

State Employment Relations Board

Board Meeting Minutes

June 5, 2014

The State Employment Relations Board met on June 5, 2014, at 10:00 a.m., at 65 East State Street, 12th Floor, Columbus, Ohio. Present at the meeting were Chair W. Craig Zimpher and Vice Chair Aaron A. Schmidt. Board Member N. Eugene Brundige was absent from the meeting.

I. APPROVAL OF MINUTES FOR THE MAY 15, 2014 BOARD MEETING:

Vice Chair Schmidt moved that the Board approve the minutes for the May 15, 2014 Board meeting. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

1. Case 2014-MED-03-0260 International Union of Operating Engineers, Local 95 and Warren City School District Board of Education

On March 6, 2014, a Notice To Negotiate was filed by the International Union of Operating Engineers, Local 95, for a successor collective bargaining agreement involving the Warren City Schools District Board of Education.

Approximately, a month later on April 10, 2014, the Employer filed a Motion of Objection to the Notice to Negotiate. The Employer alleges that the notice was not filed in a timely manner as it was filed outside the window period specified in their collective bargaining agreement.

Article V, Section 5.1 of the collective bargaining agreement states that "If either party wishes to negotiate changes to this agreement, it shall notify the other party in writing no later than March 1st of the year in which the contract is to expire". The Affidavit of the Superintendent Michael Notar indicates that he received notification of the Notice To Negotiate on March 6, 2014.

The response period for any objection to the employer's motion was due on April 21, 2014. The Union has been informed and has acknowledged the receipt of the employer's motion and has not filed a response.

Vice Chair Schmidt moved that the Board grant the Motion of Objection to Notice to Negotiate and dismiss the Notice to Negotiate. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

2. Case 2014-MED-04-0555 Amalgamated International Transit Union, Local Chapter 268 and The Greater Cleveland Regional Transit Authority

At issue in this matter is whether the parties have entered into a Mutually Agreed Upon Dispute Resolution Procedure (hereinafter MAD) that provides for the arbitration of labor and collective bargaining disputes including disputes involving contract impasse.

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3. Closing of 643 Cases

Vice Chair Schmidt moved that the Board close 643 Mediation cases beginning with Case 2010-MED-01-0001 and ending with Case 2010-MED-12-1836, not consecutively numbered. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 2014-REP-03-0042 Pickerington Support Staff Association, OEA/NEA and Pickerington Local School District
(June 17, 2014 - June 30, 2014)
2. Case 2014-REP-04-0051 Ohio Patrolmen's Benevolent Association and Great Parks of Hamilton County
(June 17, 2014 - June 30, 2014)
3. Case 2014-REP-04-0053 Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and Logan-Hocking Local School District
(June 17, 2014 - June 30, 2014)

All parties have executed and filed the appropriate Consent Election Agreement.

Vice Chair Schmidt 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: Absent SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

4. Case 2014-REP-03-0047 Joe Warner and Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Delaware County Engineer
(July 1, 2014 - July 14, 2014)

The Petitioner filed a Petition for Decertification Election. The Incumbent Employee Organization filed a Motion to Dismiss and has now filed a Motion to Withdraw the Motion to Dismiss. All parties have executed and filed a Consent Election Agreement.

Vice Chair Schmidt moved that the Board grant the Incumbent Employee Organization's Motion to Withdraw the Motion to Dismiss, approve the Consent Election Agreement, and direct a mail ballot-election to be conducted during the polling period of July 1, 2014 through July 14, 2014. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

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5. Case 2014-REP-04-0055 SEIU/District 1199, The Health Care and Social Service Union, Service Employees International Union, Change to Win, CLC and Montgomery County Board of County Commissioners (Stillwater Health Center)

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

Vice Chair Schmidt moved that the Board approve the petition and amend the certification accordingly. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

6. Case 2014-REP-04-0057 American Federation of State, County and Municipal Employees, Ohio Council 8, AFL-CIO and Greater Dayton Regional Transit Authority

The Employer filed a Petition for Amendment of Certification. The Employee Organization does not object to the amendment. The proposed amendment appears appropriate.

