

State Employment Relations Board

Board Meeting Minutes
May 6, 2010

The State Employment Relations Board met on May 6, 2010, at 11:00 a.m., at 65 East State Street, 12th Floor, Columbus, Ohio. Present at the meeting were Chairperson N. Eugene Brundige, Vice Chairperson Michael G. Verich, and Board Member Robert F. Spada.

I. APPROVAL OF MINUTES FOR THE APRIL 22, 2010 BOARD MEETING:

Board Member Spada moved that the Board approve the minutes for the April 22, 2010 Board meeting. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

1. Case 09-MED-08-0775 Ohio Council 8, American Federation of State, County and Municipal Employees, Local 1093 and City of Blue Ash

The Employee Organization filed a Notice to Negotiate in Case 09-MED-08-0775, initiating negotiations for a successor collective bargaining agreement with the Employer. Subsequently, a Petition for Decertification Election was filed in Case 09-REP-11-0130, seeking to remove the Employee Organization as the exclusive representative of the employees in the Employer's Service Department.

The Employer filed a motion to stay the negotiations pending resolution of the related representation case. The motion to stay the negotiations was filed in Case 09-REP-11-0130 instead of Case 09-MED-08-0775. The motion was unopposed.

Vice Chairperson Verich moved that the Board transfer the Employer's motion from Case 09-REP-11-0130 to Case 09-MED-08-0775 and grant the motion to stay negotiations pending disposition of the related representation case. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

2. Case 09-MED-12-1487 Fraternal Order of Police, Ohio Labor Council, Inc. and Erie County Sheriff

The Employee Organization, on behalf of the bargaining unit of Cooks, filed a Notice to Negotiate concerning negotiations for a successor collective bargaining agreement with the Employer. The existing agreement was effective from April 1, 2007 through March 31, 2010.

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The Employer filed a motion to dismiss the Notice to Negotiate. Attached to the motion was a copy of a "Termination Agreement" signed by the parties. According to the Termination Agreement, the parties desired to terminate the collective bargaining agreement effective March 31, 2010; in addition, the Employer would accept the written resignations of all members of the Cooks Unit. The motion to dismiss was unopposed

Board Member Spada moved that the Board grant the motion and dismiss without prejudice the Notice to Negotiate. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 10-REP-03-0057 Lebanon Professional Firefighters, IAFF Local 4796 (AFL-CIO) and City of Lebanon, Ohio Division of Fire

The Employee Organization has filed a Request for Recognition. The substantial evidence is sufficient. No objections have been filed. The Employer has complied with the posting requirements.

Vice Chairperson Verich moved that the Board certify the Employee Organization as the exclusive representative of all employees in the relevant bargaining unit. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

2. Case 09-REP-11-0131 Fraternal Order of Police, Ohio Labor Council, Inc. and City of East Cleveland (May 19, 2010 – June 1, 2010)

3. Case 10-REP-03-0051 International Union, UAW and Ohio Patrolmen's Benevolent Association and Trumbull County Sheriff (May 18, 2010 – June 1, 2010)

All parties have executed and have filed the appropriate Consent Election Agreements seeking mail-ballot elections.

Board Member Spada moved that the Board approve the Consent Election Agreements and direct mail ballot elections to be conducted during the polling periods indicated. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

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4. Case 10-REP-04-0067 Ohio Patrolmen's Benevolent Association and Cuyahoga County Sheriff's Office
5. Case 10-REP-04-0068 Mineral Ridge Education Association, OFT/AFT and Weathersfield Local Board of Education

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

Vice Chairperson Verich moved that the Board approve the jointly filed petitions and amend the certifications accordingly. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

6. Case 10-REP-04-0072 Ashtabula Association of Classified School Employees, OEA/NEA and Ashtabula Area City Schools Board of Education

The parties have jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to reflect current contract language and include Library Aide. The proposed amendment appears appropriate.

Board Member Spada moved that the Board approve the jointly filed petition and amend the unit accordingly. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

7. Case 10-REP-03-0042 United Steelworkers Union Local 9110.5 and City of Westerville

The Employee Organization filed a Petition for Amendment of Certification. The petition did not correctly reflect the existing Board-certified bargaining unit. The Employee Organization then filed a new Petition for Amendment of Certification (Case 10-REP-04-0063) that correctly reflected the bargaining-unit's composition.

Vice Chairperson Verich moved that the Board dismiss without prejudice the Petition for Amendment of Certification. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

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8. Case 91-REP-07-0176 Fraternal Order of Police, Ohio Labor Council, Inc. and Erie County Sheriff

The Employee Organization has filed a motion to revoke certification. The motion is unopposed. The parties confirm that no contract exists.

