

State Employment Relations Board  
Board Meeting Minutes  
April 10, 2008

The State Employment Relations Board met on April 10, 2008, at 10:09 a.m., at 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio. Present at the meeting were Chairman Craig R. Mayton and Board Member Michael G. Verich.

I. APPROVAL OF MINUTES OF THE PREVIOUS MEETING:

Board Member Verich moved that the Board approve the minutes from the March 20, 2008 Board meeting. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

1. Closing 80 cases

Board Member Verich moved that the Board close 80 Mediation cases beginning with Case 05-MED-04-0537 and ending with Case 07-MED-06-0672, not consecutively numbered. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

2. Case 07-MED-12-1242 International Union of Police Associations, AFL-CIO, Local 76 and Hancock County Sheriff

The Rival Employee Organization filed a Petition for Representation Election, in Case 08-REP-03-0048, seeking to replace the Incumbent Employee Organization as the exclusive representative for the bargaining unit. The Incumbent Employee Organization filed a Notice to Negotiate concerning negotiations with the Employer. The Employer filed a motion to stay negotiations pending resolution of the related representation case; the motion was unopposed.

Board Member Verich moved that the Board grant the Employer's motion to stay negotiations in Case 07-MED-12-1242 pending disposition of Case 08-REP-03-0048, and expedite the processing of the representation case. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

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3. Case 08-MED-03-0227 Ohio Association of Public School Employees, American Federation of State, County and Municipal Employees, Local 4, AFL-CIO and Its Local #008 and Teays Valley Local School District Board of Education

The Rival Employee Organization filed a Petition for Decertification Election, in Case 08-REP-03-0041, seeking to decertify the Incumbent Employee Organization as the exclusive representative for all school bus drivers of the Employer. The Incumbent Employee Organization filed a Notice to Negotiate concerning negotiations with the Employer. The Employer filed a motion to stay negotiations pending resolution of the related representation case; the motion was unopposed.

Board Member Verich moved that the Board grant the Employer's motion to stay negotiations in Case 08-MED-03-0227 pending disposition of Case 08-REP-03-0041, and expedite the processing of the representation case. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

4. Cases 07-MED-10-1075 Ohio Patrolmen's Benevolent Association  
07-MED-10-1076 and City of Sheffield Lake  
07-MED-10-1077

The Employee Organization filed with SERB three Notices to Negotiate for three separate bargaining units of employees of the Employer. The Employee Organization requested the appointment of a fact-finding panel for these three cases. The parties notified SERB of their selection of a fact finder. SERB appointed a fact finder. The fact-finding hearing was held on March 12, 2008. The fact-finder's report was issued on March 20, 2008.

On March 26, 2008, the Employer filed its "Certification of Fact-Finding Vote." Six of seven members of council had been present to vote. A vote was taken on whether to accept or reject the fact-finder's report. All six council members present voted to reject the report. According to the certification, the vote was taken on March 25, 2008. The certification contained a proof of service signed by the Employer's representative showing that the certification was sent by regular U.S. mail to the Employee Organization's representative on March 26, 2008. The space for the signature of the Employer's representative under the "Declaration" was unsigned.

The Employee Organization filed with SERB a motion to strike the Employer's certification and for other relief, namely to determine the fact-finder's report as deemed accepted by the Employer. The Employer filed its response with SERB.

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Ohio Revised Code § 4117.14(C) contains the process for requesting the appointment of a fact-finding panel. Under Ohio Revised Code § 4117.14(C)(3)(a), “The fact-finding panel shall \* \* \* gather facts and make recommendations for the resolution of the matter. \* \* \* The fact-finding panel shall make final recommendations as to all the unresolved issues.” Ohio Revised Code § 4117.14(C)(6)(a) provides in relevant part as follows: “The board shall adopt rules governing the procedures and methods for public employees to vote on the recommendations of the fact-finding panel.”

Ohio Administrative Code Rule 4117-9-05(N) provides in relevant part as follows: “Written verification of the date of the vote, the vote tally, and the number of members of the legislative body shall be served upon the board and the exclusive representative within twenty-four hours after the vote count but in no event later than twenty-four hours after the expiration of the seven-day voting period.” The written verification must contain proof of service upon the employee organization pursuant to Ohio Administrative Code Rule 4117-1-02. Ohio Administrative Code Rule 4117-1-02(E) also provides in relevant part: “The board has discretion to waive technical defects in any document filed with the board if no undue prejudice would result.”

