State Employment Relations Board

Board Meeting Minutes
October 24, 2013

The State Employment Relations Board met on October 24, 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 OCTOBER 10, 2013 BOARD MEETING:

Board Member Brundige moved that the Board approve the minutes for the October 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:

1. Case 2013-MED-05-0732 International Brotherhood of Electrical Workers, Local Union No. 306 and City of Wadsworth

In this matter, the Employee Organization submitted their Certification of Fact-Finding Vote that listed 10 members voting to reject the Fact Finder Report and 1 member approving the Report out of a total of 19 members eligible to vote. The Certification was timely filed with SERB on September 20, 2013. The Fact Finding Report was issued September 12, 2013.

On September 25, 2013, the Employee Organization filed with SERB a letter asking the Board to re-visit this issue by asserting that actually only 15 members were eligible to vote. Attached to their letter was a document that contained 18 names and was titled "IBEW Deductions for checks dated 9/6/2013". The Employee Organization stated three of the employees were ineligible to vote as 2 employees were still on probation and 1 had not joined the union.

The Employer's response does not challenge the union numbers, but only states this claim is too late. As the union had 10 out of 15 members reject the Fact Finder Report, the union had the necessary number to reject the Fact Finding Report and in fact did so in a timely manner. The Employer did not reject the report.

Here the union corrected their mistaken number of eligible voting members. The Employer presented no information to the contrary and the requisite number of union members rejected the Fact Finder report.

Board Member Brundige moved that the Board grant the Employee Organization's request to amend the Employee Organization Certification of Fact Finding Vote to reflect only 15 members were eligible to vote and that the Employee Organization in fact rejected the Fact Finding Report issued September 12, 2013. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

2. Case 2013-MED-06-0767 Teamsters Local Union No. 284 and Franklin County Commissioners

On October 2, 2013, the Employer filed a Motion To Clarify or Correct The Seven Day Consideration Period for The Fact Finding Report. Their motion requested an additional 7 days to within which to either accept or reject the Fact Finder report. They allege they never received the report when it was issued on September 24, 2013. They first became aware of it after receiving the Employee Organization Certification of Fact Finding Vote. They subsequently received a copy of the report from SERB. The union has no objection to the Employer request. Since then the Employer has submitted their Certification of the Fact Finding Report. Neither side rejected the report.

Board Member Brundige moved that the Board dismiss this matter as being moot. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

3. Case 2013-MED-09-1042 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Lakewood

On September 9, 2013, the Fraternal Order of Police, Ohio Labor Council, Inc. (Corrections Officers) filed a Notice to Negotiate for a new collective bargaining agreement with the City of Lakewood. The union has now filed a motion to withdraw the Notice to Negotiate Without Prejudice. The basis of their request is the Notice to Negotiate was filed in error.

Board Member Brundige moved that the Board grant the Motion To Withdraw Without Prejudice the Notice to Negotiate in Case No. 2013-MED-09-1042. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

4. Case 2013-MED-09-1046 Fraternal Order of Police, Ohio Labor Council, Inc. and the Huron County Sheriff

On September 9, 2013, the Fraternal Order of Police, Ohio Labor Council, Inc. (Nurses) filed a Notice to Negotiate for a new collective bargaining agreement with the Huron County Sheriff. The union has now filed a motion to withdraw the Notice to Negotiate Without Prejudice. The basis of their request is there are no employees left in the bargaining unit.

Board Member Brundige moved that the Board grant the Motion To Withdraw Without Prejudice the Notice to Negotiate in Case No. 2013-MED-09-1046. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 2013-REP-09-0077 Fraternal Order of Police, Ohio Labor Council, Inc. and Hamilton County Sheriff
(November 5, 2013 – November 18, 2013)

2. Cases 2013-REP-09-0080, 2013-REP-09-0081 Fraternal Order of Police, Ohio Labor Council, Inc. and Multi-County Juvenile Attention Center
(November 5, 2013 – November 18, 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 2013-REP-09-0093 Lake Employees Association for the Developmentally Disabled/OEA/NEA and Lake County Board of Developmental Disabilities

The parties jointly filed a Petition for Amendment of Certification seeking to amend the certification to change the Employee Organization's name. The proposed amendment appears appropriate.

