

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Tuscarawas Township Board of Trustees, Stark County,

Respondent.

Case No. 2007-ULP-01-0007

**ORDER
(OPINION ATTACHED)**

Before Chairperson Brundige, Vice Chairperson Verich, and Board Member Spada: December 11, 2008.

On January 8, 2007, the General Truck Drivers and Helpers Local Union No. 92 ("Local 92"), affiliated with the International Brotherhood of Teamsters ("IBT"), filed an unfair labor practice charge against the Tuscarawas Township Board of Trustees, Stark County ("Respondent"), alleging that Respondent violated Ohio Revised Code §§ 4117.11(A)(1), (A)(3), (A)(5), and (A)(6). On April 12, 2007, the State Employment Relations Board ("SERB" or "Complainant") determined that probable cause existed to believe that Respondent violated Ohio Revised Code §§ 4117.11(A)(1), (A)(5), and (A)(6) by failing to follow the contractual grievance procedure. SERB dismissed all other aspects of the charge, including the Ohio Revised Code § 4117.11(A)(3) allegation, for lack of probable cause.

On January 9, 2008, a complaint was issued. On February 21, 2008, the parties filed joint stipulations of fact and joint exhibits in lieu of an evidentiary hearing. Subsequently, all parties filed post-hearing briefs.

On July 25, 2008, the Administrative Law Judge issued a Proposed Order in this matter, recommending that SERB find that Respondent had violated Ohio Revised Code §§ 4117.11(A)(1), (A)(5), and (A)(6) by failing to follow the contractual procedure for discipline and grievances.

On August 13, 2008, Respondent filed exceptions to the Proposed Order. On August 18, 2008, Complainant filed an exception to the Proposed Order. On August 25, 2008, Local 92 filed a response to Respondent's exceptions and a cross-exception

regarding remedy. On August 26, 2008, Complainant filed a response to Respondent's exceptions.

After reviewing the unfair labor practice charge, complaint, answer, Proposed Order, exceptions, responses to exceptions, cross-exception, and all other filings in this case, for the reasons set forth in the attached Opinion, incorporated by reference, Conclusion of Law No. 3 to read: "The Tuscarawas Township Board of Trustees, Stark County, violated §§ 4117.11(A)(1), and (A)(6), but not (A)(5), when it failed to follow the contractual procedure regarding discipline and grievances."; the Findings of Fact, and Conclusions of Law, as amended, in the Proposed Order are adopted, finding that Respondent violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(6), but not (A)(5), by failing to follow the contractual procedure regarding discipline and grievances.

The Tuscarawas Township Board of Trustees, Stark County is ordered to:

A. Cease and desist from:

(1) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by failing to follow the contractual procedure for discipline and grievances, and from otherwise violating Ohio Revised Code § 4117.11(A)(1);

(2) Refusing to bargain collectively with the certified exclusive representative by failing to follow the contractual procedure for discipline and grievances, and from otherwise violating Ohio Revised Code § 4117.11(A)(5); and

(3) Establishing a pattern or practice of repeated failures to timely process grievances and requests for arbitration of grievances by failing to follow the contractual procedure for discipline and grievances, and from otherwise violating Ohio Revised Code § 4117.11(A)(6); and

B. Take the following affirmative action:

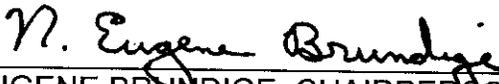
(1) Immediately schedule the termination grievances of William Faber and Jerry Knerr for arbitration and arbitrate the grievances in accordance with the procedures set forth in the 2004-06 Agreement;

(2) Post the Notice to Employees furnished by the Board, which states that the Township shall cease and desist from the actions set forth in paragraph A and shall take the affirmative action set forth in paragraph B, for sixty (60) days in all usual and customary posting locations where employees represented by the General Truck Drivers and Helpers Local Union No. 92 work; and

(3) Within twenty calendar days from issuance of the Order, notify the Board in writing of the steps that have been taken to comply therewith.

