

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

MINUTES

The State Employment Relations Board met on Thursday, August 5, 2004, at 10:00 a.m., at 65 East State Street, Columbus. Present at the meeting were Chairman Drake, Vice Chairman Gillmor, and Board Member Verich.

I. APPROVAL OF MINUTES FOR PREVIOUS MEETING:

Vice Chairman Gillmor moved that the Board approve the minutes for the July 22, 2004 meeting. Board Member Verich seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

There were no Mediation matters for this Board meeting.

III. REPRESENTATION MATTERS AT ISSUE:

- 1. Case 04-REP-01-0016 Ohio Patrolmen's Benevolent Association and Weathersfield Township, Trumbull County

- 2. Case 04-REP-04-0080 Ohio Patrolmen's Benevolent Association and Medina Township Board of Trustees, Medina County

In Case 04-REP-01-0016, the Employee Organization filed a Request for Recognition seeking to represent certain employees of the Employer. The substantial evidence was sufficient, and no objections were filed.

In Case 04-REP-04-0080, the Employee Organization filed an amended Request for Recognition seeking to represent certain employees of the Employer. The substantial evidence was sufficient, and no objections were filed.

Board Member Verich moved that the Board certify the Employee Organizations as the exclusive representatives of all employees in the bargaining units. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

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3. Case 04-REP-01-0007 Canfield Professional Firefighters Association and Cardinal Joint Fire District

The Employee Organization filed a Request for Recognition seeking to represent certain employees of the Employer. The showing of interest was sufficient, and the Employer has complied with the posting requirements. Ohio Council 8, AFSCME, AFL-CIO and Local 765 (Ohio Council 8) and the Employer filed motions to dismiss maintaining the request is untimely pursuant to Ohio Revised Code § 4117.07(B)(6), which limits filings to no sooner than one hundred twenty days or later than ninety days prior to the expiration date of any collective bargaining agreement, and that the employees in question are currently represented by Ohio Council 8. The parties do not dispute that the bargaining unit consisted only of part-time employees at the time of certification. As a result, the parties do not have any question concerning representation regarding the full-time employees in question. Since the full-time firefighters are not currently represented, the instant request is not untimely pursuant to Ohio Revised Code § 4117.07(B)(6). Vice Chairman Gillmor moved that the Board deny the Employer's and Ohio Council 8's motions to dismiss and certify the Employee Organization as the exclusive representative of all employees in the bargaining unit. Board Member Verich seconded the motion. Chairman Drake called for the vote.

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

4. Case 03-REP-12-0249 Professionals Guild of Ohio and Butler County Board of Mental Retardation and Developmental Disabilities
August 24, 2004
5. Case 04-REP-03-0036 Stage Employees Union Local No. 48, I.A.T.S.E. and University of Akron
September 10, 2004
6. Case 04-REP-04-0065 Madeira Education Association – OEA and Madeira City School District Board of Education
September 16, 2004

Board Member Verich moved that the Board approve the Consent Election Agreements and direct elections to be conducted on the dates as indicated. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

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

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7. Case 04-REP-03-0048 Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 377 and Campbell Organization of Public Employees Local 4200 and City of Campbell

The Rival Employee Organization filed a Petition for Representation Election seeking to displace the Incumbent Employee Organization as the exclusive representative of certain employees of the Employer. The Employer filed a position statement. The Rival Employee Organization filed a motion to dismiss its petition. Vice Chairman Gillmor moved that the Board grant the Rival Employee Organization's motion to dismiss, and dismiss without prejudice the Petition for Representation Election. Board Member Verich seconded the motion. Chairman Drake called for the vote.

