

State Employment Relations Board

Board Meeting Minutes
December 12, 2013

The State Employment Relations Board met on December 12, 2013, at 10:00 a.m., at 65 East State Street, 12th Floor, Columbus, Ohio. Present at the meeting were Chair W. Craig Zimpher and Board Member N. Eugene Brundige. The third SERB member position is vacant.

Chair Zimpher read the following statement "I would like to welcome everyone to this meeting of the State Employment Relations Board. As you may know the meeting is to review and vote on recommendations brought before the Board by SERB's staff. These recommendations result from investigation and consideration of the positions of the parties to each matter. Each case has been thoroughly and objectively reviewed. Thus, this Board meeting is not a hearing involving testimony or presentation of evidence. If the Board finds probable cause to believe an infraction may have occurred then that matter will be scheduled for a hearing. I appreciate your understanding of the process and we'll now proceed to our first order of business. Thank you."

I. APPROVAL OF MINUTES FOR THE NOVEMBER 14, 2013 BOARD MEETING:

Board Member Brundige moved that the Board approve the minutes for the November 14, 2013 Board meeting. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

1. Case 2013-MED-01-0024 Service Employees International Union/District 1199 and Cleveland Metropolitan School District Board of Education

This matter is before the Board on the employer's Motion to Deem Fact Finder's Recommendation Agreed Upon; Invalidate the Vote of SEIU district 1199, and Other Appropriate Relief. Also before the Board is the employee organization's reply.

The labor agreement between the parties expired June 30, 2013. It covers between 560 and 747 dues paying members who work as cleaners, various aides, maintenance and cafeteria workers and clerical staff.

On or about October 31, 2013, Fact Finder Nels Nelson issued a Report and Recommendation in the above matter. The Fact Finder was jointly selected by the parties and they did not use the services of SERB to select a Fact Finder. The union believes, that once the Fact Finding Report was issued, it properly rejected the Report as it had entered into a Mutually Agreed Upon Dispute Resolution Procedure (MAD). The Employer submits that the parties are bound by the Statutory Dispute Resolution Procedures and that the union did not properly reject the Fact Finder Report and Recommendation with a sufficient number of employees.

At issue is whether the Fact Finder Report was properly rejected. Any determination of this issue involves examining whether the parties were bound the Statutory Dispute resolution Procedures or a MAD. Included is the question of how many due paying members exist.

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Board Member Brundige moved that the Board direct this matter to an inquiry to determine whether the parties had entered into a Mutually Agreed Dispute Resolution Procedure and whether the Fact Finder Report was properly rejected. Such inquiry, to be conducted by the Office of the General Counsel, shall proceed on an expedited basis. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

2. Case 2013-MED-06-0792 Lorain County JFS and UAW Local 2192

At the meeting of November 14, 2013, the Board directed this matter to an inquiry for the purpose of reviewing the rights, duties and obligations of the parties when a party fails to properly serve a pre-hearing statement on the other party or the Fact Finder. In this matter the employee organization failed to properly serve the employer with its position statement prior the 5:00 P.M. deadline required by OAC 4117-9-05(F). Because of this omission, the Fact Finder did not permit the employee organization to present its case in chief although he did allow rebuttal evidence to be submitted. The Fact Finder subsequently issued his report which was rejected by the employee organization.

Since then the employer has requested that this matter not be advanced any further as it believes the Fact Finder adequately addressed the issue. They submit there is no longer any controversy to be determined by the Board.

Board Member Brundige moved that the Board dismiss this matter as being moot as there is no longer any controversy. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 2013-REP-10-0098 Owens Federation of Safety & Security Employees/OFT/AFT/AFL-CIO and Owens Community College

The Employee Organization filed an amended Opt-In Request for Recognition. The substantial evidence is sufficient and no objections have been filed. The Employer has complied with the posting requirements.

Board Member Brundige moved that the Board certify the Employee Organization as the exclusive representative of all employees subject to the request, and add them to the Employee Organization's existing unit. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

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2. Case 2013-REP-11-0111 Fraternal Order of Police, Beachwood Lodge 86 and City of Beachwood

The parties jointly filed a Petition for Amendment of Certification. The proposed amendment appears appropriate.