In *In re Lima*, SERB 85-002 (1-25-85), SERB first addressed a fact-finder’s report where neither party filed a certification within the prescribed time period. SERB held: “The fact-finding report must be deemed certified when neither party has voted nor communicated its vote to the Board in accordance with the relevant statutory provisions and rules.” *Id* at 28.

The signing of the “Declaration” is not required by the statutory provision or administrative rule. Under the rule, the written verification of the employer’s vote must contain a proof of service upon the employee organization. In the present case, the Employer’s Certification contains the required proof of service signed by its representative. SERB has the authority, under Ohio Administrative Code Rule 4117-1-02(E), to waive technical defects in any document filed if no undue prejudice would result. The fact that the “Declaration” is unsigned does not rise to the level of a fatal defect rendering invalid the Employer’s “Certification of Fact-Finding Vote.”

Ohio Revised Code Section 4117.22 states: “Chapter 4117. of the Revised Code shall be construed liberally for the accomplishment of the purpose of promoting orderly and constructive relationships between all public employers and their employees.” Applying this statutory direction to these facts, the omission of the signature for the “Declaration” is not a “fatal defect” in the certification of the fact-finding vote. The Employer timely and adequately submitted a written verification of the legislative body’s rejection of the fact-finder’s report.

Board Member Verich moved that the Board deny the Employee Organization’s “Motion to Strike and for Other Relief.” Chairman Mayton seconded the motion, and called for discussion, requesting confirmation that the Employee Organization was not contesting the proof of service not being signed by the representative. General Counsel J. Russell Keith replied that the Employee Organization was not contesting the Employer’s proof of service. Chairman Mayton called for the vote.

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

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III. REPRESENTATION MATTERS AT ISSUE:

1. Case 08-REP-02-0031 Greenville Emergency Communications Operators, IAFF Local 1101, AFL-CIO and City of Greenville

The Employee Organization filed a Request for Recognition seeking to represent certain employees of the Employer. The substantial evidence is sufficient. No objections have been filed. The Employer has complied with the posting requirements.

Board Member Verich moved that the Board certify the Employee Organization as the exclusive representative of all employees in the relevant bargaining unit. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

2. Case 08-REP-01-0017 Lebanon Fraternal Order of Police, Lodge No. 133 and City of Lebanon

The Employee Organization filed an amended Opt-In Request for Recognition seeking to represent certain employees of the Employer, and to add them to an existing Board-certified unit. The substantial evidence is sufficient. No objections have been filed. The Employer has 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. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

3. Case 08-REP-01-0012 Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and Euclid City Schools

The Employee Organization filed a Request for Recognition seeking to represent certain employees of the Employer. The Employer responded by filing objections and a Petition for Representation Election. The parties entered into a Consent Election Agreement seeking an election on May 20, 2008.

Board Member Verich moved that the Board approve the Consent Election Agreement and direct an election to be conducted on May 20, 2008. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

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4. Case 08-REP-02-0025 International Brotherhood of Teamsters, Local 436 and Lorain County Commissioners – Golden Acres Home
5. Case 08-REP-02-0026 International Brotherhood of Teamsters, Local 436 and Lorain County Commissioners – Golden Acres Home
6. Case 08-REP-03-0043 Ohio Association of Public School Employees (OAPSE) and Its Local #316 and Wilmington Public Library

The parties have jointly filed Petitions for Amendment of Certification seeking to amend the existing units to reflect certain negotiated changes. The proposed amendments appear appropriate.

Board Member Verich moved that the Board approve the jointly filed petitions and amend the units accordingly. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

7. Case 07-REP-10-0144 Service Employees International Union, District 1199 and Stark County District Library

The Employee Organization is the Board-certified exclusive representative of certain employees of the Employer. The Employee Organization has filed a Petition for Amendment of Certification seeking to amend the existing unit to include Assistant Branch Manager and Assistant Coordinator, Youth Services. The Employer has filed a position statement opposing the amendment. A conference call has been conducted. The parties' dispute remains.

