

State Employment Relations Board
Board Meeting Minutes
July 9, 2009

The State Employment Relations Board met on July 9, 2009, at 10:00 a.m., at 65 East State Street, 12th Floor, Columbus, Ohio. Present at the meeting were Chairperson N. Eugene Brundige, Vice Chairperson Michael G. Verich, and Board Member Robert F. Spada.

I. APPROVAL OF MINUTES OF THE JUNE 18, 2009 BOARD MEETING:

Board Member Spada moved that the Board approve the minutes for the June 18, 2009 Board meeting. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

1. Case 06-MED-09-1101 American Federation of State, County and Municipal Employees, Ohio Council 8, Local 3356 and City of Girard

On September 25, 2006, the Employee Organization filed a Notice to Negotiate with the Employer for a successor contract to the one expiring on December 31, 2006. It has been the policy of the Bureau of Mediation to check for a contract or any correspondence within a reasonable time period. Having not heard from the parties for a significant period of time, the Bureau designated the file for closing. The Board acted upon the case for closing at its June 18, 2009 Board meeting.

On June 29, 2009, the Bureau of Mediation received a request for a fact-finding panel. In order to provide one, the Board must re-open this file.

Vice Chairperson Verich moved that the Board reopen Case 06-MED-09-1101. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and for the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 09-REP-05-0050 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Wilmington

All parties have executed and filed the Consent Election Agreement.

Board Member Spada moved that the Board approve the Consent Election Agreement and direct an election to be conducted on August 11, 2009. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

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2. Case 09-REP-02-0021 CCBH Nurses and Ohio Nurses Association and Cuyahoga County Board of Health

On June 2, 2009, the Board conducted a secret-ballot election. The results of the election were thirty-six (36) ballots were cast: CCBH Nurses received one (1) vote; Ohio Nurses Association received seventeen (17) votes; and No Representative received eighteen (18) votes.

On June 18, 2009, the Board certified the election results and certified that the employees had chosen to have no exclusive representative for the purpose of collective bargaining. The election results are incorrect. (The Board's directive has not been issued.)

Ohio Administrative Code Rule 4117-5-09(B) provides that when an election in which there are three choices on the ballot results in no choice receiving a majority of the ballots cast, a runoff election shall be held in which only the two choices receiving the highest number and the second highest number of votes in the original election appear on the ballot. Issuing a corrected Tally of Ballots and directing a runoff election appears appropriate.

Vice Chairperson Verich moved that the Board rescind certification of the June 2, 2009 election results, issue a corrected Tally of Ballots reflecting "Runoff Election" as the outcome of the June 2, 2009 election, and direct a runoff election in which only Ohio Nurses Association and No Representative shall appear on the ballot, said election to be conducted at a date, time, and place determined by the Representation Section in consultation with the parties. Board Member Spada seconded the motion. Chairperson Brundige called for discussion. Board Member Spada asked what would happen if the result of the "Runoff Election" was a tie? General Counsel Keith stated that in the result of a tie in a runoff election, the Board would certify the election results and revert back to status quo, which in this case would mean Ohio Nurses Association would prevail. Chairperson Brundige called for the vote.

Vote: BRUNDIGE:	<u>Aye</u>	VERICH:	<u>Aye</u>	SPADA:	<u>Aye</u>
Affirmed	<u>X</u>		<u>Denied</u>		

3. Case 09-REP-05-0057 Teamsters Local 92, International Brotherhood of Teamsters and Lawrence County Auditor

4. Case 09-REP-05-0060 Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and Tri-County North Local School District Board of Education

The Employee Organizations filed Requests for Recognition seeking to represent certain employees of the Employers. The substantial evidence is sufficient, and no objections have been filed. The Employers have complied with the posting requirements.