Board Member Spada moved that the Board grant the motion and revoke the Employee Organization's certification. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

9. Cases 09-RBT-10-0001 Kathryn McNeal Seevers, et al. and Oak Hill Union Local Independent Employees and Oak Hill Union Local Schools
09-RBT-10-0002
09-RBT-10-0003
09-RBT-10-0004
09-RBT-10-0005
09-RBT-10-0006
09-RBT-10-0007
09-RBT-10-0008

In each cited case, the Petitioner filed a Petition to Challenge Rebate Determination. In its decision in In re Heitger, SERB 95-004 (3-28-95), the Board announced the following requirements for filing a Petition to Challenge Rebate Determination:

1. A petitioner must make a timely demand on the employee organization for a rebate of non-chargeable expenditures under the employee organization's internal procedure.
2. After the employee organization's rebate determination is issued, a petitioner must file a challenge with the State Employment Relations Board (SERB):
 - a. Within thirty (30) days of the determination date, and
 - b. The challenge must specify the arbitrary or capricious nature of the determination.

If a Petitioner does not comply with each of these requirements, then the petition will be dismissed.

The Petitioners have verified that they made a timely demand for a rebate of non-chargeable expenditures, received the Employee Organization's determination, and have filed Petitions to Challenge Rebate Determination within thirty (30) days of the determination date. While the Petitioners have indicated which expenses they believe are arbitrary and capricious, they have not provided information to support the allegation. Dismissal of the instant petitions appears appropriate. Also, it must be noted that the Petitioner in Case 09-RBT-10-0004 retired on May 15, 2009, and was no longer a public employee on October 23, 2009 when the petitions were filed.

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Vice Chairperson Verich moved that the Board dismiss with prejudice the Petitions to Challenge Rebate Determination because the Petitioners have failed to specify the arbitrary or capricious nature of the determination as required by Ohio Revised Code § 4117.09(C). Board Member Spada seconded the motion. Chairperson Brundige called for the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

10. Case 09-REP-12-0153 Wadsworth Fire and EMS, IAFF Local 4136 and City of Wadsworth

The Employee Organization filed an Opt-In Request for Recognition. The Employer responded by filing objections and a Petition for Representation Election. A conference call was conducted. The parties were not able to reach an agreement, but agreed to try to work on resolving all disputes. To date, they had not been able to reach an agreement concerning an appropriate bargaining unit.

Board Member Spada moved that the Board, without rendering any judgment on the merits, order the parties to pre-determination mediation for a period not to exceed thirty (30) days with instructions to the mediator to report back to the Board at the conclusion of the mediation or the mediation period, whichever occurs 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.. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

11. Case 09-REP-08-0096 Tolles Education Association, OEA/NEA and Tolles Career & Technical Center

12. Case 09-REP-10-0120 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and City of Green

13. Case 09-REP-12-0160 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Akron Metropolitan Housing Authority

The Employee Organizations filed Petitions for Clarification of Bargaining Unit. The Employers responded by filing objections and position statements opposing the petitions. Conference calls were conducted. The Board directed the parties in Case 09-REP-12-0160 to pre-determination mediation on March 11, 2010. All three cases had been mediated by the Representation Section. The parties did not reach an agreement concerning bargaining-unit status of the employees in question.

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Vice Chairperson Verich moved that the Board direct the matters to hearing before the State Employment Relations Board to determine bargaining-unit status of the employees in question, and for all other relevant issues, date and time of hearings to be determined by the Office of General Counsel after consultation with the parties. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

14. Case 09-REP-09-0108 Jane M. Rosenfeld and SEIU/District 1199 WV/KY/OH, The Health Care and Social Service Union, Change to Win, CLC and Public Library of Cincinnati & Hamilton County

- There were 116 valid ballots cast
- There were 3 challenged ballots
- SEIU/District 1199 WV/KY/OH, The Health Care and Social Service Union, Change to Win, CLC received 50 votes
- No Representative received 66 votes and prevailed in this election.

15. Case 09-REP-10-0127 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Sharonville

- There were 5 valid ballots cast
- There were 0 challenged ballots
- Fraternal Order of Police, Ohio Labor Council, Inc. received 2 votes
- No Representative received 3 votes and prevailed in this election.