Board Member Brundige moved that the Board approve the jointly filed petition and amend the certification accordingly. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

4. Case 2013-REP-09-0087 Owens Federation of Safety & Security Employees/OFT/AFT/AFL-CIO and Owens Community College

Originally, the parties jointly filed a Petition for Clarification of Bargaining Unit and have now jointly filed a Petition for Amendment of Certification. The proposed amendment appears appropriate.

Board Member Brundige moved that the Board approve the jointly filed amended petition, amend the unit accordingly, and dismiss the Petition for Clarification of Bargaining Unit 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 2013-REP-07-0060 Ohio Association of Public School Employees (OAPSE), AFSCME Local # 233 and Ashland City School District Board of Education

The Employer filed a Petition for Amendment of Certification seeking to exclude the Payroll/Bookkeeper Clerk position. The Employee Organization filed a position statement opposing the amendment. Mediation was conducted on October 7, 2013; however, it was unsuccessful and the parties' dispute remains.

Board Member Brundige moved that the Board direct this case to hearing to determine if the classification of Payroll/Bookkeeper Clerk is a confidential position and should be excluded from the 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 2013-REP-09-0078 Ohio Patrolmen's Benevolent Association and Southwest Summit Council of Governments

The Employee Organization filed a Request for Recognition. The Employer responded by filing objections maintaining that the positions are currently vacant. The Employee Organization has now filed a letter seeking to withdraw its request.

Board Member Brundige moved that the Board construe the Employee Organization's letter as a motion to withdraw, grant the motion, and dismiss without prejudice the Request for Recognition. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

7. Case 2013-REP-09-0091 Owens Federation of Safety & Security Employees, AFT/OFT and Owens Community College

The Employee Organization filed a Petition for Clarification of Bargaining Unit. The Employee Organization has been advised that clarification is not the appropriate vehicle to alter the composition of the existing bargaining unit. The Employee Organization has now filed a letter requesting that the petition be withdrawn.

Board Member Brundige moved that the Board construe the Employee Organization's letter as a motion to withdraw, grant the motion, and dismiss without prejudice the Petition for Clarification of 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:

There were no Administrative Law Judge or Board matters at issue.

IV. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 2013-ULP-05-0124 Fraternal Order of Police, Ohio Labor Council, Inc. v. City of Springdale

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1) and (5) by failing to bargain over a Wellness Plan and a Tobacco Cessation program that effects terms and conditions of employment.

Information gathered during the investigation revealed the City had an obligation to negotiate with the FOP concerning the impact the Wellness Program will have on the employees' terms and conditions of employment.

Board Member Brundige moved that the Board find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, and refer the matter to a hearing to determine if the City violated Ohio Revised Code 4117.11(A)(1) and (5) by failing to bargain over a Wellness Plan and a Smoking Cessation program that affects terms and conditions of employment. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

2. Case 2013-ULP-08-0215 Streetsboro School Support Personnel Association v. Streetsboro City School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(1) and (5) by bargaining in bad faith when it contracted out bargaining-unit work.

Information gathered during the investigation revealed that from the totality of the circumstances, it appears that the School Board's action of contracting out for bus cleaning services does not rise to the level of an (A)(5) violation. In addition, the Association did not provide information to support the (A) (1) 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 School Board. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

3. Case 2013-ULP-08-0221 Valley View Local School District Board of Education v. Valley View Teachers Association, OEA/NEA

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B) (3) by bargaining in bad faith. The Investigator will hold its discussion in abeyance.

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

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

4. Case 2013-ULP-08-0229 Anthony R. DeGennaro v. Ohio Council 8, AFSCME, AFL-CIO and Its Local 1197

The unfair labor practice charge alleged that the Union violated Ohio Revised Code §4117.11 (B)(6) by failing to fairly represent Mr. DeGennaro.

Information gathered during the investigation revealed Mr. DeGennaro failed to provide sufficient information to support the (B)(6) allegation. Also, Mr. DeGennaro filed the unfair labor practice charge on August 6, 2013, 147 days after he knew or should have known of a potential violation and he failed to provide evidence justifying equitable tolling of the 90-day requirement.

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

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

5. Case 2013-ULP-08-0230 Anthony R. DeGennaro v. City of Ashtabula

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(8) by discharging Mr. DeGennaro without just cause.