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

8. Case 04-REP-06-0106 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Franklin County Engineer

The Employee Organization is the Board-certified exclusive representative of certain employees of the Employer. The Employer filed a Petition for Amendment of Certification seeking to amend the existing unit to reflect title changes and to delete classifications that no longer exist. The Employee Organization filed a letter stating it does not oppose the amendment. The proposed amendment is appropriate. Board Member Verich moved that the Board approve the petition and amend the unit accordingly. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

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

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9. Case 04-REP-03-0041 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and City of Painesville

The Employee Organization filed a Petition for Representation Election seeking to represent certain employees of the Employer. A conference call was conducted for the purpose of executing a Consent Election Agreement; the Employee Organization and the Employer could not reach an agreement as to an appropriate bargaining unit. The Employer maintained several secretaries should be excluded because they are confidential employees. The Employee Organization maintained the employees in question are not performing any duties that would exclude them. Vice Chairman Gillmor 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. Board Member Verich seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

10. Case 03-REP-12-0250 Airport Firemedics Union and Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Local 100 and City of Cleveland

The Rival Employee Organization filed a Petition for Representation Election seeking to displace the Incumbent Employee Organization as the exclusive representative of a portion of a deemed-certified unit of employees of the Employer. The Rival Employee Organization argued that the employees in the proposed unit receive inadequate representation as opposed to other employees in the existing unit, and should be severed pursuant to the instant petition. The Rival Employee Organization asserted that the Incumbent Employee Organization fails to pursue grievances. The Incumbent Employees Organization filed a response maintaining delays in the grievance procedure were due to the large number of grievances being filed.

The Rival Employee Organization made allegations that if proven, may meet the severance standard set forth by the Board in *In re State of Ohio, SERB 15-012* (6-30-95). Whether this delay in processing grievances meets the severance standard can be best addressed at hearing.

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. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

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11. Case 02-REP-01-0021 International Union of Police Associations, AFL-CIO, Local 32 and City of Upper Sandusky

The Employee Organization is the Board-certified exclusive representative for certain employees of the Employer. On July 6, 2004, the Employee Organization filed a motion to revoke certification. The parties confirm no contract exists. Vice Chairman Gillmor moved that the Board grant the motion and revoke the Employee Organization's certification. Board Member Verich seconded the motion. Chairman Drake called for the vote.

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

12. Case 04-REP-01-0002 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and City of Youngstown

The Employee Organization filed a Petition for Representation Election seeking to represent certain employees of the Employer. The Employer filed objections, contending that the proposed unit includes individuals who are management level, confidential, casual, or seasonal employees. A conference call was conducted for the purpose of executing a Consent Election Agreement; the Employer and the Employee Organization could not reach an agreement as to 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. Chairman Drake called for the vote.

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

13. Case 04-REP-06-0114 United Steelworkers of America, AFL-CIO, CLC and Kent State University

The Employee Organization filed a Petition for Representation Election seeking to represent certain employees of the Employer. The Employer filed objections. The Employer contended that certain positions within the proposed unit are confidential employees or supervisors. In addition, the Employer proposed an alternative bargaining-unit description. A conference call was conducted for the purpose of executing a Consent Election Agreement; the Employer and Employee Organization could not reach an agreement as to an appropriate bargaining unit. Vice Chairman Gillmor moved that the Board direct this matter to hearing to determine an appropriate bargaining unit and for all other relevant issues, and direct the parties to mediation. Board Member Verich seconded the motion. Chairman Drake called for the vote.

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

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14. Case 04-REP-06-0094 International Association of Fire Fighters,
Local 2488 and City of Aurora

The Employee Organization is the Board-certified exclusive representative of certain employees of the Employer. The Employee Organization filed a Petition for Amendment of Certification seeking to amend the existing unit to reflect current contract language. The Employer filed a letter accepting the proposed amendment. The proposed amendment is appropriate. Board Member Verich moved that the Board approve the petition and amend the unit accordingly. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

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

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Case 03-ULP-06-0322 SERB v. City of Cleveland