Board Member Spada moved that the Board certify that the employees in each bargaining unit have chosen to have no exclusive representative for the purposes of collective bargaining. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

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16. Case 09-REP-09-0109 Clermont County Deputy Sheriff's Association and Fraternal Order of Police, Ohio Labor Council, Inc. and Clermont County Sheriff
(Deputy Sheriffs – below Sergeant, including Investigators)
- There were 51 valid ballots cast
 - There were 2 challenged ballots
 - No Representative received 0 votes
 - Fraternal Order of Police, Ohio Labor Council, Inc. received 2 votes
 - Clermont County Deputy Sheriff's Association received 49 votes and prevailed in this election.
17. Case 09-REP-09-0110 Clermont County Deputy Sheriff's Association and Fraternal Order of Police, Ohio Labor Council, Inc. and Clermont County Sheriff
(Corporals)
- There were 6 valid ballots cast
 - There were 0 challenged ballots
 - No Representative received 0 votes
 - Fraternal Order of Police, Ohio Labor Council, Inc. received 0 votes
 - Clermont County Deputy Sheriff's Association received 6 votes and prevailed in this election.
18. Case 09-REP-12-0151 Teamsters Local 507, affiliated with the International Brotherhood of Teamsters and Ohio Patrolmen's Benevolent Association and City of Cleveland
- There were 107 valid ballots cast
 - There were 9 challenged ballots
 - No Representative received 0 votes
 - Ohio Patrolmen's Benevolent Association received 26 votes
 - Teamsters Local 507, affiliated with the International Brotherhood of Teamsters received 81 votes and prevailed in this election.

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19. Case 09-REP-12-0155 Teamsters Local 436 of the International Brotherhood of Teamsters and Cuyahoga County Board of Commissioners (County Airport)
- There were 8 valid ballots cast
 - There were 0 challenged ballots
 - No Representative received 0 votes
 - Teamsters Local 436 of the International Brotherhood of Teamsters received 8 votes and prevailed in this election.
20. Case 09-REP-12-0157 Teamsters Local 377, International Brotherhood of Teamsters and Fraternal Order of Police, Ohio Labor Council, Inc. and Mahoning County Dog Warden
- There were 4 valid ballots cast
 - There were 0 challenged ballots
 - No Representative received 0 votes
 - Fraternal Order of Police, Ohio Labor Council, Inc. received 0 votes
 - Teamsters Local 377, International Brotherhood of Teamsters received 4 votes and prevailed in this election.
21. Case 09-REP-12-0149 Teamsters Local 436 and Bainbridge Township, Geauga County
- There were 5 valid ballots cast
 - There were 0 challenged ballots
 - No Representative received 1 vote
 - Teamsters Local 436 received 4 votes and prevailed in this election.
22. Case 09-REP-12-0150 Teamsters Local #348 and Copley-Fairlawn Support Staff Association, OEA/NEA and Copley-Fairlawn City School District Board of Education
- There were 128 valid ballots cast
 - There were 8 challenged ballots
 - No Representative received 6 votes
 - Copley-Fairlawn Support Staff Association, OEA/NEA received 36 votes
 - Teamsters Local #348 received 86 votes and prevailed in this election.

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Vice Chairperson Verich 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 unit. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Case 10-ULP-01-0024 Fraternal Order of Police, Ohio Labor Council, Inc. v. Mahoning County Sheriff

Charging Party filed an unfair labor practice charge against the Employer. The Board determined that probable cause existed for believing the Employer had committed or was committing unfair labor practices, authorized the issuance of a complaint, referred the matter to hearing, and directed the parties to unfair labor practice mediation.

The parties filed a settlement agreement that resolved the underlying dispute. In the settlement, Charging Party agreed to withdraw the pending charge. In addition, the parties agreed that the Board would retain jurisdiction for purposes of enforcing the terms and conditions of the agreement.

Board Member Spada moved that the Board construe the settlement agreement as a motion to withdraw, grant the motion, and dismiss with prejudice the unfair labor practice charge. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

2. Case 08-ULP-12-0520 SERB v. State of Ohio, Department of Rehabilitation and Correction, Correctional Reception Center and Virginia Lamneck

Robert F. Dalton filed an unfair labor practice charge against the Employer, alleging that the Employer violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(2). The Board determined that probable cause existed to believe that the Employer committed an unfair labor practice, authorized the issuance of a complaint, and directed the matter to hearing.

A complaint was issued. A hearing was held on January 15, 2010, wherein testimonial and documentary evidence was presented. On March 4, 2010, the Administrative Law Judge's Proposed Order was issued, recommending that the Board find that the Employer violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(2). The Employer filed exceptions to the Proposed Order. Counsel for Complainant filed a motion for extension of time to respond to the exceptions and also a response to the exceptions.

