

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

MINUTES

The State Employment Relations Board met on Thursday, July 8, 2004, at 10:00 a.m., at 65 East State Street, Columbus. Present at the meeting were Vice Chairman Gillmor and Board Member Verich. Chairman Drake was absent as she was attending the funeral of John Stozich, former State Representative, Mayor of Findlay, and Director of the Department of Industrial Relations. Chairman Drake worked with Mr. Stozich when she was a Deputy Director at the Department of Industrial Relations. Vice Chairman Gillmor and Board Member Verich extended their sympathy and mentioned how much Mr. Stozich will be missed, recapping their involvement with Mr. Stozich while they were serving in the state legislature.

I. APPROVAL OF MINUTES FOR PREVIOUS MEETING:

Board Member Verich moved that the Board approve the minutes for the June 24, 2004 meeting. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied ___

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

1. Case 04-MED-02-0127 City of Hamilton and International Union of Operating Engineers Local 20

On February 19, 2004, the Employee Organization filed a notice to negotiate in this case for a contract reopener. The mediator was appointed on May 19, 2004. On May 12, 2004, based upon the request of one of the parties, the fact finder was appointed on May 28, 2004 for Case 04-MED-02-0127. On June 4, 2004, the Employee Organization filed a notice to negotiate in Case 04-MED-06-0640. The Employer has filed a motion to stay fact finding and dismiss negotiations involving the Employee Organization. The Employer questioned whether the Employee Organization can continue to pursue fact finding in a prior contract reopener while filing a notice to negotiate relative to the subsequent expiration of the parties' agreement. The Employee Organization responded to the motion, and the Employer responded to the Employee Organization's response. Board Member Verich moved that the Board not stay fact finding and dismiss negotiations pending disposition of Case No. 04-MED-06-0640, and proceed with the processing of Case No. 04-MED-02-0127. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied ___

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III. REPRESENTATION MATTERS AT ISSUE:

1. Case 03-REP-12-0234 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Eastlake

The Employee Organization filed an amended Request for Recognition seeking to represent certain employees of the Employer. The substantial evidence is sufficient, no objections have been filed, and the Employer has complied with the posting requirements set forth in Ohio Revised Code § 4117.05(A)(2). Board Member Verich moved that the Board certify the Employee Organization as the exclusive representative of all employees in the bargaining unit. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied ___

2. Case 04-REP-06-0095 Professionals Guild of Ohio and Guernsey County Children Services Board
3. Case 04-REP-06-0097 Butler Education Association/OEA/NEA and Butler Technology and Career Development Schools
4. Case 04-REP-06-0100 International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local #2192 and Lorain County Children Services Board
5. Case 04-REP-06-0102 Ohio Association of Public School Employees (OAPSE), AFSCME Local 4, AFL-CIO and Portage County Board of Mental Retardation and Developmental Disabilities

In Case 04-REP-06-0095, the Employee Organization is the Board-certified exclusive representative of certain employees of the Employer. The parties have jointly filed a Petition for Amendment of Certification seeking to amend the existing units to reflect current contract language.

In Case 04-REP-06-0097, the Employee Organization is the Board-certified exclusive representative of certain employees of the Employer. The parties have jointly filed a Petition for Amendment of Certification seeking to amend the certification to change the Employee Organization's name to Butler Education Association/OEA/NEA.

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In Case 04-REP-06-0100, the Employee Organization is the Board-certified exclusive representative of certain employees of the Employer. The parties have jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to reflect current contract language.

In Case 04-REP-06-0102, the Employee Organization is the Board-certified exclusive representative of certain employees of the Employer. The parties have jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to include Permanent Substitute.