Board Member Brundige moved that the Board approve the jointly filed petition and amend the unit accordingly. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

3. Case 2013-REP-09-0075 Fraternal Order of Police, Ohio Labor Council, Inc. and Ohio Patrolmen's Benevolent Association and Delaware County Sheriff
(January 2, 2014 - January 15, 2014)
4. Case 2013-REP-09-0083 Jeff Yerian and Utility Workers Union of America, AFL/CIO, Local 561-A and Canton Township Board of Trustees, Stark County
(December 24, 2013 - January 6, 2014)
5. Case 2013-REP-09-0088 Sam Williams and Fraternal Order of Police, Ohio Labor Council, Inc. and Guernsey County Sheriff
(January 2, 2014 - January 15, 2014)
6. Case 2013-REP-09-0089 International Association of Firefighters, Local 2150 and City of Kettering
(December 24, 2013 - January 6, 2014)
7. Case 2013-REP-09-0094 AFSCME, Ohio Council 8, AFL-CIO and Ohio Patrolmen's Benevolent Association and Cuyahoga County
(January 2, 2014 - January 15, 2014)
8. Case 2013-REP-09-0096 Teamsters Local 507 affiliated with International Brotherhood of Teamsters and Laborers Local 1099 and City of Maple Heights
(January 2, 2014 - January 15, 2014)
9. Case 2013-REP-09-0097 Fraternal Order of Police, Lodge 15 and Fraternal Order of Police, Ohio Labor Council, Inc. and City of Brook Park
(January 2, 2014 - January 15, 2014)
10. Case 2013-REP-10-0101 Bainbridge Fire Company and Bainbridge Township, Geauga County
(December 24, 2013 - January 6, 2014)

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

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

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

11. Case 2013-REP-05-0041 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Mt. Healthy
(December 24, 2013 - January 6, 2014)

This matter was previously directed to hearing. After the pre-hearing, the Employer filed a Motion to Withdraw Objections. The parties have entered into a Consent Election Agreement seeking a mail-ballot election.

Board Member Brundige moved that the Board grant the Employer's motion, approve the Consent Election Agreement, and direct a mail-ballot election to be conducted during the polling period of December 24, 2013 through January 6, 2014. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

12. Case 2013-REP-05-0050 Laborers' International Union of North America, Local 860 and Cuyahoga County (Jobs and Family Services)

The Employee Organization filed an amended Petition for Representation Election. The Employer filed objections stating that numerous classifications are supervisors and/or confidential employees, the Help Desk Technicians should be included in an existing unit to avoid over-fragmentation, and the Account Clerks are currently represented by another Employee Organization.

The Representation Section conducted several conference calls for the purpose of entering into a Consent Election Agreement; however, the parties could not reach an agreement concerning an appropriate bargaining unit.

Chair Zimpher moved an alternative recommendation that the Board direct the matter to the Office of General Counsel to conduct an inquiry to determine if the employees in question are "public employees" pursuant to Ohio Revised Code 4117, determine an appropriate bargaining unit, and for all other relevant issues. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

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13. Case 2013-REP-09-0082 Ohio Patrolmen's Benevolent Association and Trumbull County Sheriff

The Employee Organization filed a Request for Recognition. The Employer responded by filing objections asserting over-fragmentation and that the petitioned for unit is already represented. A conference call was conducted; however, the parties' dispute remains. Also, a Petition for Representation Election was filed in Case No. 2013-REP-09-0084 involving the same parties.

Chair Zimpher moved an alternative recommendation that the Board consolidate with Case No. 2013-REP-09-0084, direct the matter to the Office of General Counsel to conduct an expedited inquiry to determine an appropriate bargaining unit and for all other relevant issues, and direct the parties to mediation. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

14. Case 2013-REP-09-0084 Ohio Patrolmen's Benevolent Association and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America - UAW, Local 112 and Trumbull County Sheriff

The Rival Employee Organization filed a Petition for Representation Election. The Employer responded by filing objections. A conference call was conducted; however, the parties could not reach an agreement concerning an appropriate bargaining unit.

The Incumbent Employee Organization states that the Rival Employee Organization failed to serve the petition upon the proper entity. The Employer and the Incumbent Employee Organization also maintain that in Case No. 2013-REP-09-0082, the Rival Employee Organization seeks to represent employees currently represented by the Incumbent Employee Organization in the instant case. The parties' dispute remains.

Chair Zimpher moved an alternative recommendation that the Board consolidate with Case No. 2013-REP-09-0082, direct the matter to the Office of General Counsel to conduct an expedited inquiry to determine an appropriate bargaining unit and for all other relevant issues, and direct the parties to mediation. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

15. Case 2013-REP-09-0092 Teamsters Local Union No. 957, General Truck Drivers, Warehousemen, Helpers, Sales and Service, and Casino Employees and Greene County Board of Commissioners, Greene County Services

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The Employee Organization filed a Petition for Representation Election. The Employer filed objections. The Representation Section obtained additional documentation and conducted several conference calls; however, the parties could not reach an agreement concerning an appropriate bargaining unit. The Employer asserts that Fiscal Support Assistant and Fiscal Support Technician should be excluded because they are confidential employees. The parties' dispute remains.

Chair Zimpher moved an alternative recommendation that the Board direct the matter to the Office of General Counsel to conduct an inquiry to determine if the employees in question are "public employees" pursuant to Ohio Revised Code 4117, determine an appropriate bargaining unit, and for all other relevant issues. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

16. Case 2013-REP-09-0085 Ohio Association of Public School Employees (OAPSE)/AFSCME, Local 4, AFL-CIO and Warren Local School District Board of Education

The Employee Organization filed a Request for Recognition and has now filed a motion seeking to withdraw the request.

