

State Employment Relations Board
State of Ohio

December 7, 2004
Minutes

The State Employment Relations Board met on Tuesday, December 7, 2004, at 10:00 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 previous 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. Cases 04-MED-08-0761 Fraternal Order of Police, Lodge No. 139
04-REP-09-0185 and Summit County Sheriff

Board Member Verich moved that the Board grant the Employer's motion to stay negotiations pending disposition of Case 04-REP-09-0185, and expedite the processing of the representation case. 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-10-1071 Fraternal Order of Police, Ohio Labor
04-REP-09-0162 Council, Inc. and City of Euclid

Vice Chairman Gillmor moved that the Board grant the Employer's motion to stay negotiations pending disposition of Case 04-REP-09-0162, and expedite the processing of 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 _____

3. Cases 04-MED-10-1093 Fraternal Order of Police, Ohio Labor
04-REP-09-0169 Council, Inc. and City of Miamisburg

Board Member Verich moved that the Board grant the Employer's motion to stay negotiations pending disposition of Case 04-REP-09-0169, and expedite the processing of the representation case. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

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

State Employment Relations Board
December 7, 2004
Board Meeting Minutes
Page 2 of 14

4. Cases 04-MED-10-1123 Fraternal Order of Police, Ohio Labor
04-REP-09-0158 Council, Inc. and Ashtabula County Sheriff

Vice Chairman Gillmor moved that the Board grant the Employer's motion to stay negotiations pending disposition of Case 04-REP-09-0158, and expedite the processing of 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 _____

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 04-REP-10-0194 Mineral Ridge Education Association and
Weathersfield Board of Education

The Employee Organization filed a Request for Recognition seeking to represent certain employees of the Employer. The substantial evidence is sufficient, and no objections have been filed. 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-10-0200 Lancaster School Support
Association/OEA/NEA and Lancaster City
Schools

3. Case 04-REP-11-0203 Ohio Patrolmen's Benevolent Association
and Sylvania Township, Lucas County

State Employment Relations Board
December 7, 2004
Board Meeting Minutes
Page 3 of 14

4. Case 04-REP-11-0211 Weaver Workshop and Support Association/OEA/NEA and Summit County Board of Mental Retardation and Developmental Disabilities

In Case 04-REP-10-0200 the parties jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to exclude Office Assistant for Information Technology, Office Assistant for Pupil Personnel, and Assistant Payroll Clerk.

In Case 04-REP-11-203 the parties jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to exclude Captain.

In Case 04-REP-11-0211 the parties jointly filed a Petition for Amendment of Certification seeking to amend the existing unit 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

5. Case 04-REP-09-0172 Social Agencies Employees Union, District 1199 Service Employees International Union (SEIU), AFL-CIO and Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and Cleveland Heights City School District Board of Education

Board Member Verich moved that the Board remand this case to the Representation Section for further investigation, specifically addressing the first prong of the test in *In re Montgomery County Joint Vocational School Dist Bd of Ed*, SERB 89-010 (5-11-89). Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

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

State Employment Relations Board
December 7, 2004
Board Meeting Minutes
Page 4 of 14

6. Case 03-REP-11-0224 Teamsters Local Union No. 413 and Southwest Licking School District

The Board directed an election pursuant to a Consent Election Agreement on November 23, 2004, in anticipation of receiving an executed consent form from the Employee Organization. The Board has not received an executed consent form from the Employee Organization. The Employee Organization states it has not reached an agreement concerning an appropriate bargaining unit. Vice Chairman Gillmor moved that the Board rescind the November 23, 2004 Direction to Election pursuant to a Consent Election Agreement, and direct the matter to hearing to determine an appropriate bargaining unit and for all other relevant issues. 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-06-0103 International Brotherhood of Teamsters Local Union No. 957, AFL-CIO and City of Trotwood

- There were 10 ballots cast
- There were 0 challenged ballots
- No Representative received 3 votes
- International Brotherhood of Teamsters Local Union No. 957, AFL-CIO received 7 votes and has prevailed in this election.

8. Case 04-REP-08-0137 International Brotherhood of Teamsters Local Union No. 957, AFL-CIO and City of Trotwood

- There were 3 ballots cast
- There were 0 challenged ballots
- No Representative received 0 votes
- International Brotherhood of Teamsters Local Union No. 957, AFL-CIO received 3 votes and has prevailed in this election.

