

State Employment Relations Board

Board Meeting Minutes  
December 16, 2010

The State Employment Relations Board met on December 16, 2010, at 10:25 a.m., at 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio. The late start was due to inclement weather. Present were Chairperson Eugene Brundige, Vice Chair Robert F. Spada, and Board Member Jennifer D. Garrison.

**I. APPROVAL OF MINUTES FOR THE DECEMBER 2, 2010 BOARD MEETING:**

Board Member Garrison moved that the Board approve the minutes for the December 2, 2010 Board meeting. Vice Chair Spada Garrison seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

**II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:**

1. Case 2010-MED-11-1753 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, Local 2911 and Wayne County Engineer

On November 22, 2010, Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, Local 2911 (“Incumbent Employee Organization”) filed a Notice to Negotiate concerning negotiations for a successor collective bargaining agreement with the Wayne County Engineer (“Employer”). On December 2, 2010, Wayne County Highway Workers Association (“Rival Employee Organization”) filed a Petition for Representation Election in Case No. 2010-REP-11-0193. The Rival Employee Organization is seeking to replace the Incumbent Employee Organization as the exclusive representative for bargaining unit of the Employer’s Highway Maintenance Worker 1, 2, and 3, Inventory Clerk, 1, 2, and 3, Mechanic 1, 2, and 3.

On December 2, 2010, the Employer filed a motion to stay the negotiations pending resolution of the related representation case. The motion was not opposed.

Vice Chair Spada moved that the Board grant the Employer’s motion to stay negotiations pending disposition of the related representation case. Board Member Garrison seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

**III. REPRESENTATION MATTERS AT ISSUE:**

1. Case 2010-REP-04-0073 Fraternal Order of Police, Ohio Labor Council, Inc. and Brown County Sheriff
2. Case 2010-REP-08-0141 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Mason
3. Case 2010-REP-11-0191 Fraternal Order of Police, Ohio Labor Council, Inc. and Noble County Sheriff

The Employee Organization filed Opt-In Requests for Recognition seeking to represent certain employees of the Employers, and to add them to existing Board-certified units. The substantial evidence is sufficient. No objections have been filed. The Employers have complied with the posting requirements.

Board Member Garrison moved that the Board certify the Employee Organization as the exclusive representative of all employees subject to the requests, and add them to the Employee Organization's existing units. Vice Chair Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

4. Case 2010-REP-09-0167 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Whitehall

The Employee Organization filed an Opt-In Request for Recognition. The Employer responded by filing objections. The Employee Organization has now filed a motion to withdraw the request.

Vice Chair Spada moved that the Board grant the Employee Organization's motion and dismiss without prejudice the Opt-In Request for Recognition. Board Member Garrison seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

5. Case 2010-REP-06-0109 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Lima

The Employee Organization filed a Request for Recognition. The Employer responded by filing objections and a Petition for Representation Election. The parties entered into a Memorandum of Understanding, and the Employer has now filed motions to withdraw the objections and the Petition for Representation Election. The substantial evidence is sufficient. The Employer has complied with the posting requirements.



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13. Case 2010-REP-09-0173 Ohio Patrolmen's Benevolent Association and Fraternal Order of Police, Ohio Labor Council, Inc. and City of Hudson  
(January 11, 2011 – January 24, 2011)

All parties have executed and filed the appropriate Consent Election Agreements seeking mail-ballot elections.

Vice Chair Spada moved that the Board approve the Consent Election Agreements and direct mail-ballot elections to be conducted during the polling periods indicated. Board Member Garrison seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

14. Case 2009-REP-05-0062 Professionals Guild of Ohio and Clark County Board of Developmental Disabilities

- There were 28 valid ballots cast
- There was 1 challenged ballot
- Professionals Guild of Ohio received 9 votes
- No Representative received 19 votes and prevailed in this election.