Board Member Brundige moved that the Board grant the Employee Organization's motion and dismiss without prejudice the Request for Recognition. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

17. Case 2013-REP-10-0103 Teamsters Local Union No. 436, affiliated with the International Brotherhood of Teamsters and Ohio Turnpike and Infrastructure Commission

18. Case 2013-REP-10-0108 Teamsters Local Union No. 436, affiliated with the International Brotherhood of Teamsters and Ohio Turnpike and Infrastructure Commission

The Employee Organization filed Opt-In Requests for Recognition and has now filed a letter seeking to withdraw the requests.

Board Member Brundige moved that the Board construe the Employee Organization's letter as a motion to withdraw, grant the motion and dismiss without prejudice the Opt-In Requests for Recognition. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

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19. Case 2013-REP-10-0106 Utility Workers Union of America, Local 561, AFL-CIO and Plain Township Board of Trustees, Stark County

The Employee Organization filed an Opt-In Petition for Representation Election and has now filed a letter withdrawing it.

Board Member Brundige moved that the Board construe the Employee Organization's letter as a motion to withdraw, grant the motion, and dismiss without prejudice the Opt-In Petition for Representation Election. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

20. Case 2013-REP-07-0063 Benevolent Employees of the Hamilton County Sheriff and Hamilton County Sheriff

- There were four (4) valid ballots cast
- There were zero (0) void ballots
- There were zero (0) challenged ballots
- No Representative received zero (0) votes
- Benevolent Employees of the Hamilton County Sheriff received 4 votes and prevailed in this election

Board Member Brundige moved that the Board certify the election results and certify the prevailing employee organization as the exclusive representative of all employees in the relevant bargaining unit. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

21. Case 2011-REP-02-0014 Fraternal Order of Police, Ohio Labor Council, Inc. and City of Worthington

The Franklin County Common Pleas Court reversed SERB's certification and remanded the case for further investigation. The parties participated in SERB's mediation process; however, the dispute remains. The FOP maintains that the certification should remain. The City maintains that the FOP's conduct during the campaign period for the election was unlawful and that a new election should be held.

Board Member Brundige moved that the Board direct the matter to an expedited hearing to determine the merits and for all other relevant issues. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

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22. Case 2013-REP-11-0110 Deb Hunter and Fraternal Order of Police, Ohio Labor Council, Inc. and City of Worthington

A Petition for Decertification Election was filed involving the same bargaining unit in the prior matter.

A contract was executed with an expiration date of December 31, 2014 which means the petition is contract barred. However, the contract specified that if the Franklin County Court of Common Pleas overrules SERB's certification, then there is no contract.

As mentioned in the prior matter, the Court reversed SERB's directive certifying the FOP as the exclusive representative. Thus, the Board's certification is reversed and there is no contract. The Petition for Decertification Election is therefore moot.

Board Member Brundige moved that the Board dismiss the Petition for Decertification Election without prejudice on the basis that it is moot. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Case 2012-REP-07-0074 Teamsters Local 436, International Brotherhood of Teamsters and City of Cleveland

On July 11, 2012, the Teamsters Local 436, International Brotherhood of Teamsters ("Employee Organization" or "Teamsters Local 436") filed a request for recognition, seeking to represent all Assistant Directors of Law for the Civil Division of the City of Cleveland ("Employer" or "City"). On August 2, 2012, the Employer filed objections to the request for recognition, a petition for representation election, and a motion to dismiss for lack of jurisdiction. Alternatively, the Employer requested that the matter proceed to a hearing in order to present evidence to show that the employees in question are not "public employees" under Ohio Revised Code ("O.R.C.") Chapter 4117.

On October 4, 2012, the Board directed this matter to hearing to determine if the employees in question are "public employees" under O.R.C. Chapter 4117, and if they are found to be "public employees," to determine an appropriate bargaining unit. A three-day evidentiary hearing was held on February 21 and 22, 2013, and March 14, 2013, wherein testimonial and documentary evidence was presented. Subsequently, the parties filed post-hearing briefs. On October 15, 2013, Administrative Law Judge Beth A. Jewell (ALJ Jewell) issued a Recommended Determination, recommending that the Board dismiss, *with prejudice*, the Employee Organization's petition for recognition, since the evidence demonstrates that the Assistant Directors of Law are employees of a public official who act in a fiduciary capacity, appointed pursuant to O.R.C. § 124.11 and; therefore, are exempt from the definition of "public employee" pursuant to O.R.C. § 4117.01(C)(9).

