

State Employment Relations Board
Board Meeting Minutes
March 5, 2009

The State Employment Relations Board met on March 5, 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 FEBRUARY 19, 2009 BOARD MEETING:

Board Member Spada moved that the Board approve the minutes for the February 19, 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. Closing 90 Cases

Vice Chairperson Verich moved that the Board close 90 Mediation cases beginning with Case 06-MED-06-0709 and ending with Case 08-MED-10-1281, not consecutively numbered. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

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

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 08-REP-12-0185 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and City of Bay Village
April 7, 2009
2. Case 08-REP-11-0181 Fraternal Order of Police, Ohio Labor Council, Inc. and The Ohio State University
April 28, 2009

All parties have executed and filed the Consent Election Agreements.

Board Member Spada moved that the Board approve the Consent Election Agreements and direct elections to be conducted on the dates indicated. 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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3. Case 08-REP-11-0184 Fraternal Order of Police, Ohio Labor Council, Inc. and Huron County Sheriff
4. Case 09-REP-01-0004 International Brotherhood of Teamsters Local Union #20 and Lucas County Auditor's Office

In each case, the Employee Organizations has filed a Request for Recognition seeking to represent certain employees of the Employers. The substantial evidence is sufficient in each case. No objections have been filed. The Employers have complied with the posting requirements in each case.

Vice Chairperson Verich moved that the Board certify each 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 _____

5. Case 09-REP-02-0022 Service Employees International Union, Local 1 and City of Cleveland

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.

Board Member Spada moved that the Board approve the jointly filed petition and amend the unit accordingly. 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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6. Case 08-REP-09-0144 Greene County Deputy Sheriff's Benevolent Association and Greene County Sheriff's Office

The Employee Organization is the Board-certified exclusive representative of certain employees of the Employer. The Employer has filed an amended Petition for Amendment of Certification seeking to exclude Office Deputies. The Employee Organization has responded by filing objections. The Employer has now filed a motion to withdraw its amended Petition.

Vice Chairperson Verich moved that the Board grant the Employer's motion and dismiss without prejudice the amended Petition for Amendment of Certification. 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 05-REP-04-0068 International Union of Operating Engineers, Local 18 and Hancock County Landfill/Hancock County Commissioners

The Employee Organization is the Board-certified exclusive representative of certain employees of the Employer. The Employee Organization has filed a motion to revoke certification. The parties confirm no contract exists.

Board Member Spada moved that the Board grant the motion and revoke the Employee Organization's 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 _____

8. Case 09-REP-01-0007 Ohio Patrolmen's Benevolent Association and Bainbridge Township, Geauga County

The Employee Organization filed a Petition for Representation Election seeking to represent certain employees of the Employer. The Employer has filed objections to the petition. A conference call was conducted for the purpose of executing a Consent Election Agreement. The parties did not reach an agreement as to an appropriate bargaining unit. The parties disputed the actual duties performed. Mediation is not recommended.

Labor Relations Specialist Tonya Jones recommended that the Board direct the case to hearing to determine an appropriate bargaining unit and for all other relevant issues; mediation was not recommended.

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Chairperson Brundige proposed an alternative recommendation and moved that the Board direct this matter to hearing, and the parties to mediation within the next thirty days; if the matter is not resolved at mediation, the matter will proceed to hearing; and the mediator is directed to report back to the Board at the conclusion of the thirty-day period or upon successful resolution, whichever comes first. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and stated that the record in this matter shows that the parties remain in disagreement regarding whether one particular position is confidential pursuant to Ohio Revised Code 4117. He further stated that with the assistance of the SERB staff, the parties should be able to present their rationale to a mediator, explore the concept of confidentiality, and hopefully resolve the matter without the costs and delays associated with the hearings process. Chairperson Brundige then called for the vote.

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

9. Case 08-REP-05-0086 Teamsters Local Union No. 284 and Ohio Attorney General

A Petition for Representation Election has been filed by the Employee Organization. The Employer has responded, asserting that the employees in question are supervisors and are exempt from collective bargaining. The employees in the instant petition are Special Agent Supervisor 1s. The same classification is referenced in In re Ohio Attorney General, SERB 2000-002 (3-3-00) where the Board found these employees to be supervisors per Ohio Revised Code Section 4117.01(C)(10).

