

State Employment Relations Board

Board Meeting Minutes

June 26, 2014

The State Employment Relations Board met on June 26, 2014, 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 Aaron A. Schmidt, and Board Member N. Eugene Brundige.

I. APPROVAL OF MINUTES FOR THE JUNE 5, 2014 BOARD MEETING:

Vice Chair Schmidt moved that the Board approve the minutes for the June 5, 2014 Board meeting. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

There were no mediation matters.

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 2014-REP-04-0056 Communications Workers of America (CWA), Local 4502 and City of Columbus

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

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

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

2. Case 2014-REP-05-0062 Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO and The State of Ohio, DAS, Office of Collective Bargaining

3. Case 2014-REP-05-0063 Fort Frye Teachers' Association (OEA/NEA) and Fort Frye Local School District Board of Education

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

Vice Chair Schmidt 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 SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

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4. Case 2014-REP-04-0052 Teamsters Local Union 413, affiliated with the International Brotherhood of Teamsters and Waverly Police Department

The Employee Organization (Teamsters) filed a Petition for Representation Election. The Employer timely filed a Position Statement and requested that the Board dismiss the petition. Teamsters filed a Memorandum in Opposition to the Motion to Dismiss.

As of the 2010 census, the population in the unincorporated portion of Waverly is 4,408. Teamsters does not dispute that the population is less than 5,000. Pursuant to In re Jackson Twp Trustees, Franklin County, SERB 99-003 (1-14-99) SERB has consistently found an entity not to be a public employer if its population is less than 5,000. Therefore, the Employer is not a "public employer" as defined by Ohio Revised Code § 4117.01 (B), and the Board lacks jurisdiction to entertain the petition.

Board Member Brundige moved that the Board determine that the Employer is not a "public employer" as defined by Ohio Revised Code § 4117.01(B), construe the Employer's request as a Motion to Dismiss, grant the motion, and dismiss without prejudice the Petition for Representation Election as the Board has no jurisdiction. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion.

Board Member Brundige commented that the memo submitted for this case was very well written. Chair Zimpher agreed.

Chair Zimpher called for the vote.

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

5. Case 2014-REP-05-0066 William Sheridan and Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4 & Local 783 and Van Buren Local Schools

The Petitioner (Sheridan) filed a Petition for Decertification Election. As the contract expires June 30, 2014, it was filed outside the window period which is 90-120 days prior to the contract's expiration. Also, the petition was not accompanied by the required showing of interest (signed and dated statements) nor was the proof of service completed.

This Investigator contacted the Petitioner and explained the filing deficiencies. Although Sheridan could amend the petition to correct the showing of interest and proof of service deficiencies, the petition was not filed within the window period which remains closed until after the contract expires.

Vice Chair Schmidt moved that the Board dismiss without prejudice the Petition for Decertification Election pursuant to Ohio Revised Code § 4117.07(C)(6). Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

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6. Case 2014-REP-05-0058 SEIU, Dist 1199 WV/KY/OH and Cleveland State University

The Employer filed a Petition for Clarification of Bargaining Unit to exclude the new classification of Enrollment Representative. The Union responded by filing a position statement opposing the clarification.

Chair Zimpher moved an alternative recommendation that the Board direct this matter to the Office of the General Counsel for the purpose of conducting an Inquiry into the issues raised in the case. At the conclusion of the Inquiry, the General Counsel will report back to the Board with a recommendation. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

7. Case 2014-REP-03-0032 Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and Canal Winchester Local School District

- There were 36 valid ballots cast
- There were 0 void ballots
- There were 2 challenged ballots
- Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO received 13 votes
- No Representative received 23 votes and prevailed in this election.

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

- There were 6 valid ballots cast
- There were 0 void ballots
- There was 1 challenged ballot
- Fraternal Order of Police, Ohio Labor Council, Inc. received 0 votes
- No Representative received 6 votes and prevailed in this election.

Vice Chair Schmidt moved that the Board certify the election results and certify that the employees in each 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 SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

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Vice Chair Schmidt moved that the Board construe the parties' settlement agreement as a motion to dismiss, grant the motion, and dismiss with prejudice the unfair labor practice charge in Case No. 2013-ULP-09-0275. (The Board retains jurisdiction over this matter for purposes of enforcing the parties' settlement agreement, pursuant to Ohio Administrative Code Rule 4117-7-06.) Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

2. Case 2014-ULP-02-0020 Parma Education Association, OEA/NEA and Parma City School District Board of Education

On February 10, 2014, the Parma Education Association, OEA/NEA ("Charging Party") filed unfair labor practice charges against the Parma City School District Board of Education ("Charged Party"), alleging that Charged Party violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(5). On April 3, 2014, the State Employment Relations Board ("Board") found probable cause to believe Charged Party had committed unfair labor practices, authorized the issuance of a complaint, referred the matter an expedited hearing, and directed the parties to participate in unfair labor practice mediation, to run concurrently with the processing of the complaint and unfair labor practice charges.

