

State Employment Relations Board

Board Meeting Minutes
January 31, 2013

The State Employment Relations Board met on January 31, 2013, at 10:00 a.m., at 65 East State Street, 12th Floor, Columbus, Ohio. Present at the meeting were Chair W. Craig Zimpher and Board Member N. Eugene Brundige. The third SERB member position is vacant.

I. APPROVAL OF MINUTES FOR THE JANUARY 10, 2013 BOARD MEETING:

Board Member Brundige moved that the Board approve the minutes for the January 10, 2013 Board meeting. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

There were no mediation or fact-finding matters at issue.

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 2012-REP-08-0085 Teamsters Local Union No. 293 and Medina County Public Defender Commission
(February 12, 2013 - February 25, 2013)
2. Case 2012-REP-11-0130 Cleveland State University Chapter of the American Association of University Professors (SCU/AAUP) and Cleveland State University
(February 12, 2013 - February 25, 2013)

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 periods indicated. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

3. Case 2012-REP-07-0077 Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and Adena Local School District Board of Education
(February 12, 2013 - February 25, 2013)

On November 1, 2012, the Board directed this matter to hearing. On January 16, 2012, the parties contacted SERB's Staff Attorney stating the matter was resolved so the hearing was canceled. The parties have entered into a Consent Election Agreement and provided a stipulated list of all employees in the bargaining unit.

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Board Member Brundige moved that the Board approve the Consent Election Agreement and direct a mail-ballot election to be conducted during the polling period of February 12, 2013 through February 25, 2013. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

4. Case 2012-REP-09-0100 Joseph T. Huhn and Stonelick Township Professional Firefighters, IAFF, Local 4558, AFL-CIO and Stonelick Township, Clermont County

The Petitioner filed a Petition for Decertification Election. On January 12, 2013, the Employee Organization filed a Disclaimer of Interest. The collective bargaining agreement expired on December 31, 2012

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

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

5. Case 2012-REP-02-0018 Hamilton County JFS Association and Ohio Council 8, American Federation of State, County and Municipal Employees, Local 1768 and Hamilton County Department of Job and Family Services

Board Member Brundige moved that the Board lift the stay. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

A mail-ballot election was conducted in this matter and the Rival Employee Organization filed Post-Election Objections which are now ripe to address. The Rival Employee Organization states that all challenged ballots should be opened and counted. The Incumbent Employee Organization maintains that the Board should not open the challenged ballots. The Employer did not address the issue of challenged ballots.

The Rival Employee Organization received 110 votes, the Incumbent Employee Organization received 176 votes, No Representative received 4 votes, and there were 12 challenged ballots. Of the 12 challenged ballots, 8 were challenged because the return envelope did not contain the required signature which is the matter at hand.

The mail-ballot instructions and the return envelope both clearly state that a ballot will not be counted unless it contains a signature. All parties signed a Consent Election Agreement in which the parties agreed to all applicable Board procedures; requiring a signature on the envelope is a Board procedure. Even if the 8 challenged ballots were opened, they are non-determinative.

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Board Member Brundige moved that the Board find that the challenged ballots should not be counted, certify the election results, and certify Ohio Council 8, American Federation of State, County and Municipal Employees, Local 1768 as the exclusive representative of all employees in the relevant bargaining unit. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

6. Case 2012-REP-06-0071 Teamsters Local 377 and International Association of Machinists and Western Reserve Transit Authority

- There were 7 valid ballots cast
- There were 0 void ballots
- There were 0 challenged ballots
- No Representative received 0 votes
- International Association of Machinists received 0 votes
- Teamsters Local 377 received 7 votes and prevailed in this election

7. Case 2012-REP-08-0081 Struthers Fraternal Order of Police Lodge No. 41 and Ohio Patrolmen's Benevolent Association and City of Struthers

(Unit A – Patrol Officers)

- There were 10 valid ballots cast
- There were 0 void ballots
- There were 0 challenged ballots
- OPBA received 0 ballots
- No Representative received 1 vote
- Struthers Fraternal Order of Police Lodge No. 41 received 9 votes and prevailed in this election

(Unit B – Captains)

- There were 4 valid ballots cast
- There were 0 void ballots
- There were 0 challenged ballots
- OPBA received 0 ballots
- No Representative received 0 votes
- Struthers Fraternal Order of Police Lodge No. 41 received 4 votes and prevailed in this election

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

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

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Case 2012-ULP-05-0122 SERB v. Coldwater Exempted Village School District, Board of Education

On May 24, 2012, the Coldwater Teachers Organization, OEA/NEA ("Charging Party") filed an unfair labor practice charge against the Coldwater Exempted Village School District, Board of Education ("Charged Party"), alleging that Charged Party violated O.R.C. §§ 4117.11(A)(1), (A)(3), and (A)(5).