Vice Chair Schmidt moved that the Board construe the petition as jointly filed and amend the unit accordingly. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

7. Case 2014-REP-05-0059 United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union (USW) and City of Avon Lake (Board of Municipal Utilities)

8. Case 2014-REP-05-0060 Municipal Foremen and Laborers' Union Local 1099 and City of Berea

9. Case 2014-REP-05-0061 Teamsters Local No. 436, affiliated with the International Brotherhood of Teamsters and Cuyahoga County

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

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

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

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13. Case 2014-REP-02-0025 Teamsters Local 436 and Rocky River Wastewater Employee's Association and City of Rocky River

- There were 15 valid ballots cast
- There were 0 void ballots
- There were 0 challenged ballots
- No Representative received 0 votes
- Teamsters Local 436 received 7 votes
- Rocky River Wastewater Employee's Association received 8 votes and prevailed in this election.

Vice Chair Schmidt 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 units. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Case 2013-ULP-04-0104 SERB v. Greater Dayton Regional Transit Authority

On April 24 and May 3, 2013, the Amalgamated Transit Union, Local 1385 ("Union" or "Intervenor") filed unfair labor practice charges against the Greater Dayton Regional Transit Authority ("Employer" or "Respondent"), alleging that the Employer violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1), (A)(5), and (A)(6). On September 12, 2013, the State Employment Relations Board ("Board" or "Complainant") determined that probable cause existed to believe that the Employer committed or was committing unfair labor practices, authorized the issuance of a complaint, and directed the matter to hearing. A complaint and notice of hearing were issued on September 25, 2013. On October 9, 2013, the Union filed a motion to intervene, which was granted.

A hearing was held on December 5, 2013. Subsequently, the parties filed post-hearing briefs. On April 3, 2014, the assigned Administrative Law Judge issued a Proposed Order, recommending that the Board find that the Employer violated O.R.C. §§ 4117.11(A)(1), (A)(5), and (A)(6) when it unilaterally determined that nine grievances were not legitimate grievances and returned those grievances to the Union as unprocessed. On April 23, 2014, the Employer filed exceptions to the Proposed Order. On May 5, 2014, Counsel for Complainant filed a response to the exceptions. On May 5, 2014, Intervenor filed a response to Respondent's exceptions, which adopted the exceptions filed by Complainant.

On May 15, 2014, Respondent filed a reply to Complainant's and Intervenor's response to Respondent's exceptions to the Proposed Order. Respondent cites O.R.C. § 4117.12(B) and Ohio Administrative Code (O.A.C.) Rules 4117-1-13 and 4117-1-15 as authority to file its reply. On May 16, 2014, Counsel for Complainant and Intervenor filed a joint motion to strike Respondent's May 15, 2014 reply. Complainant's Counsel and Intervenor assert that their joint motion to strike should be granted for the following reasons: (1) their response to Respondent's exceptions raised no new issues outside those addressed in the exceptions; (2) no cross exceptions were filed under O.A.C. Rule 4117-1-13(B); (3) SERB did not

IV. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 2014-ULP-03-0039 Ivica John Brnjic v. City of Newark

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(3) by retaliating against him for his participation in protected activities.

Information gathered during the investigation revealed that Ivica John Brnjic has established a prima facie case that the comments referenced in Mr. Brnjic's evaluation were related to his position as a union representative. Although the City's actions do not amount to a statutory violation of (A)(3), whether the actions constitute an (A)(1) violation is best addressed in a hearing.

Chair Zimpher moved an alternative recommendation that the Board, without rendering any judgment on the merits, order the parties to pre-determination mediation for period not to exceed 30 days with instructions to the assigned mediator to consult with the parties and to issue and e-mail a mediator's procedural order, including date, time, and location of mediation within the time period designated. That the Board further order the assigned mediator to report the outcome to the Board's General Counsel at the conclusion of the mediation or the mediation period, whichever occurs first. If the mediation is unsuccessful, order that the matter be remanded to General Counsel to complete the investigation and issue a recommendation to the Board. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

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

2. Case 2014-ULP-03-0048 Service Employees International Union, District 1199 v. Cincinnati State Technical & Community College

The unfair labor practice charge alleged that the College violated Ohio Revised Code §4117.11 (A)(1), (2) and (3) by discriminating against Deb Powers for engaging in protected activity.

