

State Employment Relations Board
State of Ohio

November 23, 2004
Minutes

The State Employment Relations Board met on Tuesday, November 23, 2004, at 10:02 a.m., at 65 East State Street, Columbus, Ohio. Present at the meeting were Chairman Drake, Vice Chairman Gillmor, and Board Member Verich.

I. APPROVAL OF MINUTES OF THE PREVIOUS MEETING:

Vice Chairman Gillmor moved that the Board approve the minutes of the November 5, 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 that this case be lifted from the table. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

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

The Employer filed a letter July 23, 2004, in which it objected to the finding of the Bureau of Mediation that it had accepted a Fact-Finding Report issued on June 17, 2004, and requested that the Board determine whether the Employer's certification showing acceptance, accompanied by two additional documents indicating rejection, constituted a valid rejection within the meaning of Ohio Administrative Code Rule 4117-9-05(N). On July 28, 2004, the Employee Organization filed a response in opposition to the request. On October 14, 2004, the Board tabled the matter and ordered the filing of briefs on the issue of whether the Employer's certification that the fact-finding vote had been accepted constitutes a technical defect that the Board may exercise its discretion to waive under the authority of Ohio Administrative Code Rule 4117-1-02(E), with specific attention to whether undue prejudice would result from such an exercise of discretion. The briefs have been received and reviewed. Vice Chairman Gillmor moved to deny the Employer's request that the fact-finder report be deemed rejected, and to uphold the Bureau of Mediation's determination that the report was accepted by the Employer and deemed accepted by the Employee Organization.

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2. Case 03-REP-11-0219 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Chardon

The Employee Organization filed a 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 parties entered into a Settlement Agreement whereby the Employer withdrew the objections and agreed to voluntarily recognize the Employee Organization. The Employee Organization filed an amended Request for Recognition. The substantial evidence is sufficient. The Employer has complied with the posting requirements set forth in Ohio Revised Code § 4117.05(A)(2). Vice Chairman Gillmor moved that the Board approve the Settlement Agreement, 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

3. Case 04-REP-09-0177 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Springboro
December 6, 2004

4. Case 04-REP-08-0136 Ohio Patrolmen's Benevolent Association and Fraternal Order of Police, Ohio Labor Council, Inc. and City of Oakwood
December 8, 2004

5. Case 03-REP-11-0224 Teamsters Local Union No. 413 and Southwest Licking School District
December 10, 2004

Board Member Verich moved that the Board approve the Consent Election Agreements and direct elections to be conducted on the dates 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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6. Case 04-REP-08-0148 Liberty Township Professional Fire
Fighters, IAFF Local 4394 and Liberty
Township, Butler County

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. A conference call was conducted for the purpose of executing a consent election agreement. The parties have reached an agreement concerning an appropriate bargaining unit, but the Employer wants to postpone the election until after the hiring of a substantial number of new employees. The substantial evidence is sufficient. No objections have been filed. The Employer has complied with the posting requirements set forth in Ohio Revised Code § 4117.05(A)(2). The parties have not presented any questions of representation that warrant a hearing. Vice Chairman Gillmor moved that the Board direct an election to be conducted at a date, time, and place to be determined by the Representation Section in consultation with the parties. 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-REP-09-0170 F.O.P. Local #38 and Fraternal Order of
Police, Ohio Labor Council, Inc. and City of
Oxford

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 Incumbent Employee Organization filed a position statement. The Rival Employee Organization filed a letter withdrawing its petition. Board Member Verich moved that the Board construe the Rival Employee Organization's letter as a motion to withdraw, grant the motion, and dismiss without prejudice the Petition for Representation Election. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

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

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- 8. Case 04-REP-08-0133 Ohio Association of Public School Employees, AFL-CIO (OAPSE) and Washington County Board of Mental Retardation and Developmental Disabilities
- 9. Case 04-REP-09-0163 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Hocking County Department of Job and Family Services
- 10. Case 04-REP-10-0190 East Liverpool Education Association, OEA/NEA and East Liverpool City School District Board of Education
- 11. Case 04-REP-10-0193 Ohio Association of Public School Employees, AFL-CIO (OAPSE) and Its Local 351 and Tri-Valley Local School District Board of Education
- 12. Case 04-REP-10-0196 Clark-Shawnee Local Education Association, OEA/NEA and Clark-Shawnee Local School District Board of Education

In Case 04-REP-08-0133 the parties jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to exclude the Cook position, which is vacant.

In Case 04-REP-09-0163 the parties jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to reflect current contract language.

In Case 04-REP-10-0190 the parties jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to include Athletic Director.

In Case 04-REP-10-0193 the parties jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to include Technology Technician.

