

State Employment Relations Board
Board Meeting Minutes
November 30, 2006

The State Employment Relations Board met on Thursday, November 30, 2006, at 10:15 a.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 THE PREVIOUS MEETING:

Vice Chairman Gillmor moved that the Board approve the minutes for the November 9, 2006 Board meeting. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

Board Member Verich moved that the Board close 315 Mediation cases beginning with Case 03-MED-05-0657 and ending with Case 06-MED-05-0657, not consecutively numbered. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for any discussion and Vice Chairman Gillmor asked why the cases are "not consecutively numbered" when they receive the lists of cases to be closed. General Counsel Russ Keith mentioned that not all cases are ready to be closed out at the same time, and the list is in order for only those cases that are ready for closure. Chairman Mayton called for the vote.

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

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 06-REP-05-0071 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Stark County Board of County Commissioners

The Employee Organization filed a Request for Recognition seeking to represent certain employees of the Employer. No objections were filed, and the Employer complied with the posting requirements.

Vice Chairman Gillmor moved that the Board certify the 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 _____

2. Case 06-REP-09-0116 Ohio Patrolmen's Benevolent Association and City of Pataskala

The Employee Organization filed an Opt-In Request for Recognition seeking to represent certain employees of the Employer, and to add them to an existing Board-certified unit. No objections were filed, and the Employer complied with the posting requirements.

Board Member Verich 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. 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-10-0139 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and City of Bucyrus

The parties have jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to reflect certain negotiated changes. The proposed amendment appears appropriate.

Vice Chairman Gillmor moved that the Board approve the jointly filed petition and amend the unit accordingly. 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-REP-06-0089 Toledo Association of Administrative Personnel, UAW Local 5242 and Toledo Area Regional Transit Authority

5. Case 06-REP-09-0119 Fraternal Order of Police, Ohio Labor Council, Inc. and Fairfield Township Trustees, Butler County

6. Case 06-REP-09-0120 Fraternal Order of Police, Ohio Labor Council, Inc. and Fairfield Township Trustees, Butler County

7. Case 06-REP-10-0144 Fraternal Order of Police, Ohio Labor Council, Inc. and Bazetta Township, Trumbull County

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8. Case 06-REP-10-0145 Fraternal Order of Police, Ohio Labor Council, Inc. and Bazetta Township, Trumbull County

The Employee Organizations filed Petitions for Amendment of Certification seeking to amend the certifications to reflect affiliation changes. The Employers filed letters stating they do not oppose the petitions. The proposed amendments appear appropriate.

Board Member Verich moved that the Board approve the petitions and amend the certifications accordingly. 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-REP-07-0093 Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and Zanesville City School District Board of Education

The parties have jointly filed a Petition for Amendment of Certification. The instant petition seeks to add a greater percentage than the Board has historically allowed. The proposed amendments do not appear appropriate.

Vice Chairman Gillmor moved that the Board dismiss without prejudice the jointly filed 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 _____

10. Case 05-REP-11-0170 Euclid Classified Association, OEA/NEA and Euclid City Schools

The Employee Organization filed a Petition for Amendment of Certification seeking to amend the certification to include additional job classifications. The Employer filed a position statement opposing the amendment. A conference call was conducted, but the parties could not reach an agreement. The case was directed to hearing. As a result of mediation, the Employee Organization has now filed a Withdrawal.

Board Member Verich moved that the Board construe the Withdrawal as a motion to withdraw, grant the motion, and dismiss without prejudice the Petition for Amendment of Certification. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

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11. Case 06-REP-09-0118 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Zanesville
December 12, 2006
12. Case 06-REP-05-0072 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Summit County Auditor
December 13, 2006
13. Case 06-REP-09-0133 Oak Hill Union Local Independent Employees and Ohio Association of Public School Employees and Oak Hill Union Local Schools
December 19, 2006

All parties have executed and filed the appropriate Consent Election Agreements. Vice Chairman Gillmor moved that the Board approve the Consent Election Agreements 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 _____

14. Case 06-REP-05-0068 Ohio Patrolmen's Benevolent Association and Fraternal Order of Police, Ohio Labor Council, Inc. and City of Warrensville Heights

- There were 6 ballots cast
- There were 0 challenged ballots
- No Representative received 0 votes
- Fraternal Order of Police, Ohio Labor Council, Inc. received 0 votes
- Ohio Patrolmen's Benevolent Association received 6 votes and has prevailed in this election.