On October 25, 2013, the Employee Organization filed exceptions to the Recommended Determination and a motion to withdraw the request for recognition, *without prejudice*. On November 4, 2013, the Employer filed a memorandum opposing the exceptions and

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to hearing to determine an appropriate bargaining unit and for all other relevant issues. An evidentiary hearing was held on July 25, 2013, wherein testimonial and documentary evidence was presented. At the conclusion of the hearing, the parties presented oral closing arguments. On November 1, 2013, Administrative Law Judge Beth Jewell (ALJ Jewell) issued her Recommended Determination, recommending that the Board find that the bargaining unit proposed by the Employee Organization is the appropriate unit under O.R.C. § 4117.06. Neither party filed exceptions to the Recommended Determination.

Board Member Brundige moved that the Board **(1)** adopt the Findings of Fact and Conclusions of Law, and Recommendations in ALJ Jewell's Recommended Determination, finding that the bargaining unit proposed by the Employee Organization is the appropriate bargaining unit, and **(2)** direct that a mail-ballot election be conducted in accordance with O.R.C. § 4117.07 and the rules set forth in Ohio Administrative Code ("O.A.C.") Chapter 4117-5 in the bargaining unit described below:

INCLUDED: Bus Drivers, Van Drivers, Bus Mechanics,
Head Cooks, and Cooks.

EXCLUDED: All other employees.

The mail-ballot election shall be held during a polling period to be established by the Board's Representation Section. Pursuant to O.A.C. Rule 4117-5-07(A), the Employer shall serve on the Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and shall file with the Board, **no later than December 23, 2013**, a numbered, alphabetized election-eligibility list containing the names and home addresses of all employees eligible to vote as of the last pay period just prior to December 12, 2013. The Employer shall also provide the election-eligibility list to the Board in label format.

Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

3. Case 2012-ULP-07-0192 SERB v. Toledo Area Regional Transit Authority

On July 23, 2012, the Amalgamated Transit Union, Local 697 ("ATU") filed an unfair labor practice charge against the Toledo Area Regional Transit Authority ("TARTA" or "Respondent"), alleging that TARTA violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(2). On November 1, 2012, the State Employment Relations Board ("Board" or "Complainant") determined that probable cause existed to believe that TARTA had committed or was committing unfair labor practices, referred the matter to mediation, and if mediation proved unsuccessful, authorized the issuance of a complaint and referred the matter to hearing. The parties met for a mediation session but were not able to resolve their differences.

On January 10, 2013, a complaint was issued. On March 14, 2013, an evidentiary hearing was held, wherein testimonial and documentary evidence was presented. Subsequently, the parties filed post-hearing briefs. On September 18, 2013, Administrative Law Judge Beth A. Jewell (ALJ Jewell) issued a Proposed Order and, on September 20, 2013, a Corrected Proposed Order was issued. In her Corrected

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Proposed Order, ALJ Jewell recommends the Board find that: (1) the Toledo Area Regional Transit Authority ("TARTA") is a "public employer" as defined in O.R.C. § 4117.01(B); (2) the Amalgamated Transit Union, Local 697, ("ATU") is an "employee organization" as defined in O.R.C. § 4117.01(D); (3) TARTA violated O.R.C. § 4117.11(A)(1) when it sent an email requiring ATU Business Agent, Cynthia Betz, to make "advance arrangements" to visit its Toledo Area Regional Paratransit Service ("TARPS") facility and when it sent a letter requiring Ms. Betz to make "advance arrangements" or "obtain permission" to visit its TARPS facility; (4) TARTA violated O.R.C. §§ 4117.11(A)(1) and (A)(2) when it prohibited ATU from using the employee mail slots in the lockers at the TARPS facility to communicate with TARPS bargaining-unit members; and (5) TARTA violated O.R.C. §§ 4117.11(A)(1) and (A)(2) when it posted Ms. Betz's wages on the TARPS employee bulletin board.

On October 10, 2013, TARTA filed a 12-page document of exceptions to the Proposed Order and a 13-page brief in support of its exceptions. On October 11, 2013, Counsel for Complainant filed a motion to strike, in whole or in part, Respondent's exceptions and its brief in support, and a motion for an extension of time to file a response. On October 17, 2013, the Board's Office of General Counsel issued a procedural order, granting an extension of time to file a response to the exceptions and holding in abeyance the Board's ruling on the motion to strike. On October 30, 2013, Counsel for Complainant filed a response to the exceptions.

Complainant's Counsel requests that the Board strike Respondent's exceptions and its brief in support for exceeding the page limit set forth in Ohio Administrative Code ("O.A.C.") Rule 4117-1-02(C). The motion to strike should be *denied* on the grounds that Complainant's Counsel was granted an extension of time to file a response to Respondent's exceptions and, therefore, Complainant has suffered no undue prejudice.

