

State Employment Relations Board  
Board Meeting Minutes  
June 22, 2006

The State Employment Relations Board met on Thursday, June 22, 2006, at 1:30 p.m., at 65 East State Street, Columbus, Ohio. Present at the meeting were Chairman Craig R. Mayton, Vice Chairman Karen L. Gillmor, and Board Member Michael G. Verich.

I. APPROVAL OF MINUTES OF PREVIOUS MEETING:

Vice Chairman Gillmor moved that the Board approve the minutes for the June 8, 2006 Board meeting. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

1. Case 06-MED-04-0506 AFSCME Ohio Council 8, Local 3426 and Hamilton County Engineer

The Employee Organization filed with SERB a Notice to Negotiate concerning negotiations with the Employer. In Case 06-REP-05-0065, the Petitioner filed a Petition for Decertification Election, seeking to decertify the Employee Organization as the exclusive representative. The Employer filed a motion to stay negotiations until the representation question has been resolved. The Employee Organization did not file a response to the motion.

Board Member Verich moved that the Board grant the Employer's motion, stay the negotiations in Case 06-MED-04-0506 pending disposition of Case 06-REP-05-0065, and expedite the processing of the representation case. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

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2. Case 06-MED-05-0611 Lakewood Fire Fighters, IAFF, Local 382 and City of Lakewood

The Employee Organization filed a Notice to Negotiate concerning negotiations with the Employer. The Employer filed with SERB a Motion to Dismiss Notice to Negotiate. According to the motion to dismiss, the condition for the "me too" provision for reopening the collective bargaining agreement has not been met because the benefit that the Employee Organization seeks was negotiated with another bargaining unit in 2001 and has remained unchanged in the 2004-2006 negotiations. As a result, the Employer contended that the "me too" clause to reopen negotiations has not been triggered.

The Employee Organization filed with SERB a response to the Employer's Motion to Dismiss Notice to Negotiate, arguing that the Employer's motion should be denied because the collective bargaining agreement's Article 3 Section 3.01 establishes a re-opener for the 2006 wages agreed to by the parties and an opportunity to raise objections to a hearing officer at grievance arbitration. The Employee Organization also asserted that the proposed benefit was an issue during the negotiations and contained in the subsequent fact finder's report. The Employer filed with SERB a reply to the Employee Organization's response.

The evidence presented by the parties supports that the typical interpretation of the "me too" clause for a reopener has not been satisfied in this case. Article 3 Section 3.01 of the current agreement offers binding grievance arbitration, which provides the parties with a jointly agreed to contractual mid-term dispute resolution process relative to any wage increase between the high and low range. Granting the motion to dismiss would support the public interests expressed in Ohio Revised Code § 4117.22 that Ohio Revised Code Chapter 4117 shall be construed liberally for the accomplishment of the purpose of promoting orderly and constructive relationships between all public employers and their employees.

Vice Chairman Gillmor moved that the Board grant the Employer's motion and dismiss the Notice to Negotiate. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

3. Closing 139 Mediation cases

Board Member Verich moved that the Board close 139 Mediation cases beginning with Case 03-MED-03-0267 and ending with Case 06-MED-03-0311, not consecutively numbered. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

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III. REPRESENTATION MATTERS AT ISSUE:

1. Case 06-REP-04-0056 International Union, United Automobile, Aerospace Agricultural Implement Workers of America, UAW and Mahoning County Department of Job and Family Services

The Employee Organization filed a Request for Recognition seeking to represent certain employees of the Employer. The Employer has complied with the posting requirements. Nothing has been filed as provided in O.R.C. § 4117.05(A)(2)(b)(i), (ii), (iii), or (iv) that blocks certification pursuant to the request. Vice Chairman Gillmor moved that the Board certify the Employee Organization as the exclusive representative of all employees in the unit. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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



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5. Case 06-RLX-03-0003 Brett Lanz, Rittman Educational Association (OEA/NEA) and Rittman Exempted Village School District

Vice Chairman Gillmor moved that the Board remand the case back to the Representation Section for further investigation. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

6. Case 06-REP-03-0028 International Brotherhood of Teamsters Local #407 and Sonja Wakeel and Cuyahoga County Department of Human Services

On March 3, 2006, Petitioner filed a Petition for Decertification Election seeking to decertify Incumbent Employee Organization, which is the Board-certified exclusive representative for certain employees of Employer. The showing of interest was sufficient. A conference call was conducted. The Incumbent Employee Organization is not willing to consent to an election.

