

STATE EMPLOYMENT RELATIONS BOARD

CONCILIATION GUIDEBOOK



TABLE OF CONTENTS

Purpose.....	1
Conciliation Process.....	1
Conciliation Eligibility.....	1
Conciliation Order.....	2
Panel Distribution.....	2
Selection From Panel.....	2
Alternate Selection From Roster.....	2
Lack of Mutual Selection	3
Second Panel	3
Notifying SERB of Your Selection(s)	3
Selection of Appointment Extensions	3
Appointments.....	3
Discretionary Appointments.....	4
Resignation of Conciliator	4
Mutually-agreed Alternate Dispute Settlement Procedure.....	4
Tentative Agreements.....	4
Stays.....	5
Position Statements	5
Scheduling Hearing.....	5
Postponement or Cancellation of Hearing.....	6
Closed Hearing.....	6
Subpoena Request.....	6
Hearing Record.....	7
Posthearing Submissions.....	7
Mediation.....	7
Revising A Final Offer.....	7
Settlement At Hearing.....	7
Factors Which A Conciliator Must Consider.....	8
Retroactivity of Conciliation Award	8
Issuance of Award	8
Post Conciliation Clarification.....	9
Late Report	9
Implementation and Enforcement of Award.....	9
Appeal of Award.....	9
Conciliation Costs.....	9
Publication of Award.....	10

STATE EMPLOYMENT RELATIONS BOARD

CONCILIATION GUIDEBOOK

Purpose

This guidebook has been developed as an information source of statutory provisions, rules, and current administrative practices which outline the structure for the conciliation dispute settlement process of the Ohio State Employment Relations Board. The policies in the guidebook are subject to change and are not binding upon the State Employment Relations Board in its subsequent determination of procedural or substantive issues of law.

These guidelines are not comprehensive. The parties continue to be responsible for knowing all statutory and rule provisions governing the statutory dispute settlement procedure. Please contact the Bureau of Mediation if you have questions concerning the dispute settlement process.

Conciliation Process

The conciliation process is final offer issue-by-issue arbitration **[Ohio Revised Code Section 4117.14(G)]**. By statute, it follows the fact-finding dispute resolution procedure. Employees subject to the conciliation process do not have the right to strike. **[Ohio Revised Code Sections 4117.14(D)(2) and 4117.15(A)]**

Conciliation Eligibility

The conciliation process is available to public employees, who are

- members of a police or fire department
- members of the state highway patrol
- deputy sheriffs
- dispatchers employed by a police, fire or sheriff's department or the state highway patrol
- civilian dispatchers employed by a public employer other than a police, fire, or sheriff's department to dispatch police, fire sheriff's department, or emergency medical or rescue personnel and units
- exclusive nurse's unit
- employees of the state school for the deaf or the state school for the blind
- employees of any public employee retirement system
- corrections officers
- guards at penal or mental institutions
- special policemen or police women appointed in accordance with sections 5119.14 (Mental Health) and 5123.13 (Mental Retardation and Developmental Disabilities) of the Revised Code
- psychiatric attendants employed at mental health forensic facilities
- youth leaders employed at juvenile correctional facilities

[Ohio Revised Code Section 4117.14(D)(1)]:

Conciliation Order

In accordance with Ohio Administrative Code Rule 4117-9-06(A), the Bureau of Mediation must determine that the following conditions have been met prior to issuing a conciliation order:

- The fact-finding report was rejected timely by at least one party by a three-fifths majority of the individuals who were eligible to vote.
- The vote of the fact-finding report was served timely upon SERB and the other party.
- Publication of the fact-finding report did occur in which the effective date of publication is stated on the board-issued notice of rejection of the fact-finding report.
- At least seven days have passed since the effective date of publication of the fact-finding report, and the parties have not reached a settlement.

Panel Distribution

On the eighth day following issuance of the notice of rejection of fact-finding report, a conciliation order is sent to the parties. It includes a panel of five names for selection of a conciliator. All panel members must be residents of the state. **[O.R.C. Section 4117.14(G)(13)]**. Names are distributed on a regional basis. For example, Cleveland neutrals are most likely to have their names distributed in the northern half of the state and less likely in the southern half of the state. For Cincinnati neutrals, the opposite would be true. There are no permanent panels. Panels are compiled on a case-by-case basis.

