

State Employment Relations Board

Board Meeting Minutes
July 21, 2011

The State Employment Relations Board met on July 21, 2011, at 10:00 a.m., at 65 East State Street, 12th Floor, Columbus, Ohio. Present at the meeting were Chair W. Craig Zimpher, Vice Chair Robert F. Spada, and Board Member N. Eugene Brundige.

I. APPROVAL OF MINUTES FOR THE JUNE 30, 2011 BOARD MEETING:

Vice Chair Spada moved that the Board approve the minutes for the June 30, 2011 Board meeting. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

1. Case 2011-MED-05-0837 Warren County Dispatch Association and Warren County Board of Commissioners

On May 17, 2011, the Warren County Dispatch Association ("Employee Organization") four Notices to Negotiate concerning negotiations for a successor collective bargaining agreement with the Warren County Board of Commissioners ("Employer"). The current collective bargaining agreement ("CBA") expires on December 31, 2011.

On June 2, 2011, the Bureau of Mediation sent a letter to the parties appointing a mediator. On June 20, 2011, the "Employer's Motion to Stay Negotiation and Withdraw Mediator Appointment/or Dismiss" was filed. The Employer contended that under the current CBA, a Notice to Negotiate should not have been filed no earlier than 120 days before the expiration of the current CBA, and the appointment of the mediator was premature.

On June 23, 2011, the "Employee Organization Memorandum in Opposition to Employer's Motion to Stay Negotiation and Withdraw Mediator Appointment/or Dismiss" was filed. The Employee Organization opposed withdrawing the mediator appointment and dismissing the Notice to Negotiate. It did not oppose granting the motion to stay negotiations until September 2, 2011.

On July 1, 2011, the "Employer's Reply Regarding Motion to Stay/Motion to Dismiss" was filed. The Employer indicated that its original motion was seeking either (1) a stay of negotiations and withdrawal of the mediator appointment or (2) a dismissal of the case. The Employer expressed that it is now only seeking dismissal.

The relevant provision in the current CBA, Section 38.2, is not contested by the parties. That provision states in relevant part: "If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than one hundred twenty (120) calendar days prior to the expiration date[.]" Since the Notice to Negotiate was filed more than 120 days before the expiration date, dismissal without prejudice appears appropriate.

Board Member Brundige moved that the Board grant the Employer's motion to dismiss and dismiss without prejudice the Notice to Negotiate. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

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

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2. Case 2010-MED-11-1693 Brook Park Fire Fighters, Local 1141, IAFF and City of Brook Park

Case No. 2009-MED-12-1505: On December 14, 2009, the City of Brook Park ("the City") filed with the State Employment Relations Board ("the Board") a Notice to Negotiate (Case No. 2009-MED-12-1505) for successor contract negotiations with the International Association of Fire Fighters, Local 1141 ("Local 1141"), which is the exclusive representative for a bargaining unit of the City's fire fighters and lieutenants. On December 30, 2009, a mediator was assigned.

On January 11, 2010, Local 1141 filed a motion to dismiss the notice to Negotiate. Local 1141 contended that the Notice to Negotiate was untimely filed under both Ohio Revised Code ("O.R.C.") § 4117.14 and Article XXIII of the collective bargaining agreement that expired on December 31, 2009. On January 25, 2010, the City filed its brief in opposition to the motion.

On January 28, 2010, the Board denied the motion to dismiss the Notice to Negotiate. On February 16, 2010, Local 1141 filed a Notice of Appeal from the denial to the Court of Common Pleas of Franklin County, where the matter is still pending.

Case No. 2010-MED-11-1693: On November 1, 2010, Local 1141 filed a Notice to Negotiate (Case No. 2010-MED-11-1693) concerning negotiations for a successor collective bargaining agreement with the City. On December 6, 2010, Local 1141 filed a motion to stay negotiations, requesting that the Board suspend the statutory dispute settlement procedure and toll all deadlines until the Board issued its final ruling in another pending case involving these parties (Case No. 2010-ULP-03-0100).

On December 15, 2010, the City filed its brief in opposition to the motion to stay. On January 20, 2011, the Board granted the Employee Organization's motion to stay negotiations pending disposition of Case No. 2010-ULP-03-0100.

On February 23, 2011, the City filed a motion for reconsideration of the stay of negotiations in Case No. 2010-MED-11-1693 and also requested a stay of the unfair labor practice proceedings in Case No. 2010-ULP-03-0100. On March 9, 2011, Local 1141 filed its combined brief in opposition to the motion for reconsideration and in opposition to the additional motion to stay the ULP case. On March 17, 2011, the Board granted the City's motion to reconsider and lifted the stay of negotiations in Case No. 2010-MED-11-1693.