State Employment Relations Board
December 7, 2004
Board Meeting Minutes
Page 5 of 14

9. Case 04-REP-06-0110 Andrew Deikun and Plumbers and Pipefitters Local Union 219 and Summit County General Health District

- There were 16 ballots cast
- There were 0 challenged ballots
- Plumbers and Pipefitters Local Union 219 received 2 votes
- No Representative received 14 votes and has prevailed in this election.

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

On June 17, 2003, an unfair labor practice charge was filed alleging that the Respondent had violated Ohio Revised Code Sections 4117.11(A)(1) and (A)(5). On October 1, 2003, the Board found probable cause to believe an unfair labor practice had been committed and directed the unfair labor practice case to hearing. On August 5, 2004, the Board adopted the Findings of Fact, Analysis and Discussion, and Conclusions of Law in the Administrative Law Judge's Proposed Order, finding that the Respondent had engaged 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. On August 9, 2004, the Board issued its Order, with a Notice to Employees, to the Respondent. On September 27, 2004, the Charging Party filed a motion to show cause, contending that the Respondent has failed to comply with the terms of the Board's Order. The Respondent did not file a response to the motion.

Vice Chairman Gillmor moved that the Board direct this matter to a show cause hearing to determine whether the Respondent has complied with the Board's Order and, if not, what acts must be taken to be in compliance. Board Member Verich seconded the motion. Chairman Drake called for the vote.

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

State Employment Relations Board
December 7, 2004
Board Meeting Minutes
Page 6 of 14

2. Case 04-ULP-03-0148 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 778 v. Akron City School District Board of Education

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

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

3. Case 04-ULP-06-0352 Ohio Patrolmen's Benevolent Association v. Chester Township, Geauga County

Vice Chairman Gillmor moved that the Board construe the Charging Party's letter as a motion to withdraw, grant the motion, and dismiss with prejudice the unfair labor practice charge. Board Member Verich 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. Case 04-ULP-06-0336 Service Employees International Union, District 1199 v. State of Ohio, Department of Rehabilitation and Correction, Chillicothe Correctional Institution

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (6) by establishing a pattern of interfering with the timely processing of grievances. The investigation reveals no evidence was provided to demonstrate the Charged Party repeatedly interfered with the timely processing of grievances. 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

State Employment Relations Board
December 7, 2004
Board Meeting Minutes
Page 7 of 14

2. Case 04-ULP-06-0337 Service Employees International Union, District 1199 v. State of Ohio, Department of Rehabilitation and Correction, Chillicothe Correctional Institution

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (8) by interfering with or coercing bargaining-unit employees in the exercise of their guaranteed rights. The investigation reveals the Charging Party provided information on only one employee who was not entitled to union representation during a counseling session. 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

3. Case 04-ULP-06-0338 Service Employees International Union, District 1199 v. State of Ohio, Department of Rehabilitation and Correction, Chillicothe Correctional Institution

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (6) by failing to follow the terms of a grievance settlement agreement. The investigation reveals no evidence was provided to demonstrate the Charged Party repeatedly failed to process grievances, and the Charged Party did not sign the settlement agreement. 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

State Employment Relations Board
December 7, 2004
Board Meeting Minutes
Page 8 of 14

4. Case 04-ULP-08-0475 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO v. City of Columbus

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by retaliating against Carrie Beach for her exercise of guaranteed rights. The investigation reveals Ms. Beach was engaged in protected activity with the Charged Party's Employer's knowledge and received harm. The Charged Party did not provide a persuasive rebuttal for anti-union animus. 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 retaliating against Carrie Beach for her exercise of 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 _____

5. Case 04-ULP-08-0486 International Union, United Automobile, Aerospace, Agricultural Implement Workers of America, UAW v. Perkins Township Highway Department, Erie County

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by interfering with employee's rights and refusing to bargain. The investigation reveals the Charged Party is refusing to negotiate with the exclusive representative, and a credibility issue exists regarding the comments the Charged Party made. 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 failing to bargain in good faith when it ceased negotiations due to a pending appeal and attempting to interfere with, restrain or coerce employees in the exercise of guaranteed rights. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

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

State Employment Relations Board
December 7, 2004
Board Meeting Minutes
Page 9 of 14