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7. Case 09-REP-04-0044 Michael J. Church and Teamsters Local 436 and Portage County Commissioners

On April 6, 2009, the Petitioner filed a Petition for Decertification Election seeking to decertify the Incumbent Employee Organization, which is the Board-certified exclusive representative for certain employees of the Employer. On June 2, 2009, the Incumbent Employee Organization filed a Disclaimer of Interest. The parties confirmed no contract exists.

Vice Chairperson Verich moved that the Board construe the Disclaimer of Interest as a Motion to Revoke Certification, grant the motion, revoke the Employee Organization's certification, and dismiss the Petition for Decertification Election as moot. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

8. Case 09-REP-06-0067 Ohio Patrolmen's Benevolent Association and City of Oakwood

9. Case 09-REP-06-0071 Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO and State of Ohio, Department of Administrative Services, Office of Collective Bargaining

The parties jointly filed Petitions for Amendment of Certification and have now filed letters, in each case, requesting to withdraw the petitions.

Board Member Spada moved that the Board construe the letters as motions to withdraw, grant the motions, and dismiss without prejudice the Petitions for Amendment of Certification. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

10. Case 08-REP-12-0187 Jeffrey A. Keener and United Steelworkers, AFL-CIO-CLC and City of Reynoldsburg

- There were 17 ballots cast
- There were 0 challenged ballots
- No Representative received 7 votes
- United Steelworkers, AFL-CIO-CLC received 10 votes and prevailed in this election.

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11. Case 09-REP-02-0024 Fraternal Order of Police, Ohio Labor Council, Inc. and International Association of Firefighters, Local 3369 and City of Kettering

- There were 11 ballots cast
- There were 0 challenged ballots
- No Representative received 1 vote
- International Association of Firefighters, Local 3369 received 0 votes
- Fraternal Order of Police, Ohio Labor Council, Inc. received 10 votes and prevailed in this election.

Vice Chairperson 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. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
 Affirmed X Denied _____

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Case 08-ULP-09-0370 SERB v. City of Canton
2. Case 08-ULP-09-0392 SERB v. Gallia County Local School District Board of Education

Board Member Spada moved that the Board construe the settlement agreements as motions to dismiss, grant the motions, dismiss the complaints, and dismiss with prejudice the unfair labor practice charges. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
 Affirmed X Denied _____

3. Case 07-ULP-04-0156 SERB v. City of Cleveland

Chairperson Brundige moved that the Board continue to postpone this matter to the next Board meeting. Board Member Spada seconded the motion. Chairperson Brundige called for discussion, and stated that the Board should remand this matter to the Chief Administrative Law Judge (ALJ) and the ALJ assigned to this matter for further review, and that the Chief ALJ would report back to the Board the outcome of their review. Chairperson Brundige further stated because the consolidation of the SPBR employees into SERB has not been completed through the budget process, he recommends that we continue to table

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Board Member Spada 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. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

3. Case 09-ULP-04-0130 Ohio Patrolmen's Benevolent Association v. City of Findlay

The unfair labor practice charge alleged that Charged Parties violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally implementing a substance-abuse policy. Information gathered during the investigation revealed that the policy distributed to employees was substantively similar to the policy attached to the parties' collective bargaining agreement. Charging Party failed to show how Charged Party's actions amount to an Ohio Revised Code § 4117.11(A)(1) violation. Charging Party failed to show how the policy is different from the policy addressed in the parties' collective bargaining agreement. No information was provided to show how terms and conditions of employment were affected.

Vice Chairperson 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 Parties. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

4. Cases 09-ULP-04-0134 Toledo Firefighters, Local 92 v. City of Toledo

09-ULP-04-0135 Toledo Police Patrolman's Association v. City of Toledo

Chairperson Brundige requested that these items be moved to the end of the agenda to be discussed with several cases listed under *Tabled and Other Matters* for this meeting.

