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III. REPRESENTATION MATTERS AT ISSUE:

1. Case 06-REP-08-0108 Madison County Emergency Medical Professionals, I.A.F.F. Local 4532 and Madison County EMS District

The Employee Organization filed an amended Request for Recognition. However, the Employee Organization did not provide original signatures pursuant to Ohio Administrative Code Rule 4117-3-03(A)(1) in support of the request.

Vice Chairman Gillmor moved that the Board dismiss without prejudice the Request for Recognition pursuant to Ohio Administrative Code Rule 4117-3-03(A)(1). Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

2. Case 06-REP-08-0105 Ohio Patrolmen's Benevolent Association and City of Pataskala

The Employee Organization filed a Request for Recognition seeking to represent certain employees of the Employer. The Employee Organization filed a letter withdrawing the Request for Recognition.

Board Member Verich moved that the Board construe the letter as a motion to withdraw, grant the motion, and dismiss without prejudice the Request for Recognition. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

3. Case 06-REP-08-0110 Ohio Patrolmen's Benevolent Association and City of Pataskala

The Employee Organization is the Board-certified exclusive representative of certain employees of the Employer. The parties jointly filed a Petition for Amendment of Certification seeking to amend the existing unit of four (4) employees to include two (2) Sergeants.

Historically the Board has granted the inclusion of employees if the increase is 20% or less. The addition of two employees to a unit of four employees does not meet the "substantially smaller" requirement.

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Vice Chairman Gillmor moved that the Board dismiss without prejudice the Petition for Amendment of Certification. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

4. Case 05-REP-09-0135 Teamsters Local Union #24 and Brimfield Township, Portage County

The Employer filed a Petition for Amendment of Certification and later filed a Motion to Withdraw the petition. Board Member Verich moved that the Board grant the Employer's Motion to Withdraw, and dismiss without prejudice the Petition for Amendment of Certification. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

5. Case 06-REP-08-0100 Edgerton Teachers Association and Edgerton Education Association and Edgerton Local School District

The Rival Employee Organization filed a Petition for Representation Election. The Incumbent Employee Organization responded by filing a position statement requesting that the petition be dismissed because the Incumbent Employee Organization remains the representative for the majority of the members of the bargaining unit. The Incumbent Employee Organization alleged the Employer's payroll list contains employees who are not included in the bargaining unit. The Incumbent Employee Organization also stated the petitioned-for unit is not an appropriate unit because the Rival Employee Organization has not used the exact words, per the collective bargaining agreement, to describe the proposed bargaining unit.

A conference call was conducted. The Incumbent Employee Organization was not willing to consent to an election. The Employer and the Incumbent Employee Organization confirmed no contract exists. The petition was sufficiently supported and timely filed. There were no issues that warranted 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 Mayton called for the vote.

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

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6. Case 06-REP-03-0029 Teamsters Local 436, AFL-CIO and Garfield Heights Municipal Court

The Employee Organization filed a Petition for Representation Election. On March 30, 2006, Fraternal Order of Police, Ohio Labor Council, Inc. filed a Motion to Intervene and substantial evidence in support of the motion. The City of Garfield Heights filed a Motion to Intervene, objections, and preliminary statement maintaining it is a joint employer and must be identified as such on the Petition for Representation Election. The Employer filed a Motion to Quash City of Garfield Heights Intervention. The City of Garfield Heights filed a Motion for Extension of Time to file a response. The City of Garfield Heights filed a Motion for Oral Argument and response. Jennifer P. Weiler filed a Motion to Intervene because she will assume the duties and responsibilities of Presiding Judge of the Garfield Heights Municipal Court on January 1, 2007. The Employee Organization subsequently filed a letter withdrawing the Petition for Representation Election.

Board Member Verich moved that the Board construe the Employee Organization's letter as a motion to withdraw, grant the motion, dismiss without prejudice the Petition for Representation Election, and deny all other motions as moot. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

7. Case 05-REP-09-0124 International Brotherhood of Teamsters Local No. 100 and Greater Cincinnati Water Works

The Employee Organization filed an amended Petition for Representation Election seeking to represent part-time Customer Relations Representatives of the Employer. The Employer responded by filing a position statement maintaining the employees in question are represented by Ohio Council 8 (AFSCME). The Employer stated that Appendix D of the current collective bargaining agreement with AFSCME exempts part-time Customer Relations Representatives from paying union dues or fair share fees, but explicitly refers to them as a "type of bargaining unit employee."