Board Member Brundige moved that the Board:

1. Deny the motion to strike.
2. Adopt the reasoning in ALJ Jewell's Corrected Proposed Order and incorporate by reference the Findings of Fact, Analysis and Discussion, and Conclusions of Law in the Corrected Proposed Order, finding that: (1) the Toledo Area Regional Transit Authority ("TARTA") is a "public employer" as defined in O.R.C. § 4117.01(B); (2) the Amalgamated Transit Union, Local 697, ("ATU") is an "employee organization" as defined in O.R.C. § 4117.01(D); (3) TARTA violated O.R.C. § 4117.11(A)(1) when it sent an email requiring the ATU Business Agent, Cynthia Betz, to make "advance arrangements" to visit its Toledo Area Regional Paratransit Service ("TARPS") facility and when it sent a letter requiring Ms. Betz to make "advance arrangements" or "obtain permission" to visit its TARPS facility; (4) TARTA violated O.R.C. §§ 4117.11(A)(1) and (A)(2) when it prohibited ATU from using the employee mail slots in the lockers at the TARPS facility to communicate with TARPS bargaining-unit members; and (5) TARTA violated O.R.C. §§ 4117.11(A)(1) and (A)(2) when it posted Ms. Betz's wages on the TARPS employee bulletin board.
3. Order Respondent, Toledo Area Regional Transit Authority to take the following actions:

A. CEASE AND DESIST FROM:

- (1) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by requiring the ATU Business Agent to make "advance arrangements" with or "obtain permission" from the Director of Paratransit Services prior to visiting the TARPS (Knapp Street) facility, prohibiting the ATU's use of the mail slots in the employee lockers at the TARPS facility and by posting the ATU Business Agent's name and wages behind locked glass doors on the TARPS employee bulletin board, and from otherwise violating O.R.C. § 4117.11(A)(1); and
- (2) Initiating, creating, dominating, or interfering with the formation or administration of any employee organization by prohibiting the ATU's use of the mail slots in the employee lockers at the TARPS (Knapp Street) facility and by posting the ATU Business Agent's name and wages behind locked glass doors on the TARPS employee bulletin board, and from otherwise violating O.R.C. § 4117.11(A)(2).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Post for sixty (60) consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees represented by the Amalgamated Transit Union, Local 697 work, the Notice to Employees furnished by the State Employment Relations Board stating that the Toledo Area Regional Transit Authority shall cease and desist from the actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B);
- (2) Allow the Amalgamated Transit Union, Local 697 to use the mail slots in the employee lockers at the TARPS facility;
- (3) Allow the Amalgamated Transit Union, Local 697 Business Agent access to the TARPS facility without making advance arrangements or obtaining permission; and
- (4) Notify the State Employment Relations Board in writing within twenty (20) calendar days from the date the ORDER becomes final of the steps that have been taken to comply therewith.

Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

4. Case 2013-ULP-01-0004 SERB v. City of Cuyahoga Falls

On January 8, 2013, the Fraternal Order of Police, Ohio Labor Council, Inc. ("Union" or "Intervenor") filed an unfair labor practice charge against the City of Cuyahoga Falls ("City"), alleging that the City violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(3). On March 14, 2013, the State Employment Relations Board ("Board" or "Complainant") determined that probable cause existed to believe that the City had committed an unfair labor practice by terminating Cara Cumberlidge as a full-time

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dispatcher and reinstating her as a part-time dispatcher in retaliation for her exercise of rights guaranteed in O.R.C. Chapter 4117, in violation of O.R.C. §§ 4117.11(A)(1) and (A)(3).

On May 2, 2013, a complaint was issued. On May 20, 2013, the Union filed a motion to intervene, which was granted in accordance with Ohio Administrative Code Rule 4117-1-07(A). On July 9, 2013, an evidentiary hearing was held, wherein testimonial and documentary evidence was presented. Subsequently, the parties filed post-hearing briefs. On September 20, 2013, Administrative Law Judge Beth A. Jewell (ALJ Jewell) issued a Proposed Order and, on September 26, 2013, a Corrected Proposed Order was issued. In her Corrected Proposed Order, ALJ Jewell recommends that the Board find that the City violated O.R.C. §§ 4117.11(A)(1) and (A)(3) when it terminated Ms. Cumberlidge's full-time employment status and reinstated her as a part-time dispatcher in retaliation for her exercise of guaranteed rights under O.R.C. Chapter 4117.

On October 2, 2013, the City filed a motion for clarification regarding the due date for exceptions. On October 10, 2013, the City timely filed exceptions to the Proposed Order. On October 11, 2013, the Union and Complainant filed a joint motion for extension of time to file responses to the exceptions. On October 17, 2013, the Board's Office of General Counsel issued a procedural order, granting an extension of time to file a response to the exceptions and describing the motion for clarification as moot. Counsel for Complainant and Intervenor each filed a response to the City's exceptions to the Proposed Order on October 31, 2013. Because the City timely filed its exceptions to the Proposed Order, the Board should deny the motion for clarification as moot.