It is so ordered.

BRUNDIGE, Chairperson, VERICH, Vice Chairperson, and SPADA, Board Member, concur.



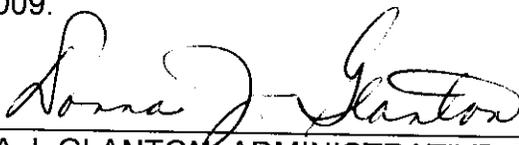
N. EUGENE BRUNDIGE, CHAIRPERSON

TIME AND METHOD TO PERFECT AN APPEAL

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 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, by filing in the court a notice of appeal setting forth the order appealed from and the grounds of appeal within fifteen days after the mailing of the State Employment Relations Board's order. A copy of the notice of appeal must also be filed with the State Employment Relations Board, at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, pursuant to Ohio Administrative Code Rule 4117-7-07.

PROOF OF SERVICE

I certify that a copy of this document was served upon each party by certified mail, return receipt requested, and upon each party's representative by ordinary U.S. mail, this 3/5th day of August, 2009.



DONNA J. GLANTON, ADMINISTRATIVE ASSISTANT



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 Board and to abide by the following:

A. CEASE AND DESIST FROM:

(1) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by failing to follow the contractual procedure for discipline and grievances, and from otherwise violating Ohio Revised Code § 4117.11(A)(1); and

(2) Establishing a pattern or practice of repeated failures to timely process grievances and requests for arbitration of grievances by failing to follow the contractual procedure for discipline and grievances, and from otherwise violating Ohio Revised Code § 4117.11(A)(6); and

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

(1) Immediately schedule the termination grievances of William Faber and Jerry Knerr for arbitration and arbitrate the grievances in accordance with the procedures set forth in the 2004-06 Agreement;

(2) Post the Notice to Employees furnished by the Board, which states that the Township shall cease and desist from the actions set forth in paragraph A and shall take the affirmative action set forth in paragraph B, for sixty (60) days in all usual and customary posting locations where employees represented by the General Truck Drivers and Helpers Local Union No. 92 work; and

(3) Within twenty calendar days from issuance of the Order, notify the Board in writing of the steps that have been taken to comply therewith.

SERB v. Tuscarawas Township Board of Trustees, Stark County, Case No. 2007-ULP-01-0007

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.

Tuscarawas Township Board of Trustees, Stark County,

Respondent.

Case No. 2007-ULP-01-0007

OPINION

Brundige, Chairperson:

This matter comes before the State Employment Relations Board (“the Board” or “Complainant”) upon the issuance of an Administrative Law Judge’s Proposed Order, and the filing of exceptions by the Tuscarawas Township Board of Trustees, Stark County (“the Respondent”), the Cross-Exception filed by the General Truck Drivers and Helpers Local Union No. 92, affiliated with the International Brotherhood of Teamsters (“Local 92”), and the Complainant’s response to the exceptions and cross-exception. For the reasons that follow, we find that the Respondent violated Ohio Revised Code (“O.R.C.”) §§ 4117.11(A)(1) and (A)(6) when it failed to follow the contractual procedure for discipline and grievances.

I. BACKGROUND

Local 92 is the exclusive representative for a bargaining unit of employees of the Respondent’s Road Maintenance and Road Department. The bargaining unit was

composed of three employees when the unit's certification was amended by the Board on January 17, 2007. SERB Case No. 2006-REP-10-0146.

The Respondent and the General Truck Drivers and Helpers Union Local 113 ("Local 113"), affiliated with the IBT, were parties to a collective bargaining agreement effective from January 1, 2004 through December 31, 2006 ("the 2004-06 Agreement"), which contained, in Article VIII, a grievance procedure that culminated in final and binding arbitration. Effective at the close of business on September 16, 2005, Local 113 was merged into Local 92. On September 16, 2005, Local 92 Secretary/Treasurer Gregory Van Dress sent a letter to the Township informing it of the merger and that Local 92 would be Local 113's successor to the 2004-06 Agreement.