The Incumbent Employee Organization stated it never received a copy of the petition as noted in the Proof of Service. The Incumbent Employee Organization did receive a copy of the petition with the letter sent by the investigator dated March 15, 2006. The Incumbent Employee Organization also received a copy of a letter dated January 24, 2006, from employees in the bargaining unit stating they no longer wish to be represented by the Incumbent Employee Organization.

Ohio Administrative Code Rule 4117-1-02(B) states that all documents shall include proof of service to the other parties to the proceeding or their representatives. Ohio Administrative Code Rule 4117-1-02(C) states in part that service by mail shall be deemed complete upon mailing. There are no issues that warrant hearing.

Board Member Verich moved that the Board 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 Mayton called for the vote.

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

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7. Case 06-REP-03-0030 Ohio Patrolmen's Benevolent Association and International Union of Police Associations and City of Perrysburg  
July 11, 2006
8. Cases 06-REP-03-0031 Ohio Patrolmen's Benevolent Association and Fraternal Order of Police, Ohio Labor Council, Inc. and City of Perrysburg  
06-REP-03-0032 July 11, 2006

All parties have executed and filed the appropriate Consent Election Agreements. Vice Chairman Gillmor moved that the Board approve the Consent Election Agreements in these cases and direct elections to be conducted on the dates indicated. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

9. Case 05-REP-09-0120 Ohio Patrolmen's Benevolent Association and Sylvania Township Police Department (Lucas County)

The Employee Organization is the Board-certified exclusive representative of certain employees of Employer. The parties jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to include Chief Dispatcher and to reflect current contract language. Board Member Verich moved that the Board approve the jointly filed petition and amend the unit accordingly. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

10. Case 06-REP-01-0011 Teamsters Local Union No. 24, affiliated with International Brotherhood of Teamsters and City of Canal Fulton

The Employee Organization filed a Petition for Representation Election seeking to represent certain employees of the Employer. The Employer has filed objections. A conference call was conducted for the purpose of executing a Consent Election Agreement. The Employee Organization and Employer could not reach an agreement concerning an appropriate bargaining unit.

Vice Chairman Gillmor moved that the Board direct the case to hearing to determine an appropriate bargaining unit and for all other relevant issues, and direct the parties to mediation. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

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11. Case 06-REP-01-0012 Ohio Patrolmen's Benevolent Association and City of the Village of Indian Hill

On April 20, 2006, the Board directed an election pursuant to a Consent Election Agreement. On May 4, 2006, the Employee Organization filed a Motion to Reschedule Representation Election because two eligible voters would be away at training the day of the election. Pursuant to Ohio Revised Code § 4117.07(C), the Board conducted a secret-ballot election on May 18, 2006.

- There were 12 ballots cast
- There were 0 challenged ballots
- No Representative received 5 votes
- Ohio Patrolmen's Benevolent Association received 7 votes and has prevailed in this election.

Board Member Verich moved that the Board deny the Employee Organization's Motion to Reschedule Election, certify the election results, and certify the Employee Organization as the exclusive representative of all employees in the bargaining unit. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

12. Case 06-REP-01-0002 Felicity Education Association/OEA/NEA and Felicity-Franklin Local School District Board of Education

- There were 74 ballots cast
- There were 0 challenged ballots
- No Representative received 14 votes
- Felicity Education Association/OEA/NEA received 60 votes and has prevailed in this election.

13. Case 06-REP-01-0003 Greg Wertz and Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Five Rivers Metro Parks

- There were 53 ballots cast
- There were 0 challenged ballots
- No Representative received 16 votes
- Ohio Council 8, American Federation of State, County and Municipal Employees received 37 votes and has prevailed in this election.

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14. Case 05-REP-09-0140 Fraternal Order of Police, Ohio Labor Council, Inc. and Lorain County Deputies Association and Lorain County Sheriff

- There were 9 ballots cast
- There were 0 challenged ballots
- No Representative received 0 votes
- Lorain County Deputies Association received 0 votes
- Fraternal Order of Police, Ohio Labor Council, Inc. received 9 votes and has prevailed in this election.

