

STATE EMPLOYMENT RELATIONS BOARD

STATE OF OHIO

MINUTES

The State Employment Relations Board met on Thursday, September 15, 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 August 19, 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:

1. Case 04-MED-01-0051                      International Association of Fire Fighters,  
Local 434 and City of Painesville

Board Member Verich moved to table the case due to new information received. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye                      GILLMOR Aye                      VERICH Aye  
Affirmed X                                  Denied   

2. Cases 04-MED-07-0713                      International Union of Police  
04-REP-07-0131                      Associations and Lorain County Sheriff

On July 28, 2004, the Employee Organization filed a notice to negotiate. The Employer filed a motion to stay negotiations involving the Employee Organization. The Employer questioned whether the Employee Organization maintains majority status in the unit. Vice Chairman Gillmor moved that the Board, in Case 04-MED-07-0713, stay the negotiations pending disposition of Case 04-REP-07-0131, and expedite the representation 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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III. REPRESENTATION MATTERS AT ISSUE:

1. Case 04-REP-07-0121 Ohio Patrolmen's Benevolent Association and City of Maple Heights

The Employee Organization filed a 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. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye  
Affirmed X Denied \_\_\_

2. Case 04-REP-04-0068 Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and Greenfield Exempted Village School District Board of Education  
September 29, 2004

3. Case 04-REP-06-0107 Ohio Education Association/National Education Association and Teamsters Local Union No. 284 and Springfield City Schools  
October 8, 2004

Vice Chairman Gillmor moved that the Board approve the Consent Election Agreements and direct elections to be conducted on the dates indicated. 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-10-0198 Ohio Patrolmen's Benevolent Association and Southeastern Ohio Regional Jail
5. Case 03-REP-12-0246 Ohio Patrolmen's Benevolent Association and Jefferson County Sheriff

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6. Case 04-REP-02-0024 Truck Drivers, Chauffeurs and Helpers  
Local Union No. 100 and Lakota Local  
School District

In Case 03-REP-10-0198, the Employee Organization filed an amended Request for Recognition seeking to represent certain employees of the Employer. The Employer responded by filing objections. On June 10, 2004, the Board directed the case to hearing to determine an appropriate bargaining unit and for all other relevant issues, and directed the parties to mediation. As a result of mediation, the Employee Organization filed a letter withdrawing the amended request.

In Case 03-REP-12-0246, the Employee Organization filed a Request for Recognition seeking to represent certain employees of the Employer. The Employee Organization filed a letter seeking to withdraw its request.

In Case 04-REP-02-0024, 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 and objections. The Employee Organization filed a letter withdrawing the petition.

Board Member Verich moved that the Board construe the Employee Organization's letters as motions to withdraw, grant the motions, and dismiss without prejudice the Requests for Recognition. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye                      GILLMOR Aye                      VERICH Aye  
Affirmed X                                  Denied    

7. Case 03-REP-09-0188 Fraternal Order of Police, Ohio Labor  
Council, Inc. and Ohio Patrolmen's  
Benevolent Association and City of  
Middleburg Heights

8. Case 04-REP-07-0116 United Teachers of Old Fort Local  
Schools and Old Fort Local Education  
Association and Old Fort Local Schools

In Case 03-REP-09-0188, the Rival Employee Organization filed a Petition for Representation Election seeking to displace the Incumbent Employee Organization, which is the deemed-certified exclusive representative of certain employees of the Employer. The Rival Employee Organization is seeking to represent all full-time Patrolmen. The Incumbent Employee Organization filed objections maintaining the deemed-certified unit is a unit of all full-time employees occupying the positions of Patrolmen and Sergeants. The Rival Employee Organization responded, asserting the Incumbent Employee Organization and the Employer have voluntarily recognized a unit

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of Patrolmen and a unit of Sergeants as evidenced by two separate and distinct contracts. On June 10, 2004, the Board directed the case to hearing to determine an appropriate bargaining unit and for all other relevant issues. On August 11, 2004, the Rival Employee Organization filed a letter withdrawing the Petition for Representation Election.

In Case 04-REP-07-0116, 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 Rival Employee Organization filed a letter withdrawing the petition.

