

State Employment Relations Board

Board Meeting Minutes
February 23, 2012

The State Employment Relations Board met on February 23, 2012, 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 FEBRUARY 9, 2012 BOARD MEETING:

Vice Chair Spada moved that the Board approve the minutes for the February 9, 2012 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-12-1721 Fraternal Order of Police, Ohio Labor Council, Inc. and Multi County Correctional Center

On December 8, 2011, the Fraternal Order of Police, Ohio Labor Council, Inc. (Full-time Lieutenants and Sergeants) ("Employee Organization") filed a Notice to Negotiate for a reopener provision with Multi County Correctional Center ("Employer"). The union has filed a motion to withdraw the Notice to Negotiate Without Prejudice. The basis of their request is that the parties do not wish to negotiate the reopener contained in their collective bargaining agreement at this time.

Vice Chair Spada moved that the Board grant the Motion To Withdraw Without Prejudice the Notice to Negotiate in Case No. 2011-MED-12-1721. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

2. Case 2011-MED-10-1579 City of Toledo and International Association of Firefighters, Local No. 92

On October 20, 2011, the City of Toledo ("City") filed a Notice to Negotiate with the State Employment Relations Board ("SERB" or "the Board") and served a copy of this notice on the International Association of Firefighters, Local No. 92 ("Local 92" or "Union").

On or about January 12, 2012, SERB appointed Fact Finder Michael Paolucci.

On or about February 14, 2012, the Union filed "Local 92's Motion to Compel the Fact Finder to Hold a Full Evidentiary Hearing or, in the Alternative, to Issue a New Fact-Finding Panel." In support of its motion, the Union submitted, inter alia, copies of email correspondence between the parties and Mr. Paolucci.

A thorough review of the parties' email correspondence demonstrates that Fact Finder Paolucci has conducted himself in accordance with the provisions of Ohio Revised Code § 4117.14 and Ohio Administrative Code Rule 4117-9-05. Specifically, the email correspondence shows nothing more than Mr. Paolucci's efforts to regulate the course and conduct of the fact-finding hearing pursuant to his authority under Ohio Administrative Code Rule 4117-9-05(H). In addition to the email correspondence, Mr. Paolucci has demonstrated his commitment to and compliance with the fact-finding

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process by converting the February 16, 2012 hearing into a mediation session to give the parties another opportunity to resolve their differences, and then by promptly rescheduling the fact-finding hearing for March 1 and 2, 2012.

Board Member Brundige moved that the Board deny the Union's motion in its entirety, specifically, that the Board deny the motion to compel the fact finder to hold a full evidentiary hearing and deny the alternative request to issue a new fact-finding panel. Vice Chair Spada seconded the motion. Board Member Brundige stated that he agreed with the recommendation to deny the Union's motion in its entirety because a review of the matter indicated that Fact Finder Paolucci has conducted himself professionally and in compliance with ORC 4117 and thus has the full confidence of the Board in how he is conducting this matter. Chair Zimpher called for discussion and the vote.

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

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 2011-REP-12-0128 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Ottawa County Department of Job and Family Services
(March 6 – March 19, 2012)

2. Case 2012-REP-01-0001 Patricia E. Tannreuther and Ohio Council 8, American Federation of State, County, and Municipal Employees, AFL-CIO and Montgomery County Office of the Public Defender
(March 6 – March 19, 2012)

3. Case 2011-REP-12-0139 John Steffens and Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Trumbull County Children Services Board
(March 6 – March 19, 2012)

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

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

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

4. Case 2012-REP-02-0022 Fraternal Order of Police, Ohio Labor Council, Inc. and Shawnee Township Trustees, Allen County

The parties jointly filed a Petition for Amendment of Certification seeking to amend the

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existing unit to include the newly created classification of Dispatch Supervisor. The proposed amendment appears appropriate.

Board Member Brundige moved that the Board approve the jointly filed petition and amend the unit 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 _____

5. Case 2011-REP-12-0132 International Union, United Automobile, Aerospace & Agricultural Implement Workers of America - UAW, Region 2 and Cuyahoga County (Cooks, Laundry and Custodial)

6. Case 2011-REP-12-0133 International Union, United Automobile, Aerospace & Agricultural Implement Workers of America - UAW, Region 2 and Cuyahoga County (Registered Nurses)

The Employer filed Petitions for Amendment of Certification seeking to amend the existing units to clarify that it is only for employees within the Cuyahoga County Sherriff's Department. The Employee Organization is not opposed to the petitions and the proposed amendments appear appropriate.

Vice Chair Spada moved that the Board approve the 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 _____

7. Case 2012-REP-01-0016 Scioto County Career Technical Center Teachers Association, OEA/NEA and Scioto County Career Technical Center

The parties have jointly filed a Petition for Amendment of Certification to change both the names of the Employer and Employee Organization. The proposed amendments appear to be appropriate.

