State Employment Relations Board

Board Meeting Minutes
March 17, 2011

The State Employment Relations Board met on March 17, 2011, at 10:00 a.m., at 65 East State Street, 12th Floor, Columbus, Ohio. Present at the meeting were Chair W. Craig Zimpher, Vice Chair Robert F. Spada, and Board Member N. Eugene Brundige.

I. APPROVAL OF MINUTES FOR THE March 3, 2011 BOARD MEETING:

Vice Chair Spada moved that the Board approve the minutes for the March 3, 2011 Board meeting. Chair Zimpher seconded the motion and called for discussion and the vote.

Vote: BRUNDIGE:	Abstain	SPADA:	Yes	ZIMPHER:	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 Employee Organization filed a Notice to Negotiate concerning negotiations for a successor collective bargaining agreement with the Employer. On September 9, 2010, the parties requested a fact-finding panel. On September 22, 2010, the Bureau of Mediation notified the selected fact finder of his appointment. The fact-finding hearing was held on November 17, 2010, and the fact-finder's report was issued on December 2, 2010.

On December 8, 2010, the Employee Organization notified the Board of its vote to accept the fact-finder's report, and the Employer notified the Board of its vote to reject the report. On December 16, 2010, the Bureau of Mediation issued an 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 27, 2010, the Employee Organization filed a memorandum in opposition to the motion. On January 20, 2011, the Board granted the Employer's motion and withdrew the conciliation order.

On February 1, 2011, Rachel J. Coffey filed a Petition for Decertification Election in Case No. 2011-REP-02-0010. On February 3, 2011, the Employer filed a motion to stay the negotiations pending resolution of the related representation case. On March 8, 2011, the Employer notified the Board of the legislative body's rejection of a tentative agreement reached by the parties in this matter.

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

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

2. Case 2010-MED-11-1693 Brook Park Fire Fighters, Local 1141, IAFF and City of Brook Park

2010-ULP-03-0100 SERB v. City of Brook Park, et al.

On November 1, 2010, in Case 2011-MED-11-1693, the Union filed a Notice to Negotiate concerning negotiations for a successor collective bargaining agreement with the City. On December 6, 2010, the Union 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 City filed its brief in opposition to the motion to stay. On January 20, 2011, the Board granted the Employee Organization's motion to stay negotiations pending disposition of Case No. 2010-ULP-03-0100. On February 23, 2011, the City filed a motion for reconsideration of the stay of negotiations in Case No. 2010-MED-11-1693 and also requested a stay of the unfair labor practice proceedings in Case No. 2010-ULP-03-0100. On March 9, 2011, the Union filed its combined brief in opposition to the motion for reconsideration and in opposition to the additional motion to stay the ULP case.

On March 26, 2010, in Case No. 2010-ULP-03-0100, the Union filed an unfair labor practice charge against the City. On May 6, 2010, SERB determined that probable cause existed to believe that the City violated O.R.C. §§ 4117.11 (A)(1) and (A)(5) by failing to bargain in good faith and failing to maintain the status quo. On July 20, 2010, a hearing was held. On September 8, 2010, the administrative law judge issued the Proposed Order, recommending that the Board find that the City violated O.R.C. §§ 4117.11(A)(1) and (A)(5) by failing to maintain the status quo and by unilaterally implementing a contract instead of exhausting the statutory dispute settlement procedures. The City filed exceptions to the proposed order. The Union and Counsel for Complainant SERB, filed responses to the exceptions. This matter is pending before the Board.

The City presented a persuasive argument that the interests expressed in O.R.C. § 4117.22 will be met if the parties are engaged in bargaining, whether under the Notice to Negotiate in Case No. 2009-MED-12-1505 or the notice in Case No. 2010-MED-11-1693. Granting the City's motion for reconsideration and lifting the stay of negotiations in the pending mediation case is appropriate. The Union also presented a persuasive argument that "staying the ULP proceedings will only inject delay and confusion into the process." Denying the City's motion to stay the proceedings in the pending ULP case is appropriate.