In Case 04-REP-10-0196 the parties jointly filed a Petition for Amendment of Certification seeking to amend the certification to change the Employer's and Employee Organization's names, and to reflect current contract language.

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

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13. Case 04-REP-09-0180 Ohio Patrolmen's Benevolent Association and Sylvania Township, Lucas County

The Employer filed a Petition for Amendment of Certification seeking to exclude Captain. The Employer filed a letter to withdraw the petition. Board Member Verich moved that the Board construe the Employer's letter as a motion to withdraw, grant the motion, and dismiss without prejudice the Petition for Amendment of Certification. 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-REP-04-0081 Ohio Patrolmen's Benevolent Association and City of Solon

- There were 2 ballots cast
- There were 0 challenged ballots
- No Representative received 0 votes
- Ohio Patrolmen's Benevolent Association received 2 votes and has prevailed in this election.

15. Case 04-REP-07-0115 Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and Manchester Local School District Board of Education

- There were 29 ballots cast
- There were 0 challenged ballots
- No Representative received 4 votes
- Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO received 25 votes and has prevailed in this election.

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16. Case 04-REP-07-0126 Clayton Professional Firefighters, IAFF
Local 4379 and City of Clayton

- There were 4 ballots cast
- There were 0 challenged ballots
- No Representative received 0 votes
- Clayton Professional Firefighters, IAFF Local 4379 received 4 votes and has prevailed in this election.

Vice Chairman Gillmor 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. Board Member Verich 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-02-0110 Perkins Township Firefighters, Local 1953,
AFL-CIO v. Perkins Township Trustees,
Erie County

On February 25, 2004, unfair labor practice charges were filed. On July 22, 2004, the Board found probable cause to believe violations of O.R.C. § 4117.11(A)(1), (3), and (5) had occurred, authorized the issuance of a complaint, referred the matter to an expedited hearing, and directed the parties to unfair labor practice mediation.

The Charging Party filed a "Notice of Dismissal of Portion of Unfair Labor Practice Charge." In the notice, the Charging Party is withdrawing the O.R.C. § 4117.11(A)(1) and (5) allegations related to bargaining in bad faith and dealing directly with bargaining-unit members. The Charging Party is not withdrawing the O.R.C. § 4117.11(A)(1) and (3) allegations related to retaliating against Union Secretary Lisa Fox in response to filing grievances. With the withdrawal of the bargaining allegations, this charge no longer fits within the O.R.C. § 4117.15(B) requirement for an expedited hearing.

Board Member Verich moved that the Board construe the "Notice of Dismissal of Portion of Unfair Labor Practice Charge" as a motion to withdraw, grant the motion, dismiss with prejudice the O.R.C. § 4117.11(A)(1) and (5) allegations related to bargaining in bad faith and dealing directly with bargaining-unit members, and refer the remaining O.R.C. § 4117.11(A)(1) and (3) allegations to a hearing. 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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2. Case 04-ULP-07-0413 Union Local Association of Classroom Teachers, OEA/NEA v. Union Local School District Board of Education
- Case 04-ULP-07-0414 Laura E. Patrone v. Union Local School District Board of Education

In Case 04-ULP-07-0413 the unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (2) by attempting to interfere with the administration of the union by laying off Ms. Patrone, President-Elect for the 2004-05 school year. In Case 04-ULP-07-0414 the Charging Party alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by laying her off in retaliation for exercising her guaranteed rights. The Charged Party filed a motion to defer. The investigation reveals the Charging Party did exercise her guaranteed rights with the Employer's knowledge, and the timing of the lay-off is suspect. Vice Chairman Gillmor moved that the Board deny the motion to defer, find probable cause to believe an unfair labor practice has been committed, coordinate 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(A)(1) and (3), but not (2), by laying off Laura Patrone in retaliation for exercising her guaranteed rights, 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

3. Case 04-ULP-09-0498 David E. Spondike, PhD. v. Akron City School District Board of Education

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) by interfering with the Charging Party's rights. The investigation reveals the Charged Party's action of entering into a grievance settlement agreement does not violate the Charging Party's rights. 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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4. Case 04-ULP-09-0499 David E. Spondike, PhD. v. Akron Education Association, Bill Siegerth

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(B)(6) by failing to fairly represent the Charging Party. The investigation reveals the Charged Party's action of assisting one member in a grievance settlement which impacted the Charging Party is 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

5. Case 04-ULP-09-0493 Ohio Patrolmen's Benevolent Association v. Huron County Commissioners and Terry Boose

The unfair labor practice charge alleges the Charged Parties violated Ohio Revised Code § 4117.11(A)(1) and (5) by interfering with employee rights by refusing to bargain in good faith. The investigation reveals Mr. Boose was not an agent or representative of the employer during negotiations, and the comments made were not regarding specific items on the table. Board Member Verich moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by the Charged Parties. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