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Vice Chairperson Verich moved that the Board grant the motion for extension of time to respond to exceptions; adopt the Findings of Fact, Analysis and Discussion, and Conclusions of Law in the Administrative Law Judge's Proposed Order, finding that the Employer violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(2) by obtaining communications between Mr. Dalton and a grievant and using the information in a grievance-arbitration hearing; and issue a cease-and-desist order with a Notice to Employees requiring the Employer to (a) post for sixty days in all the usual and normal posting locations where bargaining-unit employees represented by the Service Employees International Union, District 1199 work, the Notice to Employees furnished by the Board; and (b) notify the Board in writing within twenty calendar days from the date the Order becomes final of the steps that have been taken to comply therewith. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

V. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 09-ULP-10-0490 Napoleon Faculty Association, OEA/NEA v. Napoleon City School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), and (5) by unilaterally making changes to the teachers' work schedule and adding an all-day kindergarten without bargaining. On March 8, 2010, Charging Party filed a Motion to Partially Withdraw charge, specifically the Ohio Revised Code § 4117.11(A)(1) and (5) allegations, and continuing to proceed with the Ohio Revised Code § 4117.11(A)(3) allegation. Information gathered during the investigation revealed that Charging Party failed to provide any information to support the Ohio Revised Code § 4117.11(A)(3) allegation.

Board Member Spada moved that the Board grant Charging Party's Motion to Partially Withdraw Charge, and dismiss with prejudice the Ohio Revised Code § 4117.11(A)(3) allegation for lack of probable cause to believe that an unfair labor practice has been committed by Charged Party. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

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2. Case 09-ULP-11-0592 Hocking College SSP Education Association
v. Hocking College

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by retaliating against Stephanie Parrish because she joined the union. Information gathered during the investigation revealed that Ms. Parrish failed to meet performance expectations, and her termination was unrelated to her exercise of protected rights. Charging Party failed to provide any information to support the Ohio Revised Code § 4117.11(A)(1) allegation.

Vice Chairperson Verich 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 Charged Party. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

3. Case 09-ULP-12-0607 Fraternal Order of Police, Ohio Labor Council,
Inc. v. Summit County Sheriff

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by failing to bargain in good faith when it reneged on an agreement extending the shift bidding period. Information gathered during the investigation revealed that Charged Party's reasoning behind its actions were not made in bad faith. Under the circumstances, one could reasonably conclude that employees were interfered with, restrained or coerced in the exercise of their Ohio Revised Code Chapter 4117 rights by the employer's conduct.

The Investigator recommended 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 if Charged Party violated Ohio Revised Code § 4117.11(A)(1), but not (5), by reneging on an agreement extending the shift bidding period.

General Counsel Keith stated that Charged Party is alleged to have failed to bargain in good faith because it unilaterally extended the shift-bidding period. "A purely contractual dispute, which encompasses no arguable statutory violation, would be a candidate for dismissal for lack of probable cause." In re Upper Arlington Ed Assn, SERB 92-010 (6-30-92), n.1. In Article 32 of the collective bargaining agreement, titled "Shift and Day Off Preference," the parties set out a process for submitting a written application for indicating the first and second preferences for shift assignments each year. The process included application periods. If Charged Party improperly extended these contractual timelines, the matter should be addressed through the parties' collective bargaining agreement. Consequently, this charge should be dismissed for lack of probable cause in accordance with the In re Upper Arlington Ed Assn decision.

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Board Member Spada moved that the Board dismiss the unfair labor practice charge with prejudice for lack of probable cause to believe that a violation has occurred. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

- 4. Case 10-ULP-01-0005 United Steelworkers of America, Local 1949-B v. Marion Public Health
- 5. Cases 10-ULP-01-0008 United Steelworkers of America, Local 1949-2B v. City of Marion, Board of Health, etc.
- 10-ULP-02-0053 Heather Hughes v. City of Marion, Board of Health, etc.

In Case 10-ULP-01-0005, the unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), and (5) by interfering with employees in the exercise of guaranteed rights and refusing to bargain changes in terms and conditions of employment. In Cases 10-ULP-01-0008 and 10-ULP-02-0053, the unfair labor practice charges alleged that Charged Parties violated Ohio Revised Code § 4117.11(A)(1) and (3) by interfering with Charging Parties' rights and retaliating against her for engaging in protected activity.

Vice Chairperson Verich moved that the Board, without rendering any judgment on the question of whether probable cause exists, hold the matters in abeyance until the representation matter is determined. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

- 6. Case 10-ULP-02-0043 Robert Zubek v. Cleveland Police Patrolmen's Association

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(6) by repeatedly refusing to file a Whistleblower's Protection action. Information gathered during the investigation revealed that Charged Party's actions and reasoning regarding the related grievance-arbitration settlement did not constitute a breach of the duty of fair representation. Charging Party failed to show that the Charged Party failed to take a basic and required step by not filing a Whistleblower's Protection action.