5. Case 09-ULP-04-0136 Weaver Workshop and Support Association, OEA/NEA v. Summit County Board of Mental Retardation and Developmental Disabilities

The unfair labor practice charge alleges that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally altering the terms and conditions of employment for a portion of its bargaining-unit members. Information gathered during the investigation reveals that the matter appears to be contractual with no arguable statutory violations. The 2005 job descriptions indicate the Registered I and II Substitutes may be assigned to work in the other's position for the day. Article XXIV.A.3 states: ". . . if the

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substitute is not needed he/she will be paid half of one day's work at the appropriate rate of pay." The parties appear to have different interpretations of the contract language surrounding the Registered Substitutes. The matter appears to be best addressed through the parties' final and binding grievance-arbitration procedure.

Board Member Spada 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. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

6. Case 09-ULP-04-0137 Weaver Workshop and Support Association,
OEA/NEA v. Summit County Board of Mental
Retardation and Developmental Disabilities

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), and (5) by retaliating against President Carolyn Holladay for exercising her guaranteed rights. Information gathered during the investigation revealed that Charging Party has established a prima facie case of discrimination. The timing of the disciplines appears suspect based on the series of emails exchanged between Mr. Eck and Ms. Chandler-Marks regarding Ms. Holladay. The three disciplines within a one month period correspond with a series of emails sent by Ms. Holladay to Mr. Eck. Mr. Eck's February 18th email regarding Ms. Holladay's work performance and his interviewing of Ms. Holladay's co-workers could have a chilling effect on the members in the way they interact with Ms. Holladay in her position as Union President.

The Investigator recommended that the Board find probable cause to believe that an unfair labor practice has been committed, direct the parties to ULP mediation for a period not to exceed 45 days, report back to the Board the outcome of the mediation, and if mediation is unsuccessful, authorize the issuance of an expedited complaint at the conclusion of the mediation period, and refer the matter to a hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3), but not (5), by retaliating against President Carolyn Holladay for exercising her guaranteed rights.

General Counsel Russ Keith offered an alternative recommendation, recommending that the Board sua sponte defer the matter for resolution through the grievance-arbitration procedure and retain jurisdiction. He stated that the employee filed grievances regarding the alleged retaliatory discipline. The arbitrator's award may resolve both the charge and the contract interpretation issues in the grievances. Deferral in this matter could avoid duplicate forums and save the resources of the Board and the parties, and he proposed that the Board sua sponte defer the matter to arbitration while retaining jurisdiction under In re Upper Arlington Ed Assn, SERB 92-010 (6-30-92).

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Vice Chairperson Verich moved that the Board adopt the alternative recommendation and sua sponte 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). Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
 Affirmed X Denied _____

7. Case 09-ULP-04-0147 Auglaize Education Association, OEA/NEA v. Auglaize County Board of Mental Retardation and Developmental Disabilities

The unfair labor practice charge alleged that 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 that the parties have conflicting interpretations as to who is currently doing the work of the jobs that were abolished. The matter appeared to be best addressed through a hearing to determine if Charged Party has assigned bargaining-unit work to nonbargaining-unit employees

The Investigator recommended that the Board find probable cause to believe an unfair labor practice has been committed, direct the parties to ULP mediation for a period not to exceed 45 days, report back to the Board if mediation is unsuccessful, authorize the issuance of an expedited complaint at the conclusion of the mediation period, and refer the matter to hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by assigning bargaining-unit work to nonbargaining-unit employees.

Chairperson Brundige offered an alternative recommendation and moved that the Board, without rendering any judgment on the merits of the charge, direct the parties to pre-determination mediation for a period not to exceed 30 days, and the mediator shall report back to the Board the results of the mediation efforts. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and stated the Investigator's Report states: "the investigation reveals the parties have conflicting interpretations as to who is currently doing the work of the jobs that were abolished." Pre-determination mediation should allow the parties to exchange facts that may lead to a resolution of the issue. There being no further discussion, Chairperson Brundige called for the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
 Affirmed X Denied _____

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8. Case 09-ULP-04-0170 Cheryl A. Williams v. State of Ohio,
Department of Rehabilitation and Correction,
Mansfield Correctional Institution

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (6) by failing to timely process Charging Party's grievances. Information gathered during the investigation revealed Charging Party failed to provide information to support the allegation that Charged Party has repeatedly failed to process her grievance. The failure to process one set of grievances, which were themselves untimely filed, does not constitute a pattern of repeated failures. Charging Party's union had granted Charged Party an extension in which to respond to the grievances. Charging Party did not provide sufficient information to support the Ohio Revised Code § 4117.11(A)(1) allegation.