Board Member Garrison moved that the Board certify that the employees in the unit have chosen to have no exclusive representative for the purposes of collective bargaining. Vice Chair Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

15. Case 2010-REP-02-0014 Ohio Federation of Teachers/American Federation of Teachers and Beachwood City School District Board of Education

- Non-Professional Question 1
- There were 55 valid ballots cast
  - There was 1 challenged ballot
  - NO (noninclusion with professional employees) received 8 votes
  - YES (inclusion with professional employees) received 47 votes and prevailed in this election.



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18. Case 2010-REP-03-0059 Fraternal Order of Police, Lodge 186 and Board of Township Trustees of West Chester, Butler County

I. BACKGROUND

On March 30, 2010, the Fraternal Order of Police, Lodge 186 (“the Union”) filed a Request for Recognition, seeking to become the exclusive representative for a bargaining unit consisting of all full-time Captains of the West Chester Police Department located in West Chester Township, Butler County. On April 19, 2010, the Board of Township Trustees of West Chester, Butler County (“the Employer”) filed a Objections to the Request for Recognition, asserting that the Union’s proposed bargaining unit is not appropriate because it consists of managerial employees as defined by Ohio Revised Code (“O.R.C.”) § 4117.01(L). The Employer also asserts that the proposed bargaining unit is not appropriate because the Captains are supervisors pursuant O.R.C. § 4117.01(C)(10). The Employer also filed a Petition for Representation Election on April 19, 2010.

On September 9, 2010, the State Employment Relations Board (“the Board”) directed this matter to an Inquiry, pursuant to Ohio Administrative Code Rule 4117-3-02. The purpose of the Inquiry is to gather information relevant to the Board in resolving whether the two positions in question are exempt from the definition of public employee pursuant to O.R.C. § 4117.01(C)(7) or (10).

The information contained in the record established that the Captains’ job responsibilities fulfill two statutory exemptions set forth in O.R.C. § 4117.01(L). Specifically, the Captains are “management level employees” because they assist in the preparation for the conduct of collective negotiations and administer collectively negotiated agreements.

Vice Chair Spada moved that the Board find, pursuant to O.R.C. § 4117.01(L), that the Captains are “management level employees” and thus, pursuant to O.R.C. § 4117.01(C)(7), excluded from the definition of “public employee.” Since the proposed bargaining unit consists of only the full-time Captains of the West Chester Police Department and there are no remaining members of the proposed bargaining unit, that the Board dismiss the Request for Recognition and dismiss as moot the Employer’s Petition for Representation Election. Board Member Garrison seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

IV. **ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:**

1. Case 2009-ULP-11-0561 SERB v. City of Elyria

On November 10, 2009, the Fraternal Order of Police, Ohio Labor Council, Inc. (“the Intervenor”) filed an unfair labor practice charge against the City of Elyria (“the City”). On February 11, 2010, SERB found probable cause to believe that the City violated O.R.C. §§ 4117.11(A)(1), (A)(2), and (A)(5) by laying off all employees in the bargaining units of Corrections Officers and Corrections Supervisors and reassigning the duties to employees outside the bargaining unit. On June 28, 2010, a complaint was issued.

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A hearing was held on August 17, 2010. The parties filed post-hearing briefs. The Administrative Law Judge issued the Proposed Order on September 20, 2010, recommending that the Board find that the City did not commit an unfair labor practice. On October 13, 2010, both the Intervenor and Counsel for Complainant filed exceptions to the Proposed Order. On October 22, 2010, the City filed a response in opposition to the exceptions.