Board Member Verich 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. Vice Chairman Gillmor 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. Case 05-ULP-12-0643 SERB v. Toledo Area Regional Transit Authority
2. Case 06-ULP-04-0192 SERB v. Boardman Township, Mahoning County
3. Case 05-ULP-11-0620 SERB v. Franklin Township, Portage County
4. Case 06-ULP-03-0095 SERB v. Franklin County Coroner's Office

Vice Chairman Gillmor moved that the Board approve and adopt the settlement agreements, construe the settlement agreements as motions to withdraw and 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 _____

V. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 06-ULP-07-0331 Brookfield Association of School Employees, OEA/NEA v. Brookfield Local School District Board of Education

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally creating additional part-time Cook positions without the Charging Party's agreement. Information gathered during 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 procedure. While interpreting contract provisions such as Article III(A)(d), the arbitrator will determine whether there should be more than one part-time Cook position. 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 _____

2. Case 06-ULP-07-0358 Brookfield Association of School Employees, OEA/NEA v. Brookfield Local School District Board of Education

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), (5), and (8) by adopting a policy "limiting union business between unit members and/or administration to take place either before or after school hours." Information gathered during the investigation reveals that the Charged Party adopted a resolution to formulate such a policy, but the policy has not been adopted, no harm has occurred, and the matter has been prematurely filed.

Vice Chairman Gillmor moved that the Board dismiss the charge without prejudice as prematurely filed. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

3. Case 06-ULP-08-0398 Kimm E. Gorman v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(1) and (6) by failing to fairly represent the Charging Party when it entered into a grievance settlement agreement with the Employer. Information gathered during the investigation revealed the Charged Party took the basic and required steps in processing the Charging Party's grievance. Insufficient information was provided to show how the Charged Party's actions were arbitrary, discriminatory, or in bad faith.

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 _____

4. Case 06-ULP-08-0399 Kimm E. Gorman v. State of Ohio, Bureau of Workers Compensation

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), (4), and (5) by interfering with the Charging Party's rights and discriminating against her by transferring her to a less desirable position. Information gathered during the investigation revealed the Charging Party's union entered into a settlement agreement with the Charged Party to resolve her grievance. The Charging Party lost no benefits or pay in the transfer. 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 _____

5. Case 06-ULP-08-0402 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 455 v. Oak Hill Union Local School District Board of Education

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), (5), (6), and (8) by interfering with the administration of the Charging Parties, bargaining in bad faith, and attempting to cause the Charging Parties to violate the statute. Information gathered during the investigation revealed the Charged Party's actions do not amount to bad-faith bargaining. The parties were in the process of negotiating a successor agreement. The Charged Party gave the Charging Party its "Last Best Offer." Despite the Charging Party's allegation that it felt the Charged Party would not meet until the Charging Party took the "Last Best Offer" to the membership to vote, the parties had met after this event. The Charged Party argued that it offered dates to continue to meet and negotiate. The parties continued to exchange proposals and make concessions. It was undisputed that the Charged Party was not declaring impasse. Insufficient information was provided to support the Ohio Revised Code § 4117.11(A)(2), (6), and (8) violations.

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 _____

6. Case 06-ULP-08-0418 Cleveland Police Patrolmen's Association v. City of Cleveland

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), and (5) by allowing City Councilman Zack Reed to speak at roll call. Information gathered during the investigation revealed the presence of Councilman Reed did not amount to interfering with, restraining, or coercing employees in the exercise of guaranteed rights. The parties were not involved with negotiations at the time. The Charged Party's actions in inviting the Councilman to address the officers at roll call did not amount to bad faith bargaining. The Charging Party failed to provide sufficient information 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 the vote.