Board Member Spada 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. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

9. Case 09-ULP-04-0174 Joann Golembiewski v. University of Toledo

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by terminating Charging Party for the exercise of her guaranteed rights. Information gathered during the investigation revealed Charging Party has established a prima facie case of discrimination. Charged Party provided a persuasive rebuttal to show the termination was not due to anti-union animus, but a violation of its policies and procedures. Charged Party provided documentation to show Charging Party was terminated for "various misconduct" including failure of good behavior, solicitous interference with co-workers during their work time, and violations of the terms and conditions of her paid administrative leave. Charged Party also provided the names/positions/infractions for nine nonbargaining-unit employees who had been terminated for equal or lesser offenses than Charging Party during 2007 and 2008.

Vice Chairperson 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. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

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10. Cases 09-ULP-04-0177 Chad F. Savage v. Richland County Department of Job and Family Services
09-ULP-04-0178 Chad F. Savage v. Director Sharlene Neumann – Richland County Department of Job and Family Services

The unfair labor practice charges allege that Charged Parties violated Ohio Revised Code § 4117.11(A)(1), (3), and (7) by interfering with Charging Party's rights to representation and disciplining him in retaliation for his exercise of guaranteed rights. Information gathered during the investigation reveals the parties' collective bargaining agreement permits a representative of an employee's choice following the first steps of the grievance process. Charged Parties have no control regarding who the employee brings or the Union sends to disciplinary meetings.

Board Member Spada moved that the Board dismiss the charges with prejudice for lack of probable cause to believe that unfair labor practices have been committed by Charged Parties. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

11. Case 09-ULP-04-0182 Amber Hunter v. Western Brown Local School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by retaliating against Charging Party for exercising her guaranteed rights. Information gathered during the investigation revealed that on April 16, 2009, Charged Party adopted a resolution that it did not intend to reemploy Charging Party upon the expiration of her limited contract. Charged Party provided a persuasive rebuttal. Charging Party failed to provide any information to support the Ohio Revised Code § 4117.11(A)(1) allegation.

Vice Chairperson 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. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

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12. Case 09-ULP-04-0203 Daniel L. Standy v. Ohio Council 8, American Federation of State, County and Municipal Employees, Local 1197, AFL-CIO

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(6) by failing to fairly represent Charging Party. Information gathered during the investigation revealed a grievance had been filed on Charging Party's behalf. No information was provided to show Charged Party's actions were arbitrary, discriminatory, or in bad faith.

Board Member Spada 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. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

13. Case 09-ULP-04-0206 Fraternal Order of Police, Ohio Labor Council, Inc. v. City of Cheviot

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), and (5) by bargaining in bad faith and attempting to deal directly with employees. Information gathered during the investigation revealed Charged Party was attempting to deal directly with bargaining-unit employees rather than the designated Charging Party representative when it sent counter-proposals back to employees rather than the designated representative.

Vice Chairperson Verich moved that the Board find probable cause to believe that an unfair labor practice has been committed, authorize the issuance of a complaint, refer the matter to an expedited hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), and (5) by bargaining in bad faith and attempting to deal directly with employees, and direct the parties to expedited mediation to run concurrently with the expedited processing of the charge and complaint. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and requested that the complaint be issued no later than two weeks after the Board meeting. Chairperson Brundige called for the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

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14. Case 09-ULP-04-0214 Doreen Burns v. Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Lou Maholic
15. Case 09-ULP-04-0215 Doreen Burns v. Nancy Tomsha

The unfair labor practice charges alleged that Charged Parties violated Ohio Revised Code § 4117.11(B)(1) by restraining Charging Party in the exercise of guaranteed rights. Information gathered during the investigation revealed that Charging Party was not prohibited from voting on the new contract. Under the circumstances, it did not appear Charging Party was restrained or coerced in the exercise of her guaranteed rights.