Vice Chairman Gillmor moved that the Board deny the Respondent's motion to stay; adopt the Findings of Fact, Analysis and Discussion, and Conclusions of Law in the Proposed Order, finding that the Respondent violated O.R.C. §§ 4117.11(A)(1) and (A)(5); and issue an order, with a Notice to Employees, requiring the Respondent to cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in O.R.C. Chapter 4117, and from refusing to bargain collectively with the exclusive representative of its employees, by engaging in bad-faith "surface bargaining" when it refused to propose any reasonable alternatives to the 31 pending bargaining items during the parties' negotiations for their initial collective bargaining agreement, and from otherwise violating O.R.C. §§ 4117.11(A)(1) and (A)(5), and requiring the Respondent to (1) bargain in good faith with the Municipal Construction Equipment Operators' Local Council toward an initial collective bargaining agreement; (2) post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Municipal Construction Equipment Operators' Local Council work, the Notice to Employees furnished by the Board stating that the City of Cleveland shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and (3) notify the Board in writing within twenty calendar days from the date the Order becomes final of the steps that have been taken to comply therewith. Board Member Verich seconded the motion. Chairman Drake called for the vote.

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

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2. Case 02-ULP-06-0455 SERB v. Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Its Local 100

Board Member Verich moved that the Board overrule the exceptions to the Proposed Order, adopt the Findings of Fact, Analysis and Discussion, and Conclusions of Law in the Proposed Order, finding that the Respondent complied with the settlement agreement that was previously entered into in this matter, and dismiss the Direction to Show Cause Hearing. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
 Affirmed X Denied

3. Case 03-ULP-05-0252 SERB v. Amalgamated Transit Union, Local 627

Vice Chairman Gillmor moved that the Board adopt the Findings of Fact, Analysis and Discussion, and Conclusions of Law in the Proposed Order, finding that the Respondent violated O.R.C. § 4117.11(B)(1) when it refused to either file a grievance on Mr. Brantley's behalf or to provide him with the grievance form he requested so that he could present the grievance himself, and issue an order, with a Notice to Employees, requiring the Respondent to cease and desist from restraining or coercing employees in the exercise of their rights guaranteed in O.R.C. Chapter 4117 by failing to file a grievance on Johnny Brantley's behalf or to provide Mr. Brantley with the appropriate form to file a grievance, and from otherwise violating O.R.C. § 4117.11(B)(1), and requiring the Respondent to (1) post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Amalgamated Transit Union Local 627 work, the Notice to Employees furnished by the Board stating that the Amalgamated Transit Union Local 627 shall cease and desist from actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B); and (2) notify the Board in writing within twenty calendar days from the date the Order becomes final of the steps that have been taken to comply therewith. Board Member Verich seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
 Affirmed X Denied

Chairman Drake asked General Counsel Russ Keith whether the Board will be issuing opinions on the three cases just presented to the Board. General Counsel Keith verified that the Board's action will result in Board opinions in these cases.

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4. Case 88-ULP-04-0200 SERB v. Fort Frye City School District
Board of Education

On June 23, 2004, the Ohio Supreme Court issued its decision in *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.*, 102 Ohio St.3d 283, 2004-Ohio-2947. The court affirmed the reversal of SERB's finding that the Fort Frye City School District Board of Education did not commit an unfair labor practice when it did not renew the teaching contract of Michael Rauch. The Court agreed with the Court of Appeals and the Common Pleas court that the jury finding against the District in Mr. Rauch's federal First Amendment litigation was res judicata and that SERB was required to conclude that an unfair labor practice occurred. The Court upheld the argument by SERB and the Fort Frye Teachers Association, OEA/NEA that the issue of damages was not precluded by the federal litigation and should be determined by SERB.

On July 19, 2004, the Board received the remand from the Washington County Common Pleas Court. The previous rulings by the Board did not find a violation, and the Board has never made a ruling on the appropriate remedy in this case. Any testimony and evidence that was entered when this case was heard by a former Hearing Officer on June 25-29, 1990, did not include the damages from the related, and subsequent, federal First Amendment litigation, and could not have addressed what effect those damages would have upon the remedy in this case. A record hearing on the appropriate remedy is now necessary.