Information gathered during the investigation revealed that Mr. DeGennaro filed the unfair labor practice charge on August 6, 2013, 164 days after he knew or should have known of the potential violation and that he failed to provide evidence justifying equitable tolling of the 90-day statute of limitations. In addition, Mr. DeGennaro failed to provide sufficient information to support the (A)(8) 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 for being untimely filed. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

6. Case 2013-ULP-08-0239 Euclid Classified Association, OEA/NEA v. Euclid City School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(1) and (5) by failing to bargain over the decision to privatize the transportation department during negotiations for a successor agreement.

Information gathered during the investigation revealed that after the expiration of the Collective Bargaining Agreement and during negotiations, the School Board passed a Resolution contracting the transportation services with a transportation company under the authority of O.R.C. 3319.0810. It appears the School Board has met the requisite conditions to contract out the transportation services.

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

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

7. Case 2013-ULP-08-0252 Johnny Cole v. International Union of Operating Engineers, Local 20

The unfair labor practice charge alleged that the Union violated Ohio Revised Code §4117.11 (B)(6) by failing to fairly represent Mr. Cole.

Information gathered during the investigation revealed that the Union gave a viable reason for not advancing the grievance to arbitration. As a result, Mr. Cole failed to provide information 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 Union. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

8. Case 2013-ULP-08-0257 Ohio Patrolmen's Benevolent Association v. Trumbull County Sheriff's Office

The unfair labor practice charge alleged that the County Sheriff violated Ohio Revised Code §4117.11 (A) (1) and (5) by assigning bargaining-unit work to employees outside the bargaining unit.

Information gathered during the investigation revealed that the County Sheriff was obligated to negotiate with the Association. In addition, the County Sheriff's attempt to reassign the work may constitute interference with the employees' rights. These matters appear to be best addressed in a hearing.

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 whether the County Sheriff violated Ohio Revised Code 4117.11(A) (1) and (5) by reassigning bargaining-unit work to nonbargaining-unit employees. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

9. Case 2013-ULP-09-0262 Hillsboro Professional Firefighters IAFF Local 2972 v. City of Hillsboro

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A) (1) and (5) by bargaining in bad faith when it failed to adhere to a Memorandum of Understanding.

Information gathered during the investigation revealed in the grievance/arbitration process, an arbitrator will determine whether the City violated the parties' negotiated agreement when it failed to apply for the SAFER grant. The issues raised in the instant charge are strictly contractual with no evidence of statutory violations.

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 City and deny the motion to defer to arbitration as moot. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

10. Case 2013-ULP-08-0237 Professionals Guild of Ohio v. Butler County Board of Developmental Disabilities

The unfair labor practice charge alleged that the Butler County Board of Developmental Disabilities violated Ohio Revised Code §4117.11 (A)(1), (4) and (5) by abolishing the former position of its President, John Ferrando, in retaliation for filing Case No. 2013-ULP-05-0155 and by assigning bargaining-unit work to a nonbargaining-unit employee.

Information gathered during the investigation revealed that Mr. Ferrando's position as Customized Support Professional (CSP) was not abolished and bargaining unit work was not assigned to a nonbargaining-unit employee. Therefore, the Board of Developmental Disabilities' actions do not appear to rise to the level of an (A) (5) violation. In addition, the Union (PGO) did not provide sufficient information or documentation to support the (A) (1) and (4) 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 Board of Developmental Disabilities. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

11. Case 2013-ULP-08-0256 Stow-Munroe Falls City School District Board of Education v. Stow-Munroe Falls Classified Employees Association, OEA/NEA

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(8) by engaging in "picketing activity" during District functions without providing the requisite ten(10)-day notice.

Information gathered during the investigation revealed that it appears in this instance that the act of two (2) members distributing flyers in the parking lot of the middle schools was for informational purposes only. There was no work stoppage or strike associated with the event(s). Based on the information provided, the Association's actions do not appear to rise to the level of a (B)(8) violation.

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 Association. Chair Zimpher seconded the motion.

Chair Zimpher called for discussion.

Board Member Brundige requested that the discussion section of the Investigator's Memo be revised by changing the word "grieve" to "protest", to avoid any confusion.

Chair Zimpher called for the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

12. Case 2013-ULP-09-0264 Stow-Munroe Falls Classified Employees Association, OEA/NEA v. Stow-Munroe Falls City School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A) (1) and (5) by engaging in "conditional bargaining" at the outset of negotiations for a successor agreement.

