysis made by the Union. If the record showed that the decision to settle and not pursue arbitration was based upon a merits decision, the outcome of this case would probably be different. But under this record, settling a grievance without including Ms. Bryant once it became apparent that she was part of the impacted class with no other reason than articulated goes beyond simple negligence. We remain committed to the use of the grievance-mediation process to further the harmonious relationships between public employers and their employees in the collective bargaining setting. Again, we do not require unions to endlessly search for potential unnamed grievants to determine whether they wish to file a grievance. But Ms. Bryant was a known member of a small class. Nor should this holding have a chilling effect on settlement proceedings. The Union had options it could have pursued to resolve the grievance while protecting the rights of all of the members of the class. For example, the Union could have settled the grievance as to the other members of the class and pursued the remaining grievance issues, including Ms. Bryant's status, to arbitration. What the Union could not do legally was protect the rights of some, but not all, of the known members of a small class without justification or excuse. The statutory duties of the parties cannot be superseded by the non-binding "opinion" of a grievance mediator. Based upon the facts and circumstances of this case, we must find a violation of O.R.C. § 4117.11(B)(6).

An O.R.C. § 4117.11(B)(1) violation occurred because the Union's failure to exhaust all remedies to include Ms. Bryant in the settlement restrained her from exercising rights guaranteed in O.R.C. Chapter 4117, namely under O.R.C. § 4117.03(A)(5), the right to present grievances and have them adjusted, and under O.R.C. § 4117.03(A)(3), the right to representation by an employee organization.

C. Remedy:

After finding a violation of O.R.C. §§ 4117.11(B)(1) and (B)(6), the next step is determining whether Ms. Bryant's grievance would have been meritorious. *In re Ohio Health Care Employees Union Dist 1199*, SERB 93-020 (12-20-93). Ms. Bryant's standing under the June 19, 1999 grievance was identical to the other RN 2s. The other bargaining-unit members of the class received back pay pursuant to the November 8, 1999 settlement. Since the other class members received a substantial settlement, we must conclude that Ms. Bryant would have been eligible for a similar settlement. The record does not contain any facts that distinguish her from the other class members. As a result, Ms. Bryant would have been eligible for back pay for missed overtime opportunities arising between May 31, 1999 and June 16, 1999, which was the time period covered by the grievance. According to the record, Ms. Bryant missed seven overtime opportunities for eight-hour shifts. Her base pay rate at that time was \$22.18 per hour.

D. The Unfair Labor Practice Charge Was Timely Filed.

On January 21, 2000, Ms. Bryant filed the pending unfair labor practice charge. On August 11, 2000, the Respondents filed a motion for partial dismissal, alleging that some of the allegations in the complaint are time barred. The complaint alleges that the Union violated O.R.C. §§ 4117.11(B)(1) and (B)(6) by filing a grievance on June 16, 1999, which did not include all potential grievants. The Respondents conclude that this, as well as all remaining allegations in the complaint are derivative, but for purposes of the motion seeks only to dismiss the allegations related to the filing of the grievance.

In *In re City of Barberton*, SERB 88-008 (7-5-88), *appeal dismissed sub nom. SERB v. City of Barberton* (1990), SERB 4-46 (CP, Summit, 7-31-90), we held that in order for the ninety-day period to begin rolling, two conditions must be met. The first condition is the

charging party's acquired or constructive knowledge of the alleged unfair labor practice that is the subject of the charge. The second condition is the occurrence of actual damage to the charging party resulting from the alleged unfair labor practice. According to the record, Ms. Bryant did not become aware of the June 16, 1999 grievance until mid-December 1999;² actual damage did not occur until December 21, 1999, when the grievance was settled without any payment to Ms. Bryant. Both dates are well within the ninety-day statute of limitations. As a result, the Respondent's motion to dismiss was properly denied by the administrative law judge.

E. The Union Is a Proper Party to the Pending Charge and Complaint

The Respondents also allege that the Union is not a proper party to the pending unfair labor practice charge and complaint. Specifically, the Respondents allege that the Union was not correctly named in the charge. The Respondents refer to the fact that the unfair labor practice charge in case No. 00-ULP-01-0044 has the box checked for "employee organization" as the party against whom the charge is brought, but then lists Michelle Gray's name and address instead of the Union's name and address. The unfair labor practice charge in Case No. 00-ULP-01-0045 has no box checked in the column, "party against whom this charge is brought," but then lists Deborah Perkins' name and address. This argument was not raised by the Union during the investigation of the charges or before probable cause was found. A review of the Board's records revealed that the Union fully participated in investigation of the charges and the litigation of the complaint. Despite the technical defects in both unfair labor practice charges, it is apparent from the attached explanation of the charges that the intent of Ms. Bryant was to bring unfair labor practice charges against District 1199, Service Employees International Union, AFL-CIO, Michelle Gray, and Deborah Perkins. The Union's motion to dismiss on this basis was properly denied by the administrative law judge.

²Transcript, pp. 157-158, 171.

III. CONCLUSION

For the reasons set forth above, the State Employment Relations Board finds that District 1199 Service Employees International Union, AFL-CIO, Michele Gray, and Deborah Perkins violated O.R.C. §§ 4117.11(B)(1) and (B)(6) by settling a class grievance without including a known member of the affected class in the settlement. Thus, a cease-and-desist order will be issued requiring the Respondents to post a Notice to Employees for sixty days in all of the usual and normal locations where employees represented by District 1199, Service Employees International Union, AFL-CIO work; to pay Ms. Bryant in accordance with the terms of the November 8, 1999 settlement agreement for missed overtime opportunities arising between May 31, 1999 and June 16, 1999; and to notify the Board in writing twenty calendar days from the date the Order becomes final of the steps that have been taken to comply therewith.

Pohler, Chairman, and Gillmor, Vice Chairman, concur.