Board Member Garrison moved that the Board adopt the Findings of Fact and Conclusions of Law in the Administrative Law Judge's Proposed Order, finding that the City did not violate Ohio Revised Code §§ 4117.11(A)(1), (A)(2), and (A)(5) when it laid off all employees in the bargaining units of Corrections Officers and Corrections Supervisors and reassigned the duties to employees outside the bargaining unit; dismiss the complaint; and dismiss with prejudice the unfair labor practice charge. Vice Chair Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes      SPADA: Yes      GARRISON: Yes  
Affirmed      X                      Denied                      \_\_\_\_\_

- 2.      Case    2010-ULP-07-0285      United Steelworkers International Union and Its Local 1-7001 v. City of Parma
  
- 3.      Case    2010-ULP-05-0151      SERB v. Cleveland Metropolitan School District Board of Education

Vice Chair Spada moved that the Board construe the parties' settlement agreement as motions to dismiss, grant the motions, and dismiss with prejudice the unfair labor practice charges. Board Member Garrison seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes      SPADA: Yes      GARRISON: Yes  
Affirmed      X                      Denied                      \_\_\_\_\_

**V. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:**

1. Case 2010-ULP-09-0362 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 070 v. Mason City School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), (3), (5), and (8) by subcontracting bargaining-unit work. Information gathered during the investigation revealed Charging Party failed to provide any information to support the Ohio Revised Code § 4117.11(A)(1), (2), (3), (5) and (8) allegations. Knowledge of the alleged violation prior to May 25, 2010, 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 Garrison 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 Chair Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

2. Cases 2010-ULP-09-0363 Strongsville City School District Board of Education v. Strongsville Education Association, OEA/NEA and Fred Dillon
- 2010-ULP-09-0364 Strongsville City School District Board of Education v. Strongsville Education Association, OEA/NEA and Fred Dillon
- 2010-ULP-10-0411 Strongsville City School District Board of Education v. Strongsville Education Association, OEA/NEA

The unfair labor practice charges alleged that Charged Parties violated Ohio Revised Code § 4117.11(B)(3) by engaging in bad-faith bargaining tactics. The parties' collective bargaining agreement has expired on July 31, 2010. To date, the parties have not entered into a successor agreement. The parties have been in negotiations, declared impasse and are currently utilizing the assistance of a federal mediation. Despite Charging Party's allegations that the Charged Party's actions amount to bad-faith bargaining, a review of Charged Party's actions through the various forums, does not appear to violate the statute. The information does not contain details about negotiations/proposals. Charged Party's spokesperson appears to have been voicing his freedom of speech. Charged Party's actions do not amount to bad-faith bargaining.

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

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

3. Case 2010-ULP-10-0402 Alvah Yolanda Hayes v. Stark County Board of Developmental Disabilities

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) by interfering with, restraining, or coercing her in the exercise of guaranteed rights. Information gathered during the investigation revealed that Charging Party was called into a meeting to discuss allegations that she made derogatory remarks and had been bullying another custodian. Charging Party was not disciplined. Charging Party failed to provide any information to support the Ohio Revised Code § 4117.11(A)(1) allegation.

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

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

4. Case 2010-ULP-10-0403 Alvah Yolanda Hayes v. Stark County Educators Professional Trainers Association and Arnette Collins

The unfair labor practice charge alleged that Charged Parties violated Ohio Revised Code § 4117.11(B)(6) by failing to fairly represent Charging Party. Information gathered during the investigation revealed that a meeting was held by the employer with Charging Party to discuss allegations of derogatory remarks she made and bullying another custodian. Charging Party was not disciplined. Charging Party failed to provide any information to support the Ohio Revised Code § 4117.11(B)(6) allegation.

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

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

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5. Case 2010-ULP-10-0407 Zane Trace School Support Personnel Association, OEA/NEA v. Zane Trace 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 assigning bargaining-unit duties to a nonbargaining-unit employee. Information gathered during the investigation revealed that despite the Charged Party's argument that Ms. Burnheimer's job duties under her service contract are not bargaining-unit duties, it appeared the job duties did fall under the responsibilities of the bargaining-unit Aide position Ms. Burnheimer held, which was affected by the reduction in force. The investigation further revealed Charged Party had an obligation to bargain its assignment of bargaining-unit duties to a nonbargaining-unit employee.