Information gathered during the investigation revealed that due to the nature of the pre-conditions, the School Board's actions of demanding the two (2) pre-conditions prior to the onset of negotiations could have a chilling effect on the Association engaging in future protected activity.

Board Member Brundige moved that the Board find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, refer the matter to an expedited hearing to determine whether the School Board violated Ohio Revised Code 4117.11(A)(1), but not (5) by setting conditions prior to bargaining, which included that the Association cease and desist from engaging in protected activity, and direct the parties to expedited mediation not to exceed thirty days to run concurrently with the expedited processing of the charge and complaint. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

13. Case 2013-ULP-09-0268 Douglas Schuler, Sr. v. City of Euclid

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A) (3) by failing to follow the steps outlined in the progressive discipline procedure, which resulted in Douglas Schuler's termination.

Information gathered during the investigation revealed Mr. Schuler has failed to establish a prima facie case of discrimination. In addition, the City provided a persuasive rebuttal showing that Mr. Schuler was terminated for violating performance standards, willfully neglecting to perform duties, refusing to perform assigned work, neglecting to properly discharge duties and inefficiency and neglect of duties, and not for anti-union animus. Mr. Schuler has failed to support the (A) (3) 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 City. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

14. Case 2013-ULP-09-0271 Sandra Meeks Speller v. Toledo Association of Administrative Personnel (TAAP)

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(2) and (6) by refusing to advance Sandra Meeks Speller's termination grievance to arbitration after the School District voted not to accept the Referee's decision.

Information gathered during the investigation revealed the City's actions were not arbitrary, discriminatory or in bad faith when it decided not to appeal the hearing officer's recommendation and not to advance Ms. Speller's grievance to arbitration. In addition, this charge is untimely filed by 398 days. Ms. Speller 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 for being untimely filed. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

15. Case 2013-ULP-05-0138 Civil Service Personnel Association, Inc. v. City of Akron

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A) (1) and (5) by unilaterally reassigning bargaining-unit work to nonbargaining-unit employees and refusing to bargain regarding the reassignment.

Information gathered during the investigation revealed the City hired two part-time employees without bargaining. It appears the City's actions rise to the level of a statutory violation.

Board Member Brundige moved that the Board find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, and refer the matter to a hearing to determine whether the City violated Ohio Revised Code 4117.11(A) (1) and (5) by unilaterally assigning bargaining-unit work to nonbargaining-unit employees and refusing to bargain regarding the reassignment. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

16. Case 2013-ULP-07-0212 Tameka Dumas v. Amalgamated Transit Union, Local 268

The unfair labor practice charge alleged that the Union violated Ohio Revised Code §4117.11 (B)(1) and (6) by restraining or coercing Tameka Dumas in the exercise of her guaranteed rights by failing to file her grievance and failing to represent her.

Information gathered during the investigation revealed the Union had good reason for declining to file a grievance and explained the reasons to the Ms. Dumas. As a result, the Union's conduct does not rise to the level of a statutory violation. Ms. Dumas did not provide sufficient information to support the (B) (1) and (6) 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 Union. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

17. Case 2013-ULP-08-0246 Fairborn Education Association, OEA/NEA v. Fairborn City School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A) (1) and (5) by interfering, restraining or coercing employees in the exercise of their guaranteed rights by directly dealing with its members for the purposes of collective bargaining, by refusing to bargain with the Association and by unilaterally making changes to the terms and conditions of employment.

Information gathered during the investigation revealed the parties engaged in negotiations for a successor agreement that expired on June 30, 2013. The School Board passed a Resolution precluding it from being bound by the terms and conditions of the expired agreement and unilaterally made changes to the terms and conditions of employment. The School Board's actions appear to rise to the level of an (A) (5) violation. However, the Association did not provide sufficient information to support the (A) (1) allegation.

Chair Zimpher moved that the Board adopt an alternative analysis from that provided by the Investigator and find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, and refer the matter to a hearing to determine whether the School Board violated Ohio Revised Code 4117.11(A) (5), but not (1) by refusing to bargain and by unilaterally making changes to the terms and conditions of employment. Board Member Brundige seconded the motion.

Chair Zimpher called for discussion.

Chair Zimpher read a memo he prepared detailing the alternative analysis and his rationale:

I concur with the Recommendation to find Probable Cause and authorize the issuance of a complaint in the above matter. I do not concur with the investigator's analysis to

support this action. That analysis is premised on mid-term bargaining. In the instant case, the action complained of occurred after the expiration of the Labor Agreement. I believe the more appropriate analysis should focus on the obligations during the period when the parties are required to maintain the status quo.