The Employee Organization responded with notarized affidavits from six (6) of the employees in question, asserting that Special Agent 1s are not performing any duties that would exclude them from the statute. The investigator's review of the affidavits revealed that the actual duties performed and how those duties were performed appeared to also be the same, except for one affidavit provided by one Special Agent 1 who expressed that he was not qualified to do performance evaluations.

The burden of providing evidence that would change the supervisory status of employees in question rests upon the Employee Organization. The Employee Organization has not provided sufficient information to support a finding that the employees in question are not supervisors because the duties have not changed.

Vice Chairperson Verich moved that the Board dismiss the Petition for Representation Election, and deny the Employer's Motion to Dismiss 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 _____

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10. Case 09-REP-02-0020 Anthony Thiel and Ohio Council 8,
American Federation of State County and
Municipal Employees, AFL-CIO and Multi-
County Juvenile Attention Systems

The Petitioner filed a Petition for Decertification Election. The Petitioner failed to file substantial evidence of at least fifty percent support as required by Ohio Administrative Code Rule 4117-5-02(C)(5).

Board Member Spada moved that the Board dismiss without prejudice the Petition for Decertification Election because the Petitioner has failed to file substantial evidence as required by Ohio Administrative Code Rule 4117-5-02(C)(5). 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 08-REP-12-0187 Jeffrey A. Keener and United Steelworkers,
AFL-CIO-CLC and City of Reynoldsburg

The parties entered into a Consent Election Agreement seeking an election on March 17, 2009. On February 5, 2009, the Board directed an election be conducted on the date indicated.

On February 20, 2009, the Employee Organization filed a Motion to Stay Election pending the outcome of an unfair labor practice charge in Case No. 09-ULP-01-0037. The motion asserted that the Employer continued to try to influence the members of the bargaining unit regarding terms and conditions of the contract if they depart from the Union.

On February 23, 2009, the Employer responded by filing a Memorandum Contra to the Motion to Stay. Granting a stay of the election would be appropriate until the Board's resolution of the unfair labor practice charge.

Vice Chairperson Verich moved that the Board grant the Employee Organization's Motion to Stay Election in Case No. 08-REP-12-0187 and direct that the election be stayed until the Board's resolution of the unfair labor practice charge in Case No. 09-ULP-01-0037. 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 08-REP-03-0054 Fraternal Order of Police, Ohio Labor Council, Inc. and Ohio Council 8, American Federation of State, County and Municipal Employees, Local 2678, AFL-CIO and Cuyahoga Community College

Board Member Spada moved that the Board lift this matter from the table. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

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

This matter was tabled by the Board on December 11, 2008 pending further investigation.

The Rival Employee Organization filed a Petition for Representation Election seeking to displace the Incumbent Employee Organization, which is the deemed-certified exclusive representative of certain employees of the Employer. Further investigation revealed that pursuant to the information contained in the database maintained by the Research and Training Section confirmed that the unit is deemed-certified.

The Recognition Clause and Appendix A and B reference "the unit." It appears that the Rival Employee Organization is seeking to sever a group of employees (Public Safety Unit employees) from the existing deemed-certified unit. The Rival Employee Organization has not provided any information to support the severance as required per In re State of Ohio, SERB 92-012 (6-30-95).

Vice Chairperson Verich moved that the Board dismiss the Petition for Representation Election because the Rival Employee Organization has not provided evidence in support of the petition pursuant to In re State of Ohio, SERB 95-012 (6-30-95). Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

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

13. Case 08-REP-09-0151 The Hourly Employees of the Logan County Highway Department and Logan County Engineer's Office

- There were 13 ballots cast
- There were 0 challenged ballots
- No Representative received 1 vote
- The Hourly Employees of the Logan County Highway Department received 12 votes and prevailed in this election.

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14. Case 08-REP-09-0157 Fraternal Order of Police, Ohio Labor Council, Inc. and Teamsters Local No. 92 and City of Alliance
(Clerical)

- There were 4 ballots cast
- There were 0 challenged ballots
- No Representative received 0 votes
- Teamsters Local No. 92 received 0 votes
- Fraternal Order of Police, Ohio Labor Council, Inc. received 4 votes and prevailed in this election.