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

7. Cases 06-ULP-08-0437 International Union of Operating Engineers,
06-ULP-08-0438 Local 10 v. City of Cleveland, Department of
Public Utilities and Director Julius Ciaccia

The unfair labor practice charges alleged the Charged Parties violated Ohio Revised Code § 4117.11(A)(1) and (6) by interfering with employee rights and repeatedly refusing to process grievances. Information gathered during the investigation revealed the Charging Party failed to show how the new schedule interfered with employees' rights, or how the Charged Parties established a pattern or practice of refusing to timely process grievances.

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 _____

8. Case 06-ULP-09-0443 Thomas R. Staup v. Dean McCombs

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (B)(1) by denying the Charging Party's request for leave, and suspending him from an assignment as a volunteer instructor. Information gathered during the investigation revealed the Charged Party did not interfere with the Charging Party's guaranteed rights. The Charging Party failed to maintain a leave balance and was denied a request to take leave without pay. The Charging Party was also denied an assignment as a training instructor because of his failure to maintain an acceptable leave balance.

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 _____

9. Case 06-ULP-09-0444 Perkins Education Association, OEA/NEA v. Perkins Local School District Board of Education

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by attempting to interfere with employees' rights, and failing to bargain in good faith. Information gathered during the investigation revealed the employees were not interfered with, restrained, or coerced in the exercise of guaranteed rights. Because the meetings were not grievance meetings or investigatory disciplinary interviews, the employees were not entitled to representation.

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 _____

10. Case 06-ULP-07-0349 International Brotherhood of Teamsters, Local 114 v. City of Franklin

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by engaging in regressive bargaining and reopening tentatively resolved issues. Information gathered during the investigation revealed the Charged Party did not engage in regressive bargaining when it provided counterproposals to the Charging Party regarding holidays, wages, emergency-response eligibility, and fitness for duty. The Charged Party's duty to bargain did not require it to agree with every proposal made by the Charging Party during negotiations, and did not require it to make concessions regarding those proposals. On August 16, 2006, the parties reached a tentative agreement on all outstanding issues.

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 _____

11. Case 06-ULP-08-0430 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 134 v. Lakewood City School District Board of Education

Board Member Verich moved that the Board table this matter. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

12. Case 06-ULP-08-0432 Amalgamated Transit Union, Local 1385 v. Greater Dayton Regional Transit Authority

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by restraining Winn Brown from exercising his guaranteed rights to file grievances. Information gathered during the investigation revealed the Charged Party did not interfere with, restrain, or coerce Mr. Brown in the exercise of his guaranteed rights. Mr. Brown was still able to file three prior grievances regarding the same issue and have them heard by the Charged Party. The Charged Party provided one hearing, and attempted to schedule a second hearing over the three grievances. The second hearing, originally scheduled for August 28, 2006, was on hold per the Charging Party's request. The Charging Party failed to provide sufficient information to support the Ohio Revised Code § 4117.11(A)(3) 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 the vote.

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

13. Case 06-ULP-08-0435 Service Equipment Maintenance Employees (S.E.M.E.1) v. City of Cleveland, Department of Personnel and Human Resources

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by retaliating against Rick Spinelli for exercising his guaranteed rights, and for failing to provide the names of the safety-sensitive employees. Information gathered during the investigation revealed the Charged Party did not interfere with, restrain, or coerce Mr. Spinelli in the exercise of his guaranteed rights. Mr. Spinelli was able to file and have his grievance processed by the Charged Party. The Charging Party had knowledge of the bargaining-unit members who were in safety-sensitive positions. The positions were outlined in the parties' Drug and Alcohol Testing Addendum, which is part of the parties' negotiated agreement. Pursuant to 49 C.F.R. § 328.405(A), the Charged Party would not be permitted to release any driver information that is contained in the records relating to drug testing unless it was required by law to do so. Not every employee who was in a safety-sensitive position was also a member of the Charging Party's bargaining unit.