On November 1, 2012, the State Employment Relations Board ("the Board" or "Complainant") determined that probable cause existed for believing Charged Party had committed or was committing an unfair labor practice, authorized the issuance of a complaint, and referred the matter to hearing. On November 26, 2012, a complaint was issued and this matter was set for hearing.

On January 23, 2013, Counsel for Complainant filed a motion to dismiss and a copy of the parties' settlement agreement in this matter.

Board Member Brundige moved that the Board grant the motion to dismiss and dismiss with prejudice the unfair labor practice charge and complaint in Case No. 2012-ULP-05-0122. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

2. Cases 2012-ULP-10-0265 Edwin C. Saegert, Jr. v. Amherst Exempted Village School District, Board of Education and Ohio Association of Public School Employees, AFSCME, Local 4 and Its Local 208
2012-ULP-10-0266

On October 11, 2012, Edwin C. Saegert, Jr. ("Charging Party") filed unfair labor practice charges against the Amherst Exempted Village School District, Board of Education and the Ohio Association of Public School Employees, AFSCME, Local 4 and Its Local 208 ("Charged Parties"), alleging violations of O.R.C. §§ 4117.11(A)(1), (B)(1), and (B)(6).

On December 13, 2012, the State Employment Relations Board ("the Board" or "Complainant") determined that probable cause existed for believing Charged Parties had committed unfair labor practices, directed the parties to participate in the unfair labor practice mediation process, authorized the issuance of a complaint, and referred the matter to hearing, with mediation to run concurrently with the processing of the complaint.

On or about January 11, 2013, the parties filed a settlement agreement in this matter.

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Board Member Brundige moved that the Board construe the parties' settlement agreement as a motion to withdraw the unfair labor practice charges, grant the motion to withdraw, and dismiss with prejudice the unfair labor practice charges in Case Nos. 2012-ULP-10-0265 and 2012-ULP-10-0266. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

V. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 2012-ULP-09-0260 International Association of Fire Fighters, Local 606 v. City of Delaware

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (A)(1), (3), (5), and (6) by failing to bargain in good faith.

Information gathered during the investigation revealed it does not appear Charged Party's press release contains the details as to what transpired during the parties' negotiating session. Charged Party's argument to Charging Party's allegation of a failure to process grievances is credible. Charged Party's response to the grievances is that they were untimely filed. Charged Party attempted to discuss the issues with Charging Party in an attempt to resolve the matters.

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 the Charged Party. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

2. Case 2012-ULP-10-0275 International Union of Operating Engineers, Local 20 v. Cincinnati State Technical and Community College

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (A)(5) by engaging in delay tactics to avoid bargaining.

Information gathered during the investigation revealed the parties have been in the process of negotiating a successor agreement. Charging Party failed to provide any information or documentation to support the (A)(5) allegation.

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 the Charged Party. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

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3. Case 2012-ULP-10-0276 International Union of Operating Engineers, Local 20 v. Cincinnati State Technical and Community College

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (A)(5) by refusing to negotiate.

Information gathered during the investigation revealed Charging Party failed to provide any information or documentation to support the (A)(5) allegation.

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 the Charged Party. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

4. Case 2012-ULP-10-0278 Lois Love, et al v. Service Employees International Union, District 1199

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (B)(6) by failing to fairly represent the members of the bargaining unit.

Information gathered during the investigation revealed Charging Parties are unhappy with Charged Party's decision not to amend the parties' agreement with respect to bumping jurisdictions. Charging Parties failed to provide sufficient information or documentation to support the (B)(6) allegation.

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 the Charged Party. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

5. Case 2012-ULP-10-0284 City of New Franklin v. International Association of Fire Fighters Local 2885, AFL-CIO

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (B)(3) by failing to provide bargaining information.

Information gathered during the investigation revealed Charging Party failed to provide a persuasive reason to show how its information request was relevant to the collective bargaining process.

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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 the Charged Party. Chair Zimpher seconded the motion. Chair Zimpher called for discussion.

Chair Zimpher submitted a prepared memo regarding this case that is to be placed into the case record. In the interest of time, he did not read the memo during the meeting. The content of the memo is as follows:

Based upon review of the information gathered during the investigation of the above-referenced unfair labor practice charge, I will support the investigator's recommendation that this unfair labor practice charge be dismissed for lack of probable cause to believe an unfair labor practice has been committed. In the instant case, and based on a review of information in the file, the union had not made representations during the bargaining process which would have warranted the employer's specific request for information. However, I believe the underlying issue that forms the basis for this unfair labor practice charge warrants comment; that is, specifically, the legitimacy of a request for information by either party during the bargaining or post-impasse process.