The parties participated in unfair labor practice mediation. On June 11, 2014, the parties filed a settlement agreement. In paragraph three of this agreement, the parties request that the Board construe their settlement agreement as a motion to dismiss the unfair labor practice charge and complaint in this matter with prejudice. Since the parties have settled this matter, no complaint was issued.

Board Member Brundige moved that the Board construe the parties' settlement agreement as a motion to dismiss, grant the motion, and dismiss with prejudice the unfair labor practice charge in Case No. 2014-ULP-02-0020. (The Board retains jurisdiction over this matter for purposes of enforcing the parties' settlement agreement, pursuant to Ohio Administrative Code Rule 4117-7-06.) Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

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

3. Case 2013-ULP-10-0310 City of Cleveland v. Communications Workers of America, Local 4340, AFL-CIO

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

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

On October 11, 2013, the City of Cleveland ("Charging Party") filed an unfair labor practice charge against the Communications Workers of America, Local 4340, AFL-CIO ("Charged Party"), alleging that Charged Party violated Ohio Revised Code §§ 4117.11(B)(1), (B)(2), (B)(3), (B)(6), and (B)(8). On January 20, 2014, the State Employment Relations Board

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("the Board" or "Complainant") determined that probable cause existed to believe Charged Party had committed or was committing an unfair labor practice, authorized the issuance of a complaint, and referred the matter to hearing. The Board also directed the parties to participate in unfair labor practice mediation for a period not to exceed forty-five days.

On March 10, 2014, the parties participated in an unfair labor practice mediation session that led to the filing of a settlement agreement. In paragraph 3 of the settlement agreement, the parties request that the Board construe their agreement as a motion to hold the unfair labor practice charge and complaint in this matter in abeyance for a period of sixty days. At the end of the sixty-day period, the assigned SERB mediator will either certify that the matter has been settled and may be dismissed or has not been settled and should proceed with the issuance of a complaint in accordance with the Board's January 20, 2014 Directive. On April 3, 2014, the Board construed the parties' settlement agreement as a motion to hold the unfair labor practice charge and complaint in abeyance for a period of sixty days, granted the motion, and held in abeyance the unfair labor practice charge and complaint.

On June 17, 2014, Charging Party notified the assigned SERB mediator via email that the City has withdrawn its unfair labor practice charge in this case.

Vice Chair Schmidt moved that the Board construe Charging Party's June 17, 2014 email as a motion to withdraw the unfair labor practice charge, grant the motion, and dismiss with prejudice the unfair labor practice charge and complaint in Case No. 2013-ULP-10-0310. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

IV. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 2013-ULP-12-0347 Warren County Deputy Sheriff's Benevolent Association v. Warren County Sheriff's Office

The unfair labor practice charge alleged that the County Sheriff violated Ohio Revised Code §4117.11 (A) (1) and (2) by attempting to obtain confidential information from a union representative about a bargaining-unit employee during the course of an investigation.

Information gathered during the investigation revealed that Lt. Peters accepted Deputy Henning's statement that Officer Edwards did not say anything different and he did not pursue the matter. Thus, no harm was done. Based on that information, the County Sheriff's actions do not constitute a statutory violation of (A)(1) and (2).

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

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

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2. Case 2014-ULP-05-0068 Jennifer N. McGinnis v. Ohio Patrolmen's Benevolent Association

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(1) and (6) by failing to timely file a grievance over Jennifer McGinnis' termination.

Information gathered during the investigation revealed that Ms. McGinnis was terminated on May 8, 2013 but did not file the instant charge until May 6, 2014, nearly one (1) year later. No evidence was provided to justify equitable tolling of the 90-day time requirement. Ms. McGinnis failed to provide sufficient information to support the (B)(1) allegation.

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

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

3. Case 2014-ULP-04-0057 John Landin v. State of Ohio - Department of Rehabilitation and Correction, Allen/Oakwood Correctional Institution

The unfair labor practice charge alleged that the Department violated Ohio Revised Code §4117.11 (A)(1) by assigning nonbargaining-unit employees to the bargaining-unit position of Librarian and for violating a 2012 Letter of Agreement regarding the Librarian position.

Information gathered during the investigation revealed that the matter in this case is purely contractual with no arguable statutory violation. A grievance was filed and the matter would be best addressed through the parties' final and binding grievance- arbitration procedure. John Landin did not provide sufficient information or documentation to support the (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 Department. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

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

4. Case 2014-ULP-04-0062 Andrew Monticure v. City of Toledo

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1) by violating the Memorandum of Understanding regarding "bidding" seniority.

Information gathered during the investigation revealed that Andrew Monticure submitted a bid on the Maintenance Worker 1 position and received the bid even though he had dropped on the divisional seniority list and therefore he was not harmed. Based on the totality of the circumstances, the City's actions do not rise to the level of an (A)(1) violation

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of the statute.

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

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

5. Case 2014-ULP-04-0063 Andrew Monticure v. Ohio Council 8, AFSCME, Local 7

The unfair labor practice charge alleged that the Union violated Ohio Revised Code §4117.11 (B)(1) by allowing the City of Toledo to violate the seniority list during the bidding process.

