

State Employment Relations Board

Board Meeting Minutes  
September 15, 2016

The State Employment Relations Board met on September 15, 2016, at 10:00 a.m., at 65 East State Street, 12<sup>th</sup> Floor, Columbus, Ohio. Present at the meeting were Chair W. Craig Zimpher, Vice Chair Aaron A. Schmidt, and Board Member J. Richard Lumpe.

**I. APPROVAL OF MINUTES FOR THE AUGUST 25, 2016 BOARD MEETING:**

Vice Chair Schmidt moved that the Board approve the minutes for the August 25, 2016 Board meeting. Board Member Lumpe seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: LUMPE:     Yes     SCHMIDT:     Yes     ZIMPHER:     Yes  
          Affirmed     X                    Denied     \_\_\_\_\_

**II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:**

There were no mediation matters.

**III. REPRESENTATION MATTERS AT ISSUE:**

1.     Case   2016-REP-08-0076   Ohio Association of Public School Employees, Local #668 and Upper Scioto Valley Local School District Board of Education
  
2.     Case   2016-REP-08-0079   Ohio Association of Public School Employees (AFSCME) Local #784 AFL-CIO and Tri-County Career Center Board of Education

The parties in each case jointly filed petitions to amend certifications.

Vice Chair Schmidt moved that the Board approve the jointly filed petitions in each case and amend the certifications accordingly. Board Member Lumpe seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: LUMPE:     Yes     SCHMIDT:     Yes     ZIMPHER:     Yes  
          Affirmed     X                    Denied     \_\_\_\_\_

3.     Case   2016-REP-07-0067   International Association of Fire Fighters, IAFF Local 3518 and West Chester Township

International Association of Fire Fighters, IAFF Local 3518 (Employee Organization) filed an Opt-In Request for Recognition seeking to include the classification of Captains to an existing unit of West Chester Township. The Employer responded by filing objections.

The issue is whether the classification of Captains falls within the definition of "public employees" and as a result, should be included in the existing bargaining unit. Inquiry is appropriate.

Vice Chair Schmidt moved that the Board order the parties to participate in an Inquiry regarding the actual job duties performed by Captains employed by the Employer. The date and time of the Inquiry and the Inquiry procedures will be addressed in a procedural order issued by the Office of the General Counsel of the State Employment Relations Board. Board Member Lumpe seconded the motion. Chair Zimpher called for discussion and the vote.

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Vote: LUMPE:     Yes     SCHMIDT:     Yes     ZIMPHER:     Yes  
          Affirmed     X                    Denied     \_\_\_\_\_

4.     Case   2016-REP-05-0056   Twinsburg Clerical & Technical Workers Local 1 and Ohio Council 8, American Federation of Federal, State, County and Municipal Employees and City of Twinsburg

This case was scheduled to go before the Board on August 25, 2016. However, the Representation Section asked the Board not to take action due to new developments. On September 7, 2016 the Rival Employee Organization met with the bargaining unit members. The members voted to keep the Incumbent Employee Organization as their exclusive representative. As a result, the Rival Employee Organization filed a letter withdrawing the Petition for Representation Election and the Incumbent Employee Organization filed a letter withdrawing its disclaimer of interest.

Vice Chair Schmidt moved that the Board construe the Rival Employee Organization's letter as a motion to withdraw, construe the Incumbent Employee's Organization letter as a motion to withdraw the disclaimer of interest, grant all motions and dismiss without prejudice the Petition for Representation Election and the Disclaimer of Interest. Board Member Lumpe seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: LUMPE:     Yes     SCHMIDT:     Yes     ZIMPHER:     Yes  
          Affirmed     X                    Denied     \_\_\_\_\_

5.     Case   2016-REP-08-0075   Teamsters Local 377 and Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO and Trumbull County Engineer

On August 2, 2016, the Rival Employee Organization filed a Petition for Representation Election seeking to displace the Incumbent Employee Organization. The Employer filed objections. On August 25, 2016, the Rival Employee Organization filed a Notice of Withdrawal of Petition for Representation Election.