The Investigator recommended that the Board find probable cause to believe an unfair labor practice has been committed, order the parties immediately to ULP mediation for a period not to exceed 45 days, authorize the assigned mediator, after consultation with the parties, to issue and e-mail a mediator's procedural order, including date, time, and location of mediation within the time period designated. If the mediation is unsuccessful, authorize the issuance of a complaint 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 duties to a nonbargaining-unit employee.

General Counsel Russ Keith offered an alternative recommendation that the Board dismiss the unfair labor practice charge. Mr. Keith stated that Charging Party is the deemed-certified exclusive representative for a bargaining unit of all full-time and regular part-time noncertificated employees. Under Article 1 of the collective bargaining agreement, the Recognition clause, if the employer creates a new full-time or regular part-time noncertificated position, the employer "shall bargain the pay for that position prior to hiring a person for that position."

Whether Patty Burnheimer's service contract constitutes a noncertificated position under the contract should be addressed through the parties' grievance procedure in the collective bargaining agreement. "A purely contractual dispute, which encompasses no arguable statutory violation, would be a candidate for dismissal for lack of probable cause." In re Upper Arlington Ed Assn, SERB 92-010 (6-30-92), n.1. Until that issue is resolved, it is not clear that bargaining-unit duties are being re-assigned to a nonbargaining-unit employee. Consequently, Mr. Keith recommended the charge be dismissed for lack of probable cause, as a purely contractual dispute, in accordance with In re Upper Arlington Ed Assn, supra.

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

Vote: BRUNDIGE:	<u>Yes</u>	SPADA:	<u>Yes</u>	GARRISON:	<u>Yes</u>
Affirmed	<u>X</u>	Denied	<u>                    </u>		

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6. Case 2010-ULP-10-0410 Fraternal Order of Police, Ohio Labor Council, Inc. v. City of Marietta

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), (3), and (5) by failing to bargain over furlough days and dealing directly with bargaining-unit employees. Charged Party's actions did not appear to rise to the level of a violation. The information gathered during the investigation did not show that Charged Party was attempting to bargain directly with the employees, discredit the Charging Party's administration, or refuse to bargain over the issue of furlough days. Charging Party failed to provide any information to support the Ohio Revised Code § 4117.11(A)(1), (2), and (3) allegations.

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

Vote: BRUNDIGE:	<u>Yes</u>	SPADA:	<u>Yes</u>	GARRISON:	<u>Yes</u>
Affirmed	<u>X</u>	Denied	<u>                    </u>		

7. Case 2010-ULP-08-0317 Ohio Association of Public School Employees, AFSCME Local 4 and Its Local 546 v. Martins Ferry City School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), (5) and (8) by unilaterally changing the job descriptions after a Reduction-in-Force in order to preclude its senior members from being qualified for the new positions. Information gathered during the investigation revealed that Charging Party has established a prima facie case of discrimination. Charged Party did not provide a persuasive rebuttal as to why it did not bargain the changes to the job descriptions.

The Investigator recommended that the Board find probable cause to believe an unfair labor practice has been committed, order the parties immediately to ULP mediation for a period not to exceed 45 days, authorize the assigned mediator, after consultation with the parties, to issue and e-mail a mediator's procedural order, including date, time, and location of mediation within the time period designated. If the mediation is unsuccessful, authorize the issuance of a complaint and refer the matter to hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(5), but not (A)(1), (3), and (8), by unilaterally implementing new job descriptions.

General Counsel Russ Keith offered an alternative recommendation that the Board sua sponte defer this matter for resolution through the grievance-arbitration procedure, with the Board retaining jurisdiction over the charge. Mr. Keith stated the Union filed a group/class action grievance regarding the employer's actions. The grievance has been advanced to arbitration. The arbitrator's award may resolve both the charge and the contract interpretation issues in the grievance. Deferral in this matter, while retaining jurisdiction over the charge, could avoid duplicate forums and save the resources of the Board and the parties. See *In re Upper Arlington Ed Assn*, SERB 92-010 (6-30-92).