Board Member Verich moved that the Board approve the jointly filed petitions and amend the units accordingly. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied

6. Case 04-REP-01-0013 General Truck Drivers and Helpers
Union Local No. 92 and Stark County
Department of Job and Family Services

The Employee Organization filed an amended Petition for Representation Election seeking to represent certain employees of the Employer. The Employer has filed objections, contending that the members of the proposed bargaining unit are supervisors under Ohio Revised Code § 4117.01(C)(10) and not public employees under Ohio Revised Code § 4117.01(C). A conference call was conducted for the purpose of executing a Consent Election Agreement. The Employee Organization and Employer could not reach an agreement as to an appropriate bargaining unit. The case was mediated on May 13, 2004. The parties' dispute remains. Board Member Verich moved that the Board direct this matter to hearing to determine an appropriate bargaining unit and for all other relevant issues. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied

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7. Case 04-REP-04-0073 United Steelworkers of America, AFL-CIO-CLC and Kent State University

The Employee Organization has now filed a letter withdrawing the petition. The Employee Organization filed a Petition for Representation Election seeking to represent certain employees of the Employer. The Employer responded by filing objections. Board Member Verich moved that the Board construe the Employee Organization's letter as a motion to withdraw, grant the motion and dismiss without prejudice the Petition for Representation Election. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied ___

8. Case 04-REP-02-0031 Ohio Patrolmen's Benevolent Association and City of Parma

The Employee Organization filed a Request for Recognition seeking to represent certain employees of the Employer. The Employer responded by filing objections. A conference call was conducted for the purpose of executing a Consent Election Agreement. The parties could not reach an agreement concerning an appropriate bargaining unit. Board Member Verich moved that the Board direct the matter to hearing to determine an appropriate bargaining unit and for all other relevant issues, and direct the parties to mediation. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied ___

9. Case 04-REP-04-0067 Ohio Association of Public School Employees (OAPSE), AFSCME Local 4, AFL-CIO and Medina County Transit, July 21, 2004

The Employee Organization filed a Request for Recognition seeking to represent certain employees of the Employer. The Employer responded by filing a Petition for Representation Election. The parties have entered into a Consent Election Agreement seeking an election on July 21, 2004. Board Member Verich moved that the Board approve the Consent Election Agreement and direct an election to be conducted on July 21, 2004. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied ___

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10. Case 04-REP-03-0060 Teamsters Local #436 and City of Twinsburg
- There were 13 ballots cast
 - There were 0 challenged ballots
 - No Representative received 0 votes
 - Teamsters Local #436 received 13 votes and has prevailed in this election.
11. Case 04-REP-03-0044 Ohio Association of Public School Employees (OAPSE), AFSCME Local 4, AFL-CIO and Gallia County Board of Mental Retardation and Developmental Disabilities
- There were 21 ballots cast
 - There were 0 challenged ballots
 - No Representative received 3 votes
 - Ohio Association of Public School Employees (OAPSE), AFSCME Local 4, AFL-CIO received 18 votes and has prevailed in this election.
12. Case 04-REP-03-0063 District 1199 WV/KY/OH, The Healthcare and Social Service Workers Union, SEIU, AFL-CIO, CLC and Avon Lake Public Library

PROFESSIONAL QUESTION 1:

- There were 2 ballots cast
- There were 0 challenged ballots
- NO (noninclusion with nonprofessional employees) received 0 votes
- YES (inclusion with nonprofessional employees) received 2 votes and has prevailed in this election.

NONPROFESSIONAL QUESTION 1:

- There were 34 ballots cast
- There were 0 challenged ballots
- NO (noninclusion with professional employees) received 9 votes
- YES (inclusion with professional employees) received 25 votes and has prevailed in this election.

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COMBINED QUESTION 2:

- There were 36 ballots cast
- There were 0 challenged ballots
- No Representative received 9 votes
- District 1199 WV/KY/OH, The Healthcare and Social Service Workers Union, SEIU, AFL-CIO, CLC received 27 votes and has prevailed in this election.

13. Case 04-REP-02-0030 Ohio Patrolmen's Benevolent Association and Olmsted Township, Cuyahoga County

- There were 4 ballots cast
- There were 0 challenged ballots
- No Representative received 0 votes
- Ohio Patrolmen's Benevolent Association received 4 votes and has prevailed in this election.