15. Case 08-REP-09-0164 Fraternal Order of Police, Ohio Labor Council, Inc. and Teamsters Local No. 92 and City of Alliance
(Part-time Patrol Officers)

- There were 3 ballots cast
- There were 0 challenged ballots
- No Representative received 0 votes
- Teamsters Local No. 92 received 0 votes
- Fraternal Order of Police, Ohio Labor Council, Inc. received 3 votes and prevailed in this election.

16. Case 08-REP-09-0163 Teamsters Local Union No. 348 and Ohio Patrolmen's Benevolent Association and City of Niles

- There were 24 ballots cast
- There were 0 challenged ballots
- No Representative received 0 votes
- Ohio Patrolmen's Benevolent Association received 9 votes
- Teamsters Local Union No. 348 received 15 votes and prevailed in this election.

Board Member Spada 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. 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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17. Case 08-REP-03-0040 Ashland Vocational Teachers Association, OEA/NEA and Ashland County-West Holmes Joint Vocational School District Board of Education

- There were 29 professional and 14 nonprofessional ballots cast in this opt-in election
- There were 0 professional and 0 nonprofessional challenged ballots
- 19 professionals voted Yes for inclusion with nonprofessionals
- 8 nonprofessionals voted Yes for inclusion with professionals and inclusion prevailed in this election
- No Representative received 5 votes
- Ashland Vocational Teachers Association, OEA/NEA received 9 votes and prevailed in this opt-in election.

Vice Chairperson Verich moved that the Board certify the election results, certify that the professional and nonprofessional employees have voted to be included in a single unit for collective bargaining, and certify the 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-03-0125 SERB v. Cleveland Municipal School District Board of Education and Principal Deborah D. Moore
2. Case 08-ULP-03-0140 SERB v. Ohio Patrolmen's Benevolent Association
3. Case 08-ULP-03-0141 SERB v. Stark Area Regional Transit Authority

Board Member Spada moved that the Board construe the settlement agreement as a motion to dismiss, grant all of the motions to dismiss, dismiss the complaints, and dismiss with prejudice the unfair labor practice charges. 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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V. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 08-ULP-10-0450 Robert F. Dalton v. State of Ohio, Department of Rehabilitation and Correction, Orient Correctional Facility, et al.

The unfair labor practice charge alleged that Charged Parties violated Ohio Revised Code § 4117.11(A)(1), (2), and (4), by harassing and disciplining Charging Party for engaging in protected activities.

Vice Chairperson Verich moved that the Board, without rendering any judgment on the question of whether probable cause exists, direct the parties to pre-determination mediation for a period not to exceed thirty (30) days, with instructions to the mediator to report back to the Board regarding the status of the unfair labor practice mediation at that time. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

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

2. Case 08-ULP-10-0459 Kay Snyder v. Oak Hill Union Local School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(6) by failing to process grievances. Information gathered during the investigation revealed that a pattern or practice of failing to process grievances has not been established. Charged Party's decision in the matter is denoted in the Superintendent's June 27, 2008 letter to Charging Party. Knowledge of the alleged violation occurred more than 90 days before the charge was filed with the Board, based upon Charging Party's position that the Step 4 response should have been issued by July 3, 2008 directly from Charged Party. Charging Party knew or should have known that a violation may have been committed no later than July 3, 2008. No mitigating circumstances existed that warranted equitable tolling of the statute of limitations.

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, and 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 _____

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3. Case 08-ULP-11-0499 Service Employees International Union, District 1199 and Robert F. Dalton v. State of Ohio, Department of Rehabilitation and Correction, Corrections Reception Center and Virginia Lamneck

The unfair labor practice charge alleged that Charged Parties violated Ohio Revised Code § 4117.11(A)(1) and (2) by disciplining Robert Dalton for not revealing an employee's identify.

Vice Chairperson Verich moved that the Board, without rendering any judgment on the question of whether probable cause exists, direct the parties to pre-determination mediation for a period not to exceed thirty (30) days, with instructions to the mediator to report back to the Board regarding the status of the unfair labor practice mediation at that time. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and suggested that the mediator assigned to this matter, should also mediate Case 08-ULP-10-0450 and 08-ULP-12-0520, and called for the vote.

