

**STATE EMPLOYMENT RELATIONS BOARD
CONCILIATION HEARING AND REPORT GUIDELINES (REVISED JANUARY 2008)**

Conciliation Extensions

The conciliator has no authority to extend timelines absent mutual agreement of the parties. The parties may mutually agree to extend the timelines of the statutory conciliation procedure once the conciliator has been appointed. Extensions must be written, signed by both parties, sent to the conciliator, and filed with the State Employment Relations Board. Extensions must include a time element (*specific number of days or specific date*). Parties may renew extensions as necessary. **[O.A.C. Rule 4117-9-06(I)]**. If the parties have reached a tentative agreement and provided written notification to SERB, the timelines of the statutory conciliation procedure are extended. **[O.A.C. Rule 4117-9-02(F)(3)]**.

Extension Expires

If there has never been a written extension or if neither party pursues conciliation and the extension expires, the parties are not in compliance with SERB rules. The parties may rectify the matter by agreeing to a new written extension. If the parties do not execute a new extension, the conciliator will be required to schedule a hearing and write a report within thirty (30) days from when one party requests, in writing, assistance unless the parties mutually agree to another timeframe.

Position Statements

At least 5 calendar days prior to the hearing, the parties must provide the following information to the conciliator, to the other party, and to the board. **[O.R.C. Section 4117.14(G)(3)]**:

- 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)(4)]**. (*Positions are to be written in contract language form and indicate effective date of the provisions*).

Failure to provide 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 provided 5 calendar days prior to the hearing. **[O.R.C. Section 4117.14(G)(3)]**.

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)]**.

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. 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)]**. The location must be within the jurisdiction of the state. **[O.R.C. Section 4117.14(G)(3)]**. Conciliation hearings are not open to the public. **[O.R.C. 4117-21 and O.A.C. Rule 4117-9-06(G)]**.

Postponing or Cancelling 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 when 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.

Subpoena Requests

The parties are to make subpoena requests to the conciliator, who will determine the appropriateness of the request. Upon the conciliator's direction, SERB will prepare the subpoena and send the form to the requesting party for proper service.

Post-hearing Submissions

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

Resignation of Conciliator

Should a conciliator resign from your case, a new conciliator will be appointed. 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 SERB will appoint a conciliator at its discretion or will issue, when feasible, a new panel for the parties' selection.

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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 no more than \$118.75/hour. Conciliation fees vary. The neutral may impose reasonable cancellation fees up to an including this new maximum rate by informing the parties of his/her cancellation policy in the rate sheet provided to the parties by the board. The conciliator's per diem is listed on the neutral's biography sheet. 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 who 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)]**.

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)]**. Conciliation fees under an alternate procedure are unrestricted.

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)**. If there are questions regarding this provision, the parties should contact the Bureau of Mediation. 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)]**.

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 report and the conciliator agrees to this request, then the report is a conciliation award.

Late Report

The conciliator is required to submit the report within 30 days of the last date of hearing unless the parties mutually agree to an extension. 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 the parties are unable to reach the conciliator or if either party objects to the conciliator's proposed completion date, contact the Bureau of Mediation at **(614-644-8716)** for assistance. A delay does not affect the validity of the conciliation report. **[O.A.C. Rule 4117-9-06(I)]**.

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(J)]**. 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 any time, amend or modify a conciliator's award or order by mutual agreement. **[O.R.C. Section 4117.14(G)(11)]**.

BASIS FOR PROCEDURES AND GUIDELINES

THESE PROCEDURES AND GUIDELINES HAVE BEEN DEVELOPED AS AN INFORMATION SOURCE OF STATUTORY PROVISIONS, RULES, AND CURRENT ADMINISTRATIVE PRACTICES APPLICABLE TO THE DISPUTE SETTLEMENT PROCESS.

THESE PROCEDURES AND 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 AT (614) 644-8716 IF THERE ARE QUESTIONS CONCERNING THE DISPUTE SETTLEMENT PROCESS.