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Board Member Spada 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 Charged Party, and for lack of jurisdiction with regard to representation in a Whistleblower's Protection action. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

7. Case 10-ULP-02-0057 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Its Local 2182, AFL-CIO v. City of Conneaut and City Manager Robert Schaumleffel

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally implementing changes to health-care coverage, dealing directly with employees on health insurance, and refusing to provide information relative to health insurance. Information gathered during the investigation revealed that Charged Party appeared to have failed to bargain in good faith. During contract negotiations for a successor agreement, Charged Party's proposal included changes to health care. Prior to the parties entering into any meaningful negotiations, Charged Party went directly to the employees to offer them the choice of insurance plans. After repeated requests for information relative to the insurance plan, Charged Party failed to respond to Charging Parties' requests.

Vice Chairperson Verich 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 and 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 if Charged Parties violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally implementing changes to health care coverage, dealing directly with employees on the health insurance, and refusing to provide information relative to the health insurance. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

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8. Case 10-ULP-02-0058 Dawn Kazar v. Copley-Fairlawn Support Staff Association, OEA/NEA

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(6) by failing to represent Charging Party. Information gathered during the investigation revealed that, pursuant to In re OCSEA/AFSCME Local 11, SERB 98-010 (7-22-98), Charged Party's actions did not appear to be arbitrary, discriminatory, or in bad faith when it did not provide representation to Charging Party when Charged Party's SERS disability retirement benefits were denied. No provision in the agreement provided for SERS, and therefore Charging Party would not have been able to file a grievance on her behalf. SERS appeared to have an internal appeal process for denial of benefits, and Charged Party offered to "guide" Charging Party through the process.

Board Member Spada 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 Charged Party. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE:	<u>Yes</u>	VERICH:	<u>Yes</u>	SPADA:	<u>Yes</u>
Affirmed	<u>X</u>	Denied	<u> </u>		

9. Case 10-ULP-02-0064 International Brotherhood of Teamsters Local 436 v. Ohio Turnpike Commission

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by refusing to pay its share of the arbitration fees. Information gathered during the investigation revealed that, similar to Franklin County Sheriff and Bryan City, Charged Party's refusal to pay the arbitration fees, despite its claim that Charging Party proceeded with the arbitration hearing *ex parte*, appeared to rise to a violation of the statute.

The Investigator recommended 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 if Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by refusing to pay its share of the arbitration fees.

Chairperson Brundige offered an alternative and moved that the Board, without rendering any judgment on the merits, order the parties to pre-determination mediation for a period of 30 days with instructions to the mediator to report back to the Board at the conclusion of the mediation or the mediation period, whichever occurs 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. Vice Chairperson Verich seconded the motion.

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Chairperson Brundige called for discussion and stated that neutral arbitrators lie at the heart of the labor-management system. Failure to pay a neutral is a serious step. The parties might benefit from an opportunity to remedy this situation prior to a possible probable-cause determination. Chairperson Brundige further stated that the mediator should require those persons necessary to resolve this matter to attend the mediation, including those persons who made the decision to not pay. There being no further discussion, Chairperson Brundige called for the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

10. Case 10-ULP-02-0070 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO v. Ridgemont Local School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), (3), and (4) by retaliating against an employee for engaging in protected activity.

Board Member Spada 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 occurs 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. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

11. Case 10-ULP-02-0071 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 0243 v. Sycamore Community City School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (3) by retaliating against Dale Greer for filing a grievance and thus interfered with, restrained, or coerced him in the exercise of Ohio Revised Code Chapter 4117 guaranteed rights. Information gathered during the investigation revealed Charging Parties' information did not support the Ohio Revised Code § 4117.11(A)(1) allegation. Under the totality of circumstances for the Ohio Revised Code § 4117.11(A)(3) allegation, an analysis of the circumstantial evidence of Charged Party's motivation revealed, by a preponderance of the evidence, that Charged Party adequately rebutted the presumption of anti-union animus. Through the evaluation, Charged Party addressed an issue of behavior that occurred within the evaluation period. It appeared that the timing of the evaluation was proper. Charged Party responded to Mr. Greer's supervisor's formal complaint of harassment. Charged Party found the supervisor's charge credible because of similar incidents described by witnesses.

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Vice Chairperson Verich 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 Charged Party. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

12. Case 10-ULP-03-0091 Frederick A. Anthony v. State of Ohio, Department of Taxation

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) by filing a civil action against him in retaliation for the exercise of guaranteed rights. Information gathered during the investigation revealed that, pursuant to Ohio Revised Code § 4117.11, it did not appear Thomas Duncan was acting as the Employer, its agent or representative, but as a private citizen when he filed the action in small claims court. Charged Party stated that Mr. Duncan “acted outside his scope of employment” when he filed the civil action.