Vice Chairman Gillmor moved that the Board certify the election results and certify the prevailing employee organization as the exclusive representative of all employees in the relevant bargaining unit. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Cases 04-REP-11-0208 Greene County Career Center Classified  
04-REP-11-0209 Employees Association, OEA/NEA and Greene  
County Career Center Education Association,  
OEA/NEA and Greene County Career Center

Board Member Verich moved that the Board amend Finding of Fact No. 15 in the Administrative Law Judge's Recommended Determination to add "in 1995" in the first sentence so that it reads: "In the first negotiated agreement after OEA was elected to represent the Classified Unit in 1995, Ms. Bottorff's position title was changed from Financial Aid Coordinator to Financial Aid Specialist ("FAS"); however, her duties did not change."; adopt the Findings of Fact, as amended, Analysis and Discussion, and Conclusions of Law in the Administrative Law Judge's Recommended Determination, finding that the bargaining unit represented by the Greene County Career Center Classified Employees Association, OEA/NEA should not be clarified to exclude the position of Financial Aid Specialist and that the bargaining unit represented by the Greene County Career Center Education Association, OEA/NEA should not be clarified to include the position of Financial Aid Specialist; and deny the Petitions for Clarification of Bargaining Unit. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

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2. Case 05-ULP-02-0089 SERB v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO

Vice Chairman Gillmor moved that the Board amend the second sentence of the second paragraph of Part B, "The Remedy," of the Analysis and Discussion in the Administrative Law Judge's Proposed Order to add "with interest" so that it reads in part: "Therefore, the appropriate remedy in this case is to issue an order, pursuant to § 4117.12(B)(3), requiring the Union to pay, with interest, each Charging Party the respective amount of overtime compensation each would have earned if she had been included in the overtime available in the Processing Center from August 28 to September 28, 2004;" adopt the Findings of Fact, Analysis and Discussion, as amended, and Conclusions of Law in the Administrative Law Judge's Proposed Order, finding that the Respondent violated Ohio Revised Code §§ 4117.11(B)(1) and (B)(6) when the Respondent failed to adequately process the Charging Parties' grievance; and issue a cease-and-desist order with a Notice to Employees requiring the Respondent to (a) compensate each Charging Party for the overtime compensation each would have received, as follows: Laura Davis, \$1,860.00; Carrie Morgan, \$1,920.00; Karen Peck, \$1,632.00; and Donna Runeric, \$1,934.30; plus interest at the rate payable on such awards in the common pleas courts commencing September 10, 2004, the date the grievance was filed; (b) post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Union work, the Notice to Employees furnished by the Board; and (c) notify the Board in writing within twenty calendar days from the date the Order becomes final of the steps that have been taken to comply therewith. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

3. Case 04-ULP-10-0568 SERB v. International Association of Fire Fighters Local 1267

Board Member Verich moved that the Board transfer this case from the Hearings Section to the Board for a decision on the merits. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

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- 4. Case 05-ULP-06-0340 Talawanda Education Association, OEA/NEA v. Talawanda City School District Board of Education
- 5. Cases 05-ULP-08-0458  
05-ULP-11-0596 Fraternal Order of Police, Capital City Lodge #9 v. Franklin County Sheriff's Office
- 6. Case 05-ULP-05-0277 SERB v. Lancaster City School District Board of Education
- 7. Case 05-ULP-05-0227 SERB v. International Brotherhood of Teamsters, Local 244
- 8. Case 05-ULP-05-0288 SERB v. Wayne County Engineer and Wayne County Board of Commissioners

Vice Chairman Gillmor moved that the Board approve and adopt the settlement agreements, construe the settlement agreements as motions to dismiss, grant all of the motions, dismiss the complaints, and dismiss with prejudice the unfair labor practice charges. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

- 9. Cases 05-REP-06-0081 Service Support Administrators Association of Portage County and Portage County Educators Association for the Mentally Retarded, OEA/NEA and Portage County Board of Mental Retardation and Developmental Disabilities  
  
05-MED-05-0658 Portage County Educators Association for the Mentally Retarded, OEA/NEA and Portage County Board of Mental Retardation and Developmental Disabilities

Board Member Verich moved that the Board construe the settlement agreement as a motion by the Rival Employee Organization to withdraw its Petition for Representation Election in Case 05-REP-06-0081, grant the motion, dismiss without prejudice the petition, and lift the stay of negotiations in Case 05-MED-05-0658. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