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

4. Case 08-ULP-11-0503 Ravenna Education Association, OEA/NEA v. Ravenna City 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 unilaterally assigning bargaining-unit work to a nonbargaining-unit employee. Information gathered during the investigation revealed Charging Party, by its own admission, was aware of the Scenic Arts position as early as March 2008. Charging Party confirmed that it made contact with Charged Party in May and June 2008, but made no request or demand to bargain. It appeared that the first time the parties discussed the position was at the October 2008 Labor/Management meeting. Charging Party appeared to have waived its right to bargain. The Investigator recommended 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.

Chairperson Brundige proposed an alternative recommendation and moved that the Board, without rendering any judgment on the question of whether probable cause exists, direct the parties to pre-determination mediation for a period not to exceed thirty (30) days, with directions to the mediator to report back to the Board regarding the status of the unfair labor practice mediation at that time. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and stated that, from a review of the record, it appeared that the parties were in the midst of settlement discussion when the unfair labor practice charge was filed, and every effort should be given to allow the parties to resolve this issue before the Board considers the question as to whether probable cause exists. There being no other discussion, Chairperson Brundige called for the vote.

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

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5. Case 08-ULP-11-0508 Columbus Municipal Association of Government Employees/Communications Workers of America Local 4502 v. City of Columbus

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by failing to bargain in good faith. Information gathered during the investigation revealed it is undisputed that the parties negotiated a collective bargaining agreement agreeing that any matter subject to the jurisdiction of the Commission is not subject to the dispute resolution machinery of the collective bargaining agreement, but is subject only to the jurisdiction of the Commission. The dispute raised in the charge did not rise to a violation of the statute. The dispute was properly before the Court of Common Pleas.

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 08-ULP-12-0520 Robert F. Dalton v. State of Ohio, Department of Rehabilitation and Correction, Correction Reception Center and Virginia Lamneck

The unfair labor practice charge alleged that Charged Parties violated Ohio Revised Code § 4117.11(A)(1) and (2) by retrieving union emails to use at a grievance-arbitration hearing.

Vice Chairperson Verich moved that the Board, without rendering any judgment on the question of whether probable cause exists, consolidates this matter with Cases 08-ULP-10-0450 and 08-ULP-11-0499, and directs the parties to pre-determination mediation for a period not to exceed thirty (30) days, with instructions to the mediator to report back to the Board regarding the status of the unfair labor practice mediation at that time. 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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7. Case 08-ULP-12-0524 Piqua Firefighters Local 252, IAFF v. City of Piqua

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(5) by unilaterally eliminating a bargaining-unit position and unilaterally changing the hours, wages, and terms and conditions of employment for the other bargaining-unit members. Information gathered during the investigation revealed that the matter appeared to be contractual with no evident statutory violation. The parties' negotiated agreement did not contain descriptions for Assistant Chiefs. Charging Party, in its November 17, 2008 statement to the Commission, did not allege a violation of Ohio Revised Code Chapter 4117, but only a violation of the parties' agreement. It appeared that the matter would be best addressed through the parties' final and binding grievance 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 _____

8. Case 08-ULP-12-0527 Mayfield Education Association, OEA/NEA v. Mayfield City School District Board of Education and Anthony Loewer

The unfair labor practice charge alleged that Charged Parties violated Ohio Revised Code § 4117.11(A)(1) and (3) by berating the leadership of Charging Party and attempting to undermine Charging Party's right to advocate for its members.

Chairperson Brundige moved that the Board, without rendering any judgment on the question of whether probable cause exists, direct the parties to pre-determination mediation for a period not to exceed thirty (30) days, with directions to the mediator to report back to the Board regarding the status of the unfair labor practice mediation at that time. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and stated that without reaching a conclusion as to whether there is reason to believe probable cause exists to support a statutory violation, it is apparent that a "heated conversation" took place between the parties in this matter, in the interest of promoting good labor relations, it would be best for the parties to attempt to resolve this matter before the Board becomes involved. There being no other discussion, Chairperson Brundige called for the vote.