Board Member Brundige moved that the Board:

1. Adopt the Findings of Fact and Conclusions of Law in ALJ Jewell's Corrected Proposed Order, finding that: **(1)** the City of Cuyahoga Falls is a "public employer" as defined in O.R.C. § 4117.01(B); **(2)** the Fraternal Order of Police, Ohio Labor Council, Inc. is an "employee organization" as defined in O.R.C. § 4117.01(D); **(3)** Cara Cumberlidge is a "public employee" as defined in O.R.C. § 4117.01(C); and **(4)** the City violated O.R.C. §§ 4117.11(A)(1) and (A)(3) when it terminated Ms. Cumberlidge's full-time employment status and reinstated her as a part-time dispatcher in retaliation for her exercise of guaranteed rights under O.R.C. Chapter 4117.
2. Amend the ALJ's proposed Notice to Employees and order Respondent, City of Cuyahoga Falls, to take the following actions:

B. CEASE AND DESIST FROM:

- (1) Interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Ohio Revised Code Chapter 4117 by terminating Cara Cumberlidge's full-time employment status and reinstating her as a part-time dispatcher in retaliation for her exercise of guaranteed rights, and from otherwise violating O.R.C. § 4117.11(A)(1); and
- (2) Discriminating in regard to hire or tenure of employment or any term or condition of employment by terminating Cara Cumberlidge's full-time employment status and reinstating her as a part-time dispatcher in retaliation for her exercise of guaranteed rights, and from otherwise violating O.R.C. §
- (3)

4117.11(A)(3).

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION:

- (1) Offer reinstatement to Cara Cumberland to her full-time position as a dispatcher with full back pay, benefits, and seniority, retroactive to October 25, 2012, and subject to offset;
- (2) Post for sixty (60) consecutive calendar days in all the usual and customary posting locations where bargaining-unit employees represented by the Fraternal Order of Police, Ohio Labor Council, Inc. work, the Notice to Employees furnished by the State Employment Relations Board stating that the City of Cuyahoga Falls shall cease and desist from the actions set forth in paragraph (A) and shall take the affirmative action set forth in paragraph (B);
- (3) Notify the State Employment Relations Board in writing within twenty (20) calendar days from the date the ORDER becomes final of the steps that have been taken to comply therewith.

Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

5. Case 2013-ULP-02-0047 International Brotherhood of Teamsters, Local 336 v. Lorain County Domestic Relations Court

On February 19, 2013, International Brotherhood of Teamsters, Local 336 ("Charging Party") filed an unfair labor practice charge against Lorain County Domestic Relations Court ("Charged Party"), alleging that Charged Party violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(5).

On August 15, 2013, the State Employment Relations Board ("SERB") found probable cause to believe that Charged Party had committed unfair labor practices, directed the parties to unfair labor practice mediation, and if mediation proved unsuccessful, authorized the issuance of a complaint and directed the matter to hearing.

On November 18, 2013, SERB Mediator Anton Naess sent an email to the parties' representatives requesting an update as to the status of this matter. Charging Party's representative, Brian J. Smith, responded via email on November 18, 2013, indicating that the parties had reached a settlement of this case.

Board Member Brundige moved that the Board construe Charging Party's November 18, 2013 email notification of the parties settlement of this case as a motion to withdraw, grant the motion to withdraw, and dismiss with prejudice the unfair labor practice charge in Case No. 2013-ULP-02-0047. (The Board retains jurisdiction over this matter for purposes of enforcing the parties' settlement agreement, pursuant to O.A.C. Rule 4117-7-06.) Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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4. Case 2013-ULP-09-0266 International Brotherhood of Teamsters, Local 293 v. Medina County Public Defenders Office

The unfair labor practice charge alleged that the Medina County Public Defenders Office violated Ohio Revised Code §4117.11 (A)(1) and (5) by unilaterally making changes during first time negotiations for a collective bargaining agreement.

Information gathered during the investigation revealed the Medina County Public Defenders Office had a written policy regarding the use of compensatory time and it does not appear that the Medina County Public Defenders Office actions constitute a violation of 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 the Medina County Public Defenders Office. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

5. Case 2013-ULP-09-0274 Toledo Firefighters, IAFF Local 92, AFL-CIO v. City of Toledo

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1), (3) and (5) by interfering with the guaranteed rights of Firefighter Anthony Comes and failing to bargain in good faith.

Information gathered during the investigation revealed the Union knew or should have known the terms of the Last Chance Agreement on February 2, 2012, but did not file the instant charge until September 13, 2013, over one year later. The Union did not provide sufficient evidence to justify equitable tolling of the 90-day statute of limitations and failed to provide sufficient information to support the (A)(3) allegation.

Board Member Brundige moved an alternative recommendation that the Board dismiss the charge with prejudice for being untimely filed. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

6. Case 2013-ULP-09-0283 Scott Englehart v. Woodmore School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(3), (4) and (B)(6) by not renewing Scott Englehart's contract.

Information gathered during the investigation revealed that Mr. Englehart filed the instant charge 130 days after the actual harm. Mr. Englehart did not provide sufficient evidence to justify the equitable tolling of the 90-day statute of limitations and failed to provide sufficient information to support the (A)(3) and (4) allegation. The (B)(6) allegation was not properly filed.

