

# STATE EMPLOYMENT RELATIONS BOARD

## FACT-FINDING HEARING AND REPORT GUIDELINES (REVISED OCTOBER 2010)

### **Fact-finding Extensions**

The fact finder has no authority to extend timelines absent mutual agreement of the parties. The parties may mutually agree to extend the timelines of the statutory fact-finding procedure. Extensions must be written, signed by both parties, sent to the fact finder, 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. [Ohio Administrative Code Rule 4117-9-05(G)]. If the parties have reached a tentative agreement and provided written notification to SERB, the timelines of the statutory fact-finding procedure are extended. [O.A.C. Rule 4117-9-02(F)(3)].

### **Extension Expires**

If neither party pursues fact finding and the written 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 fact finder will be required to schedule a hearing and write a report within fourteen days from when one party requests assistance, in writing, unless the parties mutually agree to another timeframe.

### **Position Statements**

No later than five p.m. on the last business day prior to the day of the hearing, the parties must provide the following information to the fact finder and to the other party:

- 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 written statement defining all unresolved issues and summarizing the position of the party with regard to each unresolved issue. (Positions are to be written in contract language form and indicate the effective date of the provisions).

Failure to provide timely this information to the other party and the fact finder shall cause the fact finder to take evidence only in support of matters raised in the written statements provided prior to the day of the hearing. [O.A.C. Rule 4117-9-05(F)].

### **Scheduling Hearing**

The fact finder has authority to set the date, time, and place of the hearing. The fact finder 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 4117-9-05(H)]. Fact-finding hearings are not open to the public. [O.R.C. 4117-21 and O.A.C. Rule 4117-9-05(I)].

### **Postponing or Cancelling Hearing**

The parties by mutual agreement may postpone or cancel a scheduled fact-finding hearing. The parties must contact the fact finder 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 this 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 fact finder.

### **Subpoena Requests**

The parties are to make subpoena requests to the fact finder, who will determine the appropriateness of the request. Upon the fact finder's direction, SERB will prepare the subpoena and send the form to the requesting party for proper service. [O.A.C. Rule 4117-9-05-(H)].

### **Posthearing Submissions**

Posthearing briefs or other submissions are not encouraged. Should post-hearing submissions be necessary, the fact finder 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.

### **Resignation of Fact Finder**

Should a fact finder resign from the case, a new fact finder will be appointed. At the time of resignation, SERB will consider any alternate selection of the parties or, alternatively, will review the parties' initial selection(s) for fact-finding and attempt to assign the alternate, if available, to the case. If no alternate was provided or no alternate is available, then SERB will appoint a fact finder at its discretion or will issue, when feasible, a new panel for the parties' selection.

## **STATE EMPLOYMENT RELATIONS BOARD FACT-FINDING HEARING AND REPORT GUIDELINES *(continued)***

### **Mutually-Agreed Alternate Dispute Settlement Procedure**

If the parties want to forgo fact-finding or want to change the statutory structure of fact-finding, the parties may devise an alternate dispute settlement procedure at any time. [O.R.C. 4117.14(E)].

### **Settlement At Hearing**

Should the parties reach a tentative agreement with the assistance of the fact finder, the fact finder may submit upon the request of the parties a mediated settlement report outlining the terms of the settlement. This report is not a fact-finding report and is not subject to the three-fifths voting standards of the statute. If the tentative agreement is rejected, the fact finder should schedule a hearing and issue a final report. Alternatively, if the parties request that the fact-finder incorporate the mediated settlement as the final report and the fact finder agrees to this request, then the report is a fact-finding report subject to the three-fifths voting standards of the statute.

### **Late Report**

If a fact finder is late submitting a report, the parties should make a conference call to the fact finder to determine the cause and length of delay. If the parties are unable to reach the fact finder or if either party objects to the fact finder's proposed completion date, contact the Bureau of Mediation for assistance **(614-644-8716)**.

### **Error in the Report**

If the fact finder's report contains an error that needs correction, the parties should make a conference call to the fact finder to discuss the concern. Obvious typographical errors admitted by a fact finder do not require adjustment. If the report contains a substantive error and the parties require an adjustment to the report, the fact finder is to file a request with SERB for authorization to adjust the report [O.A.C Rule 4117-9-05(L)]. In the interim, the parties should conduct a vote upon the report with consideration of the error involved. Once SERB grants authorization for the fact finder to adjust the report, new timelines will be established for conducting a vote to accept or reject the report as adjusted. [O.A.C Rule 4117-9-05(L)].

### **Voting Upon the Report**

Within seven (7) days of the service date of the report, the parties are to conduct an election to accept or reject the fact-finder's report. Service date is the date of postmark for mail service and the date of delivery for personal service. (O.A.C. Rules 4117-9-05 (M) and (N) and 4117-1-02.) Each party must send written verification by electronic email of the result of its vote within 24 hours, but in no event later than 24 hours after expiration of the seven-day voting period. Failure to comply with all requirements of O.A.C. Rule 4117-9-05(M) or (N), including the requirement of proof of service for vote certification, will result in the fact finder's recommendations being deemed accepted by the non-complying party. Use the SERB fact-finding vote certification form to assure submission of all required information.

### **Fact-finding Costs**

The fact finder under a 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. Fact-finding fees vary. The fact finder's per diem is listed on the neutral's biography sheet. The neutral may impose reasonable cancellation fees up to and including this new maximum rate by informing the parties of his/her cancellation policy in the rate sheet provided to the parties through the board. The fact finder 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 share the cost of fact finding. [Ohio Revised Code Section 4117-14(C)(5)]. A party which 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)].

### **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.**