It is well established that an employer and union's duties regarding the production of relevant information during a collective bargaining process (including post-impasse procedures) are parallel. The duty to bargain collectively includes the duty to provide relevant information needed by bargaining parties for the proper performance of its duties. In instances where certain allegations, representations, or "factual" depictions are made by either party regarding matters germane to the bargaining or conciliation process a request for substantiating or confirming information is valid. As noted in ITT Corp. v. NLRB, (1967) 382 Fed 366, "Relevant factual statements made during negotiations should be supported by available (underline added) proof as to its accuracy. Failure to honor such requests (for supporting documentation/proof) is a prima facie violation of the NLRA." This standard is also applicable to proceedings under Ohio Revised Code Chapter 4117, as stated in In re SERB v. Cleveland Building and Construction Trades Council, SERB 95-018. That order notes: "It is well settled that an employer's duty to bargain in good faith includes the duty to supply the employee organization with requested information that will enable the employee organization to negotiate effectively and to perform properly in its duties as a bargaining representative...This obligation parallels an employee organization's duty to supply information requested by the employer as part of the employee organization's duty to bargain in good faith." (Emphasis added)

This order enjoys sympathy with federal holdings, to wit: NLRB v. Truitt Mfg. Co., 351 US 149, wherein the NLRB has held, "If an employer claims a financial inability to do something which affects the union, the employer has a duty to disclose its financial data." Correspondingly, if the union has, and asserts relevant information, it has an obligation to likewise share information. It is well established that relevancy of particular information requests should be resolved on a case by case basis; mere assertions of "confidentiality" and "privilege" without more information will not act as a bar to legitimate, relevant requests.

Chair Zimpher called for the vote.

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

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6. Case 2012-ULP-11-0299 Butler Technology & Career Development Schools Board of Education v. Butler Education Association, OEA/NEA

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (B)(1), (2), and (3) by attempting to deal directly with the administration.

Information gathered during the investigation revealed since the parties were not in negotiations, it does not appear Charged Party was attempting to circumvent Charging Party's designated representative. Charging Party has failed to provide any information or documentation to support the (B)(1), (2), and (3) allegations.

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 the Charged Party. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

7. Case 2012-ULP-08-0211 Ohio Patrolmen's Benevolent Association v. Trumbull County Sheriff's Office

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (A)(1) and (5) by unilaterally modifying job classifications without notice or negotiation.

Information gathered during the investigation revealed the charge was held in abeyance until December 31, 2012. On January 2, 2013 and again on January 8, 2013, SERB requested the parties provide an update as to the status of the settlement discussions. On January 10, 2013, Charging Party's counsel requested that SERB dismiss the charge for failure to pursue.

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

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

8. Case 2012-ULP-11-0297 Ottawa Hills Education Association, OEA/NEA v. Ottawa Hills 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 unilaterally assigning bargaining-unit work to nonbargaining-unit employees.

Information gathered during the investigation revealed contrary to Charged Party's assertion it "knew" that none of its teaching staff was qualified to teach the computer programming course, it still had an obligation to post the position both internally and

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externally. Also contrary to Charged Party's belief, it appears it did create a new position when it created the computer programming and proctor positions; therefore it was required to bargain the effects of those positions. As for the direct dealing allegation, the parties have conflicting accounts of what transpired. Charging Party did not provide sufficient information or documentation to support the (A)(1) allegation.

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, and directly dealing with a bargaining-unit member. Chair Zimpher seconded the motion.

Chair Zimpher called for discussion.

Chair Zimpher stated that he would support the Investigator's recommendation because it includes a mediation component.

Chair Zimpher called for the vote.

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

9. Case 2012-ULP-11-0301 Green Firefighters Association, IAFF Local 2964 v. City of Green

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (A)(1) and (5) by assigning bargaining-unit work to part-time nonbargaining-unit employees.

Information gathered during the investigation revealed contrary to Charged Party's assertion it was a "management right" to hire part-time employees, it still had an obligation to bargain the affects/effects regarding the use of part-time employees with Charging Party. Charging Party could not file a grievance because, since 2004, all references to the use of part-time employees had been deleted from the parties' agreement. Also, contrary to Charged Party's belief, it appears it did create a new position when it created the part-time firefighter/fire medic position, therefore it was required to bargaining the affects/effects of that position prior to unilaterally hiring 5 part-time firefighters to fill those positions.