On May 12, 2011, Local 1141 requested a list of Fact Finders from which a selection will be made. By a letter received on May 16, 2011, the Employer requested that the fact-finding panel be sent for both Case Nos. 2009-MED-12-1505 and 2010-MED-11-1693. On May 23, 2011, a panel of five potential fact finders was sent to the parties. On July 1, 2011, a discretionary appointment of a fact finder was made by the Bureau of Mediation.

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Pending motion: On June 14, 2011, "Local 1141's Motion for Clarification and Limiting Order" was filed. In the motion, "Local 1141 requests clarification as to the scope of the upcoming fact-finding hearing and specifically requests that any such hearing (and any further statutory dispute resolution procedures) be limited to the issues presented by Case No. 2010-MED-11-1693."

On June 17, 2011, the City filed its response to the motion, asserting that the fact-finding proceedings should cover both Case Nos. 2009-MED-12-1505 and 2010-MED-11-1693. On June 24, 2011, Local 1141 filed its reply to the City's response.

Case No. 2009-MED-12-1505 is currently pending in the Court of Common Pleas of Franklin County. SERB does not have jurisdiction over that case while it is still pending in court. As a result, the only clarification that can be made at this time involves Case No. 2010-MED-11-1693.

Vice Chair Spada moved that the Board grant the motion for clarification and state that the fact-finding hearing involves only the unresolved issues in Case No. 2010-MED-11-1693. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

3. Closing of 330 Mediation Cases

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 2011-REP-05-0056 William Dudinsky and Communications Workers of America, Local 4340 and Geauga County Engineer
(August 2, 2011 – August 15, 2011)

Vice Chair Spada moved that the Board approve the Consent Election Agreement and direct a mail ballot-election to be conducted during the polling period of August 2, 2011 through August 15, 2011. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

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- 2. Case 2011-REP-04-0035 Ohio Patrolmen's Benevolent Association and Cuyahoga County
- 3. Case 2011-REP-04-0037 City, County and Waste Paper Drivers Union, Local 244, IBT and Cuyahoga County
- 4. Case 2011-REP-05-0053 Cuyahoga Support Workers Union and Cuyahoga County
- 5. Case 2011-REP-05-0055 Southeastern Local Education Support Professionals and Southeastern Local School District

Board Member Brundige moved that the Board approve the petitions and amend the certifications accordingly. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

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

- 6. Case 2011-REP-06-0062 Streetsboro Education Association/OEA/NEA and Streetsboro City School District
- 7. Case 2011-REP-06-0063 Streetsboro School Support Personnel Association/OEA/NEA and Streetsboro City School District

Vice Chair Spada moved that the Board approve the jointly filed petitions and amend the units accordingly. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

- 8. Case 2008-REP-05-0080 Professionals Guild of Ohio and Hamilton County Educational Service Center

Board Member Brundige moved that the Board construe the Notice of Disclaimer of Interest as a Motion to Revoke Certification, grant the motion, and revoke the Employee Organization's certification. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

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

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9. Case 2011-REP-02-0013 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Grandview Heights

- There were 4 valid ballots cast
- There were 0 void ballots
- There were 0 challenged ballots
- Fraternal Order of Police, Ohio Labor Council, Inc. received 1 vote
- No Representative received 3 votes and prevailed in this election.

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

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

10. Cases 2010-REP-06-0104 Fraternal Order of Police, Ohio Labor Council, Inc. and Goshen Township Police Association and Goshen Township Trustees, Clermont County
2010-REP-09-0160

- There were 9 valid ballots cast
- There were 0 void ballots
- There were 0 challenged ballots
- No Representative received 0 votes
- Fraternal Order of Police, Ohio Labor Council, Inc. received 2 votes
- Goshen Township Police Association received 7 votes and prevailed in this election.

11. Case 2011-REP-04-0033 Ohio Patrolmen's Benevolent Association and Delaware County Board of County Commissioners/Delaware County 911

- There were 11 valid ballots cast
- There were 0 void ballots
- There was 1 challenged ballot
- No Representative received 0 votes
- Ohio Patrolmen's Benevolent Association received 11 votes and prevailed in this election.

Board Member Brundige 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. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

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

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Cases 2010-ULP-09-0365 through 2010-ULP-09-0374 SERB v. Urbana Firefighters Assoc., IAFF Local 1823 et al.