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

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

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8. Case 07-REP-09-0122 Ohio Patrolmen's Benevolent Association and Teamsters Local 908 and City of Delphos
- There were 3 ballots cast
  - There were 0 challenged ballots
  - No Representative received 0 votes
  - Ohio Patrolmen's Benevolent Association received 3 votes and prevailed in this election.
9. Case 07-REP-07-0101 International Association of EMT's and Paramedics, NAGE/SEIU and Vinton County Board of Commissioners
- There were 16 ballots cast
  - There were 0 challenged ballots
  - No Representative received 4 votes
  - International Association of EMT's and Paramedics, NAGE/SEIU received 12 votes and prevailed in this election.
10. Case 07-REP-11-0170 Fraternal Order of Police, Ohio Labor Council, Inc. and University of Cincinnati, Department of Public Safety
- There were 26 ballots cast
  - There were 0 challenged ballots
  - No Representative received 6 votes
  - Fraternal Order of Police, Ohio Labor Council, Inc. received 20 votes and prevailed in this election.
11. Case 07-REP-11-0165 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Village of Granville (Unit #1)
- There were 11 ballots cast
  - There were 0 challenged ballots
  - No Representative received 0 votes
  - Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO received 11 votes and prevailed in this election.

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12. Case 07-REP-11-0166 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Village of Granville (Unit #2)

- There were 3 ballots cast
- There were 0 challenged ballots
- No Representative received 0 votes
- Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO received 3 votes and prevailed in this election.

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

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

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Case 06-REP-12-0171 Municipal Construction Equipment Operators' Labor Council and City of Cleveland

The Municipal Construction Equipment Operator's Labor Council ("CEO Union") filed a Petition for Representation Election under Ohio Revised Code §§ 4117.05 and 4117.07 seeking to sever a group of employees of the City of Cleveland ("City") that are part of a larger bargaining unit represented by Teamsters Local No. 244 ("Local 244"). The City filed a position statement opposing the petition. Local 244 filed objections and a motion to dismiss the petition. The Board denied the motion to dismiss and directed this case to hearing to determine an appropriate bargaining unit, including whether to sever the petitioned-for employees from the existing bargaining unit, and for all other relevant issues.

A hearing was held on September 7, 2007 and October 26, 2007. The City was served with a copy of the Board's Notice to Hearing and Prehearing Order and was notified of all scheduled prehearing and hearing dates, but the City did not participate in the prehearing conference or evidentiary hearing. Subsequently, the CEO Union and Local 244 filed post-hearing briefs.



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4. Case 07-ULP-07-0369 Municipal Foreman and Laborer's Union,  
Local 1099 v. City of Cleveland

The Charging Party filed an unfair labor practice charge against the Charged Party. The Board found probable cause to believe a violation had occurred, consolidated this case with Case 2007-ULP-07-0315, authorized the issuance of a complaint, referred the matter to hearing, and directed the parties to unfair labor practice mediation.

Charging Party filed another unfair labor practice charge (Case 2007-ULP-12-0642) against Charged Party. Charged Party filed a motion to consolidate Cases 2007-ULP-07-0369 and 2007-ULP-12-0642 and a motion to stay. Charging Party filed a motion to dismiss the unfair labor practice charge in Case 2007-ULP-12-0642; the Board granted Charging Party's motion. Thus, Charged Party's motion to consolidate is moot.

Charged Party has moved to defer the case to the arbitration proceedings. Under *In re Upper Arlington Ed Assn*, SERB 92-010 (6-30-92), the Board stated that it "will not defer where the process itself is one of the issues of a pending unfair labor practice charge. \* \* \* For example, if a party has \* \* \* withheld information needed for processing the grievance, deferral will not be considered appropriate." *Id* at 3-32. The finding of probable cause in Case 2007-ULP-07-0369 concerns Charged Party's alleged failure to provide requested information for grievance and arbitration. Therefore, even though the motion is unopposed, deferral is not recommended.