Board Member Spada moved that the Board dismiss the charges with prejudice for lack of probable cause to believe that unfair labor practices have been committed by Charged Parties. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

16. Case 09-ULP-05-0217 Daniel L. Standy v. City of Ashtabula

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(3) by allowing an employee with less qualifications to bump into Charging Party's position. Information gathered during the investigation revealed that Charging Party was bumped by a laid-off employee. Despite the argument that the employee was not qualified, Charging Party was unable to establish a prima facie case. The matter appears to be strictly contractual with no evidence of a statutory violation. Charging Party failed to provide any information to support the Ohio Revised Code § 4117.11(A)(3) allegation.

Vice Chairperson 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. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

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17. Case 09-ULP-05-0220 Raymond Miller v. Toledo City School District Board of Education

18. Case 09-ULP-05-0221 Raymond Miller v. Ohio Council 8, American Federation of State, County and Municipal Employees, Local 349, AFL-CIO

In Case 09-ULP-05-0220, the unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), and (8) by terminating Charging Party without a reason. Information gathered during the investigation revealed that Charged Party terminated Charging Party for failing to successfully perform during his probationary period. Charging Party failed to provide any information to support the Ohio Revised Code § 4117.11(A)(1), (3), and (8) allegations.

In Case 09-ULP-05-0221, the unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(1) and (6) by failing to fairly represent Charging Party. Information gathered during the investigation revealed that Charging Party was terminated within his probationary period and, pursuant to the parties' agreement, was unable to grieve his termination. Charged Party's actions did not rise to the level of an unfair labor practice.

Board Member Spada moved that the Board dismiss the charges with prejudice for lack of probable cause to believe that unfair labor practices have been committed by Charged Parties. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

19. Case 09-ULP-05-0227 Professionals Guild of Ohio v. Lucas County Children Services Board

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by refusing to award step increases during contract negotiations. Information gathered during the investigation revealed that during negotiations, Charged Party unilaterally changed the terms and conditions of the collective bargaining agreement by refusing to award step increases. Because the parties are in negotiations and unable to resolve the matter, mediation was not recommended by the Investigator.

Vice Chairperson Verich moved that the Board find probable cause to believe that an unfair labor practice has been committed, authorize the issuance of a complaint, refer the matter to an expedited hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally changing the terms and conditions of the collective bargaining agreement by refusing to award step increases during negotiations, and direct the parties to expedited mediation to run concurrently with the expedited processing of the charge and complaint. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

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20. Case 09-ULP-05-0233 Elgin Education Association, OEA/NEA v. Elgin Local School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by attempting to establish pre-conditions of bargaining. Information gathered during the investigation revealed that, based on the circumstances, it was not reasonable to conclude that employees were interfered with, restrained or coerced. The issue of a reduction-in-force, due to the Charged Party's financial situation, had been discussed by the parties in different forums. Charging Party asserted Charged Party's actions of raising the issue in public prior to the start of official contract negotiations amounted to bad-faith bargaining. Since the parties had not commenced negotiations, Charged Party's actions did not appear to rise to the level of an Ohio Revised Code § 4117.11(A)(5) violation.

Board Member Spada 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. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

21. Case 09-ULP-05-0239 International Brotherhood of Teamsters, Local 436 v. Cuyahoga County Sanitary Engineer

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(3) by hiring an individual and placing the employee in a wage rate in direct conflict with the parties' collective bargaining agreement. Information gathered during the investigation revealed that the matter was strictly contractual with no evidence of a statutory violation.