On July 19, 2006, the Township's Law Director, Randall M. Traub, notified Local 92 of the Township's intent to negotiate a successor collective bargaining agreement. Law Director Traub wrote:

I do note that the actual Collective Bargaining Agreement at issue is between the International Brotherhood of Teamsters Local Union 113 [sic], but it is my understanding that the General Truck Drivers and Helpers Local Union No. 92, for whom you serve as Vice President, should actually be the contact for negotiations concerning the Collective Bargaining Agreement and for the implementation of new policies at Tuscarawas Township.

On October 16, 2006, Local 92 filed with SERB a Notice to Negotiate and served it upon the Township's bargaining representative. On November 16, 2006, SERB's Bureau of Mediation appointed a mediator to assist the parties in the collective bargaining process. The parties were in negotiations for a collective bargaining agreement to succeed the 2004-06 Agreement. On October 17, 2006, the Township sent a letter to Local 92 with information about payroll withholding of union dues.

On October 18, 2006, the Township held a special meeting and voted to order the three bargaining-unit employees, Dennis Britton, William Faber, and Jerry Knerr, to attend a special meeting on October 20, 2006. The Township asked Law Director Traub to contact the union representative. At the Township's October 20, 2006 special meeting,

Law Director Traub stated that the Township had to comply with the terms of the 2004-06 Agreement and suggested that the Township reschedule the special meeting with the employees, require the same three employees to attend, and authorize the issuance of a written notice to be signed by the employees, verifying that they had received written notice of the special meeting. The October 20, 2006 special meeting was rescheduled to October 25, 2006.

The written notice of the special meeting is dated October 23, 2006, and reads in relevant part as follows:

TO: Road Department
FROM: John Speicher, [Township] Board President
SUBJECT: Mandatory Attendance on October 25, 2006

Please be advised that the Board of Trustees of Tuscarawas Township passed a resolution at the October 20, 2006 special meeting requiring your mandatory attendance at a special meeting of the Board of Trustees for Tuscarawas Township on October 25, 2006 at 7:00 p.m.

You are required to bring your union representative to the meeting as Article X of the Collective Bargaining Agreement will be invoked.

At the special meeting on October 25, 2006, the Township terminated the employment of William Faber and Jerry Knerr. On October 26, 2006, Local 92 filed grievances with the Township over Mr. Faber's and Mr. Knerr's terminations.

On October 27, 2006, Local 92 filed a Petition for Amendment of Certification with SERB to reflect the merger of Local 113 into Local 92 and to amend the certification to show Local 92 instead of Local 113 as the exclusive representative. The Township did not oppose the petition. The petition was granted by SERB on January 4, 2007. SERB's "Amendment of Certification" provided in part as follows:

In support of the petition, the Employee Organization has provided information verifying that the standards set by the [State Employment Relations] Board in In re Montgomery County Joint Vocational School Dist Bd of Ed, SERB 89-010 (5-11-89), and in In re Ohio Federation of Teachers,

AFT, AFL-CIO, SERB 96-007 (6-7-96), have been met. The Employer has filed a letter stating it does not oppose the petition. Appropriate internal union procedures have been followed, and substantial continuity still exists. No questions concerning representation are pending.

On October 31, 2006, at its regular meeting, the Township recognized that the October 26, 2006 grievances of Mr. Faber and Mr. Knerr had been filed and that "certain procedures" needed to be followed. On November 1, 2006, the Township notified Local 92 in writing that the grievances were "not 'set forth fully' as required. * * * Once you have properly submitted the grievance, it will be processed in a timely manner." On November 1, 2006, and November 7, 2006, respectively, Local 92 filed amended grievances with the Township over Mr. Faber's and Mr. Knerr's terminations.