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)(1) and (5) by unilaterally assigning bargaining-unit work to nonbargaining-unit employees. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

10. Case 2012-ULP-12-0305 Liberty Township Professional Fire Fighters, IAFF
Local 4394 v. Liberty Township Board of Trustees

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (A)(5) by unilaterally implementing changes to the members' health insurance coverage.

Board Member Brundige moved that the Board, at Charging Party's request, 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). Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

11. Case 2012-ULP-12-0313 Sandra Meeks Speller v. Toledo Association of
Administrative Personnel (TAAP)

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (B)(2) and (6) by failing to properly represent her, in part, because she is an African American.

Information gathered during the investigation revealed Charged Party's actions were not arbitrary, discriminatory, or in bad faith when it made the decision not to appeal the hearing officer's recommendation. After being advised of Charged Party's decision, Charging Party retained private counsel to pursue the decision. The charge is also untimely filed based on Charging Party's knowledge on August 9, 2012 that Charged Party would not be appealing the decision. The September 9, 2012 email is not sufficient to toll the statute of limitations. Charging Party did not provide sufficient information or documentation to support the (B)(2) allegation.

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, and as untimely filed. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

12. Case 2012-ULP-12-0321 Diedree Ames v. Service Employees International
Union District 1199

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (B)(6) by failing to advance her grievance to arbitration.

Information gathered during the investigation revealed Charged Party's actions were not arbitrary, discriminatory, or in bad faith when it did not advance Charging Party's grievance to arbitration. After Charged Party's initial decision not to advance the

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grievance, it provided Charging Party an opportunity to appeal the decision through the Executive Board. The Appeals Committee, based on the information provided, made the decision not to advance the grievance.

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 the Charged Party. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

13. Case 2012-ULP-12-0326 Robert Castro v. Cleveland Metropolitan School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (A)(1).

Information gathered during the investigation revealed Charging Party was notified in writing that a dismissal recommendation would be made unless the deficiency was corrected no later than January 10, 2013. To date, Charging Party has failed to provide a clear and concise statement of the facts constituting an alleged violation.

Board Member Brundige moved that the Board dismiss the charge without prejudice due to Charging Party's failure to provide a clear and concise statement of facts constituting the alleged violation. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

14. Case 2012-ULP-12-0327 Wendy Clark, et al v. Ohio Council 8, AFSCME, AFL-CIO and Its Local 3577

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (B)(1) and (6).

Information gathered during the investigation revealed on January 2, 2013, Charging Party was notified in writing that a dismissal recommendation would be made unless information and/or allegations were provided to toll the statute of limitations. Using the May 21, 2012 date referenced in the charge, the charge should have been filed on or before August 9, 2012. To date, Charging Party has failed to provide any information or documentation to toll the statute of limitations.

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

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

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15. Case 2012-ULP-06-0161 Service Employees International Union, District 1199 v. Cincinnati State Technical and Community College

Board Member Brundige moved that the Board grant the Charging Party's motion for reconsideration. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §§ 4117.11 (A)(1) and (6) by interfering, restraining and coercing employees in the exercise of their guaranteed rights by repeatedly failing to process grievances.

Information gathered during the investigation revealed on November 1, 2012, Charging Party filed a timely motion for reconsideration which included new information to demonstrate how Charged Party refused to advance grievances to automatic Step 3 - Mediation. It appears Charging Party's refusal to enter into a Memorandum of Understanding with Charged Party to skip the mediation step "fueled" Charged Party's behavior. Charging Party appears to have submitted timely requests for mediation in compliance with the parties' agreement.

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)(1) and (6) by interfering, restraining and coercing employees in the exercise of their guaranteed rights by repeatedly failing to process grievances. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

16. Case 2012-ULP-08-0207 Ohio Civil Service Employees Association, AFSCME Local 11 and Its Chapter 4818 v. State of Ohio Department of Rehabilitation and Correction, T.O.C.I.

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §4117.11 (A)(6) and (7) by failing to timely process grievances.

Board Member Brundige 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.

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

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

17. Case 2012-ULP-09-0244 Ohio Civil Service Employees Association, AFSCME Local 11 and Its Local 4818 v. State of Ohio Department of Rehabilitation and Correction, T.O.C.I.

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(5) by refusing to bargain with its exclusive representative.

Information gathered during the investigation revealed the matter appears to be purely contractual with no arguable statutory violation. Charging Party did not provide sufficient information or documentation to support the (A)(5) allegation.

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 the Charged Party. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

18. Case 2012-ULP-09-0261 Jerome F. Shoemake v. Mansfield City School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code §§ 4117.11 (A)(3), (4), and (8) by discriminating against him.