It is essential for neutrals to notify the SERB when periods of unavailability arise. It is unfair to the parties to include a neutral's name on a panel for possible selection when the neutral is aware of his or her unavailability to accept any cases in the near future. When it is possible to accept cases again, the neutral must submit notice of availability before the SERB will resume distribution of his or her name for panels.

Selection From Panel

The parties must mutually select the conciliator from the list provided, by the alternate striking of names unless the parties agree to an alternate selection from the SERB Roster. **[O.A.C. Rule 4117-9-06(B)]**.

Alternate Selection From Roster

As an alternative, the parties may mutually select any member of the SERB Roster of Neutrals who is an Ohio resident in lieu of selecting from the panel provided. **[O.A.C. Rule 4117-9-06(B)]**. If the parties are unsure if an individual is a member of the SERB Roster or an Ohio resident, they should contact the Bureau of Mediation for assistance. Alternate selections do not constitute a mutually agreed dispute settlement procedure unless the individual selected is not a member of the SERB roster of neutrals or is not an Ohio resident.

Lack of Mutual Selection

The SERB will not consider the selection made by one party when the other party has been unresponsive. The SERB will make a discretionary appointment in this circumstance.

Second Panel

Because of strict timelines, the SERB does not send second panels for conciliation. The parties must make an alternate selection from the SERB Roster if they are not satisfied with the panel provided.

Notifying SERB of Your Selection(s)

The parties have five days from mailing of the panel to make their selection(s). Parties must convey their mutual selections in writing to the SERB ***(O.A.C. Rule 4117-9-06(C))***. The parties are encouraged to indicate a second choice or a third choice from the panel or from the SERB roster to be considered if their first choice is not available for appointment. In addition to submitting written selections, parties are to call the Bureau of Mediation with the selections in order that they can be considered in time for the conciliation appointment. Oral notification is authorized provided that written confirmation is sent timely. ***[O.A.C. Rule 4117-9-06(D)]***.

Selection or Appointment Extensions

Unless the parties agree to an alternate dispute settlement procedure, there is no means under the statute to extend the date of conciliation selection or appointment. There are no means under the statute to extend the date of the conciliation appointment unless the parties agree to an alternate dispute settlement procedure, or unless the parties have reached a tentative agreement and provided written notification to SERB. ***[O.A.C. Rule 4117-9-02(F)(1&3)]***.

Appointments

Conciliation appointments are made on the 6th day following issuance of the conciliation order. ***[O.A.C. 4117-9-05(D)]***.

Most appointments are made in accordance with the selection of the parties. When parties indicate a 1st choice, 2nd choice, etc., the SERB will contact the 1st choice for availability to accept the appointment and then proceed through the list of choices as necessary. If the parties provide one or more alternate choices, the SERB will proceed through the list provided by the parties. Because of the limited amount of time to make a conciliation appointment, it is necessary for roster members to return telephone calls made by SERB staff within 24 hours. Otherwise, when time is of the essence, the staff member will presume a neutral's unavailability and offer the assignment to another candidate.

Multi-unit appointments are made when the parties agree to the use of one conciliator for two or more units in negotiations ***[O.A.C. Rule 4117-9-02(C)]***. Typically, this arrangement involves a single hearing and report.

Discretionary Appointments

If selected conciliators are unavailable or if mutual selections are not made or are not submitted timely, SERB shall appoint a conciliator at its discretion. **[O.A.C. Rule 4117-9-06(C) and (D)]**. If only one party communicates its selection, SERB cannot consider the proposed selection because it is not a mutual selection of the parties as required by the rules. When neither party has communicated a selection, the statutory procedure is not abated because of their lack of response. A discretionary appointment will be made. If the parties' selection(s) decline(s) the assignment, there will be insufficient time to contact the parties to request additional selections; and a discretionary appointment will be made. SERB prefers not to make discretionary appointments; however, when required, SERB will appoint a neutral whose name did not appear on the panel provided.

Resignation of Conciliator

Should a conciliator resign from your case, a new conciliator will be appointed. The SERB will consider any alternate selection of the parties or alternatively will review the parties' initial selection(s) for conciliation and attempt to assign the alternate, if available, to the case. If no alternate selection has been provided or no alternate is available, then the SERB will appoint a conciliator at its discretion.