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 _____

14. Case 06-ULP-08-0440 Columbus Education Association, OEA/NEA v. Columbus City School District Board of Education

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally assigning bargaining-unit work to nonbargaining-unit employees. Information gathered during the investigation revealed the Charged Party did not eliminate any bargaining-unit positions when it transferred some of the teachers on special assignment back to classroom assignments. None of the affected bargaining-unit members lost their jobs, suffered a diminution of pay, seniority, or other terms and conditions of employment, and their duties were not performed by nonbargaining-unit members. The Charging Party confirmed it had knowledge of the impending changes as early as February 2006, but did not request to bargain with the Charged Party prior to the start of the new school year.

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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 _____

15. Case 06-ULP-08-0441 International Association of Machinists and Aerospace Workers, Local 1363 v. Metro Regional Transit Authority

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(5) and (6) by failing to bargain the terms and conditions of employment, and by failing to timely process grievances. Information gathered during the investigation revealed the Charging Party failed to provide sufficient information and documentation to show the Charged Party repeatedly failed to process the Charging Party's grievances. The Charging Party, after being denied at Step 2, did not advance the grievance to the next step. The Charging Party had constructive knowledge of the surveillance system in 1998. The Charging Party failed to provide sufficient information to support the Ohio Revised Code § 4117.11(A)(5) 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 _____

16. Case 06-ULP-09-0451 Barberton Education Association, OEA/NEA v. Barberton City School District Board of Education

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by terminating Jillian Zorn for the exercise of her guaranteed rights. Information gathered during the investigation revealed the Charged Party may have interfered with, restrained, or coerced Ms. Zorn in the exercise of her guaranteed rights. With the Charged Party's knowledge, Ms. Zorn was engaged in the protected activity of openly supporting the Charging Party's philosophy as outlined in the Charging Party's Crisis Newsletter, and was harmed when the Charged Party terminated her substitute-teaching contract. Ms. Zorn established a prima facie case of discrimination. The Charged Party confirmed that Ms. Zorn's substitute contract was cancelled, in part, due to her unacceptable teaching philosophy.

Vice Chairman Gillmor moved that the Board find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, refer the matter to hearing to determine if the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by terminating the employment of substitute teacher Jillian Zorn for the exercise of her guaranteed rights to support the Charging Party, 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 _____

17. Case 06-ULP-09-0454 Wesley H. Fullen v. City of Columbus,
Department of Public Safety

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(3) and (8) by violating Article 37 of the collective bargaining agreement, which resulted in Charging Party's termination. Information gathered during the investigation revealed the Charging Party was a public employee who was harmed when the Charged Party terminated his employment. But the Charging Party failed to provide sufficient information to show he was engaged in protected activity. The Charging Party failed to establish a prima facie case of discrimination. The Charging Party also failed to provide sufficient information 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 _____

18. Case 06-ULP-09-0455 Wesley H. Fullen v. International
Association of Fire Fighters, Local 67, IAFF,
AFL-CIO

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(1), (2), and (6) by providing representation at his investigatory interview without his permission or request. Information gathered during the investigation revealed Charged Party did not restrain or coerce the Charging Party in the exercise of his guaranteed rights when it was present at his June 15, 2006 investigatory interview. The Charged Party and the City of Columbus had previously agreed to allow the Charged Party to be present for all of the interviews. The Charging Party had the option to obey Chief Pettus' direct order to participate with the investigation, but chose not to obey the order because the Charged Party's representative was present at the interview. The Charging Party was informed by the Charged Party that he should obey the order and file a grievance at a later date. The Charging Party failed to provide sufficient information to support the Ohio Revised Code § 4117.11(B)(2) and (6) allegations.