Vice Chair Schmidt moved that the Board construe the notice of withdrawal as a motion of withdrawal, grant the Rival Employee Organization's motion to withdraw and dismiss without prejudice the Petition for Representation Election. Board Member Lumpe seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: LUMPE:     Yes     SCHMIDT:     Yes     ZIMPHER:     Yes  
          Affirmed     X                    Denied     \_\_\_\_\_

**IV.   ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:**

1.     Case   2016-REP-02-0016   Fraternal Order of Police, Ohio Labor Council Inc. and Bowling Green State University

On February 11, 2016, the Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP" or "Union") filed a Request for Recognition with the State Employment Relations Board ("SERB" or "Board") seeking to represent "all full-time Sergeants and Lieutenants" of Bowling Green State University ("BGSU" or "Employer"). On March 2, 2016, BGSU filed

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objections to FOP's Request for Recognition and a Petition for Representation Election. In its objections, BGSU stated as follows: (1) both Sergeants and Lieutenants are supervisors and therefore they are not public employees within the meaning of Ohio's Public Employee Collective Bargaining Law; (2) Lieutenants are management level employees and/or confidential employees and are not public employees; and (3) Sergeants and Lieutenants do not share a community of interest because Lieutenants are the Sergeants' supervisors and managers.

On April 13, 2016, FOP filed a response to BGSU's objections. FOP acknowledged that the Lieutenants are excluded from representation because they perform job duties that qualify them as "supervisors" as defined by Ohio Revised Code ("O.R.C.") § 4117.01(F). However, FOP maintains that the Sergeants are not "supervisors" within the meaning of O.R.C. Chapter 4117 and are, therefore, entitled to engage in collective bargaining. On May 12, 2016, SERB directed this case to an inquiry to determine whether the Sergeants are "supervisors" as defined by O.R.C. § 4117.01(F).

An inquiry was held in this matter on June 30, 2016, at which time, testimonial and documentary evidence was presented. On August 19, 2016, SERB's staff attorney submitted a Report and Recommendation to the Board recommending that the Board find that the full-time Sergeants are not "supervisors" as defined by O.R.C. § 4117.01(F) and, therefore, they are "public employees" under O.R.C. Chapter 4117.

Vice Chair Schmidt moved that the Board:

- (1) **adopt** the Findings of Fact, Conclusions of Law, and Recommendations in the Report and Recommendation, finding that the Sergeants are not "supervisors" as defined by O.R.C. § 4117.01(F);
- (2) **grant** the Employer's Petition for Representation Election; and
- (3) **direct** SERB's Representation Section to conduct a representation election in accordance with O.R.C. § 4117.07 and the rules set forth in Ohio Administrative Code Chapter 4117-5 in the bargaining unit described below:  
INCLUDED: All fulltime Sergeants.  
EXCLUDED: All other employees.

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

Vote: LUMPE:	<u>Yes</u>	SCHMIDT:	<u>Yes</u>	ZIMPHER:	<u>Yes</u>
Affirmed	<u>X</u>	Denied	<u>          </u>		<u>          </u>

2. Case 2016-ULP-05-0087 Ohio Council 8, AFSCME, AFL-CIO and Northfield Center-Sagamore Hills Fire District

On May 10, 2016, Ohio Council 8, AFSCME, AFL-CIO ("Charging Party") filed unfair labor practice charges against the Northfield Center-Sagamore Hills Fire District ("Charged Party"), alleging that Charged Party violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1), (A)(5), and (A)(8). On August 4, 2016, the State Employment Relations Board ("Board") found probable cause to believe Charged Party had committed unfair labor practices, authorized the issuance of a complaint, referred the matter an expedited hearing, and directed the parties to participate in unfair labor practice mediation, to run concurrently

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with the processing of the complaint and unfair labor practice charges.

The parties participated in unfair labor practice mediation and, on September 6, 2016, the parties filed a settlement agreement. In paragraph 3 of this agreement, the parties request that the Board construe their settlement agreement as a motion to dismiss the unfair labor practice charge and complaint in this matter with prejudice. Since the parties have settled this matter, no complaint has been issued in this case.