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Board Member Garrison moved that the Board 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). Vice Chair Spada seconded the motion. There being no further discussion, Chairperson Brundige called for the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

8. Case 2010-ULP-09-0361 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 546 v. Martins Ferry City School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), (5), and (8) by unilaterally freezing Charging Parties' members salaries and reducing current salaries by 5%. Information gathered during the investigation revealed Charged Party knew in January 2010 that Charging Party was foregoing the wage-reopener due to the financial condition of Charged Party. Charged Party did not provide sufficient information to show that exigent circumstances or legislative action precipitated the reduction of wages or the wage freeze.

The Investigator recommended that the Board find probable cause to believe an unfair labor practice has been committed, coordinate with Case No. 2010-ULP-08-0317, order the parties immediately to ULP mediation for a period not to exceed 45 days, authorize the assigned mediator, after consultation with the parties, to issue and e-mail a mediator's procedural order, including date, time, and location of mediation within the time period designated. If the mediation is unsuccessful, authorize the issuance of a complaint and refer the matter to hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(3) and (5), but not (1) and (8), by unilaterally freezing Charging Parties' members salaries and reducing current salaries by 5%.

General Counsel Russ Keith offered an alternative recommendation that the Board sua sponte defer this matter for resolution through the grievance-arbitration procedure, with the Board retaining jurisdiction over the charge. Mr. Keith stated a grievance contesting the employer's actions had been filed and had been advanced to arbitration. The arbitrator's award may resolve both the charge and the contract interpretation issues in the grievance. Deferral in this matter, while retaining jurisdiction over the charge, could avoid duplicate forums and save the resources of the Board and the parties. See *In re Upper Arlington Ed Assn*, SERB 92-010 (6-30-92).

Vice Chair Spada moved that the Board 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 Garrison seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

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9. Case 2010-ULP-10-0401 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 546 v. Martins Ferry City School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), (3), (5), and (8) by unilaterally implementing monetary changes to the health insurance plan. Information gathered during the investigation revealed that Charged Party knew in April 2010 that Charging Party did not agree to the terms outlined in the Memorandum of Understanding regarding the increases in co-pays and prescription costs. Charged Party did not provide sufficient information to show that exigent circumstances or legislative action precipitated the changes to the health insurance plan. Charging Party has also established a prima facie case of discrimination.

The Investigator recommended that the Board find probable cause to believe an unfair labor practice has been committed, coordinate with Case Nos. 10-ULP-08-0317 and 10-ULP-09-0361, order the parties immediately to ULP mediation for a period not to exceed 45 days, authorize the assigned mediator, after consultation with the parties, to issue and e-mail a mediator's procedural order, including date, time, and location of mediation within the time period designated. If the mediation is unsuccessful, authorize the issuance of a complaint and refers the matter to hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(3) and (5), but not (1), (2), and (8), by unilaterally implementing monetary changes to the health insurance plan.

General Counsel Russ Keith offered an alternative recommendation that the Board sua sponte defer this matter for resolution through the grievance-arbitration procedure, with the Board retaining jurisdiction over the charge. Mr. Keith stated a grievance contesting the employer's actions had been filed and, at last notice, had been advanced to Step 3 of the grievance-arbitration procedure. An arbitrator's award, if necessary, may resolve both the charge and the contract interpretation issues in the grievance. Deferral in this matter, while retaining jurisdiction over the charge, could avoid duplicate forums and save the resources of the Board and the parties. See *In re Upper Arlington Ed Assn*, SERB 92-010 (6-30-92).