Board Member Spada 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 Charged Party. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

13. Case 10-ULP-03-0095 Lisa A. Snyder v. Four County Career Center

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(3) and (8) by failing to abide by the terms outlined in her continuing contract. Information gathered during the investigation revealed that Charging Party is a public employee, but did not provide any information to show how she was harmed or that she was engaged in any protected activity at the time of the extended contract correction. Charging Party failed to establish a prima facie case of discrimination. Charging Party did not provide sufficient information to support the Ohio Revised Code § 4117.11 (A)(8) allegation. Charging Party knew or should have known in 2009 that she was not being paid at the Warehouse Manger rate, which occurred more than 90 days before the charge was filed with the Board. No mitigating circumstances existed that warranted equitable tolling of the statute of limitations.

Vice Chairperson Verich 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 Charged Party and as untimely filed. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

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14. Case 10-ULP-02-0040 Akron Firefighters Association, Local 330, IAFF, AFL-CIO v. City of Akron

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally changing terms and conditions of employment and direct dealing during negotiations. Information gathered during the investigation revealed that without a management right to counter a union right to negotiate the change, or an indication why the matter was not an appropriate subject for mediation, Charged Party overlooked its obligation to negotiate. Charging Party did not support the Ohio Revised Code § 4117.11(A)(1) allegation, and withdrew the allegation regarding direct dealing.

The Investigator recommended that the Board find probable cause to believe an unfair labor practice occurred, authorize the issuance of a complaint, and refer the matter to hearing to determine if the Charged Party violated Ohio Revised Code 4117.11(A)(5), but not (1), by unilaterally changing the terms and conditions of employment, and direct the parties to expedited mediation to run concurrently with the expedited processing of the charge and complaint.

General Counsel Keith offered an alternative recommendation that the Board find probable cause to believe an unfair labor practice has been committed. Mr. Keith stated that in In re Defiance City School Dist Bd of Ed, SERB 97-016 (11-21-97), the Board attempted to deal with the question of past practice and the relationship of such practices with mandatory subjects of bargaining. Subsequently, the Ohio Supreme Court addressed when a past practice is binding on a collective bargaining agreement in Assn. of Cleveland Fire Fighters, Local 93 of the Internatl. Assn. of Fire Fighters v. Cleveland, 99 Ohio St.3d 476, 2003-Ohio-4278. The question of whether a past practice arises solely under the collective bargaining agreement and, thus should be determined by an arbitrator, or whether the past practice also has application to the statutory requirements of Ohio Revised Code § 4117.11, is one of first impression and should be addressed through consideration of this case. As a result, Mr. Keith did not recommend mediation.

Board Member Spada moved that the Board accept the alternative recommendation, find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, refer the matter to an expedited hearing before a member of the State Employment Relations Board to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(5), but not (1), by unilaterally changing the annual January benefit payments into prorated payments for employees leaving the City's employment during the year, in violation of a longstanding past practice to not charge prorated payments. The hearing shall be bifurcated, and the parties shall first address the threshold issue of whether a binding past practice existed, and, if so, was the past practice strictly a contractual past practice or did the conduct also violate Ohio Revised Code § 4117.11(A)(5). After determining the threshold issue, the Board member may consider other issues not addressed in the threshold question. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

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15. Case 10-ULP-02-0044 Fraternal Order of Police, Akron Lodge No. 7
v. City of Akron

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally changing terms and conditions of employment and direct dealing during negotiations. Information gathered during the investigation revealed that without a management right to counter a union right to negotiate the change, or an indication why the matter was not an appropriate subject for mediation, Charged Party overlooked its obligation to negotiate. Charging Party did not support the Ohio Revised Code § 4117.11(A)(1) allegation, and withdrew the allegation regarding direct dealing.

The Investigator recommended that the Board find probable cause to believe an unfair labor practice occurred, authorize the issuance of a complaint, and refer the matter to hearing to determine if the Charged Party violated Ohio Revised Code 4117.11(A)(5), but not (1) by unilaterally changing the terms and conditions of employment, and direct the parties to expedited mediation to run concurrently with the expedited processing of the charge and complaint.

General Counsel Keith offered an alternative recommendation that the Board find probable cause to believe an unfair labor practice has been committed, not direct the parties to mediation, coordinate this matter with ULP Item Number 14 [Akron Firefighters Association, Local 330, IAFF, AFL-CIO v. City of Akron, Case 10-ULP-02-0040], and defer further action until the issues of Case 10-ULP-02-0040 are resolved.