Vice Chair Schmidt moved that the Board construe the parties' settlement agreement as a motion to dismiss, grant the motion, and dismiss with prejudice the unfair labor practice charge in Case No. 2016-ULP-05-0087. The Board retains jurisdiction over this matter for purposes of enforcing the parties' settlement agreement, pursuant to Ohio Administrative Code Rule 4117-7-06.). Board Member Lumpe seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: LUMPE:     Yes     SCHMIDT:     Yes     ZIMPHER:     Yes  
          Affirmed     X                    Denied     \_\_\_\_\_

**IV. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:**

1.     Case   2016-ULP-07-0163     Cincinnati Organized and Dedicated Employees, Inc. (CODE) v. City of Cincinnati - Police Department

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1) and (5) by interfering, restraining or coercing employees in the exercise of their guaranteed rights by refusing to bargain with the exclusive representative.

Directing the matter to pre-determination mediation to allow the parties to explore settlement is appropriate in this matter.

Vice Chair Schmidt 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. Board Member Lumpe seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: LUMPE:     Yes     SCHMIDT:     Yes     ZIMPHER:     Yes  
          Affirmed     X                    Denied     \_\_\_\_\_

2.     Case   2016-ULP-05-0095     International Brotherhood of Teamsters Local No. 348 v. Bath Township, Summit County

The unfair labor practice charge alleged that the Township violated Ohio Revised Code §4117.11 (A)(1) and (5) by failing to negotiate in good faith.

Information gathered during the investigation revealed that the Township's actions were merely attempts to try and settle the open issues. Therefore, based on the totality of the circumstances, the Township's actions do not rise to the level of (A)(1) statutory violation.

The Union did not provide sufficient information or documentation to support the (A)(5)

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allegation.

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

Vote: LUMPE: Yes SCHMIDT: Yes ZIMPHER: Yes  
Affirmed X Denied \_\_\_\_\_

3. Case 2016-ULP-05-0105 Cincinnati Federation of Teachers, OFT/AFT v. Cincinnati Public School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(1), (2) and (3) by interfering with the Union's ability to exercise their rights guaranteed in the collective bargaining agreement (CBA).

Information gathered during the investigation revealed that several issues contained in the complaint are purely contractual in nature and grievances are pending regarding them. In addition, the Union failed to substantiate its allegations that Principal McClain's communications with the long term substitutes in her school interfered with their contractual rights or the administration of Union business. Therefore, based on the totality of the circumstances, the School Board's actions do not rise to the level of (A)(1) and (2) statutory violations.

The Union did not provide sufficient information or documentation to support the (A)(3) allegation.

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

Vote: LUMPE: Yes SCHMIDT: Yes ZIMPHER: Yes  
Affirmed X Denied \_\_\_\_\_

4. Case 2016-ULP-06-0124 Tonina Lamanna v. Fraternal Order of Police, John C. Post Lodge No. 44

The unfair labor practice charge alleged that the FOP violated Ohio Revised Code §4117.11 (B)(6) by restraining or coercing Tonina Lamanna in regards to her contractual rights.

Information gathered during the investigation revealed that there was a significant change made in the parties' contract regarding promotions, which were a result of the contract negotiation process and was ratified by the Union membership. Ms. Lamanna failed to demonstrate how the Union restrained or coerced her in the exercise of her contractual rights. Accordingly, the Employer's actions do not rise to the level of a (B)(6) statutory violation.

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

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Vote: LUMPE: Yes SCHMIDT: Yes ZIMPHER: Yes  
Affirmed X Denied \_\_\_\_\_

5. Case 2016-ULP-06-0132 Amalgamated Transit Union Local 1385 v. Greater Dayton Regional Transit Authority

The unfair labor practice charge alleged that the Transit Authority violated Ohio Revised Code §4117.11 (A)(1) by threatening to use criminal prosecution against a discharged employee if the Union used the grievance procedure.

Information gathered during the investigation revealed that the Union filed a grievance regarding the employee's removal, the Transit Authority did not file criminal charges, and the employee subsequently resigned. Based on the totality of the circumstances, the Transit Authority's actions do not rise to the level of an (A)(1) statutory violation.