Information gathered during the investigation revealed that the Union advised the affected members, including Andrew Monticure, that their places on the bid list would change and further explained the seniority list that would be used during the bidding process. Therefore, based on the totality of the circumstances, the Union's actions do not rise to the level of a (B)(1) and (6) 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 Union. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

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

6. Case 2014-ULP-05-0072 City, County & Waste Paper Drivers, Teamsters Local 244 v. City of Willoughby Hills

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1) by allowing one of its representatives to disrupt a meeting of the members who were discussing contract issues; thereby, denying the members their guaranteed rights.

Information gathered during the investigation revealed that there was a misunderstanding on the part of all the parties involved. Based on the totality of the circumstances, the City's actions do not rise to the level of an (A)(1) statutory violation.

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

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

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7. Case 2014-ULP-01-0009 Civil Service Personnel Association v. City of Akron

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1) and (5) by interfering, restraining and coercing employees in the exercise of their guaranteed rights and by refusing to allow an employee to have union representation during an investigation and suspension.

Information gathered during the investigation revealed that the issues in the instant charge are purely contractual and by virtue of the arbitrator's opinion rendered in December of 2013, the issues were resolved through the parties' final and binding grievance-arbitration procedure. The Association did not provide sufficient 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 the City. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

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

8. Case 2014-ULP-05-0073 University Heights Firefighters IAFF Local 974 v. City of University Heights

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1) and (5) by interfering, restraining and coercing its employees in the exercise of their guaranteed rights and by refusing to bargain with the exclusive representative.

The Investigator will hold the discussion in abeyance pending the outcome of the recommendation.

Vice Chair Schmidt 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 comes 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.

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

9. Case 2014-ULP-05-0081 Service Employees International Union, District 1199 v. Cleveland State University

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

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

VI. TABLED AND OTHER MATTERS:

1. Case 2013-ULP-11-0334 Service Employees International Union, District 1199 v. Butler County Head Start
Tabled – April 3, 2014

VII. ADMINISTRATIVE MATTERS:

SERB REGULAR SCHEDULED MEETING DATES:

- July 24, 2014
- August 14, 2014

SYSTEM UPDATES:

Employee Organization Annual Report Filings: For fiscal year ending 12/31/13 a total of 745 Employee Organizations were required to report not later than May 15, 2014. To date, four (4) Employee Organizations have not yet filed. The list below represents the consolidation of four (4) administrative matters before the Board.

1. State Employment Relations Board v. Fraternal Order of Police, Lodge #92
2. State Employment Relations Board v. International Association of Fire Fighters, Local #2009, Richmond Heights City Fire Fighters
3. State Employment Relations Board v. Streetsboro Part-time Firefighters Organization
4. State Employment Relations Board v. International Brotherhood of Teamsters, Local #244

Every Employee Organization that is certified or recognized as a representative of public employees is required to file annually with the State Employment Relations Board (SERB) certain reports pursuant to Section 4117.19 of the Ohio Revised Code. These reports must be filed with SERB by the 15th day of the 5th month following the end of their fiscal year. SERB provided FOP, Lodge #92; IAFF, Local #2009; Streetsboro PT FF; and Teamsters Local #244 (Non Compliant Parties) with 45 day, 30 day, and 10 day notices of reaching the deadline to file the required reports. As a courtesy an Employee Organization Annual Report Form was attached to each notice along with the instruction to attach a Financial Report as indicated on item #7 of the Employee Organization Annual Report Form to comply with the filing requirements.

Once 31 days past due, another notice was sent notifying them that they were 31 days past the deadline to file the required reports. An Employee Organization Annual Report Form was attached to each notice along with the instruction to attach a Financial Report as indicated on item #7 of the Employee Organization Annual Report Form to comply with the filing requirements. The Non Compliant Parties were also notified that they could file the reports by postal or electronic mail with the email address provided. In the body of the letter it was made clear by a bolded comment that this was their final notification.

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Each of the Non Compliant Parties was contacted a combined 3 times by phone and 3 times by follow up email encouraging compliance. As of this date the Non Compliant Parties have failed to respond to requests for compliance with the requirement to file the annual and financial reports.

Vice Chair Schmidt moved that the Board refer these matters to hearing at its next regularly scheduled meeting. The Board will take evidence and hear testimony to determine if the employee organizations have failed to comply with the requirements of Section 4117.19 (B) of the Ohio Revised Code. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

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

- **SPBR Academy:** Held 6/13/14. Crowne Plaza - Dublin location. There were 113 registrants in attendance. It was a great conference.
- **Fact Finders Conference:** Scheduled for August 21, 2014 to be held at the Crowne Plaza - North location. OSU President Alutto will be the featured speaker. To date 45 registrations have been received.

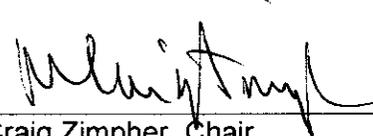
IX. ADJOURNMENT:

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

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

The Board meeting adjourned at 10:22 a.m.

/s/


W. Craig Zimpher, Chair