Vice Chair Spada moved that the Board grant the City's motion to reconsider, lift the stay of negotiations in Case No. 2010-MED-11-1693, and deny the City's motion to stay the proceedings in Case No. 2010-ULP-03-0100. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

III. REPRESENTATION MATTERS AT ISSUE:

1. Cases 2011-REP-01-0003 Loveland Police Association (Non-Supervisors) and Ohio Patrolmen's Benevolent Association and City of Loveland
(March 29, 2011 – April 11, 2011

2011-REP-01-0004 Loveland Police Association (Supervisors) and Ohio Patrolmen's Benevolent Association and City of Loveland
March 29, 2011 – April 11, 2011)

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

Board Member Brundige moved that the Board approve the Consent Election Agreements and direct mail-ballot elections to be conducted during the polling period of March 29, 2011 through April 11, 2011. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

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

2. Case 2010-REP-11-0198 Truck Drivers, Chauffeurs & Helpers Local Union No. 100 and Butler County Engineer

The Employer filed a Petition for Amendment of Certification. The Employee Organization has electronically filed a letter stating that it has no objections. The proposed amendment for each unit appears appropriate.

Vice Chair Spada moved that the Board approve the petition and amend the units accordingly. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

3. Case 2010-REP-09-0162 Cleveland Heights Teachers Union Local 795, OFT, AFT, AFL-CIO and Cleveland Heights – University Heights City School District

The Employee Organization filed a Petition for Clarification of Bargaining Unit seeking to include the position of Program Specialists – Student Conduct. The Employer responded by filing a position statement opposing the clarification.

Ohio Administrative Code Rule 4117-5-01(E)(1) provides for amendment of certification to alter the composition of a bargaining unit by adding, deleting, or changing terminology of the bargaining unit description. The Employee Organization has been advised that clarification is not the appropriate vehicle to alter the composition of the existing bargaining unit.

Board Member Brundige moved that the Board dismiss without prejudice the Petition for Clarification of Bargaining Unit. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

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

4. Cases 2010-REP-11-0190 2010-REP-11-0196 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Hamilton

The Employee Organization filed a Request for Recognition in both cases. The Employer responded by filing objections. A conference call was conducted. The Employee Organization has now filed a motion to withdraw in both cases.

Vice Chair Spada moved that the Board grant the Employee Organization's motions and dismiss without prejudice the Requests for Recognition. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

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

- There were 27 valid ballots cast
- There were 0 void ballots
- There were 0 challenged ballots
- No Representative received 0 votes
- Laborers Local Union 1099 received 6 votes
- Teamsters Local 436 received 21 votes and prevailed in this election.

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

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

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Case 2010-ULP-02-0073 Ohio Patrolmen's Benevolent Association v. City of Pepper Pike

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

3. Case 2010-ULP-11-0441 SERB v. Cuyahoga County Engineer

Vice Chair Spada moved that the Board construe the Settlement Agreement as a motion to dismiss, grant the motions, and dismiss with prejudice the unfair labor practice charges and complaint. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

4. Case 2010-ULP-09-0365
2010-ULP-09-0366
2010-ULP-09-0367
2010-ULP-09-0368
2010-ULP-09-0369
2010-ULP-09-0370
2010-ULP-09-0371
2010-ULP-09-0372
2010-ULP-09-0373
2010-ULP-09-0374
SERB v. Urbana Firefighters Association, IAFF Local 1823, et al.

On September 13, 2010, the City of Urbana filed unfair labor practice charges against the Urban Firefighters Association, IAFF Local 1823, et al. (collectively "Respondents"), alleging violations of Ohio Revised Code ("O.R.C.") §§ 4117.11(B)(2) and (3). On December 2, 2010, the State Employment Relations Board ("the Board" or "Complainant") determined that probable cause existed to believe that Respondents had committed or were committing unfair labor practices in violation of O.R.C. §§ 4117.11(B)(3), but not (B)(2), authorized the issuance of a Complaint, and referred the matters to a hearing. On December 16, 2010, a Complaint was issued.

On March 4, 2011, the parties submitted joint stipulations of fact and joint exhibits in lieu of evidentiary hearing. All parties filed briefs setting forth their legal arguments.

At issue was whether Respondents violated O.R.C. §§ 4117.11(B)(3) by circulating a petition seeking to amend the City Charter with regard to wages, hours, and terms and conditions of employment; and bypassing the Employer's bargaining representative. In lieu of the hearing scheduled before the Administrative Law Judge, the parties agreed to submit the matter directly to the Board. Construing the joint stipulations of fact as a joint motion to transfer the case from the Hearings Section to the Board is appropriate.