Board Member Garrison moved that the Board 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). Vice Chair Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

10. Case 2010-ULP-08-0331 Aurora Education Association, OEA/NEA v. Aurora City School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), (3), and (8) by retaliating against its President, Josue Perez for engaging in protected activities. Information gathered during the investigation revealed Charging Party had failed to establish a prima facie case of discrimination when he was transferred from the High School to the Middle School. Charged Party provided information to show that for the 2010–2011 school year, Mr. Perez was one of 16

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teachers reassigned to a different teaching assignment, and that Mr. Perez had been previously warned that if his attendance did not improve, he could be reassigned. Charging Party did not provide sufficient information to support the Ohio Revised Code § 4117.11(A)(1), (2), and (8) allegations.

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

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

11. Case 2010-ULP-09-0375 Canton Professional Firefighters' Association, IAFF Local 249 v. City of Canton

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 that without a rebuttal to the allegations, Charged Party appeared to have been bargaining in bad faith when it presented its "take it or leave it" proposal. Charged Party appeared to have only advised Charging Party that it was going to engage in pattern bargaining at the September 10, 2010 session.

Board Member Garrison moved that the Board find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, refer the matter to an expedited hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by failing to bargain in good faith, and order the parties to expedited mediation to run concurrently with the expedited processing of the charge and complaint. Vice Chair Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

12. Case 2010-ULP-09-0379 International Association of Fire Fighters, Local 3742 v. City of Franklin and Fire Chief Jonathan Westendorf

The unfair labor practice charge alleged that Charged Parties violated Ohio Revised Code § 4117.11(A)(2) and (6) by "deliberately failing" to timely file a grievance response and "intentionally interfering" with Captain Stu Dixon's exercise of guaranteed rights. Information gathered during the investigation revealed Charging Party had failed to provide sufficient information to show Charged Party has repeatedly failed to process grievances. SERB has previously held that the failure to process one grievance does not constitute a "repeated pattern." If Charging Party disagreed with the response received at Step 2, it could have advanced the grievance to the next step as provided for in Article 20. Charging Party did not provide sufficient information or documentation to support the (A)(2) allegation.

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

Vote: BRUNDIGE:	<u>Yes</u>	SPADA:	<u>Yes</u>	GARRISON:	<u>Yes</u>
Affirmed	<u>X</u>	Denied	_____		

13. Case 2010-ULP-09-0387 Lorain Professional Firefighters, IAFF, Local 267, AFL-CIO v. City of Lorain

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), (3) and (5) by demoting 6 of its members and laying off 11 in retaliation for pursuing a grievance to arbitration. Information gathered during the investigation revealed that when taken in the totality of the circumstances, Charged Party appeared to have used the threat of layoffs as a “tool” in order to obtain Charging Party’s agreement to the deferred payroll system. Even though the parties did come to an agreement after the arbitration award was issued, the pre-arbitration actions of Charged Party appeared to have been an attempt to coerce Charging Party into accepting the deferred payroll system.

The Investigator recommended that the Board find probable cause to believe an unfair labor practice has been committed, order the parties immediately to ULP mediation for a period not to exceed 45 days, authorize the assigned mediator, after consultation with the parties, to issue and e-mail a mediator’s procedural order, including date, time, and location of mediation within the time period designated. If the mediation is unsuccessful, authorize the issuance of a complaint and refer the matter to hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(1), but not (2), (3), and (5), by attempting to coerce Charging Party into accepting the deferred payroll system prior to the arbitration regarding the same issue.

Chairperson Brundige offered an alternative recommendation, and moved that the Board, without rendering any judgment on the merits, order the parties to pre-determination mediation for a period not to exceed 30 days with instructions to the mediator to report back to the Board at the conclusion of the mediation or the mediation period, whichever occurs first, authorize the assigned mediator, after consultation with the parties, to issue and e-mail a mediator’s procedural order, including date, time, and location of mediation within the time period designated. Board Member Garrison seconded the motion. Chairperson Brundige called for discussion and stated that he agreed with the Investigator that charges 4117.11(A)(2),(3)&(5) should be dismissed for the reasons stated in her memo. The Investigator believes there may be a remaining 4117.11(A)(1) violation. Before the Board makes such a determination and the parties invest significant expense in the processing of such charge, it may be helpful to see if the parties can resolve any remaining issue prior to a probable cause finding. There being no further discussion, Chairperson Brundige called for the vote.