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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 and for being untimely filed.

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

7. Case 2013-ULP-10-0298 Fraternal Order of Police, Lodge 101 v. Butler County Sheriff's Office

The unfair labor practice charge alleged that the County Sheriff violated Ohio Revised Code §4117.11 (A)(1) and (5) by unilaterally creating a new classification of corporal within the deputy unit.

The investigator is holding her discussion in abeyance pending the outcome of the Board's decision.

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. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

8. Case 2013-ULP-06-0157 Service Employees International Union, District 1199 v. State of Ohio - Department of Rehabilitation & Correction

The unfair labor practice charge alleged that The Department of Rehabilitation and Correction (DRC) violated Ohio Revised Code §4117.11 (A)(1), (3), (4), and (7) by unjustly terminating William J. Taraschke for exercising his guaranteed rights.

Information gathered during the investigation revealed that DRC persuasively demonstrated that after investigating complaints regarding Mr. Taraschke's behavior, Mr. Taraschke's termination was not due to his engaging in protected activities, but rather due to his misconduct as an employee. DRC's actions do not appear to rise to the level of an (A) (3) violation and there was not sufficient information or documentation to support the (A) (1), (4) and (7) 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 DRC. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

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9. Case 2013-ULP-09-0269 Douglas Schuler, Sr. v. International Brotherhood of Teamsters Local 244

The unfair labor practice charge alleged that the Union violated Ohio Revised Code §4117.11 (B) (6) by failing to fairly represent Douglas Schuler, Sr. during his termination proceedings.

Information gathered during the investigation revealed in this charge, the Union's actions do not appear to be arbitrary, discriminatory or in bad faith in its representation of Mr. Schuler and therefore, do not appear to rise to the level of a (B)(6) violation.

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 the Union. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

10. Case 2013-ULP-09-0284 Service Employees International Union, District 1199 v. Cuyahoga County Board of Developmental Disabilities

The unfair labor practice charge alleged that the County Board violated Ohio Revised Code §4117.11 (A)(1) and (5) by unilaterally removing the previously negotiated floating holidays.

Information gathered during the investigation revealed that the matter appears to be purely contractual with no arguable statutory violation. The County Board's actions do not appear to rise to the level of an (A)(5) violation and there was not sufficient information to support an (A)(1) violation.

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 the County Board. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

11. Case 2013-ULP-09-0289 Toledo Federation of Teachers, AFT, AFL-CIO v. Toledo Public School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(5) by unilaterally re-establishing the Supplemental Position of Wrestling Coach in violation of the parties' 2011 Memorandum of Understanding (MOU).

Information gathered during the investigation revealed the School Board appears to have the managerial right to re-establish the supplemental wrestling coach positions, but did have an obligation to bargain the effects of that re-establishment. The School Board offered to negotiate the effects, but the Union did not respond. In addition, the charge was filed 117 days late.

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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 and for being untimely filed. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

12. Cases 2013-ULP-10-0295 Stow-Munroe Falls Teachers' Association, OEA/NEA v. Stow-Munroe Falls City School District Board of Education

2013-ULP-10-0296 Stow-Munroe Falls Classified Employees Association, OEA/NEA v. Stow-Munroe Falls City School District Board of Education

The unfair labor practice charges alleged that the School Board violated Ohio Revised Code §4117.11 (A)(1) and (5) by unilaterally increasing insurance premiums retroactive to July 1, 2013.

Information gathered during the investigation revealed the School Board did not make changes to the specific percentages identified in the parties' Insurance Article when the increase in premiums were implemented and the School Board did not deviate from the contractually outlined premium percentages. The matter appears to be purely contractual and may have been best addressed through the parties' final and binding grievance-arbitration procedure. The Associations did not provide sufficient information or documentation to support the (A)(1) allegation.

Board Member Brundige moved that the Board dismiss the charges with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by the School Board. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

13. Case 2013-ULP-10-0302 Sheila Newton v. Ohio Civil Service Employees Association, AFSCME Local 11

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(6) when the Chapter President, Jill Tummler-McKenzie, failed to recuse herself from representing Sheila Newton prior to the start of her disciplinary process.

Information gathered during the investigation revealed that this charge should have been filed on or before September 2, 2013, but was not filed until October 4, 2013, 119 days later. Ms. Newton did not provide any information to justify tolling of the 90-day statute of limitations.

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Board Member Brundige moved that the Board dismiss the charge with prejudice for being untimely filed. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

14. Case 2013-ULP-10-0308 Ashland Professional Fire Fighters, IAFF Local 1386, AFL-CIO v. City of Ashland

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(5) by "wantonly and repeatedly" failing to issue timely payment of contractual items.

Information gathered during the investigation revealed that the Union confirms that the members have been paid their retro pay and their uniform allowance. As a result, the City's alleged actions do not rise to the level of an (A)(5) violation.