Board Member Verich moved that the Board deny as moot the motion to consolidate, and deny the motion to stay. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

5. Case 07-ULP-09-0500 Tallmadge Teacher's Association, OEA/NEA  
v. Tallmadge Local School District Board of  
Education

Charging Party filed an unfair labor practice charge against the Charged Party. The Board found probable cause to believe a violation had occurred, authorized the issuance of a complaint, referred the matter to hearing, and directed the parties to unfair labor practice mediation. Charging Party filed a motion to withdraw the charge.

Board Member Verich moved that the Board grant the motion to withdraw and dismiss with prejudice the unfair labor practice charge. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

V. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 07-ULP-11-0584 New Lexington Education Association, OEA/NEA v. New Lexington City School District Board of Education

The unfair labor practice charge alleged Charged Party violated Ohio Revised Code § 4117.11(A)(5) by failing to bargain in good faith. Information gathered during the investigation revealed Charged Party's action of filling a vacant bargaining-unit position with nonbargaining-unit employees is a mandatory subject of bargaining.

Board Member Verich moved that the Board deny Charged Party's motion to dismiss, 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 Charged Party violated Ohio Revised Code § 4117.11(A)(5) by assigning bargaining-unit work to nonbargaining-unit employees, and direct the parties to ULP mediation. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

2. Case 07-ULP-12-0657 Professionals Guild of Ohio v. Montgomery County Department of Job and Family Services

The unfair labor practice charge alleged Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally reassigning bargaining-unit work. Information gathered during the investigation revealed Charged Party reassigned bargaining-unit work to a nonbargaining-unit position.

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 Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally reassigning bargaining-unit work to a non-bargaining-unit position, and direct the parties to ULP mediation. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

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3. Case 08-ULP-01-0004 Eugene B. Abel v. Stark Area Regional  
Transit Authority (SARTA)

The unfair labor practice charge alleged Charged Party violated Ohio Revised Code § 4117.11(A)(1) by interfering with employees' rights. The Union filed a grievance relating to interpretation of the parties' agreement with respect to vacation accrual language. The grievance was advanced to arbitration. The arbitrator found in favor of the Union's interpretation and granted the grievance. Charged Party filed a motion to vacate the arbitration award. The motion was denied by the Stark County Common Pleas Court on September 25, 2007. Information gathered during the investigation revealed the charge was prematurely filed. On or about October 24, 2007, Charged Party appealed the matter to the Court of Appeals, where the case is still pending.

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 Charged Party. Chairman Mayton seconded the motion, and called for discussion and the vote.

Vote: MAYTON:     Aye                          VERICH:     Aye      
          Affirmed                          X                          Denied                                          

4. Case 08-ULP-01-0010 Willie Smith, Jr. v. State of Ohio,  
Department of Public Safety – Division of  
Highway Patrol

The unfair labor practice charge alleged Charged Party violated Ohio Revised Code § 4117.11(A)(1), (4), (6), and (8) by interfering with Charging Party's rights by scheduling his arbitration prior to a grievance being filed. Information gathered during the investigation revealed Charged Party's actions of scheduling an arbitration hearing did not interfere with Charging Party's guaranteed rights. Charging Party failed to provide sufficient information to support the Ohio Revised Code § 4117.11(A)(4), (6), and (8) allegations.

Board Member Verich moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by Charged Party. Chairman Mayton seconded the motion, and called for discussion and the vote.

Vote: MAYTON:     Aye                          VERICH:     Aye      
          Affirmed                          X                          Denied

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5. Case 08-ULP-01-0011 Willie Smith, Jr. v. Ohio State Troopers Association, Inc. IUPA, AFL-CIO

The unfair labor practice charge alleged Charged Party violated Ohio Revised Code § 4117.11(B)(1), (2), and (6) by failing to fairly represent Charging Party. Information gathered during the investigation revealed Charged Party acted reasonably when it determined to proceed to arbitration in the event a grievance was filed with respect to Charging Party's termination. Charged Party's actions were not 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 Charged Party. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