Vice Chairperson 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. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

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22. Case 09-ULP-03-0123 Municipal Construction Equipment Operators' Labor Council v. City of Cleveland

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by refusing to bargain “about its practice of unilaterally transferring bargaining-unit work to nonbargaining-unit employees” as outlined in the Craft Jurisdiction provision in the negotiated agreement. Information gathered during the investigation revealed that, pursuant to In re City of Cleveland, SERB 2008-005, (10-31-08), it did not appear that SERB has jurisdiction over the allegations contained in the unfair labor practice charge.

The Investigator recommended that the Board dismiss the charge with prejudice for lack of jurisdiction. Chairperson Brundige offered an alternative recommendation, and 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 for lack of jurisdiction in these specific circumstances. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and stated that the Board will remember that in SERB Opinion 2008-005, the Board took note of the MAD entered into by the Union and City, which had a clause that stated: “In the event that the parties are unable to reach agreement by March 31, 2007 or a date mutually agreed upon, all the terms of this agreement shall be deem exhausted.” The Board went on to find: “The MCEOLC abandoned the collective bargaining process when it pursued its bargaining-unit members’ rights under the application of external law i.e. the writ of Mandamus.”

Chairperson Brundige stated further that nothing in SERB Opinion 2008-005 removed future bargaining from the jurisdiction of SERB. The Board went on to clarify how the parties would re-enter the bargaining process: “Since the parties’ mutually agreed to procedure (MAD) has been exhausted, the parties can commence a new series of negotiations with the filing of a Notice to Negotiate.” No Notice to Negotiate or notice of a MAD has been filed, and thus, bargaining pursuant to ORC 4117 has not commenced, notwithstanding the statements of the Union to the contrary. In this specific case the actions that the Union characterizes as bargaining occurred in the Chambers of a Court Magistrate. Thus, the contested actions do not constitute bargaining pursuant to O.R.C. Chapter 4117. What happened under the direction of the Court is clearly not within SERB’s jurisdiction. If, in the future, the parties actually file a Notice to Negotiate and engage in bargaining for a new agreement, then clearly SERB would have jurisdiction at that time and, absent a MAD, the bargaining will be subject to the statutory process enumerated in O.R.C. Chapter 4117. There being no further discussion, Chairperson Brundige called for the vote.

Vote: BRUNDIGE:	<u> Aye </u>	VERICH:	<u> Aye </u>	SPADA:	<u> Aye </u>
Affirmed	<u> X </u>		<u> Denied </u>	<u> </u>	<u> </u>

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23. Case 09-ULP-05-0246 Charles F. Williams v. Greater Dayton Regional Transit Authority

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), (3), (4), (5), (6), and (8) by conducting a family dependent insurance audit without bargaining with his union, Amalgamated Transit Union Local 1385. Information gathered during the investigation revealed that the date noted in the amended charge is more than 90 days prior to the filing of the charge. The audit commenced in September 2008. Charging Party knew or should have known at that time about the audit. No mitigating circumstances warranting equitable tolling of the statutory timeline were provided by Charging Party. The charge appears to be untimely filed. Charging Party's representative acknowledged the charge was untimely.

Board Member Spada moved that the Board dismiss the charge with prejudice as untimely filed. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

24. Cases 09-ULP-05-0230 Elgin Education Association and Brenda M. Blankenship v. Elgin Local School District Board of Education

09-ULP-05-0232 Elgin Education Association and Mary Jo Bell v. Elgin Local School District Board of Education

The unfair labor practice charges alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by retaliating against Ms. Blankenship and Ms. Bell for offering testimony at arbitration. Information gathered during the investigation revealed that Ms. Blankenship and Ms. Bell have not yet been affected by any reduction-in-force. To date, no action has been taken.