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

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6. Case 04-ULP-04-0211

Edon-Northwest Teacher's Association,
OEA/NEA v. Edon-Northwest Local Board
of Education

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), and (5) by retaliating and discriminating against OEA Local President Mark Blue for engaging in protected activities and attempting to undermine his authority prior to commencement of negotiations. The investigation reveals Mr. Blue is a public employee engaged in protected activity with the Employer's knowledge and was disciplined and given a low evaluation. No information was provided to support the O.R.C. 4117.11(A)(5) violation. 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), but not (5), by reprimanding Mark Blue and giving him unsatisfactory marks on his evaluation in retaliation for engaging in protected activities, and direct the parties to ULP mediation. Board Member Verich seconded the motion. Chairman Drake asked if the Charged Party had responded to the allegations. Investigations Administrator Alan Bonham confirmed the Charged Party failed to respond to the charge or requests for information. Chairman Drake called for the vote.

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

7. Case 04-ULP-04-0232

Ohio Patrolmen's Benevolent Association
v. Delaware County Sheriff

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), and (5) by retaliating against employees for filing a grievance and renegeing on a grievance settlement. The investigation reveals no bargaining was required, the standard operating procedure is covered under the contract, no settlement agreement was signed, and the Charged Party has the authority to grant or deny leave. 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-05-0248 Canton Professional Fire Fighters, Local 249, IAFF v. City of Canton – Division of Fire and Fire Chief James W. Scott, Jr.

The unfair labor practice charge alleges the Charged Parties violated Ohio Revised Code § 4117.11(A)(1) and (3) by removing Captain Vince Harris and Fire Fighter/Paramedic Marc Jackson from the City's HAZ/MAT team because they filed a grievance. The investigation reveals the charge is untimely. Vice Chairman Gillmor moved that the Board dismiss the charge with prejudice as untimely filed. 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-05-0288 Lorain City Schools Association of Classified Personnel, OEA/NEA v. Lorain City School District Board of Education

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (6) by establishing a pattern or practice of failing to timely process grievances and requests for arbitration. The investigation reveals the Charged Party did establish a practice of failing to timely process or refusing to process grievances. Board Member Verich moved that the Board find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, refer the matter to hearing to determine if the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (6) by establishing a pattern or practice of failing to timely process grievances and requests for arbitration, 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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12. Case 04-ULP-04-0215

James G. Sweeney, et al. v. Cuyahoga
County Support Enforcement Agency

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally implementing performance standards and determining core work hours that eliminated flex time options. The investigation reveals the Charged Party's rights to be represented were interfered with through the Charged Party's unilateral action. Mr. Sweeney lacks standing to file the O.R.C. § 4117.11(A)(5) violation. The allegations regarding flex time and core work hours are strictly contractual. 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), but not (5), by unilaterally implementing performance standards, direct the parties to ULP mediation, and dismiss the allegations concerning flex time, core work hours, and scheduling. Board Member Verich seconded the motion. Chairman Drake called for the vote.

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

13. Case 04-ULP-07-0419

International Union of Operating
Engineers, Local 603 v. City of Shelby

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

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Follow-up on Rules Hearing

General Counsel Russ Keith reported that comments filed at the Rules Hearing by Attorney Bob Walter, representing several employee organizations, were being forwarded to JCARR .

Legislative Meetings

Chairman Drake said she intended to set up meetings with the new leadership in the General Assembly at their convenience after the first of the year, to cover our budget request.

2005 Board Meeting Schedule

Executive Director Snyder distributed the 2005 Board Meeting schedule and asked the Board for approval to publish. All Board members were in agreement and the 2005 schedule will be published.

Off-site Storage Project

Executive Director Snyder stated that the office to be used for Health and Wellness needed to be cleared of boxes that are stored there. A temporary employee would be brought in to inventory the contents of the boxes to allow for off-site storage.

Holiday Potluck

Executive Director Snyder stated the holiday potluck will be Tuesday, December 7 after the Board Meeting.

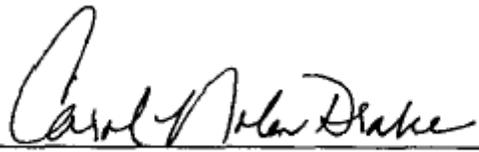
Board Holiday Event

Chairman Drake stated the after-work holiday event for SERB staff and invited guests will be December 17, 2004, starting at 5:30 p.m.

VII. ADJOURNMENT

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

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



Carol Nolan Drake, Chairman