6. Case 07-ULP-12-0628 Blanca Rivera v. Transportation Workers Union of America, Local 208, AFL-CIO

The unfair labor practice charge alleged Charged Party violated Ohio Revised Code § 4117.11(B)(1) by failing to timely process Charging Party's internal union appeal. Information gathered during the investigation revealed the allegations appeared to involve internal union policies and procedures, which would be best addressed through Charged Party's internal procedures. The allegations did not rise to the level of a statutory violation. Charging Party had constructive knowledge of Charged Party's decision regarding her charges on or about April 21, 2007, but no later than May 7, 2007, when she appealed the decision. Charging Party's actual harm occurred on or about April 21, 2007, when she was found guilty of the charges. The alleged violation occurred more than 90 days before the charge was filed with the Board. No mitigating circumstances existed that warranted 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 Charged Party, and as untimely filed. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

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7. Case 07-ULP-12-0670 Nancy S. Toliver v. Ohio Council 8,  
American Federation of State, County and  
Municipal Employees, Local 101, AFL-CIO

The unfair labor practice charge alleged Charged Party violated Ohio Revised Code § 4117.11(B)(1), (2), and (6) by bringing false internal-union charges against Charging Party. Information gathered during the investigation revealed Charging Party did not exhaust the internal-union remedies provided to her in the constitution. Charging Party did not appear to have alleged Charged Party interfered with her statutory rights, but only with the rights contained in the local's and international's constitutions. Charging Party's allegations would be best addressed through Charged Party's established internal procedures. Charging Party's allegations did not rise to the level of a statutory violation. Charging Party failed to provide sufficient information to support the Ohio Revised Code § 4117.11(B)(2) and (6) allegations.

Board Member Verich moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by Charged Party. Chairman Mayton seconded the motion, and called for discussion and the vote.

Vote: MAYTON:     Aye                          VERICH:     Aye      
          Affirmed     X                          Denied                     

8. Case 08-ULP-01-0008 Fraternal Order of Police, Ohio Labor  
Council, Inc. v. City of Cuyahoga Falls

The unfair labor practice charge alleged Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally implementing an electronic-timekeeping system. Information gathered during the investigation revealed Charging Party failed to provide sufficient information to show how the KRONOS implementation adversely affected the bargaining-unit members' wages, hours, and terms and conditions of employment. The parties' negotiated agreement is silent on the subject of timekeeping. The KRONOS system appeared to be only an electronic version of the past practice of manually entering an employee's time. Charging Party confirmed that the members have received any disputed overtime compensation. Charging Party also appeared to have had knowledge of the KRONOS system prior to the December 7, 2007 memorandum, because the system required all employees to have their fingerprints entered into the system prior to December 10, 2007. The KRONOS implementation was city-wide and not just a requirement for bargaining-unit members.

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 Charged Party. Chairman Mayton seconded the motion, and called for discussion and the vote.

Vote: MAYTON:     Aye                          VERICH:     Aye      
          Affirmed     X                          Denied

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9. Case 08-ULP-01-0021 Ohio Patrolmen's Benevolent Association v. City of Cortland

The unfair labor practice charge alleged Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by failing to act on the Tentative Agreement. Information gathered during the investigation revealed both parties confirmed they accepted the November 17, 2007 Fact-Finder's Report. On January 9, 2008, the State Employment Relations Board (Board) sent a letter to the parties indicating that the fact-finder's report had been deemed accepted by Charging Party because it had not voted on, or had failed to communicate the vote, to the Board in accordance with Ohio Administrative Code Rule 4117-9-05(M). Charged Party sent its Employer Certification of Fact-Finding Vote to the Board on November 30, 2007. Charged Party passed the ordinance regarding the contract at its February 8, 2008 meeting. As of February 15, 2008, both parties confirmed the bargaining-unit members had received their retroactive pay and benefits.

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 Charged Party. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

10. Case 08-ULP-01-0022 Youngstown Education Association, OEA/NEA v. Youngstown City School District Board of Education

The unfair labor practice charge alleged Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally imposing additional responsibilities on the supplemental basketball coaches without additional compensation. Information gathered during the investigation revealed the matter appeared to be contractual with no evident statutory violation. Charged Party provided documentation to support a past practice that, since 2005, the seventh grade played a few separate games outside of league play; and until to this season, Charging Party had not objected or filed any grievances. Charging Party did not broach the subject of supplemental compensation during the recent negotiations for a successor agreement. Supplemental compensation is the only term and condition of employment addressed in the agreement. Job descriptions or other responsibilities are addressed in the Athletic Handbook and not in the agreement. Knowledge of the alleged violation on October 11, 2007, concerning the seventh-grade games occurred more than 90 days before the charge was filed with the Board. No mitigating circumstances existed that warranted 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 Charged Party, and as untimely filed. Chairman Mayton seconded the motion, and called for discussion and the vote.