On September 13, 2010, the City of Urbana (“the City” or “the Intervenor”) filed unfair labor practice charges against the Urbana Firefighters Association, IAFF Local 1823, *et al.* (“Respondents” or “the Union”), alleging violations of Ohio Revised Code (“O.R.C.”) §§ 4117.11(B)(2) and (B)(3). On December 2, 2010, the State Employment Relations Board (“the Board” or “Complainant”) determined that probable cause existed to believe that Respondents had committed unfair labor practices in violation of O.R.C. § 4117.11(B)(3) but not (B)(2), authorized the issuance of a Complaint, and referred the matter to a hearing. On December 16, 2010, a Complaint was issued and the matter was assigned to an administrative law judge for an evidentiary hearing.

On March 4, 2011, the parties submitted joint stipulations of fact and joint exhibits in lieu of an evidentiary hearing. All parties filed briefs setting forth their legal arguments. Subsequently, the parties agreed to submit the matter directly to the Board. On March 17, 2011, the Board transferred the case from the Hearings Section to the Board for a decision on the merits.

On June 16, 2011, an evidentiary hearing was scheduled before the Board on the issue of whether the bargaining-unit members who circulated a petition to amend the Urbana City Charter with regard to wages, hours, and terms and conditions of employment were acting as agents of the Union and, thus, the Union bypassed the Employer’s bargaining representative in violation of O.R.C. § 4117.11(B)(3). The evidentiary hearing is scheduled for August 4, 2011, at 10:00 a.m.

On June 28, 2011, Intervenor, City of Urbana filed a motion for continuance to determine whether Senate Bill 5 renders the underlying unfair labor practice charge moot. As of July 19, 2011, no memorandum contra to the City’s motion for continuance has been filed with the Board.

Vice Chair Spada moved that the Board deny City of Urbana’s motion for continuance. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

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2. Case 2011-ULP-04-0115 International Assoc. of Fire Fighters, IAFF Local 1690, AFL-CIO v. City of Parma Heights

On April 11, 2011, International Association of Fire Fighters, IAFF Local 1690, AFL-CIO ("Charging Party") filed an unfair labor practice charge against City of Parma Heights ("the City"), alleging that the City violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(3) by removing Jerry Miluk forma program solely on the basis of his protected activities. On February 3, 2011, the State Employment Relations Board ("the Board" or "Complainant") determined that probable cause existed for believing the City violated O.R.C. §§ 4117.11(A)(1) and (A)(3), ordered the parties to ULP mediation, and if mediation proved unsuccessful, authorized the issuance of a complaint and referred the matter to hearing.

On July 18 2011, the parties filed a Settlement Agreement which resolved the unfair labor practice charge in Case No. 2011-ULP-04-0115.

Board Member Brundige moved that the Board construe the Settlement Agreement in Case No. 2011-ULP-04-0115 as a motion to dismiss, grant said motion, and dismiss with prejudice the unfair labor practice charge therein. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

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

V. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 2011-ULP-04-0119 International Brotherhood of Teamsters, Local 436 v. Portage County Board of Commissioners

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. Information gathered during the investigation revealed that the matter appears to be purely contractual with no arguable statutory violation. Articles 3, 29, 35, and 36 appear to give Charged Party the right to manage the workforce, transfer work, and abolish positions without an obligation to negotiate. Those articles also prohibit Charging Party from filing grievances and/or appeals regarding the changes.

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

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

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2. Case 2011-ULP-05-0133 City of Worthington v. Fraternal Order of Police, Ohio Labor Council, Inc.

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(1) by holding "closed" employee meetings to discuss representation and/or election issues. Information gathered during the investigation revealed that Charged Party does not have standing to allege a (B)(1) violation. Charging Party did not provide sufficient information or documentation to show it would be or was adversely affected by Charged Party's conduct. Also, based on Charging Party's own confirmation of Charged Party's last meeting on January 21, 2011, the instant charge should have been filed on or before April 21, 2011. The charge was not filed until May 4, 2011.

Board Member Brundige moved that the Board dismiss the charge with prejudice for lack of standing by Charging Party to file the charge, as untimely filed based on the January 21, 2011 meeting date, and deny Charging Party's Motion to Consolidate Post-Election Objections and Unfair Labor Practice Charge Hearings as moot. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

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

3. Case 2011-ULP-05-0138 Celina City School District Board of Education v. Ohio Education Association and Shelli Jackson, Labor Relations Consultant

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(3) by failing to bargain in good faith. Information gathered during the investigation revealed that Charged Party was not acting as the exclusive representative of the Celina Education Association at the time of the alleged statements, and the parties were not in negotiations for a successor agreement at the time. Therefore, Charged Party does not appear to have been bargaining in bad faith, and her actions do not appear to rise to the level of a statutory violation.