Mutually-agreed Alternate Dispute Settlement Procedure

If the parties want to change the statutory structure of conciliation, the parties may devise an alternate dispute settlement procedure at any time. **[Ohio Revised Code 4117.14(E)]**. For employees who are prohibited from striking under division (D)(1) of Section 4117.14 of the Revised Code, a mutually agreed-upon dispute settlement procedure must provide for final and binding resolution of disputed issues by a neutral third party. The procedure shall not permit or attempt to permit the employees to strike. **[O.A.C. Rule 4117-9-03(C)]**. A written alternate procedure must be executed by both parties and filed with the SERB **[O.A.C. Rule 4117-9-03(B)]**. The conciliator must cease efforts upon notification by the parties of the execution of an alternate procedure. The conciliator may submit an invoice to the parties for partial services rendered under the statutory conciliation procedure.

Some parties have established an alternate procedure at the beginning of their negotiations. Their alternate procedure may provide for another form of conciliation. In these instances, the SERB will submit, upon written request of the parties, a list of five neutrals for their consideration. When the parties deviate from the statutory dispute settlement procedure requirements, the deviation constitutes an alternate dispute settlement procedure **[O.A.C. 4117-9-03(F)]**. Conciliation fees under an alternate procedure are unrestricted.

Tentative Agreements

When the parties reach a tentative agreement on all remaining issues at impasse and send written notice to the SERB, the statutory procedure is automatically stayed by operation of O.A.C. Rule 4117-9-02(F)(3) in order to allow time for ratification of the proposed settlement. This circumstance applies regardless of whether the parties reached the tentative agreement with the assistance of the mediator or the conciliator, or on their own accord. Upon notification by one party of rejection of the tentative agreement, the statutory procedure is reactivated at the same point where it was interrupted.

Stays

SERB has issued stays of the conciliation process when the public employer has a valid, good faith doubt whether the exclusive representative maintains majority support among the members of the unit in negotiations. This doubt has been tied to a pending representation petition filed with SERB by a rival union or by members of the unit requesting decertification of the exclusive representative. If the employer submits a motion, the conciliation process may be stayed pending the disposition of the representation petition. The SERB, as it deems appropriate, may issue stays of conciliation for other causes. **[O.A.C. 4117-9-02(F)(2)]**.

The courts have, on occasion, issued stays, temporary restraining orders, or permanent injunctions in relation to the conciliation process. If the conciliator has invested much time in the proceedings prior to the stay and a lengthy delay is anticipated, the conciliator may submit an invoice for consideration of partial payment based upon services rendered.

Position Statements

At least **5 calendar days prior** to the hearing, the parties must send the following information to the conciliator, to the other party, and to the board:

- 1) The name of the party and the name, address, and telephone number of the principal representative of the party;
- 2) A description of the bargaining unit including the approximate number of employees;
- 3) A copy of the current collective bargaining agreement, if any; and
- 4) A report defining all unresolved issues, stating the party's final offer as to each unresolved issue, and summarizing the position of the party with regard to the unresolved issue. **[O.A.C. Rule 4117-9-06(E)]**. (Positions are to be written in contract language form and indicate effective date of the provisions).

Failure of a party to submit timely this information to the other party, to the conciliator, and to the board shall cause the conciliator to take evidence only in support of matters raised in the written statements submitted 5 calendar days prior to the hearing. **[O.A.C. Rule 4117-9-06(E)]**. The conciliator is responsible for enforcing this rule requirement.

On occasion, the parties will stipulate to a waiver of the rule requirement regarding the filing of position statements. The parties exercise such an option at their own risk. No precedent exists to support or oppose the ability of the parties to stipulate to a waiver.

Scheduling Hearing

The conciliator has authority to set the date, time, and place of the hearing. The conciliator shall hold a hearing within thirty days of the effective date of the board's order to conciliate, or as soon thereafter as practicable. When the conciliator contacts the parties to arrange a mutually agreed date and time of hearing, the conciliator may find it impossible to arrange a time of hearing desirable to all participants. In fact, one party may refuse to participate in the hearing under any circumstances because of pending litigation. If the parties cannot agree to an extension to resolve the conflict, the conciliator is to set a date and time of hearing which allows for a timely issuance of the subsequent conciliation award. A hearing must be conducted even if it is done in the absence of the other party. Recalcitrant parties may be encouraged to participate in the hearing, although under protest, noting that they are not waiving their objection to conciliation.

