

State Employment Relations Board

Board Meeting Minutes
January 20, 2011

The State Employment Relations Board met on January 20, 2011, at 10:00 a.m., at 65 East State Street, 12th Floor, Columbus, Ohio. Present at the meeting were Chairperson Eugene Brundige and Vice Chair Robert F. Spada.

I. APPROVAL OF MINUTES FOR THE JANUARY 20, 2011 BOARD MEETING:

Vice Chair Spada moved that the Board approve the minutes for the January 6, 2011 Board meeting. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

- 1. Case 2010-MED-06-0848 Benevolent Employees of the Hamilton County Sheriff and Hamilton County Sheriff

On June 22, 2010, the Benevolent Employees of the Hamilton County Sheriff ("Employee Organization") filed a Notice to Negotiate concerning negotiations for a successor collective bargaining agreement with the Hamilton County Sheriff ("Employer"). The bargaining unit at issue is a Board-certified unit, which had been part of a Consent Election Agreement, which was described as follows:

Included:

Account Clerk 1, Account Clerk 2, Administrative Secretary 1 (except Catherine Klinebriel, Laver F. Zahneis and Jessica L. Jones), Application Analyst 1, Business Service Officer 1, Clerk 2, Computer Programmer/Analyst, Computer Operator, Correction Classification Specialist, Corrections Instructor, Court Data Entry Operator 2, Data Entry Operator 2 (spt), Identification Technician, Inventory Purchasing Specialist, Mechanic 2, Mechanic 3, Personal Aide 1, Process Officer 2, Receptionist 2, Secretary 2 (except Joanne Harris), Senior Network Administrator, Social Service Specialist, Station Engineer, Statistics Clerk, Training Assistant, Data Entry 1 and Data Entry 2.

Excluded:

*** employees who cannot be combined with this unit because of Revised Code 4117.06 (including full-time deputy sheriffs appointed under Revised Code 311.04), all other employees not listed above as "Included" in the unit, and students.

On September 9, 2010, the parties requested a fact-finding panel. On September 22, 2010, the parties notified the Bureau of Mediation of their selection of a fact finder. On that day, the Bureau of Mediation appointed the selected fact finder of his appointment. The fact-finding hearing was held on November 17, 2010. The fact-finder's report was issued on December 2, 2010.

State Employment Relations Board
Board Meeting Minutes
January 20, 2011
Page 2 of 16

On December 8, 2010, the Employee Organization notified the Board of its 26-5 vote to accept the fact-finder's report. Also on December 8, 2010, the Employer notified the Board of its 3-0 vote to reject the report. On December 16, 2010, the Bureau of Mediation issued its order of conciliation to the parties.

On December 20, 2010, the Employer filed a motion for immediate withdrawal of the conciliation order and/or immediate motion to stay negotiations. On December 22, 2010, the Employer filed an amended motion. The Employer contends that the individuals in the bargaining unit are not eligible for conciliation.

On December 27, 2010, the Employee Organization filed a memorandum in opposition to the motion. The Employee Organization contends that the members of the bargaining unit are eligible for conciliation under Ohio Revised Code § 4117.14(D)(1), which provides in relevant part as follows:

(D) If the parties are unable to reach agreement within seven days after the publication of findings and recommendations from the fact-finding panel or the collective bargaining agreement, if one exists, has expired, then the:

(1) Public employees, who are members of a police or fire department, * * * deputy sheriffs, * * * shall submit the matter to a final offer settlement procedure pursuant to a board order issued forthwith to the parties to settle by a conciliator selected by the parties.

Ohio Revised Code § 4117.01(N) provides in relevant part as follows: "Member of a police department' means * * * a full-time deputy sheriff appointed under section 311.04 of the Revised Code[.]"

The Employee Organization contends that all of the bargaining-unit members are full-time deputy sheriffs appointed under Ohio Revised Code § 311.04 and, hence, are eligible for conciliation. The Employer contends that the parties agreed to specifically exclude "full-time deputy sheriffs appointed under Revised Code 311.04" from this bargaining unit.

The bargaining-unit description in the earlier Board certifications does not support the order of conciliation. Granting the Employer's motion to withdraw the conciliation order appears to be appropriate.