Information gathered during the investigation revealed that Ms. Powers failed to follow the protocol established in Article 30 of the collective bargaining agreement with regards to providing proper documentation to the College regarding her serving on jury duty. The Union failed to provide any information to support the (A)(1) or (2) allegations.

Vice Chair Schmidt 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 College. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

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3. Case 2014-ULP-03-0049 Service Employees International Union District 1199 v. Cincinnati State Technical & Community College

The unfair labor practice charge alleged that the College violated Ohio Revised Code §4117.11 (A)(1) and (5) by refusing to negotiate by dictating the composition of the Union's bargaining committee.

Information gathered during the investigation revealed that despite the Union's allegations, the College did not violate the statute by refusing to open negotiations up to observers. The parties are continuing to negotiate for a successor agreement. The Union failed to provide sufficient information to support the (A)(1) and (5) allegations.

Vice Chair Schmidt 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 College. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

4. Case 2009-ULP-10-0495 Youngstown State University Association of Classified Employees (YSACE) v. Youngstown State University

The unfair labor practice charge alleged that the University violated Ohio Revised Code §4117.11 (A)(1) and (5) by unilaterally implementing a deadline for its members to submit their decision regarding personal leave balances and implementing a default option if the form was not returned by the deadline. On December 28, 2009, the University filed a Motion to Defer, with the Association filing a response on January 11, 2010.

The discussion will be held in abeyance pending the outcome of the recommendation.

Vice Chair Schmidt moved that the Board refer the matter to the General Counsel's office to order the parties to an on-site status update and mediation in order to resolve the issues in the above-referenced charge. The mediation should be 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: Absent SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

5. Case 2014-ULP-03-0046 Stow-Munroe Falls Teachers' 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) by directly dealing with one of the bargaining unit members regarding his grievance and refusing to enter into the Settlement Agreement it had previously approved.

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Vice Chair Schmidt 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: Absent SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

8. Case 2014-ULP-02-0034 Ohio Council 8, AFSCME, AFL-CIO and Local 232 v. Cincinnati 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 and by directly dealing with employees and by-passing the exclusive representative.

Information gathered during the investigation revealed that Jason Boyd's phone calls to Julia Mason threatening to replace Ms. Mason with another employee if she did not withdraw the proposal for pay increases for custodians in buildings without building engineers could be construed as interfering or coercing her in the exercise of her guaranteed rights in violation of (A)(1). The Union did not provide sufficient information to support the (A)(5) allegation.

Vice Chair Schmidt 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 School Board violated Ohio Revised Code §4117.11(A)(1), but not (5). Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

9. Case 2014-ULP-03-0040 Transport Workers Union of America, Local 208 , AFL-CIO v. Central Ohio Transit Authority (COTA)

The unfair labor practice charge alleged that COTA violated Ohio Revised Code §4117.11 (A)(1) and (5) by contracting out bargaining-unit work and by refusing to bargain with the exclusive representative.

Information gathered during the investigation revealed Article XXII, Section 22.35(b) authorized COTA to use sub-contractors as long as it did not result in a layoff or a reduction in pay. COTA advised the Union of its intent to use sub-contractors and the Union did not object. Therefore, COTA's actions do not constitute a statutory violation of (A)(1) and (5).

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Vice Chair Schmidt 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 COTA. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

10. Case 2014-ULP-03-0052 Ida S. Sydnor v. State of Ohio Office of Budget and Management - Ohio Shared Services

The unfair labor practice charge alleged that the Office of Budget and Management (OBM) violated Ohio Revised Code §4117.11 (A)(1) by interfering, restraining or coercing Ida S. Sydnor in the exercise of her guaranteed rights.

Information gathered during the investigation revealed Ms. Sydnor received an oral reprimand for her unprofessional conduct at a Town Hall meeting. A grievance was filed and is proceeding through the grievance procedure. Based on the information provided, OBM's actions do not rise to the level of an (A)(1) statutory violation since the matter is purely contractual.

Vice Chair Schmidt 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 OBM and as being purely contractual. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

11. Case 2013-ULP-12-0355 Roger Martin v. City of Beachwood

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1), (2), (3), and (4) by terminating Roger Martin for engaging in protected activity when he signed a Service Agreement with the Ohio Patrolmen's Benevolent Association which was the subject of Case No. 2013-REP-04-0034.