Board Member Verich moved that the Board remand this case to the Hearings Section to determine the appropriate remedy for the unfair labor practice herein and for all other relevant issues, and direct the parties to unfair labor practice mediation. Vice Chairman Gillmor seconded the motion. Chairman Drake called for any discussion and wanted to confirm that this case has gone to the court twice, is now before the Board for the fourth time, and that the first time before SERB dealt with issues of damages based on the filing of the charge. General Counsel Keith confirmed that it has been to the Ohio Supreme Court twice, but that it has been to the court of appeals three times. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

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5. Cases 03-ULP-11-0590 Mahoning Education Association of Developmental Disabilities v. Mahoning County Board of Mental Retardation and Developmental Disabilities
- 03-REP-09-0171 Mahoning Education Association of Developmental Disabilities and Mahoning County Board of Mental Retardation and Developmental Disabilities

On September 22, 2003, the Employee Organization filed a Petition for Clarification of Bargaining Unit regarding the inclusion of certain Service and Support Administrator positions employed by the Employer within the existing bargaining unit. The Employer filed a position statement opposing the proposed clarification. On June 10, 2004, the Board directed the matter to hearing to determine the bargaining-unit status of the employees in question and for all other relevant issues, and directed the parties to mediation.

On November 10, 2003, the Employee Organization filed an unfair labor practice charge against the Employer. On April 15, 2004, the Board found probable cause to believe a violation had occurred, authorized the issuance of a complaint, referred the matter to hearing, and directed the parties to ULP mediation.

On July 1, 2004, the Employer filed a Motion to Coordinate and to Stay. In the motion, the Employer requested that the Board coordinate the processing of the two cases and stay the processing of the unfair labor practice charge until after the resolution of the representation case. On July 12, 2004, the Employee Organization filed a motion for leave to respond to the Employer's motion to coordinate the stay. On July 19, 2004, the Employee Organization filed its memorandum in opposition to the Employer's motion.

The same Administrative Law Judge will be hearing both cases, and coordination of the processing of the two cases is appropriate. The bargaining-unit status of the employees is a common issue in both cases that will overlap the hearings in both cases, but a final resolution of that issue in the representation case is not critical to the determination in the unfair labor practice case. By coordinating the cases, those issues can be determined at the same time with no administrative delay and without the need for a stay, and no prejudice will result from granting the motion for leave to respond to the Employer's motion.

Vice Chairman Gillmor moved that the Board grant the Employee Organization's motion for leave to respond to the Employer's motion, grant the motion to coordinate the processing of the two cases, and deny the motion to stay the processing of the unfair labor practice case. Board Member Verich seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

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6. Cases 04-ULP-01-0033 Fraternal Order of Police, Ohio Labor
04-ULP-01-0047 Council, Inc. v. Clark County
Commissioners and Clark County Sheriff
7. Case 03-ULP-10-0517 Mark Schreiber v. Lorain County Career
Center

Board Member Verich moved that the Board approve and adopt the settlement agreement, construe the settlement agreement as a motion to withdraw, grant the motions, and dismiss with prejudice the unfair labor practice charges. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

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

V. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Cases 04-ULP-03-0182 Marcie L. Cohen v. Gary Carlile, Ohio
Education Association Uniserve
Consultant
- 04-ULP-03-0200 Marcie L. Cohen v. Gary Carlile, Ohio
Education Association Uniserve
Consultant

The unfair labor practice charges alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(6) by representing another employee over the Charging Party at a grievance hearing, and by failing to fairly represent her at an alternate resolutions meeting. Information gathered during the investigation revealed the Charged Party does not represent individual employees, but advises unions on contractual interpretation. The Charging Party was represented by her local union representative. Vice Chairman Gillmor moved that the Board dismiss the charges with prejudice for lack of probable cause to believe that unfair labor practices have been committed by the Charged Party. Board Member Verich seconded the motion. Chairman Drake called for the vote.