Vice Chair Spada moved that the Board grant the Employer's motion to withdraw the conciliation order sent by the Bureau of Mediation. Chairperson Brundige seconded the motion and called for discussion and the vote.

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

State Employment Relations Board
Board Meeting Minutes
January 20, 2011
Page 3 of 16

2. Case 2010-MED-11-1693 Brook Park Fire Fighters, IAFF, Local 141 and City of Brook Park

On November 1, 2010, the Employee Organization filed a Notice to Negotiate concerning negotiations for a successor collective bargaining agreement with the Employer.

On December 6, 2010, the Employee Organization filed a motion to stay negotiations, requesting that the Board suspend the statutory dispute settlement procedure and toll all deadlines until the Board issued its final ruling in another pending case involving these parties (Case No. 2010-ULP-03-0100). On December 15, 2010, the Employer filed its brief in opposition to the motion to stay.

The issue in the related case is whether the Employer violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(5) by failing to bargain in good faith and failing to maintain the status quo in its negotiations. Resolution of that case may impact these negotiations. Granting the Employee Organization's motion to stay negotiations appeared to be appropriate.

Vice Chair Spada moved that the Board grant the Employee Organization's motion to stay negotiations pending disposition of Case No. 2010-ULP-03-0100. Chairperson Brundige seconded the motion and called for discussion and the vote.

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

3. Case 2009-MED-09-0850 Teamsters Local Union No. 957 and Wright State University

On September 2, 2009, the Employee Organization filed a Notice to Negotiate concerning negotiations for a successor collective bargaining agreement with the Employer. In May 2010, the parties requested a fact-finding panel. On May 20, 2010, the parties notified the Bureau of Mediation of their selection of a fact finder. On May 25, 2010, the Bureau of Mediation notified the selected fact finder of his appointment. The fact-finding hearing was held on July 27, 2010. The fact-finder's report was issued on August 23, 2010.

On August 31, 2010, the Employee Organization notified the Board of its 59-11 vote to accept the fact-finder's report. The Employer did not notify the Board of its vote to accept or reject the report; as a result, the report was deemed accepted by the Employer.

On September 22, 2010, the fact finder issued a "Determination on the Implementation of the Wage Provisions of the Fact Finding Report Dated August 23, 2010." On December 8, 2010, the Employer filed a motion to vacate the fact-finder's written correction of the fact-finding report. On December 27, 2010, the Employee Organization filed a memorandum in opposition to the motion. On January 5, 2011, the Employer filed a reply to the Employee Organization's memorandum.

State Employment Relations Board
Board Meeting Minutes
January 20, 2011
Page 4 of 16

Ohio Administrative Code Rule 4117-9-05 provides as follows:

(L) No later than fourteen days after the appointment of the fact-finding panel, unless the parties mutually agree to an extension, the fact-finding panel, acting by a majority of its members, shall serve on the parties and the board via electronic mail findings of fact, recommendations on the unresolved issues, and a separate summary of each recommendation. Any subsequent change or adjustment by the fact-finding panel in the fact-finding report must be based upon error or omission and must be submitted by the fact-finding panel to the board for consideration and imposition of new time periods. If the fact-finder's report contains an error that needs correction, the parties shall contact the fact finder to raise the concern. If the report contains a substantive error that requires an adjustment to the report, the fact finder shall file a request with the board for authorization to adjust the report. Unless the parties agree to extend the voting period, the parties should conduct a vote upon the report as issued without correction. Once the board grants authorization for the fact finder to adjust the report, new timelines will be established for conducting a new vote to accept or reject the report as adjusted. Obvious typographical errors admitted by the fact finder do not require a board authorized adjustment.

The fact finder's "Determination" appeared to be more than correcting an obvious typographical error. As a result, the adjustment should be authorized by the Board. Granting the Employer's motion to vacate appears to be appropriate.

Since this matter is now before the Board, remanding it to the fact finder to have him re-submit it to the Board would favor form over substance. Instead, accepting the fact finder's "Determination" as the adjustment by the fact finder as the rule contemplates appears to be appropriate. Further, establishing new timelines for conducting a new vote on the fact-finder's report appears to be appropriate.