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10. Case 05-ULP-06-0376 SERB v. City of Twinsburg

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

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

V. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Cases 06-ULP-03-0109 Bowling Green Police Patrolmen's Association, IUPA, Unit A v. City of Bowling Green, Division of Police  
06-ULP-03-0110 Bowling Green Police Patrolmen's Association, IUPA, Unit B v. City of Bowling Green, Division of Police

The unfair labor practice charges allege the Charged Party violated Ohio Revised Code § 4117.11(A)(5) by failing to negotiate the terms and conditions of employment for the new Records Clerk position. The investigation reveals the temporary assignment of a Dispatcher to a non-rotational position does not meet the test requiring the Charged Party to bargain the change. The Charged Party's right to assign a Dispatcher, based on operational need, is covered in the parties' collective bargaining agreement under Management Rights. The Charging Parties were given an opportunity by the Charged Party to make a proposal regarding the duration of the assignment, but declined. The Charging Parties did not file a grievance over the issue. 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 Mayton called for the vote.

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

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2. Case 06-ULP-03-0124

Randall Foutty v. Ohio Association of Public  
School Employees, AFSCME Local 268,  
AFL-CIO

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(B)(6) by allowing non-union employees to do bargaining-unit work. The investigation reveals the Charged Party's actions were not arbitrary, discriminatory, or in bad faith when it did not contest the Employer's use of substitutes. The Employer followed the procedure outlined in the agreement. The Charged Party took the basic and required steps to process the Charging Party's grievance. The Charging Party failed to follow the Charged Party's direction in order to be called back for future work as a substitute. The Charging Party failed to provide sufficient information to support the Ohio Revised Code § 4117.11(B)(6) allegation. Knowledge of the alleged violation occurred more than 90 days before the charge was filed with the Board, and no mitigating circumstances exist that warrant equitable tolling of the statute of limitations. 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 Mayton called for the vote.

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

3. Cases 06-ULP-03-0133

Lakewood City School District Board of  
Education v. Ohio Association of Public  
School Employees, AFSCME Local 4, AFL-  
CIO and Its Local 134

06-ULP-03-0134

Lakewood City School District Board of  
Education v. Kenneth Cooper, OAPSE Local  
134 President

The unfair labor practice charges allege the Charged Parties violated Ohio Revised Code § 4117.11(B)(1) and (3) when Local President Kenneth Cooper directly dealt with the Charging Party's Board members regarding specific information, and by offering to provide a counter-proposal directly to the Board members. The investigation reveals the Charged Parties' President did not restrain or coerce the Charging Party in the selection of its bargaining representative. The statement by the Charged Parties' President at the March 13, 2006 Board meeting, does not rise to the level of a direct-dealing violation. 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 Mayton called for the vote.

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

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4. Case 06-ULP-03-0135 Lakewood City School District Board of Education v. Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 134

The unfair labor practice charge alleges the Charged Parties violated Ohio Revised Code § 4117.11(B)(1) and (3) by offering a counter-proposal that included regressive and bad-faith bargaining. The investigation reveals the Union appears to have been engaging in regressive bargaining when it offered the counter-proposal. The proposal negated all previously agreed to items with the exception of insurance benefits and salary allowances. The proposal specifically states that all other tentative agreements signed in September 2005 are "off the table." 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, and refer the matter to an expedited hearing to determine if the Charged Parties violated Ohio Revised Code § 4117.11(B)(1) and (3) by engaging in regressive and bad faith bargaining when they offered the counter-proposal, and direct the parties to ULP mediation. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

5. Case 06-ULP-04-0146 Fraternal Order of Police, Beaver Creek Lodge No. 160 v. City of Beaver Creek

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by denying Officer Mark Swope a tuition reimbursement in retaliation for filing previous grievances. The investigation reveals the matter is purely a contractual issue that encompasses no arguable statutory violation, and should be processed through the parties' final and binding grievance-arbitration procedure. The Charging Party failed to provide sufficient information to support the Ohio Revised Code § 4117.11(A)(1) allegation. 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 Mayton called for the vote.