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

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2. Cases 04-ULP-02-0088 Jack Lautenslager v. Marion County Sheriff
04-ULP-02-0089 Jack Lautenslager v. Fraternal Order of Police, Ohio Labor Council, Inc.

In Case 04-ULP-02-0088, the unfair labor practice charge alleged the Sheriff violated Ohio Revised Code § 4117.11(A)(1) and (8) by conspiring with the Union to deprive the Charging Party of the opportunity to have his grievance heard. In Case 04-ULP-02-0089, the unfair labor practice charge alleged the Union violated Ohio Revised Code § 4117.11(B)(1) and (6) by failing to represent the Charging Party through the grievance process and denying him the opportunity to pursue the grievance himself. Information gathered during the investigation revealed the Sheriff gave the Charging Party a three-day suspension. The Charging Party filed a grievance, and the Union and the Sheriff agreed to waive it to the third step to arbitrate the grievance. Then, the Sheriff's representative sent a letter questioning the arbitrability of the grievance pursuant to Section 19.6 of the Labor Agreement. The Sheriff has raised the issue of arbitrability of the Charging Party's grievance at the point in the grievance-arbitration process where the parties agreed that very question should be raised. By raising the arbitrability of a grievance at this proper time, the Sheriff is merely enforcing its rights under the collective bargaining agreement. Whether the Union failed to represent the Charging Party through the grievance process and by denying him the opportunity to pursue the grievance himself is an issue that must be developed through a hearing. Board Member Verich moved that the Board dismiss the charge in Case 04-ULP-02-0088 for lack of probable cause to believe an unfair labor practice has been committed, and in Case 04-ULP-02-0089, 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(B)(1) and (6) by failing to represent the Charging Party through the grievance process and denying him the opportunity to pursue the grievance himself, and direct the parties to ULP mediation. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

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3. Case 04-ULP-04-0209 International Brotherhood of Teamsters, Chauffeurs, and Warehousemen, Local 377, AFL-CIO v. Austintown Township Trustees, Mahoning County

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally implementing changes to its hospitalization coverage for bargaining-unit employees. Information gathered during the investigation revealed the Charged Party had a duty to maintain the existing terms and conditions of employment until the parties reach impasse. The parties are still in negotiations and have not reached impasse. Vice Chairman Gillmor 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 unilaterally implementing changes to its hospitalization coverage for bargaining-unit employees, and direct the parties to ULP mediation. Board Member Verich seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
 Affirmed X Denied

4. Case 04-ULP-05-0285 Youngstown Metropolitan Housing Authority v. Ohio Council 8, American Federation of State, County and Municipal Employees, Local 288, AFL-CIO

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(3) by bargaining in bad faith by failing to sign the approved collective bargaining agreements. Information gathered during the investigation revealed the Charged Party's seven-month delay in reviewing and signing the contracts is bad-faith bargaining. 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(B)(3) by failing to timely sign the collective bargaining agreements, and direct the parties to ULP mediation. Vice Chairman Gillmor seconded the motion. Chairman Drake called for any discussion and asked Investigations Administrator Alan Bonham if the employees were still receiving benefits even though the collective bargaining agreement has not been signed. Mr Bonham indicated that they are receiving the benefits. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
 Affirmed X Denied

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5. Case 04-ULP-03-0151 Margaret L. O'Brien v. Olentangy Local School District Board of Education

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by retaliating against the Charging Party because of her involvement as Union President. Information gathered during the investigation revealed the Charging Party was permitted to resign rather than be terminated for reasons other than engaging in protected activities. Vice Chairman Gillmor moved that the Board dismiss the charges with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by the Charged Party. Board Member Verich seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

6. Cases 04-ULP-03-0184 Tom Manson v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO

04-ULP-03-0185 Lloyd Smith v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO