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

Vote: LUMPE: Yes SCHMIDT: Yes ZIMPHER: Yes  
Affirmed X Denied \_\_\_\_\_

6. Case 2016-ULP-06-0135 City of Shaker Heights v. Ohio Patrolmen's Benevolent Association

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(3) by failing to negotiate in good faith.

Information gathered during the investigation revealed that looking at the entire course of negotiations, the City and the Association met the tests for good faith bargaining, which resulted in a ratification of a new agreement. Based on the totality of the circumstances, the Association's actions do not rise to the level of a (B)(3) statutory violation.

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

Vote: LUMPE: Yes SCHMIDT: Yes ZIMPHER: Yes  
Affirmed X Denied \_\_\_\_\_

7. Case 2016-ULP-06-0136 Ohio Patrolmen's Benevolent Association v. City of Shaker Heights

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1) and (5) by failing to negotiate in good faith.

Information gathered during the investigation revealed that the Association had the opportunity to review the City's proposals and policies before the ratification vote; but failed to thoroughly review the cell phone policy before agreeing to abide by it. Furthermore, the Association failed to provide proof that the City agreed to their proposed education benefit. As a result, the City's actions do not rise to the level of an (A)(1) statutory violation.

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The Association did not provide sufficient information or documentation to support the (A)(5) allegation.

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

Vote: LUMPE: Yes SCHMIDT: Yes ZIMPHER: Yes  
Affirmed X Denied \_\_\_\_\_

8. Case 2016-ULP-06-0138 Rolanda Lloyd v. Amalgamated Transit Union, Local 268

The unfair labor practice charge alleged that the Union violated Ohio Revised Code §4117.11 (B)(6) by failing to represent Rolanda Lloyd and refusing to file a grievance on her behalf.

Information gathered during the investigation revealed that the Union provided Ms. Lloyd with representation by filing a grievance on Ms. Lloyd's behalf. Accordingly, the Union's actions do not rise to the level of a (B)(6) statutory violation.

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

Vote: LUMPE: Yes SCHMIDT: Yes ZIMPHER: Yes  
Affirmed X Denied \_\_\_\_\_

9. Case 2016-ULP-07-0158 Ohio Civil Service Employees Association, AFSCME Local 11 and Brenda L Mabe v. State of Ohio - Department of Rehabilitation and Correction, Lorain Correctional Institution

The unfair labor practice charge alleged that the State violated Ohio Revised Code §4117.11 (A)(1) by attempting to "politically coerce" bargaining-unit member, Correction Officer, Brenda Mabe.

Information gathered during the investigation revealed that Officer Mabe was a willing participant in the conversation, that neither party engaged in any inappropriate, rude or improper behavior, and that an investigation found no violation of the State's Code of Conduct. Accordingly, the State's actions do not rise to the level of an (A)(1) statutory violation.

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

Vote: LUMPE: Yes SCHMIDT: Yes ZIMPHER: Yes  
Affirmed X Denied \_\_\_\_\_

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10. Case 2016-ULP-07-0170 Damon Wilburn v. International Union of Operating Engineers Local 18S
11. Case 2016-ULP-07-0171 Damon Wilburn v. City of Painesville

The unfair labor practice charges alleged that the Union violated Ohio Revised Code §4117.11 (B)(6) and that the City violated Ohio Revised Code §4117.11 (A)(3) and (4).

In both cases, information gathered during the investigation revealed that the unfair labor practice charges were deficient in that they did not set forth sufficient facts alleging a violation of Ohio Revised Code Chapter 4117.

On July 29, 2016, Mr. Wilburn was notified, in writing, that a dismissal recommendation would be made to the Board unless the deficiencies were corrected no later than August 8, 2016. As of this writing, Mr. Wilburn has failed to provide a clear and concise statement of the facts constituting an alleged violation in either case.

Vice Chair Schmidt moved that the Board dismiss the charges without prejudice due to Mr. Wilburn's failure to provide a clear and concise statement of facts constituting an alleged violation. Board Member Lumpe seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: LUMPE: Yes      SCHMIDT: Yes      ZIMPHER: Yes  
Affirmed      X                      Denied      \_\_\_\_\_

12. Case 2016-ULP-05-0106 Mark Windle v. Ohio Civil Service Employees Association, AFSCME, Local 11

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(1) by causing the members to violate the Preamble Section of the contract and by threatening to take action against the members if they participated in any joint/extra-curricular events at the Franklin Medical Center.