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

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6. Case 06-ULP-03-0101

Jerald D. Ferreri v. Milford Exempted Village  
School District Board of Education

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by terminating the Charging Party because he filed an unfair labor practice charge against the Charged Party. The investigation reveals the Charging Party has filed a duplicate filing of Case No. 05-ULP-11-0635, which was dismissed on April 6, 2006. Vice Chairman Gillmor moved that the Board dismiss the charge with prejudice as being a duplicate filing. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

7. Case 06-ULP-03-0111

Cheryle McGlothlin v. Pickaway-Ross Joint  
Vocational School District Board of  
Education

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), (3), and (8) by placing the Charging Party in the bargaining unit represented by the Union. The investigation reveals the allegations raised do not rise to the level of a violation of the statute and is untimely filed. No mitigating circumstances exist that warrant equitable tolling of the statute of limitations. Board Member Verich moved that the Board dismiss the charge with prejudice as untimely filed. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

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8. Case 06-ULP-03-0112 Cheryle McGlothlin v. Pickaway-Ross Teacher Association, OEA/NEA
9. Case 06-ULP-03-0113 Cheryle McGlothlin v. Pickaway-Ross Teacher Association, OEA/NEA

In Case 06-ULP-03-0112, the unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(B)(1), (2), and (6) by failing to fairly represent the Charging Party. In Case 06-ULP-03-0113, the unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(B)(1) and (6) by failing to take the basic and required steps to fairly represent the Charging Party. The investigation reveals the allegations raised do not rise to the level of a violation of the statute. Charging Party has not provided any statutory reason why she should be excluded from the bargaining unit. Charging Party failed to show that the Charged Party's actions were arbitrary, discriminatory, or in bad faith. Knowledge of the alleged violations in both cases occurred more than 90 days before the charges were filed with the Board. No mitigating circumstances exist that warrant equitable tolling of the statute of limitations. Vice Chairman Gillmor moved that the Board dismiss the charges with prejudice for lack of probable cause to believe that unfair labor practices have been committed by the Charged Party, and as untimely filed. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

10. Case 06-ULP-03-0127 United Mine Workers of America, Local 4231 v. Jackson County Board of Commissioners

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), and (5) by assigning bargaining-unit work to nonbargaining-unit employees. The investigation reveals that the collective bargaining agreement between the parties includes a grievance procedure culminating in final and binding arbitration. A grievance regarding the alleged unilateral change has been filed and is proceeding through the grievance process. While interpreting contract provisions such as Article X, Section 2 (Layoffs), the arbitrator will determine whether the reassignment of bargaining-unit work to nonbargaining-unit employees, due to layoffs, is a violation. Contract interpretation and application appear to lie at the heart of both the unfair labor practice charge and grievance dispute. Board Member Verich moved that the Board defer the matter for resolution through the grievance-arbitration procedure and retain jurisdiction in accordance with In re Upper Arlington Ed Assn, SERB 92-010 (6-30-92). Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

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11. Case 06-ULP-03-0128 United Mine Workers of America, Local 4231  
v. Jackson County Board of Commissioners

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), and (5) by misrepresenting its position during bargaining with respect to employee wage increases. The investigation reveals it is undisputed that during the parties' wage reopener in December 2005, the Charged Party held the position that there was little or no money for pay raises. On or about January 15, 2006, the Charged Party granted wage increases to nonbargaining-unit employees. Despite the Charged Party's claim it was not bargaining in bad faith, the timing of the matter is questionable. The Charging Party failed to provide information to support the Ohio Revised Code § 4117.11(A)(3) allegation. 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, and refer the matter to hearing to determine if the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5), but not (3), by misrepresenting its position during bargaining with respect to employee wage increases, and direct the parties to ULP mediation. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

12. Case 06-ULP-03-0132 International Brotherhood of Teamsters,  
Local 284 v. Franklin County Child Support  
Enforcement Agency

Board Member Verich moved that the Board remand this charge to the Investigation Section for further investigation. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

13. Case 06-ULP-03-0137 International Brotherhood of Teamsters,  
Local 284 v. Springfield Metropolitan  
Housing Authority

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by interfering with an employee's exercise of guaranteed rights. The investigation reveals the meeting was a pre-disciplinary meeting and not a grievance hearing, and does 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 Mayton called for the vote.