6. Case 04-ULP-10-0570 International Union, United Automobile, Aerospace, Agricultural Implement Workers of America, UAW v. Perkins Township Highway Department, Erie County

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally imposing changes to work conditions, assigning bargaining-unit work outside the bargaining-unit, and interfering with employee's guaranteed rights. The investigation reveals a credibility issue exists in regards to the statements by the Charged Party to the employees. Vice Chairman Gillmor moved that the Board find probable cause to believe an unfair labor practice has been committed, consolidate with Case No. 04-ULP-08-0486, 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 unilaterally imposing changes to working conditions, assigning bargaining-unit work to individuals outside the bargaining unit, and interfering with employees' rights. 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-05-0271 Service Employees International Union, District 1199 and Delegate Tim Studer v. State of Ohio, Department of Rehabilitation and Correction, North Central Correctional Institution and Sheila Goodwin

The unfair labor practice charge alleges the Charged Parties violated Ohio Revised Code § 4117.11(A)(1), (3), (5) and (6) by reposting a position that was awarded to Polly Simpkins. The investigation reveals Ms. Simpkins was harmed by the reposting after she filed a grievance, and her promotion was in jeopardy prior to her filing the grievance. The Charged Parties' actions were a result of pending litigation and the possibility of layoffs, and not because Ms. Simpkins exercise of guaranteed 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 Parties. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

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

State Employment Relations Board
December 7, 2004
Board Meeting Minutes
Page 10 of 14

8. Case 04-ULP-04-0242 United Steelworkers of America, Local 9187 v. Stark County Department of Job and Family Services

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(3), (5) and (6) by failing to follow the collective bargaining agreement and the Ohio Department of Administrative Services' regulations. The investigation reveals no evidence to support the Ohio Revised Code § 4117.11(A)(5) or (6) violation occurred, and the issue is contractual and not a statutory violation. The protected activity for the Ohio Revised Code § 4117.11(A)(3) violation occurred a couple years before the harm. 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 Ohio Revised Code § 4117.11(A)(3) violation. 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-07-0424 Cleveland Association of Rescue Employees, IUPA Local 1975 v. City of Cleveland

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally assigning bargaining-unit work to nonbargaining-unit employees while the parties are in negotiations. The investigation reveals the changes to the type of dispatching work do not have a material effect upon wages, hours, or terms and conditions of employment. The changes fall under management rights of the contract. 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 _____

State Employment Relations Board
December 7, 2004
Board Meeting Minutes
Page 11 of 14

10. Case 04-ULP-10-0565 George Strader, Jr. v. Cincinnati Metropolitan Housing Authority

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by terminating the Charging Party. The investigation reveals the Charged Party was terminated for reasons other than exercising guaranteed rights and the charge is untimely. 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. 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-08-0473 Kim Reiding v. State of Ohio, Department of Mental Retardation and Developmental Disabilities, Tiffin Development Center
12. Case 04-ULP-09-0531 Christina N. Smyth v. City of Toledo
13. Case 04-ULP-09-0519 Antonios Kyriakidis v. International Painters and Allied Trades District Council No. 6 and Jimmy Matowitz
14. Case 04-ERC-09-0006 Antonios Kyriakidis v. International Painters and Allied Trades District Council No. 6

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

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

State Employment Relations Board
December 7, 2004
Board Meeting Minutes
Page 12 of 14

15. Case 04-ULP-04-0236 Terry Brown v. Hamilton County Job and Family Services
16. Case 04-ULP-06-0361 Terry Brown v. Hamilton County Job and Family Services
17. Case 04-ULP-07-0390 Terry Brown v. Ohio Council 8, American Federation of State, County and Municipal Employees, Local 8 and Its Local 1768

Vice Chairman Gillmor moved that the Board construe the Charging Party's requests as Motions for Reconsideration and deny all of the motions with prejudice. 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-ULP-06-0329 Galion Education Association, OEA/NEA v. Galion City School District Board of Education

Board Member Verich moved that the Board grant the motion to withdraw. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

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

19. Cases 04-ULP-07-0409 Marilyn K. Holsopple v. Miami Valley Career Technology Center
04-ULP-07-0410 Marilyn K. Holsopple v. Ohio Federation of Teachers

Vice Chairman Gillmor moved that the Board deny the Charging Party's Motion for Reconsideration 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