The unfair labor practice charges alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(6) by failing to adequately represent the Charging Parties. Information gathered during the investigation revealed the grievances were denied by the Charged Party's arbitration committee in December 2003, and the Charging Parties were never notified so that they could appeal the decision. Board Member Verich moved that the Board find probable cause to believe an unfair labor practice has been committed, consolidate the cases, authorize the issuance of a complaint, refer the matter to hearing to determine if the Charged Party violated Ohio Revised Code § 4117.11(B)(6) by failing to fairly represent the Charging Parties when they were unfairly displaced, and direct the parties to ULP mediation. Vice Chairman Gillmor seconded the motion. Chairman Drake called for any discussion, and Vice Chairman Gillmor asked General Counsel Keith the question that by directing this case to hearing, and the Charging Parties were not notified of the denial of the grievance, can the Charging Parties appeal the decision. General Counsel Keith responded by saying the hearing will determine the liability for the unfair labor practice charge and the remedy will be based on a determination whether the grievance was meritorious; if the grievance would not have been successful, the Charging Parties are not entitled to a windfall. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

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7. Case 04-ULP-05-0280 City of Parma v. Ohio Patrolmen's Benevolent Association

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(3) by refusing to sign the final draft of the collective bargaining agreement. Information gathered during the investigation revealed the Charged Party has refused to sign the contract. Vice Chairman Gillmor 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(B)(3) by bargaining in bad faith when it refused to sign the final draft of the collective bargaining agreement, and direct the parties to ULP mediation. Board Member Verich seconded the motion. Chairman Drake called for any discussion and commented that with a refusal to sign the contract and hard-bargaining issues, the Board certainly does not want to cause any delays and will want to move quickly to assist the employees in making sure they receive their benefits. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

8. Case 04-ULP-01-0025 Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO, Chapter 7010 v. State of Ohio, Department of Rehabilitation and Correction, Mansfield Correctional Institution and John Bond

The unfair labor practice charge alleged the Charged Parties violated Ohio Revised Code § 4117.11(A)(1), (3), and (5) by implementing a policy of docking employees eight hours of pay if they fail to clock in or out. Information gathered during the investigation revealed the charge is untimely filed. Board Member Verich moved that the Board dismiss the charge with prejudice as untimely filed. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

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9. Case 04-ULP-03-0153 St. Clairsville Education Association, OEA/NEA v. St. Clairsville-Richland City School District Board of Education

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by assigning bargaining-unit teaching duties to nonbargaining-unit aides. Information gathered during the investigation revealed contractual interpretation is at the center of the issue with statutory implications. A grievance has been filed, and deferral is appropriate. Vice Chairman Gillmor moved that the Board sua sponte defer the matter for resolution through the grievance-arbitration procedure and retain jurisdiction in accordance with *In re Upper Arlington Ed Assn*, SERB 92-010 (6-30-92). Board Member Verich seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

10. Case 04-ULP-03-0161 Huron Education Association, OEA/NEA v. Huron City School District Board of Education

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), and (5) by engaging in direct dealing with bargaining-unit members and retaliating against the membership for exercising their guaranteed rights. Information gathered during the investigation revealed the memorandum does not interfere with, restrain, or coerce employees in the exercise of guaranteed rights. No evidence was provided to support direct dealing or that an Ohio Revised Code § 4117.11(A)(3) 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. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

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11. Case 04-ULP-01-0055 Fraternal Order of Police, Captain John C. Post Lodge No. 44 v. City of Dayton

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by denying Lt. David Maynes the position of Commander of the Fifth District for engaging in protected activities. Information gathered during the investigation revealed Lt. Maynes has been engaged in protected activities with the Charged Party's knowledge, and he was not selected for the position of Commander. The Chief's comments about Lt. Maynes' union activity supports a finding of probable cause. Vice Chairman Gillmor moved that the Board find probable cause to believe an unfair labor practice has been committed, consolidate the charge with Case 03-ULP-12-0642, 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) and (3) by denying Lieutenant David Maynes the position of Commander of the Fifth District in retaliation for engaging in protected activities, and direct the parties to ULP mediation. Board Member Verich seconded the motion. Chairman Drake called for any discussion and wanted to verify with General Counsel Keith that as a rule the Board has not deferred unfair labor practice cases where an O.R.C. § 4117.11(A)(3) allegations have taken place. General Counsel Keith acknowledged that is correct. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