Board Member Verich moved that the Board certify the election results and certify the prevailing employee organizations as the exclusive representatives of all employees in the bargaining units. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied ___

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Case 04-REP-01-0005 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 410 v. City of Jackson

On January 13, 2004, the Employer filed a Petition for Amendment of Certification seeking to amend the unit by excluding all of the employees in it because they are confidential employees, management level employees, employees of a public official who act in a fiduciary capacity, or supervisors and, as such, are not "public employees" under Ohio Revised Code § 4117.01(C). The Employee Organization filed objections to the petition. On May 19, 2004, the Board issued its direction to hearing in this matter. On June 11, 2004, the Employee Organization filed a motion to stay the hearing in this case. In the motion, the Employee Organization asserted that the outcome of a related unfair labor practice case, Case No. 2003-ULP-11-0586, which has been heard but not yet

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V. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 04-ULP-03-0133 Hugh P. Gaughan v. Cleveland City School District Board of Education

The unfair labor practice charge alleged the Charged Party has violated Ohio Revised Code § 4117.11(A)(1) by denying the Charging Party due process. Information gathered during the investigation revealed the Charging Party was not permitted to have independent representation during a pre-disciplinary hearing, but did have union representation. Board Member Verich moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by the Charged Party. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied __

2. Case 04-ULP-03-0165 Hugh P. Gaughan v. Cleveland City School District Board of Education

The unfair labor practice charge alleged the Charged Party has violated Ohio Revised Code § 4117.11(A)(1) and (5) by failing to send a written response within six days of holding a Step 3 grievance hearing, held on February 26, 2004. Information gathered during the investigation revealed a delay occurred in the response because the Charged Party was waiting for additional evidence to support the grievance. The Charging Party failed to provide information to show that an Ohio Revised Code ' 4117.11(A)(5) violation occurred. Board Member Verich moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by the Charged Party. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied __

3. Case 04-ULP-02-0081 Theresa M. Baker v. Medina City Teachers Association, OEA/NEA and JoAnn Shire

The unfair labor practice charge alleged the Charged Parties have violated Ohio Revised Code § 4117.11(B)(1), (2), and (6) by modifying the collective bargaining agreement through actions taken by the Local Professional Development Committee, and by refusing to arbitrate meritorious grievances. Information gathered during the investigation revealed the Charged Parties actions were not arbitrary, discriminatory, or in bad faith. The contract provision regarding the Local Professional Development Committee was negotiated between the Employer and the Ohio Education Association.

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The Charging Party was not restrained from pursuing her grievance. No information was provided to show that the Charged Parties caused the Employer to commit a violation. Board Member Verich moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by the Charged Parties. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied

4. Case 04-ULP-02-0105 Chris Dimitri v. Metro Health System

The unfair labor practice charge alleged the Charged Party has violated Ohio Revised Code § 4117.11(A)(1) by denying the Charging Party's grievances. Information gathered during the investigation revealed the unfair labor practice is untimely filed. Board Member Verich moved that the Board dismiss the charge with prejudice as untimely filed. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied

5. Case 04-ULP-02-0106 Chris Dimitri v. Ohio Council 8, American Federation of State, County and Municipal Employees, Local 3360, AFL-CIO and President Barbara Thomas

The unfair labor practice charge alleged the Charged Parties have violated Ohio Revised Code § 4117.11(B)(6) by failing to process the Charging Party's grievances, and by failing to fairly represent him at recent negotiations. Information gathered during the investigation revealed the Charged Parties did attempt to resolve the pay inequities during negotiations for five employees, but were unsuccessful for four employees. The Charged Parties' actions were not arbitrary, discriminatory, or in bad faith. Knowledge of the alleged grievances occurred more than 90 days before the charge was filed with the Board. Board Member Verich moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by the Charged Parties, and as untimely filed regarding the grievance allegations. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied

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6. Case 04-ULP-02-0113 Julie Edwards v. City of Circleville, Chief Wayne Gray, et al.