Vice Chairperson Verich moved that the Board dismiss the charges with prejudice as prematurely filed. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

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25. Case 08-ULP-12-0529 Patricia Cartwright v. Ohio Association of Public School Employees, AFSCME Chapter 318, AFL-CIO

On March 19, 2009, the Board dismissed the unfair labor practice charge for lack of probable cause. Charging Party alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(1) and (6) by failing to fairly represent her. Specifically, in 2007, Charging Party filed a grievance and Charged Party determined not to process the grievance to arbitration. However, according to Charging Party, Charged Party failed to inform her of its decision after repeated attempts to find out the status.

On May 27, 2009, Charging Party filed a motion for reconsideration of the Board's decision. Charging Party provided information to show that Charged Party's concealment of its decision not to proceed to arbitration prevented her from having knowledge that the ninety-day statute of limitations for filing an unfair labor practice had commenced. On August 19, 2008, Charged Party stated in a letter that Charging Party's grievance lacked merit and it would not proceed to arbitration. The letter provided Charging Party with information on how to appeal the matter to the State Executive Board. Information provided showed that Charging Party was not apprised of the letter.

A review of the original investigation and the foregoing information revealed Charging Party's information merits reconsideration. Charging Party's allegation showed she was unable to assert her appeal rights; however, further review of the information appeared to show that Charging Party's grievance focused on her involuntary transfer. Contract language provided for involuntary transfers. Additionally, the transfer was not for disciplinary reasons, and Charging Party did not suffer any economic loss. Charging Party failed to provide any information to support the allegation that Charged Party's actions were arbitrary, discriminatory, or in bad faith, and failed to raise issues warranting reversal of the dismissal.

Board Member Spada moved that the Board grant Charging Party's Motion for Reconsideration and dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by Charged Party. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE:	<u> Aye </u>	VERICH:	<u> Aye </u>	SPADA:	<u> Aye </u>
Affirmed	<u> X </u>		<u> Denied </u>	<u> </u>	

26. Case 08-ULP-09-0396 Ohio Patrolmen's Benevolent Association v. City of Girard

On March 5, 2009, the Board directed the parties to pre-determination mediation. On June 17, 2009, the mediation was held by telephone. The parties failed to reach a settlement. On July 9, 2009, Charging Party filed a motion for reconsideration for the Board's consideration.

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In addition, it has been a practice of this Union to file a motion for a temporary restraining order to attempt to prevent the City from implementing cost-savings measures. During such hearings, the Union has urged that the Court should issue a restraining order until unfair labor practices or arbitrations have been decided. Thus, the City requests that SERB deny the motion to stay to avoid this type of problem.

In sum, we respectfully request that the Investigator deny the Union's request for a stay of the investigation.

While SERB is always supportive of efforts to settle disputes, our mission is also to foster orderly and constructive labor relations and not take sides. If the parties are not engaged in meaningful settlement discussions, then no purpose would be served in delaying the investigation. The parties can still, at any time, attempt to settle the matter between them, but SERB should continue to investigate in the hope that our findings may help the parties resolve the matter. There being no further discussion, Chairperson Brundige called for the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
 Affirmed X Denied _____

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| 28. | Case 09-ULP-01-0002 | <u>Ohio Patrolmen's Benevolent Association v. Cuyahoga County Sheriff and Sheriff Gerald T. McFaul</u> |
| 29. | Case 09-ULP-01-0006 | <u>Ohio Patrolmen's Benevolent Association v. Cuyahoga County Sheriff and Sheriff Gerald T. McFaul</u> |
| 30. | Case 09-ULP-01-0010 | <u>Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 302</u> |
| 31. | Case 09-ULP-01-0042 | <u>Douglas Hunter v. State of Ohio, Bureau of Workers' Compensation</u> |
| 32. | Case 09-ULP-04-0149 | <u>Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO v. City of Lebanon</u> |
| 33. | Case 09-ULP-04-0181 | <u>Communications Workers of America, Local 4501 v. The Ohio State University</u> |