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

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

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4. Case 2011-ULP-05-0144 Antonia Perris v. Cuyahoga County Board of Developmental Disabilities

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(3), (4), (6) and (8) by removing her from the STRS Seniority Report, thereby terminating her from any "potential future employment". Information gathered during the investigation revealed that Charged Party's actions do not amount to a statutory violation. Charging Party's name does not appear on the STRS Seniority Report because she participates in OPERS and not STRS. If it had been the OPERS Seniority Report, it does not appear Charging Party's name would be listed because the reports are generated for only those employees on active status and not, as in Charging Party's case, on layoff status. Charging Party did not provide sufficient information or documentation to support the (A)(3), (4), (6) and (8).

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

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

5. Case 2011-ULP-06-0155 Ohio Patrolmen's Benevolent Association v. City of Oakwood

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally transferring bargaining-unit work to nonbargaining-unit employees. Information gathered during the investigation revealed that the matter appears to be purely contractual with no arguable statutory violation. Articles 5, 22, and the MOU appear to give Charged Party the right to manage the workforce, transfer work, and abolish positions. Charging Party did not file a grievance regarding Lt. Balaj's transfer or the alleged reassignment of bargaining-unit work. Charging Party did not provide sufficient information or documentation to show why Charged Party did not have the managerial right to transfer Lt. Balaj and/or why it chose not to proceed through the grievance-arbitration procedure. Charging Party did not provide sufficient information or documentation to support the (A)(1) allegation.

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

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

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6. Cases 2011-ULP-06-0158 Terry M. Dayton v. State of Ohio, Department of Rehabilitation and Correction, Belmont Correctional Institution and Eric Lyle, Katherine Cole and Michele Miller

2011-ULP-06-0159 Terry M. Dayton v. State of Ohio, Department of Rehabilitation and Correction, Belmont Correctional Institution and Eric Lyle, Katherine Cole and Michele Miller

The unfair labor practice charges alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(5) and (8) by attempting to "entice" him to file a grievance in violation of the terms of his Last Chance Agreement in Case No. 2011-ULP-06-0158. The unfair labor practice charge alleged that Charge Party violated Ohio Revised Code § 4117.11(A)(7) and (8) by administering minimal discipline to an exempt employee for the same violation for which he received a two-year Last Chance Agreement in Case No. 2011-ULP-06-0159. Information gathered during the investigation revealed that in both cases the Charged Parties' actions do not appear to rise to the level of a statutory violation. Charged Party was not under any obligation to bargain with Charging Party, nor was he "locked-out" of his position because he was on paid administrative leave. Charging Party did not provide any information to show how Charged Parties' actions caused the Union to violate the statute.

Board Member Brundige 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 Parties. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote. .

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

7. Case 2011-ULP-01-0012 International Brotherhood of Teamsters, Local 20 v. City of Toledo

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (3), and (5) by unilaterally discontinuing the practice of allowing Union Chief Steward Jeffrey Gralak to process grievances and represent bargaining-unit employees during work hours. Information gathered during the investigation revealed that Charged Party's actions do not appear to interfere with, restrain or coerce Charging Party in his exercise of guaranteed rights. Charged Party appears to be adhering to the provisions provided for in the parties' agreement. Charging Party did not provide any information to support the (A)(3) and (5) allegations.

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

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

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8. Case 2011-ULP-04-0122 Raelynn Dolwick v. Mahoning Education Association of Developmental Disabilities

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(1) by failing to take the basic and required steps of filing her grievance in a timely manner. Information gathered during the investigation revealed that Charged Party's actions do not appear to be arbitrary, discriminatory or in bad faith. Under the totality of the circumstances, Charged Party did not coerce or restrain Charging Party in the exercise of her guaranteed rights.

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

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

9. Case 2011-ULP-04-0129 Robert Jack v. Ohio Council 8, AFSCME, Local 2001

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(B)(1), (2) and (6) by failing to fairly represent him and interfering with his guaranteed rights. Information gathered during the investigation revealed that Charged Party's actions do not appear to be arbitrary, discriminatory, or in bad faith. Under the totality of the circumstances, Charged Party did not coerce or restrain Charging Party in the exercise of his guaranteed rights.