12. Case 04-ULP-01-0057 Northwest State Community College Education Association, OEA/NEA v. Northwest State Community College

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), and (5) by engaging in direct dealing, posting a nonbargaining-unit position that will perform bargaining-unit duties, and by unilaterally changing the duties of campus security officers and retaliating against it because of its objection to a pending unit-clarification petition. Information gathered during the investigation revealed the Charged Party's actions dealt directly with the employees during negotiations. Posting of the position is not a violation, and the Charging Party did not want to pursue the retaliation issue and the security officers alleged change in duties. 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) and (5), but not (A)(3), by engaging in direct dealing with bargaining-unit employees over terms and conditions of employment, dismiss all other allegations for lack of probable cause, or because the Charging Party is no longer pursuing an aspect of the charge, and direct the parties to ULP mediation. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

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13. Case 04-ULP-03-0196 Gloria "Crable" Wilson v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO, Chapter 7660

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(1), (2), (3), and (6) by misleading the Charging Party, not processing her grievances, and failing to fairly represent her. Information gathered during the investigation revealed the Charging Party was represented, and the Charged Party has processed the Charging Party's timely filed grievances. The Charged Party's action were not arbitrary, discriminatory, or in bad faith. The allegations occurring prior to December 30, 2003, are untimely filed. Vice Chairman Gillmor 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, and as untimely filed regarding the allegations occurring prior to December 30, 2003. Board Member Verich seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

14. Case 04-ULP-03-0136 Mentor Professional Fire Fighters Association, Local 1845, IAFF v. City of Mentor, Julian C. Suso, Daniel Graybill, and Richard Harvey

The unfair labor practice charge alleged the Charged Parties violated Ohio Revised Code § 4117.11(A)(1) and (5) by assigning full-time bargaining-unit work to nonbargaining-unit employees. Information gathered during the investigation revealed both units are composed of fire fighters who work along-side each other. Both units perform the work allegedly being reassigned, and the work is not exclusive to the full-time unit. The Charged Parties did not commit an unfair labor practice by reassigning any work under these facts. Board Member Verich moved that the Board dismiss the charge with prejudice for lack of probable cause to believe an unfair labor practice has been committed by the Charged Parties. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

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15. Case 04-ULP-03-0164 Municipal Foremen and Laborers' Union Local 1099 v. City of Cleveland, Division of Waste Collection and Disposal

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by transferring bargaining-unit work to nonbargaining-unit employees by assigning trash collection to volunteers participating in the Adopt-A-Can program. Information gathered during the investigation revealed a grievance has been filed over the matter. Vice Chairman Gillmor moved that the Board sua sponte defer the matter for resolution through the grievance-arbitration procedure and retain jurisdiction in accordance with *In re Upper Arlington Ed Assn*, SERB 92-010 (6-30-92). Board Member Verich seconded the motion. Chairman Drake then called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
 Affirmed X Denied

16. Case 04-ULP-05-0269 Rodney G. Lemon v. State of Ohio, Department of Rehabilitation and Correction, Mansfield Correctional Institution, Terri Decker, and Terry Collins

The unfair labor practice charge alleged the Charged Parties violated Ohio Revised Code § 4117.11. Information gathered during the investigation revealed the Charging Party has failed to provide a clear and concise statement of the facts constituting an alleged violation. Board Member Verich moved that the Board dismiss the charge without prejudice due to the Charging Party's failure to provide a clear and concise statement of the facts constituting the alleged violation. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
 Affirmed X Denied