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

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9. Case 08-ULP-12-0533 Columbus Firefighters, Local 67, IAFF v. City of Columbus

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), (5), and (8) by unilaterally removing a bargaining-unit member from the unit and modifying the member's compensation package. Information gathered during the investigation revealed that the matter appeared to be contractual with no evident statutory violation. Charging Party did not provide any documentation to show it requested to bargain but stated "lest we be misunderstood, it is our position that Charging Party would not be obliged to bargain with the City on a subject clearly covered by and precluded by Article 2 of the contract." The matter appeared to be best addressed through the parties' final and binding grievance procedure. Charging Party did not provide sufficient information or documentation to support the (A)(3) and (8) allegations.

The Investigator recommended 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.

Chairperson Brundige proposed an alternative recommendation and 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). Board Member Spada seconded the motion. Chairperson Brundige called for discussion, and stated, in his opinion, clearly the heart of this matter lies in the interpretation of the collective bargaining agreement; the question of "duty to bargain" and other possible statutory issues would best be addressed after an arbitrator has rendered a judgment on the meaning of the language in the collective bargaining agreement. There being no other discussion, Chairperson Brundige called for the vote.

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

10. Case 08-ULP-12-0534 Fraternal Order of Police, Ohio Labor Council, Inc. v. Hamilton County Commissioners

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally making changes in the insurance coverage. Information gathered during the investigation revealed that on September 29, 2008, Charged Party changed the medical and dental insurance coverage for Communications Officers effective January 1, 2009. Pursuant to the parties' contract language, it appeared Charging Party entered into a "me too" agreement, specifically, that bargaining-unit employees will receive the same benefits as the nonbargaining-unit employees. Charged Party's actions did not rise to the level of a violation of the statute.

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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 _____

11. Case 08-ULP-12-0535 Fraternal Order of Police, Ohio Labor Council, Inc. v. Hamilton County Sheriff

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally making changes in the insurance coverage. Information gathered during the investigation revealed that on September 29, 2008, Charged Party changed the medical and dental insurance coverage for Enforcement Officers, Sergeants and Lieutenants, Corrections Officers, and Laundry and Maintenance Workers effective January 1, 2009. Pursuant to the parties' contract language, it appeared that Charging Party entered into a "me too" agreement, specifically, that bargaining-unit employees will receive the same benefits as the nonbargaining-unit employees. Charged Party's actions did not rise to the level of a violation of the statute.

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 _____

12. Case 08-ULP-12-0536 American Association of University Professors (AAUP) - University of Akron Chapter v. University of Akron

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by failing to fill a bargaining-unit position. Information gathered during the investigation revealed that the matter appeared to be contractual with no evident statutory violation. Article 11 of the parties' agreement was silent on the timeframe for the Dean to meet with the search committee. In the instant charge, it appeared that the Equal Employment Opportunity office, not the Dean, took exception to the search committee's description of one of the candidates. It appeared that the matter would be best addressed through the parties' final and binding grievance procedure.

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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13. Case 08-ULP-12-0541

Ohio Civil Service Employees Association,
AFSCME, Local 11, AFL-CIO v. State of
Ohio, Department of Rehabilitation and
Correction, Reformatory for Women

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), and (5) by dealing directly with the bargaining-unit members regarding a schedule change. Information gathered during the investigation revealed that the matter appeared to be contractual with no evident statutory violation. Charging Party did not provide any information to support the direct-dealing allegation. The parties appeared to have different interpretations of the contract language contained in Article 13. The matter appeared to be best addressed through the parties' final and binding grievance procedure. Charging Party did not provide sufficient information to support the Ohio Revised Code § 4117.11(A)(2) allegation. 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 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 and 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

14. Case 08-ULP-12-0544

Marisha A. Everett v. Port Clinton City
School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), (4), (5), and (8) by failing to provide Charging Party with a 2-year contract after it abolished her original position. Information gathered during the investigation revealed that the matter appeared to be contractual with no evident statutory violation. The parties appeared to have different interpretations of the language contained in the June 2006 Memorandum of Understanding and the RIF [Reduction In Force]/bumping procedure. The matter appeared to be best addressed through the parties' grievance procedure. Charging Party did not provide sufficient information to support the Ohio Revised Code § 4117.11(A)(1), (3), (4), and (8) allegations.