Vice Chairperson Verich moved that the Board accept the alternative recommendation, find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, refer the matter to an expedited hearing before a member of the State Employment Relations Board to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(5), but not (1), by unilaterally changing the annual January benefit payments into prorated payments for employees leaving the City's employment during the year, in violation of a longstanding past practice to not charge prorated payments. The hearing shall be bifurcated, and the parties shall first address the threshold issue of whether a binding past practice existed, and, if so, was the past practice strictly a contractual past practice or did the conduct also violate Ohio Revised Code § 4117.11(A)(5). After determining the threshold issue, the Board member may consider other issues not addressed in the threshold question. This case shall be coordinated with ULP Item Number 14 [Akron Firefighters Association, Local 330, IAFF, AFL-CIO v. City of Akron, Case 10-ULP-02-0040] and further action shall be deferred until the issues of Case 10-ULP-02-0040 are resolved. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

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16. Case 10-ULP-02-0056 Akron Nurses Association v. City of Akron

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally changing terms and conditions of employment and direct dealing during negotiations. Information gathered during the investigation revealed that without a management right to counter a union right to negotiate the change, or an indication why the matter was not an appropriate subject for mediation, Charged Party overlooked its obligation to negotiate. Charging Party did not support the Ohio Revised Code § 4117.11(A)(1) allegation, and withdrew the allegation regarding direct dealing.

The Investigator recommended that the Board find probable cause to believe an unfair labor practice occurred, authorize the issuance of a complaint, and refer the matter to hearing to determine if the Charged Party violated Ohio Revised Code 4117.11(A)(5), but not (1) by unilaterally changing the terms and conditions of employment, and direct the parties to expedited mediation to run concurrently with the expedited processing of the charge and complaint.

General Counsel Keith offered an alternative recommendation that the Board find probable cause to believe an unfair labor practice has been committed, not direct the parties to mediation, coordinate this matter with ULP Item Number 14 [Akron Firefighters Association, Local 330, IAFF, AFL-CIO v. City of Akron, Case 10-ULP-02-0040] and ULP Item Number 15 [Fraternal Order of Police, Akron Lodge No. 7 v. City of Akron, Case 10-ULP-02-0044], and defer further action until the issues of Case 10-ULP-02-0040 are resolved.

Board Member Spada moved that the Board accept the alternative recommendation, find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, refer the matter to an expedited hearing before a member of the State Employment Relations Board to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(5), but not (1), by unilaterally changing the annual January benefit payments into prorated payments for employees leaving the City's employment during the year, in violation of a longstanding past practice to not charge prorated payments. The hearing shall be bifurcated, and the parties shall first address the threshold issue of whether a binding past practice existed, and, if so, was the past practice strictly a contractual past practice or did the conduct also violate Ohio Revised Code § 4117.11(A)(5). After determining the threshold issue, the Board member may consider other issues not addressed in the threshold question. This case shall be coordinated with ULP Item Number 14 [Akron Firefighters Association, Local 330, IAFF, AFL-CIO v. City of Akron, Case 10-ULP-02-0040] and ULP Item Number 15 [Fraternal Order of Police, Akron Lodge No. 7 v. City of Akron, Case 2010-ULP-02-0044] and further action shall be deferred until the issues of Case 10-ULP-02-0040 are resolved. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE:	<u>Yes</u>	VERICH:	<u>Yes</u>	SPADA:	<u>Yes</u>
Affirmed	<u>X</u>		<u>Denied</u>		

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17. Case 09-ULP-02-0071 Napoleon Faculty Association, OEA/NEA v. Napoleon Area City School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11. Information gathered during the investigation revealed that on June 18, 2009, the unfair labor practice charge was deferred to arbitration pursuant to In re Upper Arlington Ed Assn, SERB 92-010 (6-30-92). The arbitrator's decision was rendered on March 12, 2010. Neither party filed a motion for review. The arbitration award indicated that the issues raised in the unfair labor practice charge have been considered and decided in conformity with due process of law in the arbitration procedure.

Vice Chairperson Verich moved that the Board dismiss the charge as having been resolved between the parties pursuant to the grievance-arbitration process. Board Member Spada seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

18. Case 09-ULP-04-0147 Auglaize Education Association, OEA/NEA v. Auglaize County Board of Mental Retardation and Developmental Disabilities

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally assigning bargaining-unit work to nonbargaining-unit employees. On September 9, 2009, SERB deferred the unfair labor practice charge to the parties' grievance-arbitration procedure pursuant to option three of In re Upper Arlington Ed Assn, SERB 92-010 (6-30-92). On January 6, 2010, an arbitration award was issued. On January 22, 2010, Charging Party filed a Motion for Review of Arbitration Award and for SERB to Reassert Jurisdiction. Charged Party did not file a Brief in Opposition to the Motion for Review.