17. Case 04-ULP-05-0253 International Brotherhood of Teamsters, Local 244 v. City of Cleveland

18. Case 04-ULP-05-0264 Yourline Johnson v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO, Chapter 220

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19. Cases 04-ULP-04-0237 Thomas A. Laubenthal v. City of Cleveland
- 04-ULP-04-0238 Thomas A. Laubenthal v. Ohio Council 8, American Federation of State, County and Municipal Employees, Local 100, AFL-CIO
- 04-ULP-05-0250 Brian Rutkowski v. American Federation of State, County and Municipal Employees, Local 100, AFL-CIO
- 04-ULP-05-0251 Brian Rutkowski v. American Federation of State, County and Municipal Employees, Local 100, AFL-CIO

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

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

20. Case 04-ULP-06-0373 Professionals Guild of Ohio v. Butler County Board of Mental Retardation and Developmental Disabilities
21. Case 04-ULP-06-0377 Cleveland Police Patrolmen's Association v. City of Cleveland
22. Case 04-ULP-07-0398 Lori Rutkowski v. Ohio Council 8, American Federation of State, County and Municipal Employees Local 2058, AFL-CIO
23. Case 04-ULP-06-0345 Lewis J. Tarsha v. Ohio Council 8, American Federation of State, County and Municipal Employees, Local 544-01, AFL-CIO
24. Case 04-ULP-07-0381 International Union of Police Associations, AFL-CIO Local 45 v. City of Perrysburg and Chief of Police Richard A. Gilts
25. Case 04-ULP-06-0293 Ohio Patrolmen's Benevolent Association v. City of Galion

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| 26. | Case | 04-ULP-06-0320 | <u>Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO v. Dayton Public Schools Board of Education</u> |
| 27. | Case | 04-ULP-07-0411 | <u>Canton Professional Fire Fighters Association, Local 249, IAFF v. City of Canton</u> |
| 28. | Case | 04-ULP-05-0281 | <u>International Association of EMT's and Paramedics, Local R7-11 v. Delaware County Emergency Medical Services</u> |

Board Member Verich moved that the Board construe the letters and settlement agreement as motions to withdraw, and grant all motions. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

Vote:	DRAKE <u>Aye</u>	GILLMOR <u>Aye</u>	VERICH <u>Aye</u>
	Affirmed <u>X</u>	Denied <u> </u>	

VI. ADMINISTRATIVE MATTERS

Chairman Drake and Executive Director Snyder reported on the annual conference of the Association of Labor Relations Agencies (ALRA) they attended in Halifax, Nova Scotia. They both felt it was very worthwhile, as they met many directors and chairmen for the various state labor relations and mediation agencies in the United States and in Canada. They discussed common issues encountered in investigating, prosecuting, and mediating labor disputes, as well as the budget process used in other states. They reported that the State of Oregon's labor relations agency has serious budget problems and is seeking comparative financial information from other states, while the State of Washington is expanding its agency to regulate state employees for the first time. They felt that the State of Ohio was somewhere in the middle compared to the other states dealing with budget problems. Chairman Drake participated in a feedback panel for the ALRA Neutrality Project, a project that will proceed over the next several years, to develop a "black letter" law position paper dealing with neutrality and impartiality issues faced by labor relations agencies. The first part of the project was to identify common issues and propose in a preliminary draft how they might be handled. A revised draft, including conference feedback, will be prepared by the Neutrality Panel, sent back to the agencies for their review, and discussed at the next ALRA Conference to take place in Seattle, Washington. Chairman Drake also noted discussions with other agencies on a number of other issues, e.g., increased health care costs and bargaining, and revenue-generating activities such as charging filing fees, fees for training, and costs for litigation. Board Member Verich asked the Chairman and Executive Director what was one thing they brought back with them that was very instrumental or meaningful to them. Chairman Drake replied that learning from other board members how they are dealing

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Board Member Verich moved that the Board exit from executive session. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the roll-call vote.

ROLL-CALL VOTE: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied

VII. ADJOURNMENT

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

Vote: DRAKE Aye GILLMOR Aye VERICH Aye
Affirmed X Denied



Carol Nolan Drake, Chairman

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