Board Member Brundige moved that the Board construe the joint stipulations of fact as a joint motion and transfer the case from the Hearings Section to the Board for a decision on the merits. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

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

5. Case 2010-REP-01-0001 United Steelworkers of America, Local 1949 (Unit 2-B) and Marion Public Health

On January 11, 2010, United Steelworkers of America Local 1949, Unit 2-B ("Local 1949B") filed a Petition for Clarification of the Bargaining Unit, pursuant to Ohio Administrative Code ("O.A.C.") Rule 4117-5-01(E), seeking to clarify the existing bargaining unit to include employees who were employed by Marion County General Health District prior to the union of the Marion County General Health District and the City of Marion Health Department. Marion Public Health responded by filing a position statement asserting that Local 1949B had never been certified as the exclusive representative for Marion Public Health employees. Marion Public Health asserted that it was established as the result of the November 4, 2008 Marion County General Election and, therefore, it is a new employer, not the result of a merger.

On July 22, 2010, the State Employment Relations Board ("the Board" or "SERB") directed this matter to pre-determination mediation. Pre-determination mediation was conducted on August 19, 2010. The parties were unable to reach an agreement regarding the employees in question.

On September 23, 2010, the Board directed this matter to hearing before the Board to determine whether Marion Public Health is a new employer or the result of a merger, the bargaining-unit status of the employees in question, and for all other relevant issues. A telephone status conference was conducted with the parties on November 3, 2010, at which time the parties agreed to submit this matter to a non-oral hearing on stipulations and briefs. The parties' stipulation of facts and merit briefs were filed with the Board on December 23, 2010 and reply briefs were filed on January 21, 2011. Additional information was requested by the Board. That information was filed on February 11, 2011.

The pivotal issue presented in this case is whether Marion Public Health is a new employer or the result of a merger. Marion Public Health argued that it is a new organization because it was created by the election option set forth in O.R.C. § 3709.071. Marion Public Health asserted that Marion Public Health is not the result of a merger because it did not exist until January 1, 2010, and so it had no existing operations before the Marion City Health Department and Marion County Health District were abolished and replaced by Marion Public Health.

Although neither Ohio case law nor SERB currently recognize any "successor employer" or "alter ego" doctrines, Local 1949B argued that SERB should apply such doctrines in this case. Local 1949B asserted that Marion Public Health is a "successor employer" and/or "alter ego employer" that must adhere to the terms and conditions of the expired collective bargaining agreement between Local 1949B and the City of Marion Health Board. Local 1949B further asserted that SERB should accept the instant Petition for Clarification of the Bargaining Unit and accrete the 5 employees from the Marion County General Health District into the bargaining unit that was established with the Marion City Health Department.

As previously noted, city and general health districts can be combined by either contract or an election petition. Contractual unification is effected by agreement between a general health district's board and one or more city health district boards. Administrative responsibilities can be allocated to any of the contracting boards or to a contractually created combined board. *See*, O.R.C. §§ 3709.07 and 3709.071.

It was noted that the election option set forth in O.R.C. § 3709.071 suggested that an entity created under this statute is a new organization. Specifically, O.R.C. § 3709.071 differed from the contract option, in that it was the electorate, not the predecessor boards of health, that makes the decision whether to form a unified health district. The ballot election option vested discretion over the new board's structure in the electorate and responsibility for its administration in two third parties, the chairman of the district advisory council and the chief executive of each member city.

Vice Chair Spada moved that because Marion Public Health was created by the election process of O.R.C. § 3709.071 to replace both the City of Marion Health Department and Marion County General Health District, the Board should find that Marion Public Health is a new organization rather than a continuation of or successor to either the City of Marion Health Department or the Marion County General Health District. For that reason, the Board should also find that Marion Public Health has no "successor" or "alter ego" employer obligations to recognize Local 1949B as the exclusive representative of any of its employees. Since Marion Public Health is a new employer and the only existing bargaining unit was the one that existed for employees of the City of Marion Health Department *prior* to the creation of Marion Public Health, the instant Petition for Clarification of the Bargaining Unit is inappropriate should be dismissed. Board Member Brundige seconded the motion. Chair Zimpher called for discussion, and Board Member Brundige and Vice Chair Spada wanted to thank Staff Attorney Elaine Stevenson for her hard work in obtaining more information for the Board to review, as it helped clarified the complicity of the case. Chair Zimpher called for the vote.