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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 _____

19. Case 06-ULP-09-0459 Arthur L. Beasley, Jr. v. International Union of Operating Engineers, Local 18S

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(B)(6) by failing to fairly represent the Charging Party during the recent contract negotiations. Information gathered during the investigation revealed the Charged Party's actions were not arbitrary, discriminatory, or in bad faith when it presented the fact-finder's report to the membership for a vote. The Charging Party, in his capacity as a negotiating-team member, bore some of the burden for providing information to the membership. The membership later ratified the tentative agreement that it had rejected two months earlier. Knowledge of the alleged violations prior to June 27, 2006, 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.

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 for events occurring prior to June 27, 2006. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

20. Case 06-ULP-09-0469 National Conference of Firemen and Oilers, Local 200, SEIU, AFL-CIO, CLC v. Shaker Heights City School District Board of Education

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1). Information gathered during the investigation revealed the Charging Party failed to respond to SERB's requests for information.

Vice Chairman Gillmor moved that the Board dismiss the charge with prejudice because the Charging Party failed to pursue the matter. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

21. Case 06-ULP-06-0307

Teachers Association of Washington Local Schools and Paul Johnson v. Washington Local School District Board of Education

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by placing Paul Johnson on the reduction-in-force list rather than assigning him to another position because of his exercise of guaranteed rights. Information gathered during the investigation revealed Mr. Johnson was a public employee who was engaged in protected activity as a union officer and negotiating-team member. The Charged Party was aware of his activities. A prima facie case of discrimination was established. Improper motivation by the Charged Party may be inferred from circumstantial, as well as, direct evidence.

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 placing Paul Johnson on the reduction-in-force list rather than assigning him to another position because of his 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

22. Case 06-ULP-06-0325

Joe Boose, Jr. v. Ohio Council 8, American Federation of State, County and Municipal Employees, Local 2058, AFL-CIO

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(B)(1) and (6) by failing to represent the Charging Party because of his race. Information gathered during the investigation reveals the Charged Party's representation of Charging Party was not arbitrary, discriminatory, or in bad faith. The Charged Party has provided examples where similarly situated employees resigned in the face of theft allegations. The Board lacks jurisdiction to address the race-discrimination 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, and for lack of jurisdiction regarding the race-discrimination issue. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

23. Case 06-ULP-06-0326 Joe Boose, Jr. v. City of Toledo, Division of Water

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), (3), (6), and (8) by coercing the Charging Party into resigning. The Charged Party filed a motion to defer the charge to the grievance-arbitration process. Information gathered during the investigation revealed the Charging Party was not engaged in any Ohio Revised Code Chapter 4117 protected activities at the time of his resignation. A prima facie case of discrimination was not established. The Charging Party was advised of the possible consequences if he chose to fight the charges, and signed the resignation. The Charged Party was not obligated to rescind the resignation. The Charging Party failed to provide information to support the Ohio Revised Code § 4117.11(A)(2) and (6) allegations, and failed to provide sufficient information to support the Ohio Revised Code § 4117.11(A)(1) and (8) allegations. The Board lacks jurisdiction over allegations of race discrimination.

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 for lack of jurisdiction regarding the race-discrimination allegations, and denied the Charged Party's motion to defer as moot. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

24. Case 06-ULP-07-0329 Dolores Johnson v. Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO

25. Case 06-ULP-07-0330 Jody Kurtz v. Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO

The unfair labor practice charges allege the Charged Party violated Ohio Revised Code § 4117.11(B)(1) by expelling the Charging Parties from membership and continuing to collect union fees. Information gathered during the investigation reveals the Charging Parties were not restrained or coerced from pursuing decertification of the Charged Party. The Charged Party's Constitution and Bylaws provide for a process to investigate complaints against its members, the outcome, of which can lead to expulsion from the union. The Charging Parties contend that the expulsion interferes with their right to join a union. Under the circumstances, the Charged Party had reason to expel the Charging Parties and, therefore, did not commit a violation. The collective bargaining agreement contains a fair-share-fee provision that calls for payroll deductions of employees who are not members of the Charged Party.