Information gathered during the investigation revealed on April 3, 2014, the Board dismissed the unfair labor practice charge for lack of probable cause that a statute has been violated. On April 24, 2014, Mr. Martin timely filed a motion for reconsideration. Although Mr. Martin's Counsel, Joseph Hegedus, presented an impassioned request for SERB to reconsider its decision regarding the dismissal of the above-referenced charge he did not provide any additional information that was not previously provided in the parties' original position and fully considered and reviewed by the Board.

Vice Chair Schmidt moved that the Board deny Mr. Martin's Motion for Reconsideration with prejudice. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

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12. Case 2014-ULP-01-0005 Otis Davenport v. State of Ohio - Bureau of Workers Compensation

The unfair labor practice charge alleged that the Bureau violated Ohio Revised Code §4117.11 (A)(1), (2), (3), (4), (5), (6), (7) and (8) by interfering with his guaranteed rights.

Information gathered during the investigation revealed that on March 13, 2014, the Board dismissed the above charge for lack of probable cause. Mr. Davenport timely filed a motion for reconsideration. Mr. Davenport presented new and additional evidence meriting reconsideration. However, after fully reconsidering the matter, the Bureau's actions were rude, but the actions do not rise to the level of a statutory violation.

Vice Chair Schmidt moved that the Board deny Mr. Davenport's Motion for Reconsideration with prejudice. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

13. Cases 2014-ULP-03-0035 Hicksville Education Association, OEA/NEA v.
2014-ULP-03-0036 Hicksville Exempted Village School District Board of
2014-ULP-03-0037 Education
2014-ULP-03-0038

14. Case 2014-ULP-04-0061 Amalgamated Transit Union, Local 1385 v. Greater Dayton Regional Transit Authority

Items 13 and 14 were withdrawn pursuant to either a request or a motion to withdraw.

Vice Chair Schmidt moved that the Board construe the request to withdraw 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: Absent SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

VI. TABLED AND OTHER MATTERS:

1. Case 2013-ULP-10-0310 City of Cleveland v. Communications Workers of America, Local 4340, AFL-CIO
Hold In Abeyance – April 3, 2014
2. Case 2013-ULP-11-0334 Service Employees International Union, District 1199 v. Butler County Head Start
Tabled – April 3, 2014

VII. ADMINISTRATIVE MATTERS:

SERB REGULAR SCHEDULED MEETING DATES:

- **June 26, 2014**
- **July 24, 2014**
- **August 14, 2014**

SYSTEM UPDATES:

- **Employee Organization Annual Report Filings:** For fiscal year ending 12/31/13 a total of 745 Employee Organizations were required to report not later than May 15, 2014. To date, **25 Employee Organizations** have not yet filed. Emails were sent to IAFF, NOFF & OAPFF reminding them to have their locals file the required reports. Sheila Farthing will continue to work on getting the remaining organizations reports in before the deadline of June 16, 2014, the date for the 31 day notice to be sent. The balance of 720 Employee Organizations have filed and are in compliance.
- **Cost of Health Insurance in the Public Sector Survey update:** Of the 1,232 responses received, 1,232 surveys have been scrubbed. Justin is fielding responses from survey takers regarding questions raised during scrubbing.

Initial Rough Draft will be ready by July 1, 2014. **Report Release Date August 1, 2014**

	2014	2013
➤ Total Responses	1,232	1,226
➤ Did not Respond / Incomplete Survey	95	99
➤ Total Surveys Sent	1,327	1,325
➤ Response Rate	92.84%	92.52%

- **FY 2015 Office of Budget and Management (OBM) Allotment Planning:** Budget Allotment Plans are due to OBM by June 20, 2014. Final budget plans were presented and reviewed by the Chairman Wednesday, June 04, 2014. The plan has been submitted to Central Services Agency for their review and ultimate submittal to OBM.
- **Workforce Plans:** Update plans for FY16-17 will be due to DAS 11/12/14. Per Central Services Administration, updates to the Workforce Plan will include increased attention to identifying “essential” vs. “critical” employees, forecasting, and knowledge transfer.
- **FY 2016-2017 Biennium Budget Process in BPM (OAKS Budget and Planning Module) and SOPPS (State of Ohio Payroll Projection System):** Biennium budget process planning will kick off with training on July 10, 2014.