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

V. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 2010-ULP-12-0473 Fraternal Order of Police, Lodge 18 v. City of Euclid

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally restricting time off for bargaining-unit employees. Information gathered during the investigation revealed that with respect to the Ohio Revised Code § 4117.11(A)(1) allegation, it did not appear that Lt. Golden's rights were interfered with, restrained or coerced. Lt. Golden was compensated for the accrued unused leave upon his retirement. Charged Party's actions did not rise to a violation of the statute. Contract language does not limit the consecutive number of weeks a member may take. Based on the circumstances it appeared a past practice did not exist. There appeared to be an unprecedented scenario of six supervisors retiring in succession.

Board Member Brundige 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. Chair Zimpher called for discussion and the vote.

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

2. Case 2010-ULP-12-0477 United Mine Workers of America v. Southeast Ohio Emergency Medical Services District

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(5) by refusing to participate in "effects" bargaining. Information gathered during the investigation revealed that Charged Party failed to exist as an entity. As such, no duty to bargain exists.

Vice Chair Spada moved that the Board dismiss the charge with prejudice as moot. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

3. Case 2011-ULP-01-0014 Cloverleaf Education Association, OEA/NEA v. Cloverleaf 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 engaging in bad faith and regressive bargaining. Information gathered during the investigation revealed that based on the totality of circumstances, it appeared Charged Party's actions did not appear unlawful. It was apparent the parties have been in the process of negotiating during a time where financial considerations are a factor. It did not appear that Charged Party was attempting to frustrate the process.

Board Member Brundige 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. Chair Zimpher called for discussion and the vote.

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

4. Case 2011-ULP-01-0029 Strongsville Education Association, OEA/NEA v. Strongsville 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 interfering with the bargaining process by acting in bad faith. Information gathered during the investigation revealed that it appeared the Charged Party member had been exercising his freedom of speech. Under the circumstances, it did not appear the comments were an interference, coercion or restraint of employees' rights. Charged Party's actions did not amount to bad faith bargaining.

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 Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

5. Case 2011-ULP-01-0039 Stephanie Watson v. Service Employees International Union, District 1199

2011-ULP-01-0040 Stephanie Watson v. State of Ohio, Department of Rehabilitation and Correction, Parole and Community Services Division

In Case 2011-ULP-01-0039, the unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(6) by failing to fairly represent Charging Party; and in Case 2011-ULP-01-0040, the unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (8) by interfering with Charging Party's rights and causing the Union to violate the statute. Information gathered during the investigation revealed Charging Party is a probationary employee, and pursuant to the parties' agreement, probationary removals are not subject to the established grievance procedure. 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 Brundige 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, and as untimely filed. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

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

6. Case 2011-ULP-01-0045 Service Employees International Union, District 1199, C. Dails, RN, D. Vrabel, RN, and M. Patcher, RN v. State of Ohio Department of Rehabilitation and Correction, Northeast Pre-Release Center

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), (4), and (5) by rescinding schedule changes agreed to by the parties. Information gathered during the investigation revealed that the issues are purely contractual with no evidence of a statutory violation. It appeared interpretation of the schedule changes will be best addressed through the parties' grievance-arbitration process.

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 Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

7. Cases 2010-ULP-12-0474 Fraternal Order of Police, Queen City Lodge 69 v. City of Cincinnati

2011-ULP-01-0013 Queen City Lodge 69, Fraternal Order of Police v. City of Cincinnati, et al.

2011-ULP-02-0054 Fraternal Order of Police, Queen City Lodge No. 69 v. City of Cincinnati, et al.

The unfair labor practice charges alleged that Charged Parties violated Ohio Revised Code § 4117.11(A)(1), (3), and (5) by unilaterally assigning bargaining-unit work to nonbargaining-unit employees. Information gathered during the investigation revealed that the charges are prematurely filed since the motion filed by City Council has yet to have any adverse effect on or required any bargaining with Charging Party. Per Charged Parties, in order to have any legal effect, any motion filed by Council must be in the form of an Ordinance which adopts the terms of the motion. To date, no Ordinances regarding the contracting-out of bargaining-unit work have been initiated and/or passed by City Council.