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. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

26. Case 06-ULP-07-0337 Robert E. Decker v. Fremont City School District Board of Education

The unfair labor practice charge alleged the Charged Party violated Ohio Revised Code § 4117.11(A)(8) by changing Article 13.2 of the collective bargaining agreement after it was ratified. Information gathered during the investigation revealed the Charging Party's allegation is speculative and is not based upon facts that can support the Ohio Revised Code § 4117.11(A)(8) violation. The Union and the Charged Party have signed off on the new collective bargaining agreement. The decision to change a contractual provision is mutual. The allegation that the Charged Party caused, or attempted to cause the Union to commit a violation, is not substantiated by the information provided during the investigation.

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 _____

27. Case 06-ULP-07-0364 Treasurers and Ticket Sellers Union, Local 756 v. City of Cleveland

The unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by bargaining in bad faith. Information gathered during the investigation reveals that the bargaining unit represented by the Charging Party is unique from other represented bargaining units of the Charged Party. The Charged Party's insistence to only offer wages negotiated with the other bargaining units indicates an attempt to frustrate the bargaining process. Unlike the other bargaining units, the General Fund of the Charged Party does not support the Charging Party's bargaining unit; its funds are generated by the Convention Center's Enterprise Fund. The Charged Party failed to respond to the Information Request and has not denied the allegation of bad-faith bargaining. Therefore, the allegations are treated as being true.

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Vice Chairman Gillmor moved that the Board find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, refer the matter to an expedited hearing to determine if the Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by bargaining in bad faith, and direct the parties to mediation. Board Member Verich seconded the motion. Chairman Mayton called for any discussion. General Counsel Russ Keith suggested to the Board that since the Charged Party failed to respond to the Investigator's information requests and since this matter is being referred to an expedited hearing, the Board may not want to direct the parties to mediation. Chairman Mayton agreed with this recommendation and stated that Charged Party was doing well with compliance issues, but a slippage has occurred and, for the record, needs to be monitored.

Vice Chairman Gillmor moved that the Board amend the motion to delete the direction to mediation. Board Member Verich seconded the motion. Chairman Mayton called for the vote on the motion to amend the motion.

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

Chairman Mayton then called for the vote on the motion as amended.

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

28. Case 06-ULP-10-0535 Joyce Nichols v. North East Care Center

29. Case 06-ULP-10-0540 Joyce Nichols v. Midport, Inc.

In Case 06-ULP-10-0535, the unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(3), and in Case 06-ULP-10-0540, the unfair labor practice charge alleges the Charged Party violated Ohio Revised Code § 4117.11(A)(1). Information gathered during the investigation reveals the Charging Party is not a public employee, the Charged Parties are private companies and not public employers, and the parties are not under the Board's jurisdiction.

Board Member Verich moved that the Board dismiss the charges with prejudice for lack of jurisdiction. Vice Chairman Gillmor seconded the motion. Chairman Mayton called for the vote.

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

30. Case 06-ULP-06-0259 Stanley Koplan v. City of Cleveland

31. Case 06-ULP-06-0260 Stanley Koplan v. International Union of Operating Engineers, Local 10

32. Case 06-ULP-02-0056 Ralph C. Hughes v. Cuyahoga Community College

33. Case 06-ULP-02-0057 Ralph C. Hughes v. Ohio Council 8, American Federation of State, County and Municipal Employees, Local 2678, AFL-CIO
34. Cases 06-ULP-04-0166 David Michael Troutman v. Fraternal Order of Police, Ohio Labor Council, Inc.
06-ULP-04-0167 George S. Christen v. Fraternal Order of Police, Ohio Labor Council, Inc.

Vice Chairman Gillmor moved that the Board construe the Charging Party's request and letter as motions for reconsideration, and deny the motions for reconsideration with prejudice. Board Member Verich seconded the motion. Chairman Mayton called for the vote.