Vice Chairman Gillmor moved that the Board construe the Rival Employee Organizations' letters as motions to withdraw, grant the motions, and dismiss without prejudice the Petitions 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    

9. Case 04-REP-05-0092                      David Hodgekin and International Union of Operating Engineers, Local #18 and City of Louisville

The Petitioner filed an amended Petition for Decertification Election seeking to decertify the Incumbent Employee Organization, which is the Board-certified exclusive representative for certain employees of the Employer. On August 9, 2004, the Incumbent Employee Organization filed a disclaimer of interest. The parties confirm no contract exists. Board Member Verich moved that the Board grant the disclaimer of interest, revoke the Employee Organization's certification, and dismiss the Petition for Decertification Election as moot. 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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10. Case 04-REP-03-0055 Willoughby Professional Fire Fighters, Local #2291, IAFF and City of Willoughby

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 exclude Captains. The Employee Organization filed a position statement contending Captains are under the direction of, and their work is reviewed by, the Assistant Chief and Chief, who are not in the bargaining unit. The Employer filed a Motion to Withdraw Petition for Amendment of Certification. Vice Chairman Gillmor moved that the Board grant the Employer's motion to withdraw, and dismiss without prejudice the Petition for Amendment of Certification. Board Member Verich seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye  
Affirmed X Denied \_\_\_

11. Case 04-REP-05-0085 Ohio Patrolmen's Benevolent Association and Copley Township, Summit County

The Employee Organization filed a Petition for Clarification of Bargaining Unit seeking to clarify an existing Board-certified unit of employees of the Employer. The Incumbent Employee Organization filed a motion to withdraw. Board Member Verich moved that the Board grant the Incumbent Employee Organization's motion to withdraw, and dismiss without prejudice the Petition for Clarification of Bargaining Unit. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye  
Affirmed X Denied \_\_\_

12. Case 04-REP-03-0050 Erie County Board of Mental Retardation and Developmental Disabilities Employees Association, OEA/NEA and Erie County Board of Mental Retardation and Developmental Disabilities

13. Case 04-REP-08-0134 International Association of Firefighters, Local 136 and City of Dayton

14. Case 04-REP-08-0135 Ohio Patrolmen's Benevolent Association and City of Middleburg Heights

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15. Case 04-REP-08-0146 North Canton Professional Firefighters and Paramedics Association, IAFF Local 3489 and City of North Canton

In Case 04-REP-03-0050, 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 certification pursuant to Ohio Revised Code § 5126.15(A) to create a separate bargaining unit for Habilitation Specialists aka Service and Support Managers. The Employee Organization filed a response agreeing with the proposed amendment.

In Case 04-REP-08-0134, 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 Professional Firefighters.

In Case 04-REP-08-0135, the Employee Organization is the deemed-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 bargaining unit to create a separate unit for Sergeants.

In Case 04-REP-08-0146, the Employee Organization is the Board-certified exclusive representative of certain employees of the Employer. The parties jointly filed a Petition for Amendment of Certification seeking to amend the certification to change the Employee Organization's name to North Canton Professional Firefighters and Paramedics Association, IAFF Local 3489.

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

Vote: DRAKE Aye GILLMOR Aye VERICH Aye  
Affirmed X Denied \_\_\_

16. Case 04-REP-03-00046 General Truck Drivers and Helpers Union Local No. 92 and Lawrence County Clerk of Courts  
October 12, 2004

Board Member Verich moved that the Board approve the Consent Election Agreement and direct an election to be conducted on the date 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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17. Case 04-REP-01-0011 Harrison Part-time Firefighter  
Association and City of Harrison

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 and has now filed a letter seeking to withdraw it. Vice Chairman Gillmor 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 Amendment of Certification. Board Member Verich seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye  
Affirmed X Denied \_\_\_

18. Case 04-REP-04-0074 Mineral Ridge Education Association  
and Weathersfield Teachers Association  
and Weathersfield Local School District  
Board of Education