The Township refused to process the grievances to arbitration, claiming it had no agreement with Local 92. Local 92 requested that an arbitrator be selected to hear the grievances, but the Township rejected the request. The Township did extend the terms of the 2004-06 Agreement during the ongoing collective bargaining negotiations.

II. DISCUSSION

The Township is alleged to have violated O.R.C. §§ 4117.11(A)(1), (A)(5), and (A)(6), which provide as follows:

(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 Ohio Revised Code or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

(5) Refuse to bargain collectively with the representative of his employees recognized as the exclusive representative or certified pursuant to Chapter 4117. of the Revised Code;

(6) Establish a pattern or practice of repeated failures to timely process grievances or requests for arbitration of grievances[.]

A. Substantial Continuity Existed Between Local 113 and Local 92, Eliminating any Question of Representation Arising from the Merger; No Change in Bargaining Representative Occurred; and Local 92 Has Standing to Process the Grievances

The Township argues as a defense that it is not obligated to arbitrate the termination grievances because at the time the terminations occurred and the grievances were filed, SERB had not yet granted Local 92's Petition for Amendment of Certification. Therefore, it argues, Local 92 was not a party to the 2004-06 Agreement and thus had no standing to arbitrate the grievances. This argument is without merit. When a union affiliation or merger takes place, it must be determined whether a question of representation is raised, which may invoke the representation procedures under O.R.C. § 4117.05, or whether the action is simply an internal union affair with substantial continuity resulting in no change in bargaining representative. *In re Montgomery County Joint Vocational School Dist Bd of Ed*, SERB 89-010 (5-11-89) ("*Montgomery JVS*"). "[S]ubstantial continuity between the pre- and post-affiliation local ensures that there is no question of representation emanating from the change." *Id.* at 3-58.

SERB has not addressed the specific issue presented in this case, in which the successor labor organization is actually a continuation of the earlier representative following a merger of sister locals affiliated with the same national organization. The National Labor Relations Board ("NLRB"), however, has addressed this issue. It is well-settled that SERB may look to NLRB decisions for guidance, and SERB has done so previously when considering union affiliation issues. See, e.g., *Montgomery JVS*.

Specifically, the NLRB has held that when a merger of sister locals affiliated with the same international occurs, such as with IBT Locals 113 and 92, the surviving local "succeeds to the bargaining rights previously vested" in the merged local, effective from the date of the merger. Failure to recognize and bargain with the successor local violated Sections 8(a)(1) and (5) of the National Labor Relations Act. *Syscon Int'l, Inc.*, 322 NLRB 539, 544 (1996) ("*Syscon*"). In *Syscon*, the merger of two International Brotherhood of Electrical Workers locals resulted in the surviving local succeeding to the bargaining rights

previously vested in the merged local. The NLRB held that the employer was obligated to recognize and bargain with the surviving local "and has been since January 1, 1995 [the date of the merger]." *Id.*

Once certified by the NLRB or voluntarily recognized by an employer as the majority representative of bargaining-unit employees, a union enjoys a presumption of continued majority support, and the employer has a corresponding continuing obligation to recognize and bargain with the union. A change in internal structure or affiliation does not necessarily change this obligation. The NLRB has consistently held that a party seeking to avoid its bargaining obligation by virtue of such a change has the burden of demonstrating that the change was not accomplished with minimal due process or was sufficient to raise a question concerning representation. *Id.*; *Sullivan Bros. Printers, Inc.*, 317 N.L.R.B. 561, 563 (1995). We hereby adopt this NLRB standard as our own.

SERB already determined in Case No. 2006-REP-10-0146 that the merger of Local 113 into Local 92 followed internal-union procedures and met the substantial-continuity test. No question of representation was raised as a result of the merger. Indeed, the Township put forth no evidence and presented no arguments to the contrary, either in response to Local 92's Petition for Amendment of Certification or in this unfair labor practice proceeding. The Township stated in a letter to SERB regarding the representation case that it had no objection to, and did not oppose, the amendment of certification in that case.