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

35. Case 06-ULP-10-0486 United Mine Workers of America, Local 4231 v. Jackson County Commissioners
36. Case 06-ULP-10-0499 Ohio Council 8, American Federation of State, County and Municipal Employees, Local 1039, AFL-CIO v. City of Portsmouth

Board Member Verich moved that the Board construe the letters as motions to withdraw, and grant the motions with prejudice. 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:

Web Clearinghouse Project Update – Executive Director Art Marziale reported that there was a meeting with Babbage Simmel on November 20, 2006, to get an update on the progress of this project. At the end of January 2007, the Research and Training Section staff will be thoroughly trained on the whole process, and then they will set up an internal full-scale test to see if it is working here at SERB. Once that test is completed, they will generate a test to two external customers to see how well it works for them. When all the “bugs” have been worked out, it will then be “launched” for the public's use. Upon its completion, the contract on the project will end except for a maintenance contract to be worked out.

Further discussion took place on how the process will work when billing customers for special reports. Special reports consist of a customized compilation of information taking a little bit more time to assemble and not consistent with the usual data requested.

Health Care Survey Update – Researcher Kay Raffo first expressed her heartfelt thanks to Research and Training Administrator Cheri Alexander, Researcher Sarah Malackany, and IT Expert Sayfee (from Babbage Simmel) for all of their assistance and expertise during this project. Ms. Raffo then reported that the Board has had a 77.2% return on its surveys, which is much better than last year, and it has helped in updating data for this year's Health Care Report. She said this large response was due to surveys either being received via mail, faxes, e-mails, or some by phone. Ms. Raffo mentioned that there is some software available that can help design the program to work much better, and suggested that the agency might want to look into it for future use. She stated that in most categories school districts, counties, and large cities responded to the survey. She also mentioned that there will be some new designs made to the inside of this report, and showed the Board some examples of these changes that will be made. Vice Chairman Gillmor suggested that maybe a new design could also be made for the cover. Ms. Raffo stated that by the Board's first January 2007 meeting, this project should be completed and ready for the Board's input and for the final report to be distributed. Board Member Verich commented that it has taken years for such a comprehensive report to be put together, and that he was very pleased with the large response, with the hard work Ms. Raffo has been doing, and said that maybe the possibilities are there to put the information on SERB's website once a final report is published. Vice Chairman Gillmor asked if other states publish a report like SERB does, how it is reported, and whether they contribute to the text of it all. Ms. Raffo stated there are a few states that do publish reports, and mentioned California does a very good job of reporting such information. Vice Chairman Gillmor mentioned a Chicago insurance association that may be able to help us with our report and disseminating it to interested parties. Ms. Raffo also mentioned that there was a physicians trade association in Columbus that could also help, maybe through a grant, that could also do the same in letting interested parties know of our information.

Vice Chairman Gillmor requested that when we put a new cover together that credit be given to Researcher Kay Raffo, Research and Training Administrator Cheri Alexander, Researcher Sarah Malackany, and IT Expert Sayfee for all of their hard work. Executive Director Marziale suggested that he could write something about each one stating their expertise used in this project, and place it in the "Forward" part of the report. This project has been a team effort by the staff and credit should be given to them.

Ms. Raffo mentioned that after this survey project is completed she will be working on the Annual Report, and hopefully have a better way of showing the statistical information so it can be understood better. The Board members made comments that the monthly reporting is not always the easiest to decipher, and it could be just a matter of not asking the right questions of what should be reported to give someone a complete overview of what the agency does. All of this information should be reviewed when Ms. Raffo starts this project.

Minutes – The Board members discussed the present processing method of how and when they receive the minutes to review them before any upcoming Board meeting takes place. A better process needed to be in place so no one is in a hurry reviewing them. It was decided that the minutes should be ready in a final format for the Board members' review by the Monday before the meeting takes place on Thursday. This timing should give all Board members ample time to review the minutes and to make any comments on them to staff before the minutes are presented for approval at the Board meeting. It was also mentioned that the Board's agenda should also be ready by that Monday for their review. This new procedure will start immediately.

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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 _____

Vice Chairman Gillmor moved that the Board exit from Executive Session. 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 _____

VII. ADJOURNMENT

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

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

/s/ Craig R. Mayton
Craig R. Mayton, Chairman