The arbitrator's award denied the grievance, finding no contract violation. The arbitrator's ruling addressed Article 21.2 - Layoff and Recall and Article 21.4 – Notice to the Union, but it did not appear to address the issue of the Employer assigning bargaining-unit work to nonbargaining-unit employees, which is at the heart of the unfair labor practice charge. The arbitrator's award did not appear to clarify who was performing the duties of the laid-off bargaining-unit members.

Board Member Spada moved that the Board grant the motion for review, find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, and refer the matter to a hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(5), but not (1), by assigning bargaining-unit work to nonbargaining-unit employees. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

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28. Case 10-ULP-04-0132 Toledo Police Patrolman's Association v. City of Toledo

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (5), and (6) by unilaterally changing its members terms and conditions of employment and by failing/refusing to process the corresponding grievances. Charging Party filed a Motion to Expedite the instant charge and a Motion Requesting SERB to Seek Injunctive Relief. Information gathered during the investigation revealed that Charged Party's claim of exigent circumstances for unilaterally changing the members' terms and conditions of employment is weak. After reaching Memorandums Of Understanding (MOU) with other bargaining units, Charged Party appeared to have rescinded its claim of exigent circumstances for those units. When Charging Party did not agree to the terms of its MOU, Charged Party enacted the exigent circumstances ordinance, which eliminated its pension pick-up obligation and increased members' costs for health insurance premiums. After filing grievances, Charged Party claimed that the processing would be "futile under the circumstances." Charged Party's refusal to process the grievances may have eliminated any recourse Charging Party may have had to rectify the changes made through the ordinance.

Board Member Spada moved that the Board grant Charging Party's Motion to Expedite the charge, find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, refer the matter to an expedited hearing before the State Employment Relations Board to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(1), (5), and (6) by unilaterally increasing Charging Party's health care premiums, rescinding its 10% payment into Charging Party's pension fund, refusing/failing to process the corresponding grievances, and grant Charging Party's Motion Requesting SERB to Seek Injunctive Relief. Vice Chairperson Verich seconded the motion. Chairperson Brundige called for discussion and requested that the pre-hearing be scheduled by telephone in a week to further expedite the process of this case. There being no further discussion, Chairperson Brundige called for the vote.

Vote: BRUNDIGE: Yes VERICH: Yes SPADA: Yes
Affirmed X Denied _____

29. Case 10-ULP-04-0118 City of Toledo v. Toledo Police Patrolman's Association

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(5) and (8) when a "significant and inordinately high number" of its members called in sick or failed to report for duty on April 5 and 6, 2010 after unsuccessful discussions with Charging Party. Information gathered during the investigation revealed that the parties have conflicting opinions as to whether or not the police officers were engaged in concerted activity on April 5 and 6, 2010 when approximately 25% of the scheduled officers called in sick. A normal shift call-in is approximately 5 officers, but on those dates 71 out of 285 scheduled officers called in sick. The timing of the call-ins is suspect since earlier in the day on April 5th, Charged Party's request for a Temporary Restraining Order was denied, and Charging Party denied its request to re-submit a previously rejected MOU to Charged Party's members.

VII. ADMINISTRATIVE MATTERS:

Executive Director Passmore reported on Administrative Matters:

Staff. Matthew Bradley is back as a legal intern with SERB for a second summer. The first class of new legal interns starts May 17, 2010, and a second class begins on May 24, 2010.

Charities. The 2010 Operation Feed Campaign is underway and will continue through the end of May. This week's fundraiser is a silent auction for themed baskets designed and donated by staff. Bidding closes tomorrow, Friday, May 7, 2010, at 3:00 PM.

Training. Internal mediation training for staff will be conducted in June.

Office Closings. DAS has approved SERB's request to close on Friday, November 26, 2010; and Thursday, December 23, 2010 as Cost Savings Days.

Rules Review. SERB is beginning its five year rules review. Informal meetings will be held during the month of June to get input from our customers.

IX. ADJOURNMENT:

Vice Chairperson Verich moved that the Board adjourn the meeting. Board Member Spada seconded the motion. Chairperson Brundige called for the vote.

Vote:					SPADA:	
BRUNDIGE:	<u>Yes</u>	VERICH:	<u>Yes</u>			<u>Yes</u>
Affirmed	<u>X</u>		<u>Denied</u>			

The Board meeting adjourned at 11:46 a.m.

N. Eugene Brundige
/s/ _____
N. Eugene Brundige, Chairperson