The Rival Employee Organization filed a Petition for Representation Election seeking to displace the Incumbent Employee Organization, which is the deemed-certified exclusive representative of certain employees of the Employer. The Incumbent Employee Organization filed a motion to intervene and objections. The Rival Employee Organization filed a response requesting SERB overrule the Incumbent Employee Organization's objections and proceed in processing the instant petition and conducting an election. Pursuant to In re City of Port Clinton, SERB 95-002 (2-27-05) and In re City of Cleveland, SERB 88-004 (4-19-88), the Board has maintained that an employee organization is not barred from becoming or seeking to become the exclusive representative of a group of employees simply because its formation is still incomplete, and it lacks a constitution, by-laws, elected officials, and dues. Compliance with the requirements of Ohio Revised Code § 4117.19 is not essential for an organization to become an employee organization under Ohio Revised Code Chapter 4117. Board Member Verich moved that the Board deny the Incumbent Employee Organization's motion to intervene as moot, and direct an election at a date, time, and place to be determined by the Representation Section in consultation with the 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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19. Case 04-REP-02-0023 Unified Support Staff and Social Services and Communication Workers of America, AFL-CIO and Summit County Children Services

The Rival Employee Organization filed a Petition for Representation Election seeking to displace the Incumbent Employee Organization, which is the deemed-certified exclusive representative of certain employees of the Employer. The showing of interest is sufficient. The Incumbent Employee Organization has filed a position statement opposing the petition, maintaining the Interim and Conciliation Agreement serves as a contract bar to the filing of the instant petition, and confirming that the conciliation award has not been issued, and it is not willing to consent to an election.

On June 24, 2004, the Board determined the "Interim and Conciliation Agreement" was a settlement agreement resolving a work stoppage and directed an election to be conducted at a date, time, and place determined by the Representation Section in consultation with the parties. On July 23, 2004, the Incumbent Employee Organization filed a motion to stay the election pending resolution of Case 04-ULP-05-0272. The Incumbent Employee Organization alleges the Employer played a key role in initiating, creating, and forming the Rival Employee Organization. The Incumbent Employee Organization filed a motion for reconsideration on August 9, 2004, asking the Board to reconsider and reverse its prior decision and to apply the contract bar rule to the instant case. The Incumbent Employee Organization maintains the parties incorporated the previously "expired" collective bargaining agreement into the "Interim and Conciliation Agreement" in Paragraph 3, thereby confirming their intentions to be bound by a collective bargaining agreement.

Vice Chairman Gillmor moved that the Board deny the Incumbent Employee Organization's motion to stay the election and motion for reconsideration. 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-REP-05-0084 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and City of Hillsboro

- There were 18 ballots cast
- There were 0 challenged ballots
- No Representative received 0 votes
- Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO received 18 votes and has prevailed in this election.

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21. Case 04-REP-04-0069 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Richland County Commissioners
- There were 4 ballots cast
  - There were 0 challenged ballots
  - No Representative received 0 votes
  - Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO received 4 votes and has prevailed in this election.
22. Case 04-REP-02-0022 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Sharonville
- There were 26 ballots cast
  - There were 0 challenged ballots
  - No Representative received 8 votes
  - Fraternal Order of Police, Ohio Labor Council, Inc. received 18 votes and has prevailed in this election.
23. Case 04-REP-05-0088 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Elyria Health District
- a. Professional (Question 1):
- There were 12 ballots cast
  - There was 1 challenged ballots
  - Noninclusion with nonprofessional employees received 1 vote
  - Inclusion with nonprofessional employees received 10 votes and has prevailed in this election.
- b. Nonprofessional (Question 1):
- There were 9 ballots cast
  - There were 0 challenged ballots
  - Noninclusion with professional employees received 2 votes
  - Inclusion with professional employees received 7 votes and has prevailed in this election.
- c. Combined (Question 2):
- There were 21 ballots cast
  - There was 1 challenged ballot
  - No Representative received 3 votes
  - Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO received 17 votes and has prevailed in this election.