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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15. Case 08-ULP-12-0545 Marisha A. Everett v. Port Clinton City Schools Secretarial Unit

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(2), (3), and (6) by failing to represent Charging Party during the grievance process. Information gathered during the investigation revealed that Charged Party's actions were not arbitrary, discriminatory, or in bad faith when it did not support Charging Party's request to advance the grievance to Level 3. Charged Party's membership voted not to support advancing the grievance to a higher level. Charged Party notified Charging Party to advise her that if she decided to advance the grievance it would be on her own. Charging Party did not provide sufficient information to support the Ohio Revised Code § 4117.11(B)(2) and (3) allegations.

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 _____

16. Case 08-ULP-12-0558 Victoria C. Valena v. State of Ohio, Department of Youth Services, Scioto Juvenile Correctional Facility and Gwen Randle

The unfair labor practice charge alleged that Charged Parties violated Ohio Revised Code § 4117.11(A)(1) by preventing Charging Party from moving to her new position. Information gathered during the investigation revealed the matter was strictly contractual with no evidence of a statutory violation. No grievance was filed.

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 _____

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17. Case 09-ULP-01-0009 Charles L. Cook v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO, Chapter 8010

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(1) and (6) by interfering with Charging Party's rights and failing to represent its members. Information gathered during the investigation revealed that Charging Party failed to show how 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 _____

18. Case 08-ULP-10-0426 Chris Kerper v. Multi-County Juvenile Attention System

19. Case 08-ULP-12-0525 Faith D. Harris-Jefferson v. Ohio Council 8, American Federation of State, County and Municipal Employees, Local 2312, AFL-CIO

In Case 08-ULP-0-0426, the unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11. Information gathered during the investigation revealed that information was requested in writing from Charging Party on October 17, 2008, and January 21, 2009. Charging Party did not respond to the written requests for information.

In Case 08-ULP-12-0525, the unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11. Information gathered during the investigation revealed that information was requested in writing from Charging Party on December 9, 2008, and January 12, 2009. Charging Party did not respond to the written requests for information.

Vice Chairperson Verich moved that the Board dismiss the charges with prejudice for failure of Charging Parties to pursue the matters. 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 08-ULP-05-0187 International Association of Fire Fighters, Local 3412 and Jamie Osborne v. Union Township Board of Trustees, Clermont County

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), (3), (4), (5), and (7) by terminating the employment of the Local IAFF President for engaging in protected activities.

On September 25, 2008, SERB deferred the unfair labor practice charge to the parties' grievance-arbitration process. On November 21, 2008, an arbitration award was issued. The arbitrator determined that Mr. Osborne was not terminated for just and sufficient cause and reduced the discipline to a one-month suspension since some discipline was warranted.

On December 19, 2008, Charging Parties filed a Motion for Review. On December 30, 2008, Charged Party filed a Response to the Motion for Review.

The arbitrator's ruling appears to have addressed the facts of the grievance and the unfair labor practice charge. Charging Parties' Motion for Review appears to be seeking enforcement of the Award. SERB is not the appropriate place to seek such enforcement. It appears that the parties are close to achieving full compliance with the award.

Board Member Spada moved that the Board deny the Motion for Review and dismiss the charge as having been resolved through the parties' grievance-arbitration procedure. 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 08-ULP-03-0095 Louis D. Brown, III v. City of Cleveland – Division of Water

On May 29, 2008, the Board dismissed the referenced unfair labor practice charge. Charging Party alleged that Charged Party violated Ohio Revised Code § 4117.1(A)(1) by interfering with his guaranteed rights. The dismissal directive was issued on June 17, 2008.

On August 11, 2008, Charging Party filed a motion for reconsideration of the Board's decision. Ohio Administrative Code Rule 4117-1-04(E) allowed for the filing of a motion for reconsideration "no later than forty-five days after the issuance of the Board's final ruling." Charging Party filed its motion more than 45 days after the issuance of the directive.