Board Member Brundige moved that the Board approve the jointly filed petition and amend the certification 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 _____

8. Case 2011-REP-01-0005 Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and Madison Local School District Board of Education

The Employee Organization filed a Request for Recognition and the Employer

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responded by filing objections. On August 18, 2011, the Board directed the matter to a non-oral hearing to determine an appropriate bargaining unit. You have before you Ms. Stevenson's memorandum. The evidence contained in the record clearly establishes that the Assistant to the Treasurer, the Secretary to the Assistant Superintendent, and the Secretary to the Director of Curriculum qualify as "confidential employees" under the second definition in O.R.C. § 4117.01(K) and therefore should be excluded from the proposed bargaining unit.

Vice Chair Spada moved that the Board grant the Employer's Objections to the Request for Recognition and exclude the Assistant to the Treasurer, the Secretary to the Assistant Superintendent, and the Secretary to the Director of Curriculum from the bargaining unit and certify Ohio Association of Public School Employees (OAPSE)/ AFSCME Local 4, AFL-CIO as the exclusive representative of the following Madison Local School District Board of Education bargaining unit:

Included: Receptionist; Secretary; Accounts Payable Clerk; Copy Center Assistant; Payroll Assistant.

Excluded: Assistant to the Treasurer; Secretary to the Assistant Superintendent; Secretary to the Director of Curriculum; management employees, supervisors, and confidential employees as defined by Ohio Revised Code Chapter 4117; and seasonal and casual employees as defined by SERB.

Board Member Brundige seconded the motion. Chair Zimpher called for discussion. Board Member Brundige stated that he could support the recommendation due to the fact the Secretary to the Director of Curriculum is currently reporting to the Assistant Superintendent. Should the District employ a separate Director of Curriculum the case might have a different outcome. Chair Zimpher called for the vote.

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

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Case 2011-ULP-06-0166 SERB v. Springfield Education Association

On June 10, 2011, Springfield Local School District Board of Education ("Charging Party" or "Intervenor") filed an unfair labor practice charge against Springfield Education Association ("Charged Party"), alleging that Charged Party violated Ohio Revised Code § 4117.11(B)(3).

On November 17, 2011, the State Employment Relations Board ("the Board" or "SERB") determined that probable cause existed for believing Charged Party had committed or was committing an unfair labor practice, authorized the issuance of a complaint, and referred the matter to hearing. On November 23, 2011, a complaint was issued and the matter was set for a hearing on January 13, 2012. The hearing was continued pending settlement.

On February 6, 2012, Counsel for SERB filed a motion to dismiss and a copy of the parties' settlement. In their settlement agreement, the parties jointly request that SERB construe the parties' settlement agreement as a motion to dismiss the unfair labor

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practice charge and complaint with prejudice. The parties agree that SERB shall retain jurisdiction over this matter for purposes of enforcing the parties' settlement agreement.

Board Member Brundige moved that the Board grant the motion to dismiss and dismiss with prejudice the unfair labor practice charge and complaint therein. The Board shall retain jurisdiction over this matter for purposes of enforcement, in accordance with Ohio Administrative Code Rule 4117-7-06. 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 2012-ULP-01-0004 Beaver Local Education Association v. Beaver Local School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1) and (5) by unilaterally implementing changes to the cost/coverage of prescription medications which were not included in the Tentative Agreement, and by failing to execute a Tentative Agreement which does not include those changes.

Information gathered during the investigation revealed the matter appears to be strictly contractual with no evident statutory violations. Charging Party confirms both parties signed the September 19, 2011 Tentative Agreement, which appears to contain the approval of the 3-tier prescription plan. The Union has filed a grievance containing almost identical allegations as those contained in the instant charge. The matter appears to be best addressed through the parties' final and binding 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 _____

2. Case 2012-ULP-01-0005 International Union of Operating Engineers, Local 20 v. Hamilton County Board of County Commissioners

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(5) by unilaterally creating the new position of HVAC Technician - Chiller Specialist.

Information gathered during the investigation revealed the matter appears to be strictly contractual with no evident statutory violations. Charging Party confirms the HVAC Technician classification is in the bargaining unit. Charged Party provided documentation to show that previous HVAC Technician postings, including the one for Chiller Specialist, all contain the identical class number which identifies the position as

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an HVAC Technician. The matter appears to be best addressed through the parties' final and binding grievance-arbitration procedure.

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 _____

3. Case 2012-ULP-01-0006 Jeffrey R. Bair v. Service Employees International Union, District 1199

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (B)(1) and (6) by refusing to consent to be joined as a party-plaintiff in litigation to challenge his arbitration award.

Information gathered during the investigation revealed Charged Party's actions do not appear to be arbitrary, discriminatory, or in bad faith when it declined to join Charging Party in his litigation to vacate the arbitrator's award. Prior to the arbitration, Charging Party had signed a waiver releasing Charged Party of any liability regarding the grievance and subsequent arbitration when he retained outside counsel. Charged Party stated it has not attempted to vacate a final and binding arbitrator's award for over 15 years. Charging Party did not provide sufficient information or documentation to support the (B)(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 _____

4. Case 2012-ULP-01-0010 Civil Service Personnel Association v. City of Akron

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(5) by unilaterally implementing a uniform change for the 911 Dispatchers while the parties are in negotiations for a successor agreement.