General Counsel Russ Keith offered the recommendation that the Board grant the Employer's motion to vacate the fact-finder's written correction of the fact-finding report; accept the fact finder's "Determination on the Implementation of the Wage Provisions of the Fact Finding Report Dated August 23, 2010" as the adjustment by the fact finder under Ohio Administrative Code Rule 4117-9-05(L); and remand this matter to the Bureau of Mediation to establish new timelines for conducting a new vote to accept or reject the fact-finding report as adjusted under Ohio Administrative Code Rule 4117-9-05(L).

Chairperson Brundige moved that the Board grant the Employer's motion to vacate the fact-finder's written correction of the fact-finding report. Vice Chair Spada seconded the motion. Chairperson Brundige called for discussion and stated that it is the Board's jurisdiction to accept the fact-finder's report when it is deemed accepted, and it is up to the parties to work out how it is to be implemented. Chairperson Brundige called for the vote.

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

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 2010-REP-12-0199 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Whitehall

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

Vice Chair Spada moved that the Board certify the Employee Organization as the exclusive representative of all employees in the relevant bargaining unit. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

2. Case 2010-REP-12-0203 Plain Township Professional Firefighters Local 2967 and Plain Township Board of Trustees, Stark County

3. Case 2010-REP-12-0204 Erie County MR/DD Employees Association/OEA/NEA and Erie County Board of Developmental Disabilities

The parties jointly filed Petitions for Amendment of Certification. The proposed amendments appear appropriate.

Vice Chair Spada moved that the Board approve the jointly filed petitions and amend the units accordingly. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

4. Case 2010-REP-09-0148 Teamsters Local 436 and Laborers Local Union 1099 and City of Bedford Heights

All parties have executed and filed the appropriate Consent Election Agreement seeking a mail-ballot election.

Vice Chair Spada moved that the Board approve the Consent Election Agreement and direct a mail-ballot election to be conducted during the polling period indicated. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

State Employment Relations Board
Board Meeting Minutes
January 20, 2011
Page 6 of 16

5. Case 2003-REP-12-0240 Maple Heights Office on Aging Employees Union and City of Maple Heights

On December 22, 2010, the Employee Organization filed a letter disclaiming interest. The Employer does not oppose the request. The parties confirm no contract exists.

Vice Chair Spada moved that the Board construe the letter as a Motion to Revoke Certification, grant the motion, and revoke the Employee Organization's certification. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

6. Case 2010-REP-07-0123 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and MetroHealth Medical Center

Vice Chair Spada moved that the Board, without rendering any judgment on the merits, order 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 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. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

7. Case 2010-REP-07-0121 Saybrook Township Fire Department Part-timers and International Association of EMT's and Paramedics and Saybrook Township Board of Trustees, Ashtabula County

- There were 18 valid ballots cast
- There were 0 void ballots
- There was 1 challenged ballot
- No Representative received 3 votes
- International Association of EMT's and Paramedics received 2 votes
- Saybrook Township Fire Department Part-timers received 13 votes and prevailed in this election.

Vice Chair Spada moved that the Board certify the election results and certify the prevailing employee organization as the exclusive representative of all employees in the relevant bargaining unit. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Case 2010-ULP-07-0293 SERB v. City of Westerville
2. Case 2010-ULP-08-0315 Cincinnati Federation of Teachers v. Cincinnati Board of Education

Vice Chair Spada moved that the Board construe the Settlement Agreement and email as motions to dismiss, grant the motions, and dismiss with prejudice the unfair labor practice charges and complaints therein. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

3. Case 2010-ULP-05-0157 SERB v. Cleveland Metropolitan School District Board of Education

On May 13, 2010, the Union filed an unfair labor practice charge against the Respondent. On July 8, 2010, the Board found probable cause to believe that Respondent violated Ohio Revised Code ("O.R.C.") § 4117.11(A)(5) when it released to the public specific bargaining proposals during negotiations in an attempt to deal directly with the membership and improperly influence negotiations, authorized the issuance of a complaint, and directed the matter to hearing.

On July 24, 2010, a Complaint was issued. On August 18, 2010, Counsel for Complainant filed a motion to amend the complaint; the motion was granted.