Vote: BRUNDIGE:	<u>Yes</u>	SPADA:	<u>Yes</u>	GARRISON:	<u>Yes</u>
Affirmed	<u>X</u>	Denied	_____		

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14. Case 2010-ULP-07-0303 Goshen Education Association, OEA/NEA and Mike Tudor v. Goshen Local School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), and (3) by refusing to postpone Mike Tudor's disciplinary meeting so that the Union President or Grievance Chair could attend, requiring Mr. Tudor to proceed with another representative, and intimidating that representative into writing on the disciplinary notice that Mr. Tudor refused to sign the reprimand even though he only wished to speak to legal counsel before signing. Information gathered during the investigation revealed union representation was provided for a non-investigatory meeting, the contract right to choose representation is purely contractual, and subjectively one could not reasonably conclude that the direction to sign the disciplinary notice interfered with, restrained, or coerced any employee in the exercise of a Chapter 4117 right.

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

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

15. Case 2010-ULP-09-0376 Transport Workers Union of America, Local 208 v. Central Ohio Transit Authority

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11. Information gathered during the investigation revealed information was requested in writing from Charging Party on October 25, 2010, and November 10, 2010. Charging Party Charging Party did not respond to the written requests for information.

Board Member Garrison moved that the Board dismiss the charge with prejudice because Charging Party failed to pursue the matter. Vice Chair Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

16. Case 2010-ULP-10-0391 Middletown Fire Fighters Association, IAFF Local 336 v. City of Middletown

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(5) by unilaterally changing a past practice regarding compensation for overtime physicals. Information gathered during the investigation revealed that the matter is purely a contractual dispute and best addressed through the parties binding, grievance-arbitration process.

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

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

17. Case 2010-ULP-10-0396 Linda Goetz v. Forest Park Firefighters Association, IAFF Local 3024

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(6) by deciding not to pursue Charging Party's grievance to arbitration and stand by idly allowing the Employer to single her out for discipline regarding her tattoos. Information gathered during the investigation revealed Charged Party's actions were not arbitrary, discriminatory or in bad faith.

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

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

18. Case 2010-ULP-10-0409 William J. Garner v. The Kroger Company

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11. Information gathered during the investigation revealed Charged Party is not a public employer. The charge is not within the Board's jurisdiction.

Vice Chair Spada moved that the Board dismiss the charge with prejudice for lack of jurisdiction. Board Member Garrison seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

19. Case 2010-ULP-10-0412 Robert Habern v. Ohio Civil Service Employees Association, AFSCME, Local 11

The unfair labor practice charge alleged that Charged Party's Union Staff Representative, Karen Vroman-Ells, violated Ohio Revised Code § 4117.11(B)(3) and (6) by applying for and accepting the position she was suppose to win back for Charging Party following his wrongful termination. Information gathered during the investigation revealed there was no evidence that Charged Party refused to bargain collectively with Charging Party's Employer, or that Charged Party's processing of Charging Party's termination grievance was arbitrary, discriminatory, or in bad faith.

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

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

20. Case 2010-ULP-06-0237 Quinton A. Osborne v. Service Employees International Union, District 1199

On December 16, 2010, 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 timely file his grievance.

On November 24, 2010, Charging Party filed a request for reconsideration of the Board's decision. A review of the original investigation revealed Charging Party failed to raise issues warranting reversal of the dismissal.