Vice Chairperson Verich moved that the Board deny Charging Party's motion for reconsideration with prejudice as untimely 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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22. Case 08-ULP-07-0292 Donna Hicks v. Cuyahoga County Board of Mental Retardation and Developmental Disabilities

On November 20, 2008, the Board dismissed the referenced unfair labor practice charge for lack of probable cause. Charging Party alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (6) by not adjusting her pay in accordance with the collective bargaining agreement.

On December 17, 2008, Charging Party filed a letter requesting reconsideration of the Board's decision. A review of the original investigation revealed Charging Party failed to raise issues warranting reversal of the dismissal.

Board Member Spada moved that the Board construe Charging Party's letter as a motion for reconsideration, and deny the motion for reconsideration with prejudice. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

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

23. Case 09-ULP-01-0021 City of Mansfield v. International Association of Fire Fighters Local 266

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(2) and (3) by attempting to take the permissive bargaining subject of minimum staffing to impasse. On February 17, 2009, the parties filed a Joint Motion to Stay the Investigation pending the outcome of Case No. 08-ULP-09-0380, City of Salem v. International Association of Fire Fighters, Local 283, Case 08-ULP-09-0380.

Vice Chairperson Verich moved that the Board grant the Joint Motion to Stay the Investigation pending the Board's final determination of Case 08-ULP-09-0380s. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

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

24. Case 07-ULP-11-0597 Cincinnati Federation of Teachers v. Cincinnati Public Schools Board of Education

25. Case 08-ULP-07-0259 Civil Service Personnel Association, Inc. v. City of Akron

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| 2. Cases | 07-ULP-10-0535 | <u>Ohio Council 8, American Federation of State,</u> |
| | 07-ULP-10-0536 | <u>County and Municipal Employees,</u> |
| | 07-ULP-10-0537 | <u>Local 2687, AFL-CIO v. Cuyahoga</u> |
| | 07-ULP-10-0538 | <u>Community College</u> |
| | 07-ULP-10-0539 | Tabled – January 8, 2009 |

VII. ADMINISTRATIVE MATTERS:

Executive Director Sherrie Passmore reported that the Board Meeting Schedule for April, May, and June 2009 is as follows: April 9 & 23, May 7 & 21, and June 4 & 18, 2009.

Executive Director Passmore reported that Chairperson Brundige presented to the Agriculture and Development Subcommittee of the House Finance and Appropriate Committee testimony regarding Budget Hearings.

Executive Director Passmore reported the final figures for the Combined Charitable Campaign stating the goal was \$11,317.00, and the staff surpassed the goal with pledges totaling \$14,922.00. She and the Board applauded the staff for their donations. It was also mentioned that there were 106 state agencies participating, and SERB was 1 of 12 to achieve 95-100% participation, which is very impressive.

Executive Session

Vice Chairperson Verich 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 Spada seconded the motion. Chairperson Brundige called for the roll-call vote.

ROLL-CALL VOTE:

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

The Board went into executive session at 10:43 a.m.

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Board Member Spada moved that the Board exit from Executive Session. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for the roll-call vote.

ROLL-CALL VOTE:

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

The Board exited from executive session at 10:51 a.m.

Executive Director Passmore presented a letter from Edward E. Turner, Administrator of SERB's Bureau of Mediation, discussing a change in his full-time assignment from Administrator to Mediator in the Bureau of Mediation, reflecting "the needs of the agency, our clients, personal and professional considerations, and the need for restructuring to deal with the financial challenges faced by SERB and other State agencies in the current fiscal crises." Executive Director Passmore recommended that the Board approve this change.

Chairperson Brundige moved that the Board reclassify and return Edward E. Turner from the Bureau of Mediation Administrator position in the unclassified service to a Labor Relations Mediator position in the classified service, and that General Counsel and Assistant Executive Director J. Russell Keith assume the duties of Administrator of the Bureau of Mediation along with his other responsibilities and retain his present classification with no change in his rate of pay. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

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

VIII. ADJOURNMENT:

Board Member Spada moved that the Board adjourn the meeting. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for the vote.

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

The Board meeting adjourned at 10:54 a.m.

/s/ N. Eugene Brundige

N. Eugene Brundige, Chairperson