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



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Board Member Verich moved that the Board, in Cases 07-ULP-08-0425 and 07-ULP-10-0551, consolidate the charges, 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 Charged Parties violated Ohio Revised Code § 4117.11(A)(1) and (3), but not (4) and (8), by engaging in actions for the purpose of terminating, then terminating Charging Party's employment for engaging in protected activities, direct the parties to ULP mediation, and table Case 07-ULP-11-0619. Chairman Mayton seconded the motion, and called for discussion asking General Counsel Keith, through parliamentary procedures, if the Board can vote on the whole recommendation of these charges regarding the tabling of Case 07-ULP-11-0619, or whether that part of the recommendation should be separate. General Counsel Keith replied the Board can vote on the whole recommendation as presented. Chairman Mayton called for the vote.

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

13. Case 07-ULP-12-0655 Richard Spatz v. Fraternal Order of Police, Ohio Labor Council, Inc.

The unfair labor practice charge alleged Charged Party violated Ohio Revised Code § 4117.11(B)(6) by refusing to take Charging Party's grievance to arbitration. Information gathered during the investigation revealed Charged Party and the Employer were in agreement concerning interpretation of the contractual provision regarding time counted toward being a road deputy for promotion eligibility. Charged Party's actions were not 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 Charged Party. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

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14. Case 06-ULP-08-0431 Riverdale Education Association, OEA/NEA v. Riverdale Local School District Board of Education

On August 25, 2006, Riverdale Education Association, OEA/NEA (Charging Party) filed an unfair labor practice charge against Riverdale Local School District Board of Education (Charged Party). On December 14, 2006, the charge was deferred to arbitration pursuant to In re Upper Arlington Ed Assn., SERB 92-010 (6-30-92). On May 24, 2007, an arbitration award was issued. On or about June 8, 2007, Charging Party filed a timely Motion for Review. On or about June 12, 2007, Charged Party filed a Memorandum Contra to Charging Party's motion. Charged Party argued that Charging Party's motion merely disagrees with the arbitration award, and did not provide any information as to why the charge should not be dismissed. The arbitration award resolved the unfair labor practice charge.

Board Member Verich moved that the Board deny the motion and dismiss the charge with prejudice as having been resolved between the parties pursuant to the grievance-arbitration process. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

15. Cases 07-ULP-07-0318 Lloyd E. Harley, et al. v. State of Ohio, Department of Transportation
- 07-ULP-07-0319 Lloyd E. Harley, et al. v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO

On December 13, 2007, the Board dismissed the unfair labor practice charges for lack of probable cause and as untimely filed. Charging Parties alleged that ODOT violated Ohio Revised Code § 4117.11(A)(1) through (8) by singling them out for a wage freeze. Charging Parties alleged that OCSEA violated Ohio Revised Code § 4117.11(B)(1) through (8) by agreeing to single them out for a wage freeze.

On January 23, 2008, Charging Parties filed a request for reconsideration of the Board's decision. A review of the original investigation revealed that Charging Parties failed to raise any new issues warranting reversal of the dismissal.