The Employee Organization filed a response stating Appendix D intended not only to exclude part-time Customer Relations Representatives from paying union dues or fair share fees, but also makes it clear that they are not eligible for union representation or membership. The Employee Organization further stated the vacation policy also specifically excludes these employees. Several conference calls were conducted. The parties were not able to reach an agreement concerning an appropriate bargaining unit.

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The Employee Organization filed information containing an exchange of e-mail messages between a part-time employee and AFSCME Union Steward. AFSCME appeared to have declined representation. This case was remanded to the Representation Section for further investigation. The Employer was contacted by the investigator and maintained its position that the employees in question are represented by AFSCME.

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

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

8. Case 06-REP-05-0065 Wayne Schneider, Jr. and Ohio Council 8, American Federation of State, County and Municipal Employees, Local #3426 and Hamilton County Engineer

- There were 73 ballots cast
- There were 0 challenged ballots
- Ohio Council 8, American Federation of State, County and Municipal Employees received 33 votes
- No Representative received 40 votes and has prevailed in this election.

Board Member Verich moved that the Board certify the election results and certify that the employees in the unit have chosen to have no exclusive representative for purposes of collective bargaining. 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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9. Case 06-REP-03-0028 Sonja Wakeel and International Brotherhood of Teamsters Local #407 and Cuyahoga County Department of Human Services

- There were 24 ballots cast
- There were 0 challenged ballots
- No Representative received 9 votes
- International Brotherhood of Teamsters #407 received 15 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 _____

10. Case 06-REP-06-0086 Fraternal Order of Police, Ohio Labor Council, Inc. and Licking County Commissioners
October 11, 2006

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. The parties entered into a Consent Election Agreement seeking an election on October 11, 2006.

Board Member Verich moved that the Board approve the Consent Election Agreement and direct an election to be conducted on the date indicated above. 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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City of Cleveland to settle a contempt action, but International Union of Operating Engineers, Local 18 did not negotiate a decrease in compensation of those persons employed by the City of Cleveland as construction equipment operators with the knowledge or consent of the construction equipment operators; (4) no evidence was presented in the record showing that International Union of Operating Engineers, Local 18 informed the City of Cleveland that the construction equipment operators themselves, as individual employees, had agreed to a decrease in compensation; (5) the wages of the construction equipment operators who were appellees in Consolo v. City of Cleveland (2004), 103 Ohio St.3d 362, 2004-Ohio-5389, were not the result of collective bargaining between International Union of Operating Engineers, Local 18 and the City of Cleveland; and (6) no evidence was presented in the record showing that any benefits package was negotiated or implemented for the construction equipment operators until February 2005, which was after SERB certified the Municipal Construction Equipment Operators' Labor Council as the construction equipment operators' exclusive representative in January 2003. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

3. Case 04-ULP-12-0678 SERB v. Mahoning County Board of Mental Retardation and Developmental Disabilities

Vice Chairman Gillmor moved that the Board grant the joint motion, stay the SERB proceedings until 30 days after the issuance of the arbitrator's award, which shall be filed promptly with the Board by the Charging Party, and retain jurisdiction over the unfair labor practice charge and complaint to determine whether the arbitrator's award has resolved the unfair labor practice issues. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

4. Case 06-ULP-03-0145 Tracy E. Barnhart v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO

5. Case 05-ULP-02-0096 SERB v. Springfield Township, Summit County

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2. Case 06-ULP-06-0285 Michelle Dunlap v. Conneaut Area City 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 non-renewing the Charging Party's contract in retaliation for her exercise of guaranteed rights. Information gathered during the investigation reveals sufficient information to show a connection may exist between the Charging Party's exercise of guaranteed rights and the Charged Party's decision to non-renew the Charging Party's teaching contract.