Information gathered during the investigation revealed the matter appears to be contractual with no arguable statutory violation. On January 18, 2012, the parties met and Charged Party provided the remedy requested by Charging Party regarding the Rules and Regulations. Charged Party also notified all the affected employees that the Rules and Regulations were being held in abeyance until further notice. At the January 25, 2012 negotiating session, Charged Party withdrew its proposal regarding uniform changes.

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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-11-0301 Service Employees International Union, District 1199 v. Cuyahoga County Executive

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(8) by refusing to provide requested information in an effort to cause or attempt to cause the Union to violate the statute.

Information gathered during the investigation revealed Charging Party failed to provide any information to support the (A)(8) 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 _____

6. Case 2011-ULP-11-0304 James Sweeney v. Cuyahoga County Executive

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1) and (3) by imposing discipline upon him in retaliation for his exercise of guaranteed rights.

Board Member Brundige 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 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-12-0314 Kent State University v. Ohio Council 8 AFSCME AFL-CIO and Its Local 153

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (B)(3) by attempting to engage in direct dealing with its Board of Trustees.

Information gathered during the investigation revealed the e-mail sent to Charging Party did not address bargaining issues. It does not appear Charged Party's actions rise to

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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 _____

8. Case 2011-ULP-12-0324 Avon Teachers' Association, OEA/NEA v. Avon Local School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1) and (5) by contracting out bargaining unit duties.

Information gathered during the investigation revealed Charging Party failed to provide any information to support the (A)(1) and (5) allegations.

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 2012-ULP-01-0001 Union Township Board of Trustees, Clermont County v. Union Township Professional Firefighters, IAFF Local 3412

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (B)(1), (3), and (5) by refusing to execute a collective bargaining agreement.

10. Case 2012-ULP-01-0007 Union Township Professional Fire Fighters, IAFF Local 3412 v. Union Township Board of Trustees, Clermont County

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1), (3), and (5) by unilaterally making changes and modifying articles in the negotiated collective bargaining agreement.

Vice Chair Spada moved that the Board consolidate Case No. 2012-ULP-01-0001 and Case No. 2012-ULP-01-0007 for the purposes of mediation, and 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. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

11. Case 2011-ULP-11-0285 John Barteck v. Teamsters Local 20

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (B)(1) and (6) by interfering, restraining and coercing him in the exercise of his guaranteed rights and failing to represent him.

Information gathered during the investigation revealed Charged Party's actions do not rise to the level of a statutory violation and the matter is purely contractual.

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 _____

12. Cases 2011-ULP-12-0316 Priscilla S. Bright v. Geneva Area City School District Board of Education

2011-ULP-12-0317 Priscilla S. Bright v. Ohio Association of Public School Employees, AFSCME Local 4 and Its Local 307 and Trina Molnar

2011-ULP-12-0318 Priscilla S. Bright v. Ohio Association of Public School Employees, AFSCME Local 4 and Its Local 307 and Ann Craig

Vice Chair Spada moved that the Board construe the settlement agreement as a motion to withdraw, and grant the motion with prejudice. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

13. Case 2011-ULP-07-0190 Youngstown Education Association, OEA/NEA v. Youngstown City School District Board of Education

Board Member Brundige moved that the Board grant the motion to withdraw and dismiss with prejudice. 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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14. Case 2011-ULP-11-0299 Wapakoneta City School District Board of Education v. Wapakoneta Education Association, OEA/NEA

Vice Chair Spada moved that the Board lift the matter from the table. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

Board Member Brundige moved that the Board grant the motion to withdraw and dismiss with prejudice. Vice Chair Spada 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. Case 2010-MED-07-0882 Lebanon Professional Firefighters, IAFF Local 4796 and City of Lebanon
Tabled – April 28, 2011
2. Cases 2011-REP-10-0108 Ohio Patrolmen's Benevolent Association and Cuyahoga County
2011-REP-10-0111
2011-REP-10-0114
2011-REP-10-0116
2011-REP-10-0117
2011-REP-10-0118
Tabled- January 26, 2012

VII. ADMINISTRATIVE MATTERS:

Vice Chair Spada moved that the Board approve the State Employment Relations Board Employee Handbook, updated February 9, 2012. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

SERB REGULAR SCHEDULED MEETING DATES:

- Reminder of the regular scheduled meeting dates of the State Employment Relations Board:
 - **March 8**
 - **April 5**

SYSTEM UPDATES:

- **SERB Employee Handbook:** The handbook will be forwarded to the State Printing for printing and 3 hole punched with tabs inserted. Once back from State Printing it will be distributed to all staff at an All Hands Meeting with sign off receipts being done.
- **Annual Report on the Cost of Health Insurance in Ohio's Public Sector:** The Research and Training Section is in full swing with tracking survey responses. 1467 surveys were sent

