

State Employment Relations Board
Board Meeting Minutes
September 8, 2005

The State Employment Relations Board met on Thursday, September 8, 2005, at 10:05 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 REGULAR MEETING:

Vice Chairman Gillmor moved that the Board approve the minutes for 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

Chairman Drake asked that the approval of minutes of the August 30, 2005 special meeting be deferred until later.

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

1. Cases 05-MED-04-0480 Teamsters Union Local 284 and Columbus
05-REP-07-0105 State Community College

On April 15, 2005, the Employee Organization filed a notice to negotiate. The Employer filed a motion to stay negotiations involving the Employee Organization. The Employer questions whether the Employee Organization maintains majority status in the unit. Board Member Verich moved that the Board stay the negotiations in Case 05-MED-04-0480 pending disposition of Case 05-REP-07-0105, 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

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 05-REP-04-0067 Municipal Foremen & Laborers' Union
Local No. 1099 (Laborers International
Union of North America) and City of
Cleveland

The Employee Organization filed an Opt-in Request for Recognition seeking to represent certain employees of the Employer, and add them to an existing unit. 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). Vice Chairman Gillmor moved that the Board certify the Employee Organization as the exclusive representative of all employees subject to the request, and add them to the Employee Organization's existing unit. 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 05-REP-03-0036 Ohio Patrolmen's Benevolent Association and Delaware County Commissioners
September 27, 2005

The Employee Organization filed a Petition for Representation Election seeking to represent certain employees of the Employer. The Employer responded by filing objections. The parties have entered into a Consent Election Agreement seeking on election on September 27, 2005. Board Member Verich moved that the Board approve the Consent Election Agreement and direct an election to be conducted on September 27, 2005. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

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

3. Case 05-REP-02-0019 Ohio Patrolmen's Benevolent Association and Dayton Public Service Union, Local No. 101, AFSCME, Ohio Council 8 and City of Dayton

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 Employer responded by filing objections. The Rival Employee Organization has now filed a Motion to Dismiss. Vice Chairman Gillmor moved that the Board grant the Rival Employee Organization's motion 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 _____

4. Cases 05-REP-04-0048 District 1199, Service Employees International Union, AFL-CIO, CLC and Board of Education of the Cleveland Municipal School District
05-REP-07-0103 District 1199, Service Employees International Union, SEIU, AFL-CIO, CLC and Cuyahoga County Board of Commissioners
5. Case 05-REP-07-0104 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Richland County Child Support Enforcement Agency
6. Case 05-REP-08-0109 Teamsters Local No. 20 and Ottawa County Commissioners

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7. Case 05-REP-08-0112 Teamsters Local #348 and New Franklin Village

In Case Nos. 05-REP-04-0048 and 05-REP-07-0103, the Employee Organization is the deemed-certified exclusive representative of certain employees of the Board of Education of the Cleveland Municipal School District and the Cuyahoga County Board of Commissioners. The parties have jointly filed Petitions for Amendment of Certification seeking to amend the existing units to reflect current contract language and to change the Employee Organization's name because of reorganization.

In Case No. 05-REP-07-0104, the parties jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to exclude the position of Fiscal Specialist. The parties have advised that the position is occupied and should be excluded because it is a confidential position.

In Case No. 05-REP-08-0109, the parties have jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to reflect current contract language and exclude Building Inspectors, Principal Clerk I, Principal Clerk II, and Records Specialist.

In Case No. 05-REP-08-0112, the parties jointly filed a Petition for Amendment of Certification seeking to amend the certification to change the Employer's name to New Franklin Village.

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

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

8. Case 04-REP-09-0154 Fraternal Order of Police, Ohio Labor Council, Inc. and Miami University

The Employee Organization is the Board-certified exclusive representative of certain employees of the Employer. On August 17, 2005, 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

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9. Case 05-REP-03-0037 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Muskingum County Water Department
- There were 10 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 10 votes and has prevailed in this election.
10. Case 05-REP-01-0016 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Springfield
- There were 15 ballots cast
 - There were 0 challenged ballots
 - No Representative received 2 votes
 - Fraternal Order of Police, Ohio Labor Council, Inc. received 13 votes and has prevailed in this election.
11. Case 05-REP-05-0074 United Steelworkers of America, AFL-CIO-CLC and Fairfield County, Utilities Department
- There were 11 ballots cast
 - There were 0 challenged ballots
 - No Representative received 3 votes
 - United Steelworkers of America, AFL-CIO-CLC received 8 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 _____

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12. Case 04-REP-08-0132 Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and Orange City School District Board of Education

On July 28, 2005, the Board directed an election pursuant to the Consent Election Agreement. The Employee Organization has filed a letter disclaiming interest and requests that the Board cancel the September 13, 2005 election. Vice Chairman Gillmor moved that the Board construe the Employee Organization's letter as a Disclaimer of Interest, grant the disclaimer and cancel the September 13, 2005 election. Board Member Verich seconded the motion. Chairman Drake called for the vote.