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 (3) by non-renewing the Charging Party's contract in retaliation for her exercise of guaranteed rights, and direct the parties to ULP mediation. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

3. Cases 06-ULP-06-0286 East Cleveland City School District Board of Education v. Ms. Lee Lundblad

06-ULP-06-0287 East Cleveland City School District Board of Education v. East Cleveland Education Association, OEA/NEA

The unfair labor practice charges allege the Charged Parties violated Ohio Revised Code § 4117.11(B)(1), (2), and (3) by interfering with the Charging Party's selection of its bargaining representative. Information gathered during the investigation reveals the communication distributed was not a press release, did not address bargaining proposals, and was not intended to bypass the Charging Party's bargaining representative. The communication has been distributed among the bargaining-unit members, and not to the public or Charged Party's Administrators.

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 Parties. 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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4. Case 06-ULP-06-0318 Aurora Professional Firefighters Local 2488,
IAFF v. City of Aurora

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by failing to bargain in good faith. Information gathered during the investigation reveals the Charged Party's actions may constitute an attempt to frustrate the bargaining process by failing to bargain in good faith. The Charged Party has filed a Motion to Consolidate.

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, and deny the motion to consolidate. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

5. Case 06-ULP-06-0319 Eastwood Education Association, OEA/NEA
and Mitchell Freeman v. Eastwood Local
School District Board of Education

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), and (5) by discriminating against Mitchell Freeman after he filed a grievance, and by failing to bargain in good faith. Information gathered during the investigation reveals that despite the fact that an arbitrator ruled in favor of Mr. Freeman, the parties' collective bargaining agreement does not contain any provision regarding the selection of coaches. The Charged Party has provided sufficient information to show that the denial of the coaching position was not related to protected activity. Despite the fact that an arbitrator ruled in favor of Mr. Freeman, the parties' collective bargaining agreement does not contain any provision regarding the selection of coaches.

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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6. Case 06-ULP-06-0323 Jennifer Adams v. Hocking Technical College

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by discriminating against the Charging Party in retaliation for exercising guaranteed rights. Information gathered during the investigation reveals the Charging Party has not suffered any loss of pay or benefits. The Charging Party remains an instructor, is teaching the same courses, and is employed in the same department. The information provided also fails to show that the reprimands were related to protected activity. The May 31, 2006 reprimand has been reduced to an oral warning.

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 _____

7. Case 06-ULP-05-0225 Larry F. Jones v. Fraternal Order of Police Local 44

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(6) by failing to take the Charging Party's grievance to arbitration. Information gathered during the investigation revealed the Charged Party's actions were not arbitrary, discriminatory, or in bad faith. The Charging Party was notified on or about August 10, 2004, that his grievance would not be going to arbitration. The Charged Party did not take the grievance to arbitration based on the merits. Knowledge of the alleged violation occurred more than 90 days before the charge was filed with the Board. No mitigating circumstances existed 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: Aye GILLMOR: Aye VERICH: Aye
Affirmed X Denied _____

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8. Case 06-ULP-06-0309 Association of Public Library Employees v. Toledo Lucas County Public Library

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by dealing directly with the bargaining-unit members regarding terms and conditions of employment. Information gathered during the investigation reveals the Charged Party was within its Management Rights when it issued the survey. The survey is not designed to be used in a detrimental way against the bargaining-unit members, and is not a mandatory subject of bargaining since it does not affect wages, hours, or terms and conditions of employment. The issue should be resolved through the parties' final and binding grievance-arbitration procedure.

The Charging Party had knowledge of the survey as early as January 2006, but no later than March 2006, and did not request to bargain with the Charged Party. The alleged violation occurred more than 90 days before the charge was filed with the Board. 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 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 Mayton called for the vote.

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

9. Case 06-ULP-06-0322 Latanga D. Banks v. Ohio Council 8, American Federation of State, County and Municipal Employees, Local 100, AFL-CIO

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(1) by failing to assist the Charging Party in getting her job back after she was laid off. Information gathered during the investigation reveals the Charged Party did not restrain or coerce the Charging Party in the exercise of her guaranteed rights. On March 21, 2006, the Charging Party sent a letter to the Employer regarding the fact she was not re-hired, did not copy the Charged Party, or ask to be assisted by the Charged Party. Insufficient information was provided to support the Ohio Revised Code § 4117.11(B)(1) allegation. The alleged violation occurred more than 90 days before the charge was filed with the Board. No mitigating circumstances existed 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: Aye GILLMOR: Aye VERICH: Aye
Affirmed X Denied _____