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 the City. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

15. Case 2013-ULP-09-0271 Sandra Meeks Speller v. Toledo Association of Administrative Personnel (TAAP)

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(2) and (6) by refusing to advance Sandra Meeks Speller's termination grievance to arbitration after the School District voted not to accept the Referee's decision.

Information gathered during the investigation revealed on October 24, 2013, the Board dismissed the above charge for lack of probable cause. Ms. Speller filed a timely motion for reconsideration on November 15, 2013. However, Ms. Speller failed to provide any new information warranting reconsideration.

Board Member Brundige moved that the Board deny Ms. Speller's Motion for Reconsideration with prejudice. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

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16. Case 2013-ULP-06-0161 Errol Savage v. Cleveland Metropolitan School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(1), (3), and (4) by unilaterally transferring employees to a different location and refusing to bargain with the exclusive bargaining representative.

Information gathered during the investigation revealed that the School Board has demonstrated that it followed the proper protocol set forth in the collective bargaining agreement, and in consultation with Errol Savage's exclusive representative. The School Board's actions do not rise to the level of a statutory violation.

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 the School Board. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

17. Case 2013-ULP-08-0241 Gwendolyn S. Mitchell v. Lucas County Sheriff

The unfair labor practice charge alleged that the County Sheriff violated Ohio Revised Code §4117.11 (A)(1) and (3) by interfering, restraining, coercing and discriminating against Gwendolyn Mitchell in the exercise of her guaranteed rights.

Information gathered during the investigation revealed that the Lucas County Sheriff followed the progressive discipline procedure when it terminated Ms. Mitchell for violating the work rule regarding Abuse of Sick Leave. The County Sheriff's actions do not appear to rise to the level of a statutory violation. Ms. Mitchell failed to provide sufficient information to support the (A)(1) and (3) 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 the County Sheriff. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

18. Case 2013-ULP-08-0242 Gwendolyn S. Mitchell v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Local 3056

The unfair labor practice charge alleged that the Union violated Ohio Revised Code §4117.11 (B)(6) by failing to represent Gwendolyn S. Mitchell regarding her termination.

Information gathered during the investigation revealed that the Union took the basic and required steps in its representation of Ms. Mitchell when it filed a grievance regarding her termination. The Union's actions do not rise to the level of a (B)(6) violation.

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Items 20 through and including 25 were withdrawn pursuant to a request to withdraw, a motion to withdraw, or as a result of a settlement.

Board Member Brundige moved that the Board construe the requests to withdraw and the SERB mediated settlement agreement as motions to withdraw, and grant the motions with prejudice. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

VI. TABLED AND OTHER MATTERS:

There are no tabled matters.

VII. ADMINISTRATIVE MATTERS:

Executive Director Christine Dietsch presented the following "Executive Director's Report":

Candidate for Addition to SERB's Roster of Neutrals

The following candidate is recommended for membership onto the State Employment Relations Board's Roster of Neutrals. The candidate submitted the required application, writing samples and references. Adding this candidate to the Roster of Neutrals improves the diversity of the panel. The candidate is:

1. John Mark Haseley

Board Member Brundige moved that the Board approve the above listed candidate, John Mark Haseley, for addition to the State Employment Relations Board (SERB) Roster of Neutrals. Chairman Zimpher seconded the motion. Chairman Zimpher called for discussion and the vote.

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

SERB REGULAR SCHEDULED MEETING DATES:

- Reminder of the next regular scheduled meeting dates of the State Employment Relations Board:
 - **January 09, 2014**
 - **January 30, 2014**
 - **February 20, 2014**
 - **March 13, 2014**
 - **April 03, 2014**
 - **April 23, 2014 (Wednesday)**
 - **May 15, 2014**
 - **June 05, 2014**

SYSTEM UPDATES:

- **Employee Organization Annual Report Filings:** For fiscal year ending 06/30/13 a total of 41 Employee Organizations are required to report not later than December 15, 2013. Five (5) organizations have been granted extensions as their accounting firms do not have their financial statements complete as of this date. All other Employee Organizations have filed.
- **Advanced Conflict Resolution Training for SERB Staff:** To be held on December 20, 2013 at the State Library. All staff will be in attendance. CLE's have been approved for the legal staff for the training. Coverage for the Office has been arranged.

FUTURE PLANNING:

- **SERB Academy:** Spring academy being planned for 3/31/14 & 4/01/14 to coincide with the 30th Anniversary of SERB. Crown Plaza location.
- **SPBR Academy:** Spring academy being planned for 6/13/14. Crown Plaza location.

IX. ADJOURNMENT:

Board Member Brundige moved that the Board adjourn the meeting. Chair Zimpher seconded the motion. Chair Zimpher called for the vote.

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

The Board meeting adjourned at 10:47 a.m.

/s/ 
W. Craig Zimpher, Chair