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Board Member Verich moved that the Board certify the election results and certify each prevailing employee organization as the exclusive representative of all employees in the relevant bargaining unit. 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 04-ULP-01-0003                      Transport Workers Union Local 208, AFL-CIO v. Central Ohio Transit Authority
2. Case 04-ULP-04-0209                      International Brotherhood of Teamsters, Chauffeurs, and Warehousemen, Local No. 377, AFL-CIO v. Austintown Township Trustees, Mahoning County
3. Case 04-ULP-03-0183                      Fraternal Order of Police, Ohio Labor Council, Inc. v. City of Newark
4. Case 03-ULP-10-0526                      SERB v. City of Kettering
5. Case 03-ULP-11-0574                      SERB v. Jefferson County Engineer James Branagan
6. Case 03-ULP-11-0605                      SERB v. Ledgemont Local School District Board of Education

Vice Chairman Gillmor moved that the Board approve and adopt the settlement agreements, construe the settlement agreements and letters as motions to withdraw and dismiss, grant all of the motions, dismiss the complaints, 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-04-0234 Bruce Hitterman v. Greater Cleveland Regional Transit Authority
- 04-ULP-04-0235 Bruce Hitterman v. Amalgamated Transit Union, Local 268

In Case 04-ULP-04-0234, the unfair labor practice charge alleged the Employer violated Ohio Revised Code § 4117.11(A)(8) by conspiring with the Union to deny the Charging Party his rights under the contract. Information gathered during the investigation revealed there is no evidence to substantiate a violation occurred, or that the Employer caused or attempted to cause the Union to commit a violation. In Case 04-ULP-04-0235, the unfair labor practice charge alleged the Union violated Ohio Revised Code § 4117.11(B)(6) by conspiring with the Employer to deny the Charging Party his rights under the contract. Information gathered during the investigation revealed the Union's Executive Board and membership voted not to take the grievance to arbitration. The grievance was processed up to Step 4, and no information was provided to show the Union's actions were arbitrary, discriminatory, or in bad faith. Board Member Verich 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 Parties. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye  
Affirmed X Denied \_\_\_

2. Case 04-ULP-03-0254 Hugh P. Gaughan v. National Conference of Firemen and Oilers Local 701, SEIU, SFL-CIO

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(1) and (6) by failing to fairly represent the Charging Party. Information gathered during the investigation revealed the Charged Party and the Employer mutually agreed to extend the time lines of the grievance-arbitration procedure. No information was provided to show the Charged Party's actions were arbitrary, discriminatory, or in bad faith. Vice Chairman Gillmor moved that the Board dismiss the charge for lack of probable cause to believe 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 \_\_

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3. Case 04-ULP-05-0287 Hugh P. Gaughan v. Cleveland City School District

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by not transferring the Charging Party in retaliation for exercising guaranteed rights. Information gathered during the investigation revealed the Charging Party's transfer was denied for reasons other than the Charging Party exercising guaranteed rights. 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 Party. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye  
Affirmed X Denied   

4. Case 04-ULP-05-0284 Transport Workers Union, AFL-CIO, Local 208 and Steve Stanton v. Central Ohio Transit Authority

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by retaliating against Mr. Stanton for his exercise of guaranteed rights. Information gathered during the investigation revealed Mr. Stanton may have been disciplined for engaging in protected activities, and a credibility issue exists on Mr. Stanton's conduct at the meeting. 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(A)(1) and (3) by interfering with and disciplining the union representative for engaging in protected activity, 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

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5. Case 04-ULP-06-0313 Fraternal Order of Police, Lodge #25 v. City of North Olmsted

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by failing to bargain in good faith. Information gathered during the investigation revealed the Charged Party did not engage in bad-faith bargaining when it made the statement regarding wage increases. The wage increases for Charged Party's officials were set approximately two years earlier, and no other bargaining-unit employees received raises. 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   

6. Case 04-ULP-04-0217 Robert A. Howard v. Lorain County Sheriff Employees Association, IUPA

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(1) by failing to fairly represent the Charging Party. Information gathered during the investigation revealed the Charged Party's decision not to pursue the Charging Party's grievance to arbitration is based on its merits, and the Charged Party's actions were not arbitrary, discriminatory, or in bad faith. 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. Board Member Verich seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye  
Affirmed X Denied   

7. Case 04-ULP-04-0229 Columbus Municipal Association of Government Employees/ Communications Workers of America, Local 4502 v. City of Columbus