Board Member Verich moved that the Board construe the settlement agreement as a motion to withdraw, and grant the motion with prejudice. Vice Chairman Gillmor seconded the motion and called for any discussion. Vice Chairman Gillmor noted that the Investigator and the Mediation Department did a fine job in settling this case. Vice Chairman Gillmor called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied __

7. Case 04-ULP-01-0045 Ohio Nurses Association v. The Ohio State University Medical Center

The unfair labor practice charge alleged the Charged Party has violated Ohio Revised Code § 4117.11(A)(1), (5), and (6) by refusing to timely process grievances and by failing to provide requested information. Information gathered during the investigation revealed the Charged Party established a pattern or practice of not timely processing grievances and did not reasonably supply the information requested to process grievances. Board Member Verich moved that the Board find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, refer the matter to hearing to determine if the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (5), and (6) by refusing to timely process grievances and failing to provide requested information, and direct the parties to ULP mediation. Vice Chairman Gillmor seconded the motion. Vice Chairman Gillmor called for any discussion. Board Member Verich stated that it is the duty of SERB to fairly apply the law and that the duty to timely process grievances is also an important duty under the law. The Board always tries to fairly resolve issues between employees and employers especially regarding the matter of having the parties timely process grievances. Vice Chairman Gillmor then stated that the Board now has 30 employees where it once had 52, but it has no reduction in its statutory responsibilities. She also emphasized that the Board's staff has continued to produce high quality work through the investigation process of these unfair labor practice cases. She also wished to convey her thanks to the entire staff, on behalf of the Board, for continuing to do a terrific job.

It is noted that a few employees from The Ohio State University Medical Center were in attendance showing their concerns with signs of protest. Vice Chairman Gillmor addressed the group and stated that if they had any questions, they could direct their concerns to General Counsel Russ Keith after the meeting. A spokesperson for the group stated that all they were asking the Board, through their protest, is why the Board

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has not ruled on their case and allow an election to take place. She said that it also appeared to the group that the Board was acting in favor of the Employer and not with their rights. General Counsel Keith told the group that their representation issue was not on the agenda for this particular meeting, but that he believed it would be on the agenda for the next Board meeting; he stated that he would speak with them after the Board meeting. Vice Chairman Gillmor called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied

8. Case 04-ULP-05-0261 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO v. City of East Cleveland

The unfair labor practice charge alleged the Charged Party has violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally changing health care benefits during negotiations. Information gathered during the investigation revealed the implementation of new health care benefits and premiums during contract negotiations. Board Member Verich moved that the Board find probable cause to believe an unfair labor practice has been committed, coordinate the case with Case 04-ULP-03-0161, authorize the issuance of a complaint, refer the matter to an expedited hearing to determine if the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally implementing health care changes during contract negotiations, and direct the parties to ULP mediation. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied

9. Case 04-ULP-06-0310 John R. Butler v. Mobile Instruments, Inc.

The unfair labor practice charge alleged the Charged Party has violated Ohio Revised Code § 4117.11(A)(1) by harassing the Charging Party during breaks and lunch. Information gathered during the investigation revealed the Charged Party is a private company, and the Charging Party did not allege a violation covered under Ohio Revised Code Chapter 4117. The charge is not within SERB's jurisdiction. Board Member Verich moved that the Board dismiss the charge with prejudice for lack of jurisdiction. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied

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10. Case 04-ULP-05-0270 Service Employees International Union,
District 1199 v. Cleveland Public Library

The unfair labor practice charge alleged the Charged Party has violated Ohio Revised Code § 4117.11(A)(1) and (5) by bargaining in bad faith by refusing to provide requested information during negotiations. Information gathered during the investigation revealed the Charged Party admitted it did refuse to provide requested information to the Charging Party during negotiations. Board Member Verich moved that the Board find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, refer the matter to an expedited hearing to determine if the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by refusing to provide requested information during negotiations, and direct the parties to ULP mediation. Vice Chairman Gillmor seconded the motion and called for any discussion, and stated that by directing this case to hearing it can “flesh” out all the issues and make a better determination on what exactly happened. Vice Chairman Gillmor called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied __

11. Case 04-ULP-02-0064 Ohio Patrolmen's Benevolent
Association v. Athens County
Commissioners

The unfair labor practice charge alleged the Charged Party has violated Ohio Revised Code § 4117.11(A)(1) by removing the bottled water supply from the 911 dispatcher's work area. Information gathered during the investigation revealed the water removal was not due to the parties' reaching impasse over negotiations. Board Member Verich moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by the Charged Party. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied __