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10. Case 06-ULP-07-0340 Ohio Association of Public School Employees, AFSCME Local 4 and Its Local 356, AFL-CIO v. Greenon Local 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 denying Rebecca Hayden a day of unpaid leave while granting another bargaining-unit member unpaid leave during the same time period. Information gathered during the investigation reveals the Charged Party did not interfere with, restrain, or coerce Ms. Hayden when it informed her she was not entitled to take an unpaid day of leave during the last two weeks of school. Article 15.3(B) of the parties' collective bargaining agreement states that "unpaid leave shall not be used during the last two weeks of school." The issue is contractual and has been handled through the parties' grievance-arbitration process. The Charging Parties did not appeal the grievance to the next step. Ms. Hayden did attend her son's graduation without missing any work time.

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 _____

11. Case 06-ULP-07-0341 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 190 v. Newark City School District Board of Education

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(5) by unilaterally implementing a direct deposit requirement for all bargaining-unit members. Information gathered during the investigation reveals the Charged Party's implementation of a direct deposit option did not have any material effect on the wages, hours, or terms and conditions of employment of the bargaining-unit members. The change pertains to all of the Charged Party's employees, and not just members of the Charging Parties. The Charging Parties did not serve the Charged Party with a request to bargain the implementation of direct deposit. Employees who did not sign up for direct deposit can still receive a manual check from the Treasurer's Office.

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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12. Case 06-ULP-05-0212

Tom Guyer, Jr. v. State of Ohio, Department of Rehabilitation and Correction, Mansfield Correctional Facility, Lee Sampson, and Heidi Waligura

The unfair labor practice charge alleges the Charged Parties violated Ohio Revised Code § 4117.11(A)(1), (3), and (4) by subjecting the Charging Party to disparate treatment for having filed grievances. Information gathered during the investigation reveals the Charged Parties' actions did not interfere with, restrain, or coerce the Charging Party from engaging in protected activities. The Charging Party has not been prevented from filing grievances, and has not established a prima facie case of discrimination. Knowledge of the events occurring prior to February 7, 2006, has occurred more than 90 days before the charge was filed with the Board. 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 for lack of probable cause to believe that an unfair labor practice has been committed by the Charged Parties, and as untimely filed for events occurring prior to February 7, 2006. 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-05-0220

Sandra Kay Feasby v. Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Sylvania Local No. 227

It was requested that the Board table this matter because the General Counsel requested additional information.

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 _____

14. Case 06-ULP-06-0275

Nick Salapata v. City of Niles

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) by ordering an employee to sweep sidewalks when it should have offered the work to employees in the Charging Party's classification. Information gathered during the investigation reveals the Charging Party is alleging a contractual violation. The Charged Party did not interfere with, restrain, or coerce the Charging Party from engaging in protected activities. The Charging Party was not prevented from filing a grievance. The Charged Party's decision was based upon the job descriptions and contractual language. The Union agreed with the Charged Party's application of the contractual provisions and job assignments.

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Vice Chairman Gillmor moved that the Board in Case 06-ULP-06-0312, 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 for the allegation concerning the 2004 call-in pay issue; and in Case 06-ULP-06-0313, 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

- 16. Case 06-ULP-06-0264 Ruth Miller v. Liberty Union-Thurston Local School District Board of Education
- 17. Case 06-ULP-06-0315 Hamilton Local Education Association, OEA/NEA v. Hamilton Local School District Board of Education
- 18. Case 06-ULP-07-0379 Millcreek-West Unity Teachers Association, OEA/NEA v. Millcreek-West Unity Local School District Board of Education
- 19. Case 06-ULP-08-0410 Charles Kaman v. Huron Professional Fire Fighters, Local 4168, IAFF

Board Member Verich moved that the Board construe the notice, settlement agreement, and letter as motions to withdraw, and grant all motions. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

VI. ADMINISTRATIVE MATTERS

Executive Session – Vice Chairman Gillmor moved that the Board go into executive session, pursuant to Ohio Revised Code § 121.22(G)(1), to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of public employees. 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