A hearing was held on September 22, 2010. On November 15, 2010, Administrative Law Judge Christopher R. Young issued a Proposed Order, recommending that the Board find that the Respondent violated O.R.C. § 4117.11(A)(5) and the duty to bargain in good faith when Respondent released specific bargaining proposals to the public during negotiations, thereby directly dealing with membership and improperly influencing negotiations. The Administrative Law Judge also recommended that the Board issue a cease-and-desist order requiring Respondent to: (1) post the Notice to Employees furnished by the Board for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Union work, and (2) notify the Board in writing within twenty days after the order becomes final of the steps that have been taken to comply with the order.

The parties have not filed any exceptions to the Proposed Order. Ohio Revised Code § 4117.12(B)(2) provides that if no exceptions are filed to a proposed order, then the proposed order becomes the order of the Board.

State Employment Relations Board
Board Meeting Minutes
January 20, 2011
Page 8 of 16

Vice Chair Spada moved that the Administrative Law Judge's Proposed Order become the order of the Board, pursuant to Ohio Revised Code § 4117.12(B)(2), since no exceptions were filed by any party. Chairperson Brundige seconded the motion and called for discussion and the vote.

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

4. Case 2010-ULP-01-0003 SERB v. Lorain County Board of Commissioners

On January 7, 2010, the Union filed an unfair labor practice charge against the Employer, alleging that the Employer violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(5) by implementing its "Last, Best, and Final Offer" prior to reaching ultimate impasse. On March 24, 2010, SERB determined that there was probable cause to believe that the Employer had committed or was committing unfair labor practices when it implemented its "Last, Best, and Final Offer" prior to reaching ultimate impasse, authorized the issuance of a complaint, and referred the matter to hearing. On June 29, 2010, a complaint was issued.

A hearing was held on September 21, 2010. The parties filed post-hearing briefs. The Administrative Law Judge issued the Proposed Order on October 14, 2010, recommending that the Board find that the Employer did commit an unfair labor practice.

On November 2, 2010, the Employer filed exceptions to the Proposed Order. On November 15, 2010, both the Union and Counsel for Complainant filed responses to the Employer's exceptions to the Proposed Order.

Vice Chair Spada moved that the Board amend Conclusion of Law No. 3 to read: "Lorain County Board of Commissioners violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(5) by failing to maintain the status quo and by unilaterally implementing its 'Last, Best, and Final Offer' instead of exhausting the statutory dispute settlement procedures."; adopt the Findings of Fact and Conclusions of Law, as amended, in the Administrative Law Judge's Proposed Order, finding that the Employer violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(5) when it implemented its "Last, Best, and Final Offer" prior to reaching ultimate impasse; and issue an order requiring the Employer to cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117, and from refusing to bargain collectively with the exclusive representative of its employees, by implementing its "Last, Best, and Final Offer" prior to reaching ultimate impasse, and from otherwise violating Ohio Revised Code § 4117.11(A)(1) and (A)(5); and ordering the Employer to take the following affirmative action: (1) immediately rescind the "Last,

Best, and Final Offer” that was unilaterally implemented on December 30, 2009, (2) return to the *status quo ante* as of December 29, 2009, (3) reimburse the bargaining-unit members for any losses sustained, and additional expenses incurred, as a result of the Employer’s unilaterally implemented changes on December 30, 2009, (4) bargain in good faith with the United Steelworkers International Union, Local 8845, toward a successor collective bargaining agreement; (5) post a Notice to Employees furnished by the Board for sixty days in all of the usual and normal posting locations where bargaining-unit employees represented by the Union work; and (6) notify the Board via electronic mail within twenty calendar days from the date the Order becomes final of the steps that have been taken to comply therewith. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

IV. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 2010-ULP-10-0408 Zane Trace School Support 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 nonbargaining-unit employees. Information gathered during the investigation revealed that Charging Party failed to provide any information to support the Ohio Revised Code § 4117.11(A)(1) and (5) 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. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

2. Case 2010-ULP-11-0417 Association of Cleveland Fire Fighters, Local 93, IAFF v. City of Cleveland

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), (5), and (7) by involuntarily assigning members of the Fire Division to duties of the EMS Division, and dealing directly with the employees. Information gathered during the investigation revealed that the issues are purely contractual with no implication of a statutory violation. Charging Party’s information failed to support the Ohio Revised Code § 4117.11(A)(1), (2), and (7) allegations.