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

13. Case 05-REP-03-0035 Bus, Sales, Truck Drivers, Warehousemen & Helpers, Local Union No. 637 and South East Area Transit

The Employee Organization filed a Petition for Amendment of Certification seeking to amend the existing unit to change the Employer's name from Muskingum Authority of Public Transit to South East Area Transit. The Employer has filed a letter stating it does not oppose the change. 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 04-ULP-05-0252 SERB v. City of Cleveland

On May 3, 2004, the Laborers' International Union of North America, Local 1099, ("Intervenor") filed an unfair labor practice charge against the City of Cleveland ("Respondent"). On October 28, 2004, the State Employment Relations Board ("Complainant") 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 unfair labor practice mediation.

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V. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 05-ULP-05-0257 Elizabeth Fecher v. Cincinnati Federation of Teachers

The Charging Party alleges the Charged Party violated Ohio Revised Code §§ 4117.11(B)(1), (2), and (6) by failing to fairly represent all members of the bargaining unit. The investigation reveals the matter involves contract interpretation. The Charged Party's interpretation of the contract being different from some members' interpretation, does not rise to the level of a violation. 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 _____

2. Case 05-ULP-05-0301 Robert Thompson v. University of Cincinnati

The Charging Party alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) by failing to properly serve the Charging Party notice of his termination, and by referring to him as a terrorist. The investigation reveals the Charging Party was able to file a grievance over his termination. The charge is untimely filed. 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 and 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 _____

3. Case 05-ULP-06-0324 Professionals Guild of Ohio v. Butler County Board of Mental Retardation and Developmental Disabilities

The Charging Party alleges the Charged Party violated Ohio Revised Code §§ 4117.11(A)(1) and (5) by engaging in bad faith bargaining. The investigation reveals the parties have engaged in negotiations. Disagreeing with proposals is not a violation of the statute. 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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4. Cases 05-ULP-05-0254 Youngstown State University Association of Classified Employees v. Youngstown State University

The Charging Party alleges the Charged Party violated Ohio Revised Code §§ 4117.11(A)(1), (2), (3), and (8) when the Charged Party's Executive Director used a threatening tone to members conducting union business and ordered them to disperse. The investigation reveals the Charging Party did not notify the area supervisor before conducting union business. The meeting was allowed to continue. The Charged Party's actions do not amount to a violation. Insufficient evidence was provided to support Ohio Revised Code §§ 4117.11(A)(2), (3), or (8) allegations. 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

5. Case 05-ULP-05-0238 International Association of Fire Fighters, Local 1144 v. City of Bay Village

The Charging Party alleges the Charged Party violated Ohio Revised Code §§ 4117.11(A)(1) and (5) by unilaterally deducting retroactive health care costs from past due wages without an agreement or conciliation order. The investigation reveals the conciliator did award the retroactive deduction of health care costs. 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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6. Cases 05-ULP-05-0230 Ohio Patrolmen's Benevolent Association,
Patrol Unit v. Liberty Township, Trumbull
County
- 05-ULP-05-0231 Ohio Patrolmen's Benevolent Association,
Police Supervisors' Unit v. Liberty
Township, Trumbull County

The Charging Parties allege the Charged Party violated Ohio Revised Code §§ 4117.11(A)(1) and (5) by unilaterally changing a contract provision regarding prescriptions without bargaining. The investigation reveals the Charged Party did not make a unilateral change. The contract does not contain specific language regarding prescription co-payments. 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 Party. Vice Chairman Gillmor seconded the motion. Chairman Drake called for the vote.

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

7. Case 05-ULP-05-0265 International Association of Fire Fighters,
Local 1144 v. City of Bay Village

The Charging Party alleges the Charged Party violated Ohio Revised Code §§ 4117.11(A)(1) and (5) by refusing to provide employees with a benefit equaling the value of the dental care changed. The investigation reveals no information was presented to demonstrate the bargaining-unit members were to get any additional benefit regarding the change in the dental plan. Insufficient evidence was provided to support the Ohio Revised Code § 4117.11(A)(5) allegations. 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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8. Case 05-ULP-03-0151

Service Employees International Union,
District 1199 v. Riverview Nursing Home,
Ottawa County

The Charging Party alleges the Charged Party violated Ohio Revised Code §§ 4117.11(A)(1), (2), (4), and (8) by threatening not to pay employees for shift and weekend differential pay, by unilaterally changing shift hours for weekend shift differential, and by unilaterally changing the collective bargaining agreement by paying only certain employees shift differential. The investigation reveals the matter is strictly a contractual dispute. Insufficient evidence was provided to support the Ohio Revised Code §§ 4117.11(A)(2) and (8) allegations. 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