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

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

10. Case 2011-ULP-05-0141 Sylvia A. Hodson v. Consumer Support Services

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1). Information gathered during the investigation revealed that pursuant to the Board's investigation, under Ohio Revised Code § 4117.12, information was requested in writing from Charging Party on May 20, 2011, and June 16, 2011. Charging Party did not respond to the written requests for information.

Board Member Brundige moved that the Board dismiss the charge with prejudice because the Charging Party failed to pursue the matter. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

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

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11. Case 2011-ULP-05-0149 Service Employees International Union, District 1199 v. Stark County District Library

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by unilaterally assigning hours of work to employees outside of the bargaining unit. Information gathered during the investigation revealed that Charging Party did not provide any information to support the (A)(1) and (5) allegations.

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

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

12. Case 2010-ULP-12-0481 Union Township Police Association v. Union Township, Clermont County

The unfair labor practice charges alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5) by refusing to bargain in good faith. Information gathered during the investigation revealed that Charged Party's changes to off-duty detail was done to determine if the change was more efficient than the prior method of assignment. It does not appear the change was intended to be permanent, unless the new way was superior to the previous method. Charged Party received complaints regarding the new policy from bargaining-unit members and a decision was made to go back to the previous way of assigning off-duty detail. Charging Party did not file a grievance regarding the new policy. Charging Party did not provide sufficient information or documentation to support the (A)(1) allegation.

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

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

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13. Case 2011-ULP-01-0031 Service Employees Maintenance Employees,
Local 1 v. City of Cleveland

The unfair labor practice charges alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(3), (5), (6), and (8) by refusing to abide by the terms and conditions of a settlement agreement, refusing to process grievances in a timely manner, discriminating against employees in the exercise of their guaranteed rights, and causing or attempting to cause it to breach its duty of fair representation.

Information gathered during the investigation revealed that the matter was brought to the appropriate authority by Ms. West when she informed Charging Party to have Mr. Kafaru submit documentation to support the discrepancy. Charged Party has reimbursed Mr. Kafaru for his out-of-pocket medical expenses. The investigation also reveals the instant charge was filed more than 90 days from the date of Mr. Kafaru's reinstatement and is therefore untimely filed. Charging Party did not provide information to toll the statute of limitations. Charging Party did not provide sufficient information or documentation to support the (A)(5), (6), and (8) allegations.

Vice Chair 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 and as untimely filed. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

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14. Cases 2011-ULP-02-0064 Perry Organized Workers v. Perry Township
 2011-ULP-04-0124 Board of Trustees, Stark County
 2011-ULP-05-0137
 2011-ULP-05-0153

The unfair labor practice charges alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2) and (5) by refusing to bargain in good faith.

Information gathered during the investigation revealed that as a result of the negotiations, the parties have unresolved issues. It appears the parties have engaged in hard bargaining; therefore, each parties' conduct on its face, could be construed by either party as coercing and restraining to cause or attempt to cause the parties to bargain in bad faith and as a result commit an unfair labor practice. In re Toledo Federation of Teachers, SERB 97-001 (1-10-97). Board-directed pre-determination mediation may prove fruitful since several unfair labor practice charges have been filed by both parties.

The investigator recommended: 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, and consolidate the instant cases with Case Nos. 2011-ULP-02-0074 and 2011-ULP-04-0126 for the purposes of pre-determination mediation only.

Board Member Brundige moved (seconded by Vice Chair Spada) 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, and consolidate the instant cases with Case Nos. 2011-ULP-02-0074 and 2011-ULP-04-0126 for the purposes of pre-determination mediation only. Should either of the parties determine not to participate in the pre-determination mediation, then the parties are directed to appear before this Board to "show cause" as to why that party has determined not to participate. The Office of General Counsel is authorized to set the time and date of the show cause hearing, should it be necessary, after consultation with the parties.

Chair Zimpher called for discussion and the vote.

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

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16. Case 2011-ULP-03-0087 Hamilton Local Education Association, OEA/NEA v. Hamilton Local School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11(A)(1), (2), and (5) by bargaining in bad faith and interfering with its administration. Information gathered during the investigation revealed that Charged Party's actions do not appear to rise to the level of a statutory violation. Charging Party did not provide sufficient information or documentation to support the (A)(1) and (2) allegations.