The Township cites *Franklin County Bd of Comm'rs v. SERB*, (Franklin Cty. 1989), 64 Ohio App.3d 113 ("*Franklin County*"), and *United Electrical, Radio and Machine Workers of America (UE) v. Star Expansion Industries, Inc.*, 246 F.Supp. 400 (S.D.N.Y. 1964) ("*UE*") in support of its position. These cases are readily distinguishable. *Franklin County* involves the issue of when a public employer's bargaining obligation attaches after SERB holds a representation election. No representation election took place in this case because no question of representation was raised by the merger. In *UE*, the incumbent union processed a termination grievance to arbitration. The applicable collective

bargaining agreement subsequently expired. Thereafter, the incumbent union was decertified, and a new union was certified. Both unions claimed the right to arbitrate the termination grievance. The issue presented in *UE* was whether the union that started processing the grievance retained the right to process it to conclusion after expiration of the applicable collective bargaining agreement and notwithstanding the decertification. In contrast, Local 113 was merged into another local, not decertified. Mr. Faber's and Mr. Knerr's grievances arose over a year after Local 113 was merged into Local 92. Unlike the incumbent union in *UE*, Local 113 cannot process the grievances to arbitration since Local 113 no longer exists.

When substantial continuity exists, as a matter of law no change in bargaining representative has occurred, even though the bargaining representative may, post-affiliation or post-merger, have a different union name or local union number. In light of the substantial continuity between IBT Locals 113 and 92, no change in bargaining representative occurred when Local 113 merged into Local 92. Accordingly, Local 92 was and is a party to the 2004-06 Agreement and has standing as the exclusive bargaining representative to process the termination grievances to arbitration. In *Montgomery JVS*, almost a year passed between the date the affiliation was approved by the membership and the date the union filed its Petition for Amendment of Certification. Thus, the timing of an amendment of certification is irrelevant; rather, the dispositive factor is whether substantial continuity exists.

The Township is required to recognize and bargain with Local 92 as the successor to Local 113 under the 2004-06 Agreement. As demonstrated by the stipulated facts and joint exhibits, the Township itself recognized Local 92 as the successor to the 2004-06 Agreement following the merger in 2005, both before and after the filing of the subject grievances. This recognition included continuing the terms and conditions of the 2004-06 Agreement, honoring the dues check-off provisions and remitting such dues to Local 92, inviting Local 92 to the disciplinary proceedings consistent with the 2004-06 Agreement, negotiating a successor agreement to the 2004-06 Agreement with Local 92, and, initially

processing the subject grievances under the 2004-06 Agreement. It is clear that Local 92 was and continues to be the exclusive representative for the bargaining-unit employees, notwithstanding the Township's belated and erroneous claim that, for purposes of arbitrating the subject grievances, Local 92 was not party to the 2004-06 Agreement.

Consequently, the Township's defenses to the unfair labor practice charge are without merit. The Township, at all relevant times to the unfair labor practice charge here, has been obliged to recognize Local 92 from the date of merger in 2005 and process the subject grievances under the 2004-06 Agreement. The Township cannot selectively decide that for purposes of the termination grievances it will not recognize Local 92. By failing and refusing to process the grievances under the 2004-06 Agreement, the Township has violated O.R.C. § 4117.11(A)(1) and (A)(6).