Vice Chair Spada moved that the Board construe the request for reconsideration as a motion for reconsideration, and denies the motion with prejudice. Board Member Garrison seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

21. Case 2010-ULP-07-0276 Michael Kerschner v. State of Ohio, Department of Rehabilitation and Correction, Lorain Correctional Institution

22. Case 2010-ULP-07-0281 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 738 v. Batavia Local School District Board of Education

23. Case 2010-ULP-10-0405 Service Employees International Union, District 1199 v. Stark County District Library

24. Case 2010-ULP-11-0422 Lexington Teachers' Association, OEA/NEA v. Lexington Local School District Board of Education

25. Case 2010-ULP-11-0444 Massillon Education Association, OEA/NEA v. Massillon City School District Board of Education

Board Member Garrison moved that the Board construe the settlement agreements and letter as motions to withdraw the charges, and grant the motion with prejudice the motions to withdraw. Vice Chair Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes GARRISON: Yes  
Affirmed X Denied \_\_\_\_\_

**VI. TABLED AND OTHER MATTERS:**

- |    |                        |   |
|----|------------------------|---|
| 1. | Case 2010-ULP-01-0005  | <u>United Steelworkers of America, Local 1949-B v. Marion Public Health</u><br>Hold In Abeyance – May 6, 2010                   |
| 2. | Cases 2010-ULP-01-0008 | <u>United Steelworkers of America, Local 1949-2B v. City of Marion, Board of Health, etc.</u><br>Hold In Abeyance – May 6, 2010 |
|    | 2010-ULP-02-0053       | <u>Heather Hughes v. City of Marion, Board of Health, etc.</u><br>Hold In Abeyance – May 6, 2010                                |
| 3. | Case 2010-ULP-06-0243  | <u>Hocking College Education Association, OEA/NEA v. Hocking College</u><br>Tabled – September 23, 2010                         |

**VII. ADMINISTRATIVE MATTERS:**

Executive Director Sherrie Passmore reported on Administrative Matters:

**Proposed Mail-Ballot Procedure Change.** SERB is considering a change to its mail ballot procedure which states that each voting period will have a starting and ending date, and only ballots postmarked within that time period will be valid and counted. Recently SERB received a ballot that was postmarked one day before the polling period began. Consistent with current procedures, that vote was challenged by SERB, and subsequently not counted. Questions have been raised as to whether the beginning date requirement causes an undue hardship for voters. Because SERB has been mailing ballot kits out a few days prior to the first day of the polling period, we are considering amending the procedures to state: **Ballots returned to SERB postmarked prior to the first day of the polling period will be valid and counted in the election. Ballots returned to SERB postmarked after the last day of the polling period will not be valid and not counted in the election.** Constituents and customers are invited to comment on this proposed change via e-mail to Dory McClendon at [dory.mcclendon@serb.state.oh.us](mailto:dory.mcclendon@serb.state.oh.us) by Wednesday, December 29, 2010. If such a change in procedure is made, we will notify all parties of the effective date.

**Training.** A Developing Labor Law Conference was held on December 3, 2010, and was attended by 49 of our customers and constituents. A training conference on Ohio's civil service laws is scheduled for January 12, 2011.

**Board Meetings.** SERB regular Board meetings for the first quarter of 2011 are scheduled for January 6 and 12, February 3 and 17, and March 3 and 17. All meetings will start at 10:00 AM, and are held in the Board's offices at 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio 43215

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**Office Closings.** State offices will be closed Dec. 24, 2010, in observance of Christmas Day. SERB will be using a Cost Savings Day on December 23, 2010, and will be closed for business. Electronic filings sent by e-mail to SERB after 5 p.m. on December 22, 2010, will be considered filed on the next business day that SERB is open (December 27, 2010). State offices will be closed Dec. 31, 2010, in observance of New Year's Day. Electronic filings sent by e-mail to SERB after 5 p.m. on December 30, 2010, will be considered filed on the next business day that SERB is open (January 3, 2011).

**IX. ADJOURNMENT:**

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

Vote: BRUNDIGE: Yes      SPADA: Yes      GARRISON: Yes  
Affirmed      X      Denied      \_\_\_\_\_

The Board meeting adjourned at 11:02 a.m.

/s/  
\_\_\_\_\_  
N. Eugene Brundige, Chairperson