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(2) and (6) by attempting to stop the Charging Parties representing their members. Information gathered during the investigation revealed there is no evidence to support an attempt to manipulate the bargaining-unit occurred, or that an Ohio Revised Code § 4117.11(A)(6) 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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8. Case 04-ULP-06-0314 Ohio Patrolmen's Benevolent Association v. City of Norton

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally prorating the clothing allowance for bargaining-unit employees. Information gathered during the investigation revealed the matter is strictly contractual with no statutory issues. 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. Board Member Verich seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye                      GILLMOR Aye                      VERICH Aye  
Affirmed X                                  Denied   

9. Case 04-ULP-03-0192 Communications Workers of America, Local 4501 v. Ohio Secretary of State

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally failing to post and/or fill positions in the bargaining unit after the positions were vacated. Information gathered during the investigation revealed that although the Charged Party does not have an obligation to fill vacant positions, it may have violated the statute by reassigning bargaining-unit duties outside the unit. 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) by reassigning bargaining-unit work to employees outside of the unit, 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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10. Case 04-ULP-02-0112 Barberton City School District Board of Education v. Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 140

The unfair labor practice charge alleged the Charged Parties violated Ohio Revised Code § 4117.11(B)(5) and (8) by inducing and encouraging bargaining-unit members to engage in an illegal partial strike by their refusal to perform their duties. Information gathered during the investigation revealed no concerted effort by the bus drivers took place due to any actions of the Charged Parties. Each driver acted individually based upon perceived unsafe driving conditions. 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 Parties. Board Member Verich seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye  
Affirmed X Denied   

11. Case 04-ULP-06-0339 Service Employees International Union, District 1199 v. State of Ohio, Department of Rehabilitation and Correction

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   

12. Case 04-ULP-06-0371 Woodridge Local School District Board of Education v. Woodridge Education Association, OEA/NEA

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(1) and (3) by bargaining in bad faith. Information gathered during the investigation revealed no specific proposals were discussed, and no action was requested of the Charging Party in the letter. 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. 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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13. Case 04-ULP-07-0406 City of Cleveland v. Municipal Construction Equipment Operator's Labor Council

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(3) by dealing directly with City Council during negotiations. Information gathered during the investigation revealed the Charged Party admits it dealt directly with City Council to get it to change its vote 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(B)(3) by bypassing the designated bargaining representative and dealing directly with City Council. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

Vote: DRAKE Aye                      GILLMOR Aye                      VERICH Aye  
Affirmed X                                  Denied   

14. Case 04-ULP-06-0324 Chris Nelson v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO

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

Vote: DRAKE Aye                      GILLMOR Aye                      VERICH Aye  
Affirmed X                                  Denied   

15. Case 04-ULP-07-0379 International Brotherhood of Teamsters Local Union No. 436 v. Ohio Turnpike Commission

16. Case 04-ULP-07-0405 Ohio Council 8, American Federation of State, County and Municipal Employees, Local 1350, AFL-CIO v. City of Akron

17. Case 04-ULP-07-0434 Miami East Association of Support Personnel, OEA/NEA v. Jeffrey K. Lewis, Superintendent, Miami East Local School District

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18. Case 04-ULP-04-0230 International Brotherhood of Teamsters  
Local Union No. 100 v. Lakota Local  
School District Board of Education

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 Aye GILLMOR Aye VERICH Aye  
Affirmed X Denied   

19. Case 04-ULP-04-0206 Cuyahoga County Community Health  
Board v. Ohio Association of Public  
School Employees, AFSCME Local 328,  
AFL-CIO

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(3) by bargaining in bad faith when it attempted to circumvent the interest-based-bargaining procedure and ground rules. Information gathered during the investigation revealed the Charged Party did not use negotiation techniques to frustrate or avoid mutual agreement and, therefore, was not bargaining in bad faith. The Charging Party did not demonstrate harm to itself to substantiate the failure-to-represent allegation. 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. Board Member Verich seconded the motion. Chairman Drake called for any discussion, and asked Mediation Administrator Dale Zimmer if he and Mediator Tony Naess had worked with these parties. Mr. Zimmer responded that he and Mr. Naess had worked with the parties to set up a Labor Management Committee. Mr. Zimmer noted that a federal mediator was involved now with the parties. Chairman Drake called for the vote.