State Employment Relations Board
Board Meeting Minutes
January 20, 2011
Page 10 of 16

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. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

3. Case 2010-ULP-11-0418 Cleveland Association of Rescue Employees/ILA, Local 1975, AFL-CIO v. City of Cleveland

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), (5), and (7) by assigning bargaining-unit work to the IAFF bargaining-unit employees. Information gathered during the investigation revealed that the issues are purely contractual with no implication of a statutory violation. Charging Party's information failed to support the Revised Code § 4117.11(A)(1), (2), and (7) 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. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

4. Case 2010-ULP-11-0440 Bruce A. Jones v. State of Ohio, Department of Administrative Services, Office of Collective Bargaining

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(8) by causing his Union to violate its obligation to fairly represent Charging Party. Information gathered during the investigation revealed that Charging Party's grievance had been properly processed pursuant to the parties' grievance procedure. Charging Party failed to provide any information to support the Ohio Revised Code § 4117.11(A)(8) 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 Party. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

State Employment Relations Board
Board Meeting Minutes
January 20, 2011
Page 11 of 16

5. Case 2010-ULP-11-0448 Andre L. Battle, Sr. v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(6) by failing to fairly represent Charging Party during his arbitration hearing. Information gathered during the investigation revealed that Charged Party's actions were not arbitrary, discriminatory or in bad faith. 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 Party. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

6. Case 2010-ULP-11-0452 Bruce A. Jones v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(6) by failing to fairly represent Charging Party. Information gathered during the investigation revealed that Charged Party's actions were not arbitrary, discriminatory or in bad faith. 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 Party. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

7. Cases 2010-ULP-09-0348 Amy L. Barket v. Greater Cincinnati Building and Construction Trades Council
2010-ULP-09-0349 Todd M. Brown v. Greater Cincinnati Building and Construction Trades Council
2010-ULP-09-0350 Timothy J. Clark v. Greater Cincinnati Building and Construction Trades Council
2010-ULP-09-0351 Michael R. Ewing v. Greater Cincinnati Building and Construction Trades Council
2010-ULP-09-0353 Charles R. Giles, Jr. v. Greater Cincinnati Building and Construction Trades Council
2010-ULP-09-0354 Mark H. Heimers v. Greater Cincinnati Building and Construction Trades Council

State Employment Relations Board
Board Meeting Minutes
January 20, 2011
Page 13 of 16

9. 2010-ULP-10-0413 Bexley Education Association, OEA/NEA v. Bexley 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 implementing a teacher observation process called "Collaborative Observation Protocol" or "Peer Review." Charged Party filed a Motion to Defer to Arbitration. Information gathered during the investigation revealed that to date, Charged Party had not implemented the Collaborative Observation Protocol; therefore, the charge appeared to be prematurely filed. If Charged Party does implement the protocol in the future, Charging Party would have the grievance process as a remedy and/or the option to file another unfair labor practice charge.

Vice Chair Spada moved that the Board dismiss the charge without prejudice as prematurely filed, and deny Charged Party's Motion to Defer to Arbitration as moot. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

10. Case 2010-ULP-03-0083 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO v. City of North Olmsted

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) unilaterally changing bargaining-unit employees' rotating schedules from weekly to monthly. Information gathered during the investigation revealed that on May 20, 2010, SERB deferred the unfair labor practice charge to the parties' grievance-arbitration procedure pursuant to option three of *In re Upper Arlington Ed Assn*, SERB 92-010 (6-30-92). On December 20, 2010, Charging Party advised SERB that the parties resolved the matter prior to the arbitration hearing.