Information gathered during the investigation revealed that on August 4, 2016, the Board found probable cause and ordered the parties to participate in mediation and if unsuccessful, the Board authorized the issuance of a complaint and directed the parties to a hearing.

On August 24, 2016, the Association timely filed a request for reconsideration.

However, Ohio Administrative Code 4117-1-04(E) provides that a motion/request for reconsideration may only be filed on the Board's final ruling. A probable cause finding is not the Board's final ruling. Therefore, the Association's request for reconsideration is prematurely filed.

Vice Chair Schmidt moved that the Board construe the Association's request for reconsideration as a Motion for Reconsideration, and deny the motion with prejudice for being prematurely filed. Board Member Lumpe seconded the motion. Chair Zimpher called for discussion and the vote.

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Vote: LUMPE:     Yes     SCHMIDT:     Yes     ZIMPHER:     Yes  
          Affirmed         X                     Denied         \_\_\_\_\_

- 13.   Case   2016-ULP-06-0143   International Brotherhood of Teamsters, Local 507 v. City of Cleveland
- 14.   Case   2016-ULP-06-0144   International Brotherhood of Teamsters, Local 507 v. City of Cleveland
- 15.   Case   2016-ULP-07-0172   Matt Cicero v. International Brotherhood of Teamsters Local 436
- 16.   Case   2016-ULP-08-0177   Louanna Gladman v. State of Ohio - Department of Rehabilitation and Correction, Southern Ohio Correctional Facility
- 17.   Case   2016-ULP-08-0178   Louanna Gladman v. State of Ohio - Department of Rehabilitation and Correction, Southern Ohio Correctional Facility
- 18.   Case   2016-ULP-05-0085   Service Employees International Union District 1199 v. Cleveland Public Library

Requests for withdrawal were filed in ULP matters 13 through and including 18.

Vice Chair Schmidt moved that the Board construe the requests to withdraw as motions to withdraw and grant all motions to withdraw with prejudice. Board Member Lumpe seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: LUMPE:     Yes     SCHMIDT:     Yes     ZIMPHER:     Yes  
          Affirmed         X                     Denied         \_\_\_\_\_

**VI. TABLED AND OTHER MATTERS:**

- 2016-ULP-04-0069   Trumbull County Engineer's Office v. Ohio Civil Service Employees Association, AFSCME Local 11 and Doug Sollitto
- 2016-ULP-05-0086   Trumbull County Engineer v. Ohio Civil Service Employees Association, AFSCME Local 11
- 2016-ULP-05-0093   Trumbull County Engineer v. Ohio Civil Service Employees Association
- 2016-ULP-05-0096   Trumbull County Engineer v. Ohio Civil Service Employees Association
- 2016-ULP-05-0099   Trumbull County Engineer v. Ohio Civil Service Employees Association
- 2016-ULP-06-0120   Trumbull County Engineer v. Ohio Civil Service Employees Association

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- 2016-ULP-05-0102 Ohio Civil Service Employees Association, AFSCME Local 11 v. Trumbull County Engineers Office and Matthew Blair
- 2016-ULP-05-0103 Ohio Civil Service Employees Association, AFSCME Local 11 v. Trumbull County Engineers Office and Matthew Blair
- 2016-ULP-05-0104 Ohio Civil Service Employees Association, AFSCME Local 11 v. Trumbull County Engineers Office and Randy Smith
- 2016-ULP-05-0108 Ohio Civil Service Employees Association v. Trumbull County Engineers Office

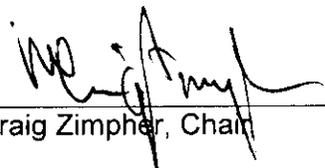
**VII. ADMINISTRATIVE MATTERS:**

**IX. ADJOURNMENT:**

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

Vote: LUMPE: Yes    SCHMIDT: Yes    ZIMPHER: Yes  
Affirmed    X    Denied \_\_\_\_\_

The Board meeting adjourned at 10:29 a.m.

/s/   
W. Craig Zimpher, Chair