Scheduling Hearing (continued)

The location of the hearing is to be determined by the conciliator. The selected location should take into consideration convenience of the parties, if possible. With the cooperation of the parties, the conciliator is to select a site which does not require rental expense, unless the parties agree to assume the cost of rental expenses. The conciliator may not choose a hearing location at a cost to the parties unless the parties fail to agree to an alternate cost-free location. **[O.A.C Rule 4117-9-06(F)]**. Where feasible, the location must be within the jurisdiction of the state. **[O.R.C. Section 4117.14(G)(3)]**.

Postponement or Cancellation of Hearing

The parties by mutual agreement may postpone or cancel a scheduled conciliation hearing. The parties must contact the conciliator immediately upon knowing the need to postpone or cancel a hearing. The initial contact should be made by telephone and then confirmed in writing. The neutral may impose reasonable cancellation fees up to and including the new maximum rate by informing the parties of his/her cancellation policy in the rate sheet provided to the parties through the board. In instances where the parties have failed to communicate the postponement or cancellation of the hearing, the parties are to assume the costs of travel expenses and travel time of the conciliator.

Closed Hearing

Conciliation hearings are not open to the public **[O.A.C. Rule 4117-9-06(G)]**. They are viewed as part of the negotiation process. Attendance by individuals other than the participants should not be encouraged and must be approved by the parties.

Subpoena Request

Any party to the conciliation hearing may request to subpoena an individual or necessary documents. The following procedures apply:

- A subpoena request must be written and presented to the conciliator.
- Upon receipt of the request, the conciliator must determine the appropriateness of the subpoena. For valid requests, the conciliator is to call the SERB and convey the necessary information for the issuance of the subpoena by the SERB. This information includes:
 - name and complete address of party requesting subpoena
 - name, title (if applicable), and complete address of party being subpoenaed
 - documents or records to be produced at the hearing
 - the date, time, and location of the hearing
 - the relevant SERB case number
- Upon the conciliator's direction, the SERB will prepare the subpoena and send the form to the requesting party for proper service.

Hearing Record

The conciliator is responsible for the record of the hearing. The taking of notes on the part of the conciliator is considered sufficient. The costs of a stenographer are the responsibility of the requesting party or parties. Should delays result from production of the stenographic records, the parties must agree to the time extension. When the conciliator has stated at the hearing the date of closure of the record, additional extensions for submissions should not be granted except upon the mutual agreement of the parties.

Post-Hearing Submissions

Post-hearing briefs or other submissions are not encouraged. Should post-hearing submissions be necessary, the conciliator shall establish the deadline for submissions. A post-hearing submission must provide proof of service to reflect that the other party was served a copy of the submission.

Mediation

The conciliator is expected to recognize the role of mediation and its relationship to the process of conciliation. Prior to initiating hearing procedures, the conciliator is encouraged to attempt mediation to resolve issues at impasse [***O.R.C. Section 4117.14(G)(1)***]. Even if a tentative agreement cannot be reached on all disputed issues, a reduction in the number of issues to be addressed by conciliation may result.

In the course of a conciliation assignment, the conciliator may be asked to suggest contract language during mediation efforts. Such suggested language does not substitute for a conciliation award and has no status under the statutory procedure.

Prior to the appointment of the conciliator, a state (SERB) or federal (FMCS) mediator is assigned to the case [***O.A.C. Rule 4117-9-04(B)***]. If the mediator has scheduled a meeting with the parties, the conciliator should not schedule a hearing or mediation session in conflict with the arrangements made by the mediator. When a conflict cannot be avoided, the conciliator is obligated to contact the mediator to resolve the conflict.

Revising A Final Offer

If, after submission of the parties' position statements, mediation efforts result in a change in a final offer, a party may, by mutual agreement, submit a revised final offer to the conciliator. [***O.A.C. Rule 4117-9-06(E)(4)***].

Settlement At Hearing

Should the parties reach a tentative agreement with the assistance of the conciliator, the conciliator may submit upon the request of the parties a mediated settlement report which outlines the terms of the settlement. This report is not a conciliation award. If the tentative agreement is rejected, the conciliator should schedule a hearing and issue a final award. Alternatively, if the parties request that the conciliator incorporate the mediated settlement as the final award and the conciliator agrees to this request, then the report is a conciliation award.