Information gathered during the investigation revealed Charging Party is not a public employee. He was a contract employee with a one (1) year recall term. The position was not included in the bargaining unit. Charging Party's position was abolished in June 2010, but he did not file the instant charge until October 2, 2012. Charging Party did not provide any information or documentation to toll the statute of limitations.

Board Member Brundige moved an alternative recommendation that the Board dismiss the charge with prejudice for lack of jurisdiction because the Charging Party was not a public employee at the time of the incident giving rise to, or the filing of, that charge and note that, if the Board had jurisdiction we would have found a lack of probable cause to believe an unfair labor practice had been committed by Charged Party and as untimely filed. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

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19. Case 2012-ULP-09-0243 Fraternal Order of Police, Lorain Lodge No. 3 v. City of Lorain
20. Case 2012-ULP-12-0312 Massillon Education Association, OEA/NEA v. Massillon City School District Board of Education

Board Member Brundige moved that the Board construe the settlement agreement as a motion to withdraw, and grant the motions with prejudice. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

VI. TABLED AND OTHER MATTERS:

There are no tabled items.

VII. ADMINISTRATIVE MATTERS:

SERB REGULAR SCHEDULED MEETING DATES:

- Reminder of the next regular scheduled meeting dates of the State Employment Relations Board:
 - February 21, 2013
 - March 14, 2013
 - April 04, 2013

SYSTEM UPDATES:

- **SFY 2011-12 Audit of SERB:** Exit conference was held on January 23, 2013. The audit began on Tuesday, May 1, 2012. Reconciliation (by SERB staff) of revenue, non-payroll expenditures and payroll registers managed by CSA/OAKS is a continuing recommendation by the Auditor's Office. SERB has put into place certain functions to be able to be as responsive to the recommendation as is possible. In addition, Record Retention schedules need to be updated for both SERB and SPBR. This will be a project to be undertaken soon.
- **Employee Organization (E.O.) Annual Reporting Requirements Update:** Out of 33 E.O.'s required to file Annual Reports for fiscal year ending September 30th, Eighteen (18) 45 day notices were sent, there are currently 6 E.O.'s outstanding; filings are due by 2/15/13. The formula is 5 months + 15 days beyond the fiscal year end for reporting. If required reports are not timely filed, it is at that juncture that a 31 day notice of past due will be sent. **Currently, no employee organization is non-compliant.**
- **Vacancy in Clerk's Office:** Seven (7) candidates have been interviewed. Three (3) additional interviews will be conducted this Friday, February 1st. Our goal is to conduct second interviews for the top candidates and make a decision as soon as possible. Ideally, we would like to have a start date of 02/11/13 which is the beginning of a new pay period.
- **VoIT:** The new phone system, Voice over Internet (VoIT) is moving forward. By mid February, the Project Manager from OIT will be conducting meetings to provide the process by which to select and order phone & service choices. Phone switch upgrades will not occur until March, so the earliest we may switch over is late April, but May is more likely.
- **STATEWIDE COST ALLOCATION PLAN (SWCAP):** The SWCAP report was submitted to OBM ahead of schedule. Areas of concentration included:

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1. Service allocation based on active membership of each retirement system using merged data from the Retirement Systems and from DAS Payroll.
 2. Straight line depreciation method used for equipment purchases
 3. Equipment use allowance method used for all items over \$5000 per unit cost for items that were purchased from FY83 through FY97.
 4. Hardware and solid state electronic equipment depreciated over 5 years
 5. All other assets depreciated over 15 years with an ultimate zero salvage value.
 6. A complete review of all expenditures used to support the services provided by SERB/SPBR completed for correctness and compliance.
- **Operation Feed Campaign:** Judy Knapp has graciously agreed to accept the coordinator role for this worthwhile venture. She will be collecting for the campaign. Thank you to Judy for volunteering to help us out!

FORWARD LOOK FOR FUTURE TRAINING:

- **Upcoming conferences** - A second SERB Academy is scheduled for March 7 and 8, 2013. Still on the planning cycle is a SPBR Academy proposed for the spring 2013.

VII. EXECUTIVE SESSION:

Board Member Brundige moved that the Board go into executive session, pursuant to Ohio Revised Code § 121.22(G)(3) to confer with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

The Board went into Executive Session at 10:33 a.m.

Board Member Brundige moved that the Board exit from Executive Session. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

The Board exited from Executive Session at 11:35 a.m.

IX. ADJOURNMENT:

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

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

The Board meeting adjourned at 11:35 a.m.

/s/


W. Craig Zimpher, Chair