Board Member Brundige moved that the Board dismiss the charges without prejudice as prematurely filed. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

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

8. Case 2011-ULP-01-0010 Harry Brockmeier v. Greater Dayton Regional Transit Authority

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by failing to afford Charging Party his Americans With Disabilities Act (ADA) rights. Information gathered during the investigation revealed that Charged Party's actions did not rise to the level of a statutory violation. The allegations contained in the charge did not appear to be under SERB's jurisdiction. Charging Party appeared to be alleging violations of his FMLA, ADA, and EEOC rights. 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.

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, as untimely filed, and for lack of jurisdiction regarding allegations of FMLA, ADA and EEOC violations. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

9. Cases 2011-ULP-01-0032 City of Fostoria v. Ohio Patrolmen's Benevolent Association

2011-ULP-01-0033 City of Fostoria v. Ohio Patrolmen's Benevolent Association and Justin Kiser

2011-ULP-01-0034 City of Fostoria v. International Association of Firefighters

2011-ULP-01-0035 City of Fostoria v. Ohio Patrolmen's Benevolent Association and Brandon Bell

2011-ULP-01-0036 City of Fostoria v. Ohio Patrolmen's Benevolent Association and Cory Brian

2011-ULP-01-0037 City of Fostoria v. International Association of Firefighters, Local 325 and Chapter President Jason Root

2011-ULP-01-0038 City of Fostoria v. International Association of Firefighters, Local 325 and Warren Digby

The unfair labor practice charges alleged that Charged Parties violated Ohio Revised Code § 4117.11(B)(2) and (3) by "taking out petitions" seeking to place a Charter Amendment on the ballot. Information gathered during the investigation revealed that Charging Party did not provide sufficient information to show that Mr. Kiser, Mr. Bell, and Mr. Brian were acting as agents of Charged Party, or that Charged Party had authorized the officers to act on its behalf. Charging Party confirmed in its Ordinance that it was FOP Culp Lodge #22 that initiated the petition and not Charged Party. Charging Party did not provide sufficient information to support the Ohio Revised Code § 4117.11(B)(2) allegation. The information also revealed Charged Parties, through Mr. Root and Mr. Digby, circulated a petition in an attempt to change the City Charter and thus their wages, hours, and terms and conditions of employment rather than collectively bargain the changes with the designated bargaining representative. At no time did Charged Parties deny that Mr. Root and Mr. Digby were not acting as its agents.

The Investigator recommended that the Board dismissed with prejudice Case Nos. 2011-ULP-01-0032, 2011-ULP-01-0033, 2011-ULP-01-0035, and 2011-ULP-01-0036; and that in Cases 2011-ULP-01-0034, 2011-ULP-01-0037, and 2011-ULP-01-0038, find probable cause to believe unfair labor practices have been committed, consolidate the cases, authorizes the issuance of a complaint, and refer the matters to an expedited hearing to determine if Charged Parties violated Ohio Revised Code § 4117.11(B)(3), but not (2), by circulating a petition seeking to amend the City Charter with regard to wages, hours, and terms of conditions of employment, and bypassing Charging Party's exclusive bargaining representative.

Chair Zimpher offered an alternative recommendation that the Board table these cases until the Board rules on the Urbana cases – ALJ Matters, Item 4 of this meeting. Board Member Brundige moved that the Board table these cases. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion stating that the Investigator's Memorandum references the similar ULP charges and complaint pending in *City of Urbana v. Urban Firefighters Association, IAFF Local 1823, et al* (Case Nos. 2010-ULP-09-0365 through 2010-ULP-09-0374) in ALJ Matters Item #4. In ALJ Item #4, it was recommended that the Board transfer these matters from the Hearings Section to the Board for a decision on the merits. With the Board adopting this recommendation, tabling these *Fostoria* cases until the Board rules on the *Urbana* cases seemed appropriate. Chair Zimpher called for the vote.