Vote: DRAKE Aye GILLMOR Aye VERICH Aye  
Affirmed X Denied   

20. Case 04-ULP-05-0279 Ohio Association of Public School  
Employees (OAPSE)/AFSCME Local 4,  
AFL-CIO v. Cuyahoga County  
Community Health Board

Board Member Verich moved that the Board remand the case back to the Investigator for further investigation. 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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- |     |      |                |   |
|-----|------|----------------|---|
| 21. | Case | 04-ULP-07-0392 | <u>Champion School Support Association,<br/>OEA/NEA v. Champion Local School<br/>Board of Education</u>                                 |
| 22. | Case | 04-ULP-06-0294 | <u>Ryan Tanner v. Galion City School<br/>District Board of Education</u>  |
| 23. | Case | 04-ULP-07-0395 | <u>Newton Falls Association of Classified<br/>Employees v. Newton Falls Exempted<br/>Village School District Board of<br/>Education</u> |
| 24. | Case | 04-ULP-07-0396 | <u>Mark Myers v. Newton Falls Exempted<br/>Village School District Board of<br/>Education</u>   |

Vice Chairman Gillmor moved that the Board grant all of the motions to withdraw with prejudice. Board Member Verich 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

Executive Director Pat Snyder reviewed some computer issues with the Board. The agency received quotes for network support services in FY 2005 from computer vendors that are on state term schedules: Babbage Simmel, Sophisticated Systems, Inc. (SERB's current vendor), SARCOM, and Grant Saint John. The lowest quote came from Babbage Simmel, a contractor that is willing to continue current services at the rate of \$50.00 per hour. Sophisticated Systems' quote was \$65.00 per hour, SARCOM's quote was \$70.00, and Grant Saint John's quote was \$78.50. SERB's Fiscal Officer Sandy Stiffler and Executive Director Snyder met with representatives of Babbage Simmel and the administrator who would regularly be assigned to SERB, Mr. Sayfullah Sayfee. They were provided resumes as well as references from Babbage Simmel, which were all positive about the service they received and the integrity of the billing process. Sophisticated Systems' references were also checked and were positive. Board Member Verich asked Executive Director Snyder whether she felt that Babbage Simmel could meet our needs and duties well as Sophisticated Systems had, and how their references had checked out. Executive Director Snyder stated that Babbage Simmel does meet our requirements, their references were checked out, and we had positive feed back on response time, willingness to go beyond the requirements, and billing practices. Based on that, she recommended to the Board that SERB contract with Babbage Simmel to provide network support to the Agency. Vice Chairman Gillmor moved to authorize Babbage Simmel to provide network support to the agency under its state term schedule for the remainder of FY '05, at a rate of \$50.00 per hour, in an amount not to exceed \$43,750.00, such support to begin on Friday, September 17, 2004. Board Member

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Verich seconded the motion. Chairman Drake called for any discussion. Executive Director Snyder stated that if the Board approves this recommendation she would like to tell Mr. Sommer the Board authorized this change and to reassure him that the change occurred because of budget issues and not because of him or his services, and that Sophisticated Systems had been very helpful to the agency. She said she would intend to inform him and then the staff later in the day if a change were made. 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>	

Executive Director Snyder also discussed computer hardware/software purchases. As a result of several computer hard-drive and tower failures, she recommended that the Board authorize the purchase of three new towers and two new hard drives so that the agency can avoid down-time as it works with the remaining aging equipment in use. One vendor has given the agency a quote, and SERB will acquire at least three quotes before they purchase any equipment. The funds would come from the FY 2005 equipment budget of \$15,000.00. Board Member Verich moved to authorize the expenditure of funds not to exceed \$2,200 for the purchase of three new computers and two new hard drives as specified in SERB's Request for Quotes for Computer Equipment dated September 10, 2004. 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>	