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General Counsel Russ Keith stated he concurred in the probable cause recommendation, but did not recommend ULP mediation in this case, and also did not recommend consolidating this case with the other matter. He then offered an alternative recommendation, that the Board find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, and refer the matter to hearing to determine if Charged Parties violated Ohio Revised Code § 4117.11(A)(1) and (2) by obtaining communications between Charging Party and a grievant and using the information during a grievance-arbitration hearing. Vice Chairperson Verich moved that the Board accept the alternative recommendation. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and for the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

ULP Item #4 and Tabled and Postponed Items #3, #4, #5, #7, and #8

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| 4. | Cases 09-ULP-04-0134 | <u>Toledo Firefighters, Local 92 v. City of Toledo</u> |
| | 09-ULP-04-0135 | <u>Toledo Police Patrolman's Association v. City of Toledo</u> |
| 3. | Case 09-ULP-01-0020 | <u>Toledo Police Patrolman's Association v. City of Toledo</u>
Postponed – April 23, 2009 |
| 4. | Case 09-ULP-01-0023 | <u>City of Toledo v. Toledo Police Patrolman's Association</u>
Postponed – April 23, 2009 |
| 5. | Case 09-ULP-01-0030 | <u>Toledo Police Patrolman's Association, Local 10, IUPA v. City of Toledo</u>
Postponed – April 23, 2009 |
| 7. | Cases 09-ULP-02-0072 | <u>Toledo Police Command Officers' Association v. City of Toledo</u> |
| | 09-ULP-02-0073 | <u>Toledo Police Patrolman's Association v. City of Toledo</u>
Postponed – June 18, 2009 |

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8. Case 09-ULP-03-0106 Toledo Firefighters Association, Local 92 v. City of Toledo
Postponed - June 18, 2009

Chairperson Brundige moved that Tabled and Postponed Items 3, 4, 5, 7 and 8 be lifted from the table for consideration along with current ULP Item No. 4. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

The unfair labor practice charges alleged that Charged Parties violated Ohio Revised Code § 4117.11(A)(1) and (5) by issuing a budget proposal calling for a temporary pay cut, shortened work week, suspension of pension pick-ups, and other reductions. Information gathered during the investigation revealed that Charged Parties may have committed a violation when Mayor Finkbeiner proposed unilateral changes to terms and conditions of employment during contract negotiations, and recommended City Council violate the parties' mutually agreed to alternate dispute resolution procedure.

The Investigator recommended that the Board find probable cause to believe an unfair labor practice has been committed, consolidate the matters with Cases 09-ULP-02-0073 and 09-ULP-03-0106, direct the parties to ULP mediation for a period not to exceed 45 days, report back to the Board the outcome of the mediation, and if mediation is unsuccessful, authorize the issuance of a complaint at the conclusion of the mediation period, and refer the matter to an expedited hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by the Mayor proposing unilateral changes to terms and conditions of employment during contract negotiations, and recommending City Council violate the parties' mutually agreed to alternate dispute resolution procedure.

Chairperson Brundige offered an alternative recommendation, that the Board, without rendering any judgment on the merits of the individual charges, order the parties to pre-determination mediation of the matters (Tabled or postponed items listed plus ULP item No. 4 from today) at the SERB offices on either July 20 or 21 to meet with the Executive Director and SERB Mediators, unless otherwise arranged by Executive Director, in an effort to resolve the charges enumerated in the cases indicated. Vice Chairperson Verich moved that the Board accept the alternative recommendation. Board Member Spada seconded the motion. Chairperson Brundige called for discussion, and stated pursuant to the direction of this Board, SERB Mediators have been attempting to secure the agreement of all parties to participate in mediation. The City has agreed, but Counsel for the Employee Unions has not agreed. Because of the number of charges pending, and the statutory mission of SERB to promote orderly and constructive labor relations, it is important that the parties honestly and seriously consider the possibilities of settlement. There being no further discussion, Chairperson Brundige called for the vote.

Vote: BRUNDIGE: Aye VERICH: Aye SPADA: Aye
Affirmed X Denied _____