Factors Which A Conciliator Must Consider

The State Employment Relations Board shall submit for inclusion in the record and for consideration by the conciliator the written report and recommendations of the fact finder. **[O.R.C. Section 4117.14(G)(6)]**. In compliance with O.R.C. Section 4117.14(G)(7), the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:

- (1) Past collectively bargaining agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) The stipulations of the parties; and
- (6) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, conciliation or other impasse resolution procedures in the public service or in private employment.

Retroactivity of Conciliation Award

Increases in rates of compensation and other matters with cost implications awarded by the conciliator are restricted as to retroactivity. **See O.R.C. Section 4117.14(G)(11)**. The Bureau of Mediation should be contacted for questions regarding this provision. Notwithstanding this restriction, the parties may, at anytime, amend or modify a conciliator's award or order by mutual agreement. **[O.R.C. Section 4117.14(G)(11)]**.

Issuance of Award

The conciliator is to issue the award as soon as possible following the close of the conciliation hearing. If the conciliator has agreed to a date of issuance with the parties, the conciliator is obligated to issue the report timely unless the parties mutually agree to an extension.

In order for the conciliation process to resolve all potential issues at impasse and not just those of the moment of the hearing, the conciliator should include by reference in the report all tentative agreements of the parties.

The conciliator should discuss with the parties the eventual arrangements for distribution of the conciliation award. If the award is to be hand-delivered or to be picked up, a receipt should be completed by the individual receiving the award. The receipt should be kept by the conciliator. If the parties desire that the award be sent by express mail, the parties are to assume the full cost for this expense. **The award must be issued to the SERB on the same day that it is issued to the parties.**

Post-Conciliation Clarification

If the conciliator is asked by the both parties to issue a clarification or supplement to the award after it has been issued, the conciliator is not under an obligation to provide the requested clarification or supplement. Because the jurisdiction of the conciliator has expired, the costs, if any, associated with a new hearing or with preparation of a clarification to the award are the responsibilities of the parties. If one party calls the conciliator for interpretation of a conciliation recommendation, the conciliator should arrange a conference call of the parties in order to respond to the item in question.

Late Report

If a conciliator is late in submitting a report, the parties should make a conference call to the conciliator to determine the cause and length of delay. If either party objects to the circumstance, the Bureau of Mediation should be contacted for assistance.

Implementation and Enforcement of Award

The issuance of a final offer settlement award constitutes a binding mandate to the public employer and the exclusive representative to take whatever actions are necessary to implement the award. **[O.R.C. Section 4117.14(I)]**. A party may bring suits for the enforcement of an award in the court of common pleas of any county wherein a party resides or transacts business. **[O.R.C. Sections 4117.14(F) and 4117.09(B)(1)]**.

Appeal of Award

All final offer settlement awards and orders of the conciliator made pursuant to Chapter 4117. of the Revised Code are subject to review by the court of common pleas having jurisdiction over the public employer as provided in Chapter 2711. of the Revised Code. If the public employer is located in more than one court of common pleas district, the court of common pleas in which the principal office of the chief executive is located has jurisdiction. **[O.R.C. Section 4117.14 (H)]**. As an alternative to an appeal, the parties may, at anytime, amend or modify a conciliator's award or order by mutual agreement. **[O.R.C. Section 4117.14(G)(11)]**.

Conciliation Costs

The conciliator under statutory appointment will be paid no more than \$950.00/day for eight hours of service which include time for travel, the hearing, research, and writing of the report. Hours greater than or less than eight shall be compensated at \$118.75/hour. The conciliator will also be reimbursed for all actual and necessary expenses not to exceed \$150.00/day. **[O.A.C. Rule 4117-9-01(C)]**. The parties are to each pay 50% of the charges upon receipt of an invoice from the conciliator. **[O.A.C. Rule 4117-9-06(K)]**. A party that fails to pay a neutral's fee within 60 days of its issuance, may be required to pay a 10% late fee in addition to the initial charges. **[O.A.C. Rule 4117-9-01(C)]**.

Publication of Award

The SERB maintains a library of all conciliation reports. In order to provide an effective library service, certain standards are suggested to the conciliator in preparing the report. The report is to be typed on 8 1/2" x 11" paper. The date of issuance and the related SERB case number are to be listed on the face of the report.

If the conciliator desires to have the report published as part of a professional journal, a release may not be required because the report is a public record. As a courtesy, the parties involved should be consulted.

8/15