B. A Public Employer's Refusal to Process Grievances and Requests for Arbitration Violates O.R.C. §§ 4117.11(A)(1) and (A)(6)

When a violation of O.R.C. § 4117.11(A)(1) is alleged, the appropriate inquiry is an objective rather than subjective one. *In re Pickaway County Human Services Dept.*, SERB 93-001 (3-24-93), *aff'd sub nom. SERB v. Pickaway Human Services Dept.*, 1995 SERB 4-46 (4th Dist. Ct. App., Pickaway, 12-7-95). A violation will be found if, under the totality of the circumstances, it can be reasonably concluded that the employees were interfered with, restrained, or coerced in the exercise of their O.R.C. Chapter 4117 rights by the public employer's conduct. *In re Hamilton County Sheriff*, SERB 98-002 (1-23-98), *aff'd sub nom. Hamilton County Sheriff v. SERB*, No. A98-00714 (Mag. Dec., CP, Hamilton, 10-9-98). For example, an O.R.C. § 4117.11(A)(1) violation was found when a transportation supervisor told public employees who were engaged in strike activity that "if they did not come back to work from the strike, they would lose their jobs." *In re Springfield Local School Dist Bd of Ed*, SERB 97-007 at 3-49 (5-1-97). These statements were considered "overtly threatening" because they were tied directly to the individuals' protected activity.

A public employer must process grievances and requests for arbitration. O.R.C. § 4117.11(A)(6) "contains a specific unique violation for failure to process grievances and requests for arbitration of grievances." *In re Franklin County Sheriff*, SERB 91-001 (1-8-91) ("*Franklin County Sheriff*") at 3-2, *aff'd sub nom., Franklin County Sheriff's Dept v. F.O.P. Capital Lodge No. 9*, 1991 SERB 4-70 (CP, Franklin, 7-2-91), upheld, *Franklin County Sheriff's Dept v. SERB*, 1992 SERB 4-16 (10th Dist Ct App, Franklin, 1-28-92).

In *Franklin County Sheriff*, the employer refused to process certain grievances to arbitration; the employer argued that it was justified in doing so because the grievances were not arbitrable (they pertained to the assignment and promotion of bargaining-unit members). Instead of submitting the question of arbitrability to an arbitrator, the employer filed a declaratory-judgment action in common pleas court seeking the court's opinion of the arbitrability of the disputed grievances. The union filed an unfair labor practice charge with SERB. SERB concluded that the employer's refusal to arbitrate the grievances constituted a violation of O.R.C. §§ 4117.11(A)(1) and (A)(6), stating that "the legislature clearly defined the employer's obligation and responsibility in processing grievances. This is a consequential part of the legislature's overall design to provide a consistent mechanism for dispute resolution in promoting orderly and constructive relationships between all public employers and their employees." *Id* at 3-2 to 3-3.

SERB has previously discussed what constitutes a "pattern" of failing to process grievances in *In re Cuyahoga County Sheriff's Dept*, SERB 90-017 (9-28-90) and in *Franklin County Sheriff*, but has not addressed what constitutes a "practice" of failing to process. The 10th District Court of Appeals, in *Franklin County Sheriff's Dept v. SERB*, 1992 SERB 4-16, 4-17 (10th Dist. Ct App., Franklin, 1-28-92) held: "The unfair labor practice charge under [O.R.C. § 4117.11](A)(6) was, of necessity, not founded on any one specific act but, rather, consisted of a course of conduct which, when taken as a whole, established a pattern or practice."

In this case, the failure to process these grievances, or allow them to advance to arbitration under the guise of dealing with a separate union, is clearly an O.R.C.

§ 4117.11(A)(6) violation. The Township has demonstrated a practice that is based on a willful decision carried out over the course of repeated and continuous conduct by the Township. While not occurring over a sufficient number of occurrences to constitute a "pattern," it was certainly sufficient to form a "practice."

Thus, the Township's refusal to process and arbitrate Mr. Faber's and Mr. Knerr's grievances violates O.R.C. §§ 4117.11(A)(1) and (A)(6). The Township's obligation to process grievances through arbitration is set forth in Article VIII of the 2004-06 Agreement. Article X of the 2004-06 Agreement requires "just cause" for employee discipline and the presence of a Union officer in the case of suspension or discharge. See Jt. Exh, 1, p. 11. The Township has recognized these contractual requirements during the disciplinary process. The grievances concern employee discipline, a subject matter covered by the 2004-06 Agreement, and the Township is obligated under O.R.C. Chapter 4117 and the 2004-06 Agreement to process the grievances through arbitration. By failing to do so, the Township violates O.R.C. §§ 4117.11(A)(1) and (A)(6).