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

10. Case 2011-ULP-01-0047 Municipal Construction Equipment Operators' Labor Council v. City of Cleveland

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by failing and/or refusing to bargain in good faith. Charging Party filed a "Motion and Memorandum to Stay Mediation and Fact Finding Pending Resolution of this ULP". Information gathered during the investigation revealed that since the filing of the "new" Notice to Negotiate in October 2010, the parties have met, exchanged proposals, reached Tentative Agreements on a variety of issues, and have recently selected a second fact-finder.

Charging Party's allegations that Charged Party was failing and/or refusing to bargain in good faith was not supported by the facts. Charging Party appeared to believe that because Charged Party did not agree to its wage demands, Charged Party was bargaining in bad faith. From the documentation provided by both parties, it appeared each party is steadfast in their respective positions. Charging Party did not provide sufficient information to support the Ohio Revised Code § 4117.11(A)(1) 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, and deny Charging Party's motion as moot. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

11. Case 2009-ULP-09-0468 International Brotherhood of Teamsters Local 100 v. Hamilton County Job and Family Services

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally assigning bargaining-unit work to nonbargaining-unit employees, which resulted in layoffs and the erosion of the bargaining unit. Information gathered during the investigation revealed that on September 9, 2010, the Board rescinded its previous deferral order, and without rendering any judgment on the merits, ordered the parties to pre-determination mediation. On November 9, 2010, the parties met but were not able to reach an agreement, but requested that they be permitted to continue discussions toward a resolution. On February 25, 2011, after conversations with the mediator, the Board was informed that mediations had "stalled." The investigator's original memorandum has been resubmitted for the Board's review and consideration.

Board Member Brundige 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 Party violated Ohio Revised Code § 4117.11(A)(5), but not (1), by unilaterally assigning bargaining-unit work to nonbargaining-unit employees which resulted in the erosion of the bargaining unit. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

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

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

Vice Chair Spada moved that the Board grant the Motion to Withdraw with prejudice. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	SPADA:	Yes	ZIMPHER:	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-REP-07-0125 Fraternal Order of Police, Ohio Labor Council, Inc. and Miami Township Trustees, Clermont County
Tabled – February 18, 2011

VII. ADMINISTRATIVE MATTERS:

Executive Director Sherrie Passmore reported on Administrative Matters:

Budget. The Governor's final FY 2012-13 recommendations for SERB were received from the Office of Budget and Management. A small reduction in SERB's budget was recommended. These recommendations will be reviewed taking into consideration the anticipated increase in SERB's workload if changes are made to the collective bargaining law.

Training. A SERB Academy was held on March 7 and 8, 2010. The conference was attended by fifty of our customers and received high marks overall. Many of those in attendance complemented staff on their friendliness and approachability. Chair Zimpher added his comments commending the staff as well for a job well done and for their friendly approach and accessibility to those in attendance.

SERB will be partnering with the Federal Mediation and Conciliation Service (FMCS) and the Central Ohio Labor Relations Association (COLERA) to host an arbitrator/advocate symposium May 12 and 13, 2011. A bargaining conference has been tentatively scheduled for August 9, 2011.

Staff. Administrative Assistant Sandy Iversen has announced her retirement. After nearly 27 years with SERB, Sandy will be retiring on May 31, 2011. The Board also extended their deepest appreciation to Ms. Iversen for all of her hard work at SERB through the years.

Charity. The Operation Feed Campaign has begun and will continue through the end of May. Barb Kelly will be coordinating the campaign for SERB. Please see Barb if you would like to make a donation. At the end of the campaign all donations will be sent to the Mid-Ohio Food bank. Chair Zimpher asked if any of our staff have volunteered their time at the Mid-Ohio Food bank. Board Member Brundige responded by stating that some staff have volunteered in the past when the Volunteer Day in September has taken place, along with some other volunteer locations.

Chair Zimpher mentioned that if SB 5 passes, what will the role of SERB's educational process entail, and that the Board should talk about the relevant role in that process as things unfold. Board Member Brundige mentioned that COLERA is working on putting a conference together in late April to early May to discuss such things, and that Director Blair will also be participating in the conference.

IX. ADJOURNMENT:

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

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

The Board meeting adjourned at 10:35 a.m.

/s/
W. Craig Zimpher, Chair