Vice Chair Spada moved that the Board dismiss the charge with prejudice as having been resolved between the parties pursuant to the grievance-arbitration process. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

11. Case 2008-ULP-09-0416 Jeremy Sayers v. University of Akron, Chris Hariasz, and Neil Sapienza

The unfair labor practice charge alleged that Charged Parties violated Ohio Revised Code § 4117.11(3) by retaliating against Charging Party in retaliation for his exercise of guaranteed rights. Information gathered during the investigation revealed that on November 20, 2008, SERB deferred the unfair labor practice charge to the parties' grievance-arbitration procedure pursuant to option three of *In re Upper Arlington Ed Assn*, SERB 92-010 (6-30-92). Charging Party's grievance never proceeded to arbitration. Charging Party asserted Charged Parties refused to process his grievance based on procedural issues. Despite the Charged Parties' claim that Charging Party

State Employment Relations Board
Board Meeting Minutes
January 20, 2011
Page 14 of 16

displayed a violent and angry behavior, other employees stated they never witnessed Charging Party being violent or angry. There also appeared to be a credibility issue as to whether Charging Party tripped over the paint can or kicked it.

Vice Chair Spada moved 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 Parties violated Ohio Revised Code § 4117.11(A)(3) by retaliating against Charging Party for engaging in protected activity. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

- 12. Case 2010-ULP-07-0261 Massillon Education Association, OEA/NEA and Scott Baker v. Massillon City School District Board of Education
- 13. Case 2010-ULP-06-0236 Teays Valley Classroom Teachers Association, OEA/NEA v. Teays Valley Local School District Board of Education

In Case 2010-ULP-07-0261, the Board dismissed the unfair labor practice charge for lack of probable cause to believe that an unfair labor practice had been committed by Charged Party on October 14, 2010. Charging Parties alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), and (5) by nonrenewing Scott Baker in retaliation for filing grievances. On December 3, 2010, Charging Parties filed a motion for reconsideration of the Board's decision. A review of the original investigation revealed Charging Parties failed to raise issues warranting reversal of the dismissal.

In Case 2010-ULP-06-0236, the Board dismissed the unfair labor practice charge for lack of probable cause to believe that an unfair labor practice had been committed by Charged Party on September 9, 2010. Charging Party alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by interfering with Christa Liggett's exercise of guaranteed rights and retaliating against her. On December 6, 2010, Charging Party filed a motion 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 deny the motions for reconsideration with prejudice. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

State Employment Relations Board
Board Meeting Minutes
January 20, 2011
Page 15 of 16

14. Case 2010-ULP-05-0160 Columbiana Education Association, OEA/NEA v. Columbiana Exempted Village School District Board of Education
15. Case 2010-ULP-07-0291 Sheeila J. Foster v. Ohio Civil Service Employees Association, AFSCME, Local 11, Chapter 3180
16. Case 2010-ULP-08-0336 Fraternal Order of Police, Ohio Labor Council, Inc. and FOP Lodge 161 v. City of Riverside
17. Case 2010-ULP-11-0426 Fraternal Order of Police, Ohio Labor Council, Inc. v. Village of Granville
18. Case 2010-ULP-11-0425 Green Local Association of School Support, OEA/NEA (GLASS) v. Green Local School District Board of Education

Vice Chair Spada moved that the Board construe the SERB mediated settlement agreements as motions to withdraw the unfair labor practice charges, dismiss the complaint, and grant the motions with prejudice. Chairperson Brundige seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

VI. TABLED AND OTHER MATTERS:

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

VII. ADMINISTRATIVE MATTERS:

Executive Director Sherrie Passmore reported on Administrative Matters:

Training. The January 12, 2011 SPBR training conference on Ohio's civil service laws received high marks from attendees. Based on feedback and because a number of our customers who had signed up were unable to attend due to weather, we are considering having another civil service law conference in the near future. A SERB Academy is

State Employment Relations Board
Board Meeting Minutes
January 20, 2011
Page 16 of 16

scheduled for March 7 and 8, 2011; and a bargaining conference is being planned for April, 2011. SERB will be partnering with the Federal Mediation and Conciliation Service and the Central Ohio Labor Relations Association to host an arbitrator/advocate symposium in May, 2011.

Staff. Brian Eastman has accepted a position with the Ohio Department of Public Safety. His last day with SERB will be tomorrow, January 21, 2011. Matt Whittman will also be leaving SERB. He has accepted an attorney position with Downes, Fishel, Hass and Kim.

IX. ADJOURNMENT:

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

Vote: BRUNDIGE: Yes SPADA: Yes
Affirmed X Denied _____

The Board meeting adjourned at 10:31 a.m.

Sherrie J. Passmore
/s/ _____
Sherrie Passmore, Executive Director