C. A Refusal to Process and Arbitrate Grievances Does Not Automatically Violate O.R.C. § 4117.11(A)(5).

Complainant has the burden to prove by a preponderance of the evidence that an unfair labor practice has been committed. O.R.C. § 4117.12(B)(3). The 2004-06 Agreement contains the grievance machinery that culminates in final and binding arbitration. The grievance procedure is an extension of the collective-bargaining process. *In re Bryan City Bd of Ed*, SERB 97-003 (3-14-97). But the Township's refusal to process the grievances to arbitration does not *automatically* constitute a refusal to bargain under O.R.C. § 4117.11(A)(5). The circumstances of each case will determine whether the employer's conduct constitutes a refusal to bargain. Therefore, the Township's refusal to process the grievances, standing alone, does not also violate O.R.C. § 4117.11(A)(5).

In addition, we must address the finding of derivative violations since it was mentioned in the Administrative Law Judge's Proposed Order. In *In re Amalgamated*

Transit Union, Local 268, SERB 93-013 (6-25-93), at n.14, the Board stated that a violation of O.R.C. § 4117.11(A)(1) is a derivative violation of O.R.C. § 4117.11(A)(5); the Board also stated that a violation of O.R.C. § 4117.11(B)(1) was not a derivative violation of other violations of O.R.C. § 4117.11(B). This approach appears to hold that each subsection of O.R.C. § 4117.11(A) or (B) does not stand on its own, which is contrary to the expressed language and purpose of O.R.C. Chapter 4117. Therefore, we now expressly reject the previous practice concerning so-called derivative violations in favor of review of each individual charge.

D. Remedy

The Administrative Law Judge's Proposed Order recommends the following remedy:

(1) Immediately schedule the termination grievances of William Faber and Jerry Knerr for arbitration and arbitrate the grievances in accordance with the procedures set forth in the 2004-06 Agreement;

(2) Post the Notice to Employees furnished by the Board, which states that the Township shall cease and desist from the actions set forth in paragraph A and shall take the affirmative action set forth in paragraph B, for sixty (60) days in all usual and customary posting locations where employees represented by the General Truck Drivers and Helpers Local Union No. 92 work; and

(3) Within twenty calendar days from issuance of the Order, notify the Board in writing of the steps that have been taken to comply therewith.

We find that this remedy meets the requirements of O.R.C. § 4117.12.

III. CONCLUSION

For the reasons above, the Board finds that the Tuscarawas Township Board of Trustees, Stark County, violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(6), but not (A)(5), when it failed to follow the contractual procedure for discipline and grievances.

Verich, Vice Chairperson, and Spada, Board Member, concur.

SERB

"Promoting Orderly and Constructive
Labor Relations Since 1984"

State
Employment
Relations
Board



65 East State Street, 12th Floor
Columbus, Ohio 43215-4213
Phone 614.644.8573
Fax 614.466.3074
www.serb.state.oh.us

N. Eugene Brundige, Chairperson
Michael G. Verich, Vice Chairperson
Robert F. Spada, Board Member

Ted Strickland, Governor

Sherrie J. Passmore Executive Director

Case No. 2007-ULP-01-0007

CERTIFICATION

I, the undersigned General Counsel and Assistant Executive Director for the State Employment Relations Board, hereby certify that the attached document is a true and exact reproduction of the original Order (with Opinion Attached) of the State Employment Relations Board entered on its journal on the 31st day of August, 2009.

J. Russell Keith
General Counsel and Assistant Executive Director
August 31, 2009