Ohio Administrative Code § 4117-9-02 (E) requires that parties maintain the provisions of the labor agreement until expiration of the agreement or the statutory dispute procedures are exhausted. In the case of 'In re Cuyahoga County Commrs.', SERB 89-006 (3-15-89) the Board held an employer not abiding by the terms and conditions of a contract even after it has expired, pending negotiations, has bargained in bad faith. The Terms of an unexpired collective bargaining agreement continue in effect until the parties reach "ultimate impasse". In the case of 'In re University of Cincinnati', SERB 93-007 (5-13-93), the Board stated, "It is a well-established principle of collective bargaining law that even after contract expiration, parties can change employment terms only through mutual agreement or, if ultimate impasse is reached, through the employer's implementation of its last best offer." Ultimate impasse is the point at which good faith negotiations have been exhausted. 'Vandalia-Butler City School Dist Bd of Ed.' SERB 90-003 (2-9-90).

It appears ultimate impasse has not been reached. Similarly, this investigation reveals it is probable that the employer refused to bargain with the union.

With the modified analysis, I agree with the recommendation of the investigator.

Chair Zimpher called for the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

18. Case 2013-ULP-04-0109 Elyria Education Association, OEA/NEA v. Elyria City School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A) (1) and (5) by unilaterally changing the benefits provided to retiring and laid-off bargaining-unit members.

On August 15, 2013 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 October 15, 2013, the Association advised SERB the matter had been resolved. The Association filed a Motion to Withdraw.

Board Member Brundige moved that the Board grant the Association's Motion to Withdraw the charge with prejudice. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	Yes	ZIMPHER:	Yes
Affirmed	X	Denied	

19. Case 2013-ULP-08-0220 Danielle Sherrill v. Cuyahoga Community College

20. Case 2013-ULP-08-0225 Danielle Sherrill v. Ohio Council 8, AFSCME, AFL-CIO

Items 19 through and including 20 were withdrawn pursuant to a request to withdraw.

Board Member Brundige moved that the Board construe the requests to withdraw as motions 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 matters.

VII. ADMINISTRATIVE MATTERS:

Executive Director Christine Dietsch presented the following "Executive Director's Report":

SERB REGULAR SCHEDULED MEETING DATES:

- Reminder of the next regular scheduled meeting dates of the State Employment Relations Board:
  - **November 14, 2013**
  - **December 12, 2013**
  - **January 09, 2014**

SYSTEM UPDATES:

- **Employee Organization Annual Report Filings:** No Employee Organizations with fiscal year ending 05/31/2013 are due at this time.

- **Met with Spencer Wood, Chief Operating Officer of the Office of Information Technology:** We have been having difficulty in getting resolution to an ongoing situation involving SERB's servers at the SOCC. The situation started mid December of 2012 when our SQL Server crashed due to a Windows update. Unfortunately, our virtual server was not in an environment where snapshots were being taken and production was down for three days. In order to avoid this from reoccurring we began the process to migrate our servers into a more managed environment at the SOCC.

  The migration includes three servers (fileserver, terminal server/application server, and SQL server). The first two are built and ready for data, the SQL server has been the issue.

  A quote and specifications for the migration was developed and submitted. It was approved to move forward.

Spencer Wood agreed that the road blocks SERB has encountered along the way will be removed and the situation will be resolved shortly. Thank you to Justin Brown of SERB staff for his diligence in working with the situation for 10 months.

- **Educational Development Fund (EDF) system testing:** HCM Training and Employee Development Fund Manager of DAS's Human Resources Division asked that I work with them to test augmentations to their former EDF application program. The testing took several attempts but the new application format finally worked. They are requesting to use SERB again as a tester for additional applications on the horizon.

- **SERB Staff Emergency Call Tree:** An updated version of the call tree has been distributed to all staff in the event of weather or other type of emergency that may dictate the closing of the office.

REMINDER:

- **SERB Academy:** Scheduled for November 6 and 7, 2013 (Wednesday and Thursday) at the CROWNE PLAZA, DUBLIN. 65 participants have registered to date.

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 10:36 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 11:16 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 11:17 a.m.

/s/
W. Craig Zimpher, Chair