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

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14. Case 06-ULP-04-0155 Joey Phillips v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11. The investigation reveals the charge is untimely filed. No mitigating circumstances exist that warrant equitable tolling of the statute of limitations. Board Member Verich moved that the Board dismiss the charge with prejudice as untimely filed. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

15. Case 06-ULP-02-0068 Peggy A. Moses v. Laborers' International Union of North America, Foremen, Laborers and Municipal, Local 1099

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(B)(6) by refusing to take the Charging Party's grievance to arbitration or otherwise represent her when she was given a suspension. Vice Chairman Gillmor moved that the Board table this matter. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

16. Case 06-ULP-01-0007 Steven F. Sakal, Jr. v. Cuyahoga County Board of Commissioners

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (5), and (8) by continuously bypassing Ken Cunningham's representative on SERB matters. The investigation reveals only the January 11, 2006 occurrence of the alleged direct dealing was provided by the Charging Party. No other dates were provided to support the allegation that the Charged Party dealt directly with Mr. Cunningham. Shortly after the incident, the Charging Party acknowledges that Mr. Morales contacted him and not Mr. Cunningham. Insufficient information was provided to support the Ohio Revised Code § 4117.11(A)(8) allegation. 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 Mayton called for the vote.

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

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17. Case 06-ULP-01-0016 Jarrold Flack v. State of Ohio, Rehabilitation Services Commission

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), and (3) by giving the Charging Party a low evaluation for engaging in protected activities. The investigation reveals the Charged Party was aware of Charging Party's protected activities in his capacity as union steward. The Charging Party's low evaluation has not resulted in discipline or withholding pay increases. Insufficient information was provided to support the Ohio Revised Code § 4117.11(A)(2) 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 Mayton called for discussion where it was noted that the General Counsel and Assistant Executive Director, J. Russell Keith, was not involved in the investigation or review of this matter. Chairman Mayton then called for the vote.

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

18. Case 06-ULP-02-0073 Melvin McQueen v. Municipal Foremen and Laborers' Union, Local 1099

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(B)(6) by bargaining lower wage increases for the Custodian II classification. The investigation reveals the Charged Party's actions were not arbitrary, discriminatory, or in bad faith. Steward Rini's comments, in the context to which they were made, do not rise to the level of a violation. 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 Mayton called for the vote.

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

19. Case 06-ULP-03-0096 Ohio Council 8, American Federation of State, County and Municipal Employees, Local 1043, AFL-CIO v. City of Lakewood

20. Case 06-ULP-03-0097 Fred Billey v. City of Lakewood

The Charging Parties failed to respond to SERB's Information Requests. Vice Chairman Gillmor moved that the Board dismiss the charges with prejudice because the Charging Parties failed to pursue the matters. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

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21. Case 05-ULP-11-0614 Mark Baylers v. City of Cleveland – Street Department

The Board dismissed the charge for lack of probable cause to believe an unfair labor practice had been committed by the Charged Party. The Charging Party filed a timely request for reconsideration of the Board's dismissal. No new information was provided not already addressed in the original investigation. Board Member Verich moved that the Board deny the Charging Party's Motion for Reconsideration with prejudice. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

Vote: MAYTON: Recuses GILLMOR: Aye VERICH: Aye  
Affirmed X Denied \_\_\_\_\_

22. Case 06-ULP-05-0196 Alliance Education Association, OEA/NEA v. Alliance City School District Board of Education

The Charging Party filed a Motion to Withdraw the unfair labor practice charge. Vice Chairman Gillmor moved that the Board grant the Motion to Withdraw. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

VI. ADMINISTRATIVE MATTERS:

**Association of Labor Relations Conference (ALRA)** – Vice Chairman Gillmor moved that the Board approve the cost of travel, room, and registration fees for the Chairman and Executive Director to the annual ALRA Academy meeting in Baltimore, Maryland from July 21-23, 2006, the annual ALRA conference program from July 22-26, 2006, and for travel and room for Mediator Tom Worley to the annual conference program from July 22-26, 2006. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

Vote: MAYTON: Abstain GILLMOR: Aye VERICH: Aye  
Affirmed X Denied \_\_\_\_\_

**Executive Session** – Vice Chairman Gillmor moved that the Board go into executive session to discuss the appointment, employment, promotion, compensation, or hiring of a public employee, pursuant to Ohio Revised Code § 121.22(G)(1). Board Member Verich seconded the motion. Chairman Mayton called for the roll-call vote.

Roll Call Vote: MAYTON: Aye GILLMOR: Aye VERICH: Aye  
Affirmed X Denied \_\_\_\_\_