12. Case 04-ULP-03-0132 Westlake Firefighters Association,
Local 181, IAFF v. City of Westlake

Board Member Verich moved that the Board remand this case for further investigation. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied __

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13. Case 04-ULP-02-0098 Lola Severns v. Service Employees International Union, District 1199

The unfair labor practice charge alleged the Charged Party has violated Ohio Revised Code § 4117.11(B)(6) by ignoring the nurses= working-out-of-classification issue. Information gathered during the investigation revealed the Charging Party did not ask the Charged Party to file or pursue a grievance over the matter, nor was the Charging Party prevented from filing a grievance on her own. The Charged Party=s actions were not arbitrary, discriminatory, or in bad faith. Board Member Verich moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by the Charged Party. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied __

14. Cases 04-ULP-03-0190 Hugh P. Gaughan v. Cleveland City School District Board of Education
04-ULP-03-0193 Hugh P. Gaughan v. Cleveland City School District Board of Education

Board Member Verich moved that the Board dismiss the charges with prejudice because the Charging Party failed to pursue the matters. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied __

15. Case 04-ULP-05-0265 International Brotherhood of Teamsters, Local 20 v. City of Toledo – Water Reclamation
16. Case 04-ULP-04-0221 Westerville Education Association, OEA/NEA v. Westerville City School District Board of Education
17. Case 04-ULP-04-0239 Keystone Local Education Association and Deborah Turner v. Keystone Local School District Board of Education

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18. Case 04-ULP-03-0160 Columbus Municipal Association of Government Employees and Communications Workers of America, Local 4502 v. City of Columbus, Department of Human Resources

Board Member Verich moved that the Board construe the letter, notice, and settlement as motions to withdraw, and grant all motions with prejudice. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent GILLMOR Aye VERICH Aye
Affirmed X Denied ___

VI. ADMINISTRATIVE MATTERS

Executive Director Pat Snyder mentioned that she would keep the Board posted on any response from a request for relief from the 6% budget cut that Chairman Drake made to the Office of Budget and Management on July 2, 2004.

Executive Director Snyder commented on the good report Bill Sommer, of Sophisticated Systems, prepared giving an analysis of SERB's computer system and the recommendations that had been made and implemented. Vice Chairman Gillmor and Board Member Verich expressed their appreciation towards all the hard work that has been done with the computer system. Executive Director Snyder mentioned there is still more work to be done, and there have been some glitches, but all is being worked out.

Executive Director Snyder mentioned that she has been in touch with IT managers at other state departments that use contracts, as well as DAS regarding requests for quotes on the FY '05 computer contract, to begin September 1, 2004, and hopes that information from these sources will help to finalize SERB's Request for Quotes in this area. She also mentioned that the FY '06-07 Operating Budget Request is due to OBM on July 15, 2004.

Executive Director Snyder stated that the agency has requested a third list of Customer Service Assistant 1 (CSA1) candidates from the Department of Administrative Services for the Clerks Office and those candidates had until Friday, July 9, 2004 to contact SERB for an interview. She also stated that so far only two of the six people on the list have requested an interview. She also said that she has reviewed the Administrative Assistant 2 internal and external applications, and we are now scheduling panel interviews. There are a total of 10 people to be interviewed, consisting of three internal and seven external applicants.

Executive Director Snyder stated that the FMCS grant proposal on health care bargaining had been filed by the Ohio Public Sector Labor-Management Health Care Benefit Committee. Chairman Drake and Mediator Tom Worley have been working with this committee, and the proposal on which the Board had previously authorized Mediator Worley to work some additional paid hours.

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VII. ADJOURNMENT

Board Member Verich moved that the Board adjourn the meeting. Vice Chairman Gillmor seconded the motion and called for the vote.

Vote: DRAKE Absent
Affirmed X

GILLMOR Aye
Denied

VERICH Aye



Carol Nolan Drake, Chairman

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