9. Case 05-ULP-03-0162

Fraternal Order of Police, Lodge 2 v. City
of Canton

The Charging Party alleges the Charged Party violated Ohio Revised Code §§ 4117.11(A)(1), (2), and (3) by initiating internal affairs complaints against FOP President Jack Angelo for engaging in protected activity. The investigation reveals filing internal affairs complaints against a union officer for engaging in normal union activities constitutes an attempt to coerce or restrain the officer from engaging in protected activity. Sergeant Angelo did not receive any harm. No information was provided to support Ohio Revised Code §§ 4117.11(A)(2) and (3) violations occurred. Vice Chairman Gillmor moved that the Board find probable cause to believe an unfair labor practice has been committed, coordinate this case with Cases 04-ULP-11-0639, 04-ULP-12-0721, 05-ULP-01-0041, 05-ULP-01-0042, 05-ULP-03-0153, and 05-ULP-04-0213, authorize the issuance of a complaint, and direct the matter to hearing to determine if the Charged Party violated Ohio Revised Code § 4117.11(A)(1), but not (2) and (3), by filing internal affairs complaints against FOP President Jack Angelo 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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10. Case 05-ULP-04-0183 Fraternal Order of Police, Lodge 2 v. City of Canton

The Charging Party alleges the Charged Party violated Ohio Revised Code §§ 4117.11(A)(1), (2), and (3) by threatening to remove Sergeant Victor George from his position in the Vice Bureau if he did not withdraw his grievance. The investigation reveals a credibility issue exists over what Chief McKimm said at the meeting. An objective view of the Charged Party's version of what was said may have a chilling effect on Sgt. George's protected activity. Sgt. George was not harmed. Insufficient evidence was provided to support the Ohio Revised Code §§ 4117.11(A)(2) or (3) allegations. Board Member Verich moved that the Board find probable cause to believe an unfair labor practice has been committed, consolidate this case with Case 05-ULP-03-0162, coordinate it with Cases 04-ULP-11-0639, 04-ULP-12-0721, 05-ULP-01-0041, 05-ULP-01-0042, 05-ULP-03-0153, and 05-ULP-04-0213, authorize the issuance of a complaint, and refer the matter to hearing to determine if the Charged Party violated Ohio Revised Code § 4117.11(A)(1), but not (2) and (3), by threatening to reevaluate Sgt. Victor George's position in the City Police Department's Drug Bureau if he failed to withdraw his grievance, 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

11. Case 05-ULP-02-0104 Robin Rayfield v. University of Toledo

The Charging Party alleges the Charged Party violated Ohio Revised Code §§ 4117.11(A)(1), (4), and (8) by discontinuing earned wages because he gave testimony about racial discrimination. The investigation reveals the Charging Party was on an unapproved leave of absence. The testimony given was not before SERB, nor had the Charging Party filed any previous unfair labor practice charge. The charge is untimely filed. The Charged Party filed a motion to defer and memorandum in support. 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, and deny the motion as moot. 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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12. Case 05-ULP-02-0111 Celina Education Association, OEA/NEA v. Celina City School District Board of Education

The Charging Party alleges the Charged Party violated Ohio Revised Code §§ 4117.11(A)(1) and (3) by filing an unfair labor practice charge against the Charging Party to retaliate against Union Vice President Kathy Hart and Teacher Angie Schwieterman. The investigation reveals no evidence to support a violation of the statute. 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 _____

13. Case 05-ULP-05-0299 Dennis Dietrich v. Lee Township, Monroe County and John J. Pyles

The Charging Party alleges the Charged Parties violated Ohio Revised Code §§ 4117.11(A)(1) and (3) by terminating the Charging Party for insubordination. The Charged Parties are not a public employer and the Charging Party is not a public employee. Vice Chairman Gillmor moved that the Board dismiss the charge with prejudice for lack of jurisdiction. 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-03-0174 Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and Its Local 291 v. Willard City School District Board of Education

On October 14, 2004, the Board deferred this matter for resolution through the grievance-arbitration procedure and retained jurisdiction in accordance with *In re Upper Arlington Ed Assn*, SERB 92-10 (6-20-92). On August 19, 2005, the Charging Parties filed a motion to withdraw. Board Member Verich moved that the Board grant the motion to withdraw with prejudice. 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 05-ULP-05-0268 Butler Education Association, OEA/NEA v. Butler Technology and Career Development Schools Board of Education

The Charging Party alleges the Charged Party violated Ohio Revised Code §§ 4117.11(A)(1), (3), and (5) by making threats to transfer and non-renew employees for exercising guaranteed rights, retaliating against Dave Traxler for exercising guaranteed rights, and failing to bargain in good faith. The investigation reveals the alleged threats do not violate the statute. The Charged Party's actions to address expressed concerns do not violate the statute. 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

16. Case 05-ULP-05-0288 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO v. Wayne County Engineer and Wayne County Board of County Commissioners

The Charging Party alleges the Charged Parties violated Ohio Revised Code §§ 4117.11(A)(1) and (5) by refusing to implement a collective bargaining agreement. The investigation reveals the matter is one of first impression. Member Verich moved that the Board find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, refer the matter to an expedited hearing to determine if the Charged Party violated Ohio Revised Code §§ 4117.11(A)(1) and (5) by refusing to implement a collective bargaining agreement, 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

17. Case 05-ULP-05-0274 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 211 v. South-Western City School District Board of Education

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

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