Board Member Verich moved that the Board construe Charging Parties' request as a Motion for Reconsideration, and deny the motion with prejudice. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

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16. Cases 08-ULP-01-0001 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO v. Plain Local School District Board of Education

17. Case 08-ULP-01-0009 Ohio Patrolmen's Benevolent Association v. City of Munroe Falls

Board Member Verich moved that the Board construe the letters as motions to withdraw, and grant with prejudice the motions to withdraw. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

18. Case 07-ULP-12-0671 City of Warren v. Ohio Council 8, American Federation of State, County and Municipal Employees, Local 74, AFL-CIO

Board Member Verich moved that the Board lift this matter from the table. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

The unfair labor practice charge alleged Charged Party violated Ohio Revised Code § 4117.11(B)(5) and (6) by seeking to enforce a court order on behalf of a "splinter group" of employees. Information gathered during the investigation revealed in February 1997, Tax Department employees filed a declaratory-judgment lawsuit claiming the agreement entered into with the Treasurer was a binding contract. The employees' demand for back pay in 2007 was based upon the 2002 ruling. Charging Party failed to appeal. Knowledge of the alleged violation occurred more than 90 days before the charge was filed with the Board. No mitigating circumstances existed that warranted 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 Charged Party, and as untimely filed. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

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19. Case 07-ULP-11-0567 Cleveland Police Patrolmen's Association v. City of Cleveland
20. Case 08-ULP-03-0105 Ohio Patrolmen's Benevolent Association v. Hocking County 911
21. Case 08-ULP-02-0074 Ohio Patrolmen's Benevolent Association v. Cincinnati State Technical Community College

Board Member Verich moved that the Board construe the letters as motions to withdraw, and grant the motions to withdraw with prejudice. Chairman Mayton seconded the motion, and called for discussion and the vote.

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

Chairman Mayton stated for the record his thanks and appreciation to Labor Relations Administrator Dory McClendon and her staff for the great effort and outstanding job they did regarding the Ohio Turnpike Commission's election.

VI. TABLED MATTER:

1. Case 06-ULP-12-0671 City of Warren, Ohio Council 8, American Federation of State, County and Municipal Employees, Local 74, AFL-CIO
2. Case 06-ULP-11-0561 SERB v. City of Montgomery
3. Case 07-ULP-08-0434 General Truck Drivers and Helpers Union, Local No. 92 v. Stark County Board of Commissioners

VII. ADMINISTRATIVE MATTERS:

A. **Agency's Record Retention Schedules:**

Board Member Verich moved that the Board adopt the agency's proposed record-retention schedules subject to any necessary outside approvals. Chairman Mayton seconded the motion, and called for discussion, asking General Counsel Keith if there were any outstanding issues with the proposed record-retention schedules. General Counsel Keith replied that there were no outstanding issues to his knowledge. Chairman Mayton then called for the vote.

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

B. **2007 16<sup>th</sup> Annual Report on Cost of Health Insurance in Ohio Public Sector**

Chairman Mayton mentioned that the 2007 16<sup>th</sup> Annual Report on Cost of Health Insurance in Ohio Public Sector has been sent to State Printing. It was distributed at the recent SERB Academy. It will be sent soon to the parties who ordered the report.

C. **Babbage Simmel Renewal**

Fiscal Officer Sandy Stiffler discussed the proposed renewal of Babbage Simmel's contract, which ends on June 30, 2008. Chairman Mayton had asked Fiscal Officer Stiffler earlier in the week when should the Board look into this matter as he was not advocating to look elsewhere, but only for the purposes in a due diligence analysis of what needs to be done. Fiscal Officer Stiffler replied that the Board needs to look into this matter now, and recommended that the Board contact Babbage Simmel to obtain a renewal quote from them, and then maybe contact up to five other State vendors for quotes. The five vendors could be checked out as to who they work with, what kind of services they provide, whether they have a good reputation, and other relevant considerations. Chairman Mayton commented that it would be nice if we could find a smaller vendor to work with as our agency is small and would not want to get lost in the shuffle of service. Fiscal Officer Stiffler reminded the Board that the State Technical group also has to sign off on this contract even if SERB renews with Babbage Simmel. It was also mentioned that the Clearinghouse project is under a separate contract with Babbage Simmel. Board Member Verich asked Fiscal Officer Stiffler how much is paid out to Babbage Simmel under the current contract. She replied that approximately \$65.00 per hour for four hours of work a day, totaling approximately \$64,000 a year, is paid.

Chairman Mayton asked Fiscal Officer Stiffler to obtain immediately a renewal quote from Babbage Simmel, along with quotes from up to five other State vendors. He asked her to report back to the Board with her findings and recommendation for the Board's action.

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VIII. ADJOURNMENT:

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

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

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