Executive Director Snyder reported that Bill Sommer had recommended that back-up software for SERB's e-mail system be upgraded because the current back-up software does not run well with the new servers. Upgrading the software should eliminate further problems. Executive Director Snyder was also advised that the network administrators from Babbage Simmel possesses advanced knowledge in Microsoft Exchange and Microsoft Outlook, and could quickly review the upgrade recommendation.. If he concurs with the recommended purchase, she recommended that the agency quickly purchase this software. A supplier has already furnished SERB a price of \$1,045.00 to purchase the needed software. Board Member Verich moved to authorize, upon the concurrence of our FY 2005 network administrator and the review of at least three quotes, the purchase of an upgrade to the current Veritas Backup Exec version 8.5 software, or a comparable competitive upgrade, not to exceed \$1,050.00, so that SERB's e-mail system is adequately backed up. 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>	

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Executive Director Snyder reported that Intellinetics had requested the agency amend its agreement so that it would pay 70% of the invoice for the installation of its Optical Character Recognition (OCR) system now and the balance when all documents in our database had been processed for OCR treatment and finally tested. Intellinetics projects that it will be early October 2004 before all our data will be processed. She said that although the software had been installed and the funds had been allocated from our FY 2004 budget, she did not want to authorize this arrangement without the Board's knowledge and approval since our database is large and the OCR system is new. She also noted that there are still some outstanding issues with another Intellivue upgrade that has been installed and paid for. No motion was offered to authorize partial payment before final testing.

The Board Members indicated they are still reviewing the FY 2005 Section Goals, which they had received earlier in the week. They will discuss them further at the next board meeting.

Chairman Drake and Executive Director updated the Board on the SERB's 20<sup>th</sup> Anniversary Developing Labor Law Forum. They are putting the agenda together and have asked former Board Members to attend as panelists. Among those accepting are former Board Chairman Donna Owens and former Board Members Jane Latané, Chauncey Mason, and Eugene Brundige. Other speakers include former SERB Executive Director John Looman, attorneys Jonathan Downes, Gary Johnson, Joseph Hegedus, Bob Weisman, and retired Assistant Ohio Attorney General Dennis Morgan. Many former staff members will also be invited to attend. Vice Chairman Gillmor will be introducing Board Member Michael Verich as a Keynote speaker. Chairman Drake also said they are applying for Continuing Legal Education (CLE) credits from the Ohio Supreme Court.

Executive Director Snyder informed the Board that the 2004 Health Insurance Surveys have been sent out, and that we are receiving many of them via fax. The fiscal office will be inputting all of the data received into the 2004 Health Insurance Cost Survey which will be distributed later.

Executive Director Snyder reported that SERB's 2004 Annual Report is at the printer and will be available for distribution soon.

Executive Director Snyder updated the Board on the status of the Administrative Assistant 1 (AA1) and Labor Relations Specialist 1 (LRS 1) postings. At this time there are more than 200 applications submitted for the AA1 position, and they are being reviewed. There have been about 235 applications submitted and reviewed for the LRS 1 position, and interviews will start next week for this position.

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Executive Director Snyder noted that budget book language is due at OBM today and is to consist of SERB's description and services provided. Chairman Drake mentioned that all of the services the agency provides are very important and should not be ranked in any priority order, as the statute does not prioritize them. Vice Chairman Gillmor suggested that it should be reported that due to a reduction in staff from 52 to 28 and budget cuts, our agency is still complying with rules and regulations the law sets forth for our agency.

Executive Director Snyder discussed some recommendations of the newly formed Health and Wellness committee, including converting an empty window office into an exercise room with equipment, exercise such as weights and mats provided by employees. The Board liked the idea of promoting good health. Vice Chairman Gillmor suggested that interior office be used for the exercise room instead so that the window office could be assigned to an employee. This suggestion will be given to the committee.

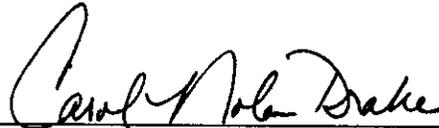
Executive Director Snyder also advised the Board that the Web Page Design committee has been exploring the idea of designing a new web-site for SERB and showed Board members a prototype designed by Mediator Debbie McCormack, who has designed web pages professionally and offered to update SERB's on a comp-time basis so that her mediation work will not be interrupted. Executive Director Snyder invited the Board's feedback on the design.

Finally, it was announced that the November 9, 2004 meeting will be changed to November 5, 2004, still at 10:00 A.M.

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