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

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

VI. TABLED AND OTHER MATTERS:

1. Cases 2011-ULP-01-0032 City of Fostoria v. Ohio Patrolmen's Benevolent Association
- 2011-ULP-01-0033 City of Fostoria v. Ohio Patrolmen's Benevolent Association and Justin Kiser
- 2011-ULP-01-0034 City of Fostoria v. International Association of Firefighters
- 2011-ULP-01-0035 City of Fostoria v. Ohio Patrolmen's Benevolent Association and Brandon Bell
- 2011-ULP-01-0036 City of Fostoria v. Ohio Patrolmen's Benevolent Association and Cory Brian
- 2011-ULP-01-0037 City of Fostoria v. International Association of Firefighters, Local 325 and Chapter President Jason Root
- 2011-ULP-01-0038 City of Fostoria v. International Association of Firefighters, Local 325 and Warren Digby
Tabled – March 17, 2011
2. Case 2010-MED-07-0882 Lebanon Professional Firefighters, IAFF Local 4796 and City of Lebanon
Tabled – April 28, 2011

VII. ADMINISTRATIVE MATTERS:

1. Removal from SERB's Roster of Neutrals

Member Brundige moved that the Board remove Robert Brunner, Virginia Wallace-Curry, David Monsour, Charles Nicholls, and Harold Paddock from the State Employment Relations Board (SERB) Roster of Neutrals. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

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

2. Candidate for SERB's Roster of Neutrals

Vice Chair Spada moved that the Board approve Sherrie J. Passmore to the State Employment Relations Board (SERB) Roster of Neutrals contingent upon receipt of required references. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

EXECUTIVE DIRECTORS REPORT FOR THE 7/21/11 MEETING OF THE SERB

SERB REGULAR SCHEDULED MEETING DATES:

- Reminder of the regular scheduled meeting dates of the State Employment Relations Board:
 - August 18,2011

SYSTEM UPDATES:

- We are proceeding with the 3rd and final phase of the SERB Management Docketing System (SMDS). It has been duly named SMDS and ultimately will be able to communicate with the existing CMDS. Data conversion is scheduled to be completed by July 30. The SERB Docketing System (SDS), ULP, Representation, and Mediation re-writes will be done and tested over the next 3 months. The overall system will be ready for a full test by October 28th, training will occur and full implementation is projected to happen by the second week of November.
- Aaron Rogers, IT, has completed the wireless installation.
- 4 Channel Digital Recording System is now in place; training for staff was held last week in 2 sessions.

PERFORMANCE EVALUATION:

- The new Performance Evaluation format will be used and all are due by July 22nd.

LEGAL INTERNS:

- The interns are winding down their time with us. They had a tour of the Capitol on Wednesday, are presenting a case to the SERB following this meeting, observing a tally of ballots, attending and observing a mediation conducted by Mediator Ed Turner with Franklin County ODJFS, touring the Supreme Court next Wednesday, and one by one they will be concluding their volunteer services. Frank White on Wednesday, July 27; Chase Thompson

on Friday, July 29; Cara Olie on Monday, August 01; and Joe DiPasquale on Wednesday, August 03. They have done well and we thank them for their excellent work.

HEALTH CARE REPORT AND ANNUAL REPORT:

- Both reports are on track.
 - The Health Care Report is completed.
 - The Annual Report is scheduled for final draft reviews this week with a completion date anticipated of July 27, 2011 or sooner. Statutory deadline to be on the Governor's desk is August 1, 2011.

FAREWELL and GOOD LUCK TO RUSS KEITH:

- **Russ Keith**, General Counsel and Assistant Executive Director, is leaving SERB and transferring to the Industrial Commission effective Monday, July 25, 2011. His wit, wisdom and plethora of institutional knowledge will be keenly missed. We have arranged for a direct phone line to his new desk at the I.C. in order stay in touch and get a daily dose of his wry humor.

FORWARD LOOK FOR FUTURE TRAINING:

- **Developing Labor Law Conference** – 12/09/11 at the ODOT facility. CLE's to be submitted to the Supreme Court before 9/9/11, more information to follow as this conference is finalized. There is no conflict with the AG's office.
- **SERB Academy** – 3/15/12 & 3/16/12. CLE's to be submitted to the Supreme Court before 12/14/11, more information to follow as this academy is finalized.
- **Fact Finders Conference** – scheduled for August 10, 2012.

IX. ADJOURNMENT:

Chair Zimpher moved that the Board adjourn the meeting. Vice Chair Spada seconded the motion. Chair Zimpher called for the vote.

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

The Board meeting adjourned at 10:34 a.m.

/s/ 
W. Craig Zimpher, Chair