

State Employment Relations Board

Board Meeting Minutes

December 17, 2015

The State Employment Relations Board met on December 17, 2015, at 10:00 a.m., at 65 East State Street, 12th Floor, Columbus, Ohio. Present at the meeting were Chair W. Craig Zimpher and Vice Chair Aaron A. Schmidt. The third SERB member position is vacant.

I. APPROVAL OF MINUTES FOR THE NOVEMBER 19, 2015 BOARD MEETING:

Vice Chair Schmidt moved that the Board approve the minutes for the November 19, 2015 meeting. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: 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 2015-REP-10-0097 Perry Association of Support Staff OEA/NEA and Perry Local School District Board of Education
(December 29, 2015 - January 12, 2016)
2. Case 2015-REP-10-0100 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO and Paint Creek Joint EMS/Fire District
(December 29, 2015 - January 12, 2016)
3. Case 2015-REP-10-0101 Ohio Patrolmen's Benevolent Association and City of Wickliffe
(December 29, 2015 - January 12, 2016)

The parties have entered into Consent Election Agreements seeking mail-ballot elections for the polling period of December 29, 2015 through January 12, 2016.

Vice Chair Schmidt moved that the Board approve the Consent Election Agreements and direct mail-ballot elections to be conducted during the polling period of December 29, 2015 through January 12, 2016. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

4. Case 2015-REP-09-0085 New Lexington Education Association OFT/AFT/AFL CIO #4186 and New Lexington City School District Board of Education
5. Case 2015-REP-11-0108 Fraternal Order of Police, Lodge 101 (Non-Supervisors) and Butler County Sheriff

The parties jointly filed Petitions for Amendment of Certification seeking to amend the existing units respectively. The proposed amendments appear appropriate.

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

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

6. Case 2015-REP-10-0095 Tom Moses and International Union of Operating Engineers, Local 18 and City of Findlay

Tom Moses filed a Petition for Decertification Election seeking to decertify the International Union of Operating Engineers, Local 18, which is the Board-certified exclusive representative of certain employees of City of Findlay. On December 9, 2015, the Petitioner has filed a letter withdrawing the Petition for Decertification Election.

Vice Chair Schmidt moved that the Board construe the Petitioner's letter as a motion to withdraw, grant the motion, and dismiss without prejudice the Petition for Decertification Election. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

7. Case 2015-REP-11-0103 Joe Sizemore and Fraternal Order of Police and Gallia County Sheriff

On November 5, 2015, Joe Sizemore filed a Petition for Decertification Election seeking to decertify Fraternal Order of Police, which is the Board-certified exclusive representative of certain employees of the Gallia County Sheriff's Office.

The petition was filed outside of the 120-90 day range prior to the contract's expiration date. The petition is untimely filed. The Representation section has contacted the Petitioner and explained the filing deficiency.

Vice Chair Schmidt moved that the Board dismiss without prejudice the Petition for Decertification Election for being untimely filed. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

8. Case 2015-REP-11-0104 Mayfield Village Firefighters Association and Village of Mayfield

Mayfield Village Firefighters Association filed a Request for Recognition seeking to represent certain employees of Mayfield Village Fire Department. The current federal census reveals that the population in the unincorporated portion of Mayfield Village Fire Department is less than 5,000. Therefore, the Village of Mayfield is not a "public employer" as defined by Ohio Revised Code §4117.01(B). Accordingly, the Board lacks jurisdiction.

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Vice Chair Schmidt moved that the Board dismiss the Request for Recognition for lack of jurisdiction. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

9. Case 2015-REP-09-0084 Shannon C. Boyce and Glass Molders Pottery
Plastics & Allied Workers and Columbiana County
Clerk of Courts

The Union was served with a copy of the petition via certified mail. The mail was returned as "unclaimed". Dismissing the Union's objections and remanding the case to the Representation Section to proceed with the mail-ballot election process is appropriate.

Vice Chair Schmidt moved that the Board dismiss the Employee Organization's objections and remand the case to the Representation Section to proceed with the mail-ballot election process. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

10. Case 2015-REP-10-0098 Fraternal Order of Police, Ohio Labor Council, Inc.
and Hamilton Township, Warren County

The Fraternal Order of Police, Ohio Labor Council, Inc. filed a Request for Recognition seeking to represent all full-time Police Administrative Assistants of Hamilton Township Trustees. The substantial evidence is sufficient, and no objections have been filed. The Employer has complied with the posting requirements set forth in Ohio Revised Code § 4117.05(A)(2).

Vice Chair Schmidt moved that the Board certify the 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: SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

11. Case 2015-REP-07-0066 Teamsters Local 436 and City of Solon
(September 22, 2015 - October 5, 2015)

- There were fifty-six (56) valid ballots cast
- There were zero (0) void ballots
- There were zero (0) challenged ballots
- No Representative received twenty six (26) votes
- Teamsters Local 436 received thirty (30) votes
- Teamsters Local 436 prevailed in this election

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The Board has already been apprised of this case. Mail-ballot elections were held and the ballots were tallied.

Vice Chair Schmidt moved that the Board dismiss the post-election objections, certify the election results, and certify the 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: SCHMIDT: Yes ZIMPHER: Yes
 Affirmed X Denied

12. Case 2015-REP-07-0064 Michael Harkless and Teamsters Local Union 637 affiliated with the International Brotherhood of Teamsters and Jackson County EMS
(November 10, 2015 –November 24, 2015)

- There were twenty (20) valid ballots cast
- There were zero (0) void ballots
- There were zero (0) challenged ballots
- Teamsters Local Union 637 received (3) votes
- No Representative received seventeen (17) votes
- No Representative prevailed in this election

13. Case 2015-REP-08-0074 Gregory Grimm and Ohio Association of Public School Employees (OAPSE) Southeast District and Athens County Board of Developmental Disabilities

- There were eight (8) valid ballots cast
- There were zero (0) void ballots
- There were zero (0) challenged ballots
- Ohio Associations of Public School Employees (OAPSE) Southeast District received one (1) vote
- No Representative received seven(7) votes
- No Representative prevailed in this election

Mail-ballot elections were held and the ballots were tallied.

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

Vote: SCHMIDT: Yes ZIMPHER: Yes
 Affirmed X Denied

14. Case 2015-REP-08-0077 Fraternal Order of Police, Ohio Labor Council, Inc. and Fayette County Sheriff
(November 10, 2015 –November 24, 2015)

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- There were ten (10) valid ballots cast
- There were zero (0) void ballots
- There were zero (0) challenged ballots
- No Representative received one (1) vote
- Fraternal Order of Police, Ohio Labor Council, Inc. received nine (9) votes
- Fraternal Order of Police/Ohio Labor Council, Inc. prevailed in this election

Mail-ballot elections were held and the ballots were tallied.

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

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Case 2015-ULP-07-0159 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and its Local 332 v. Vermilion Local School District Board of Education
2. Case 2015-ULP-07-0166 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and its Local 332 v. Vermilion Local School District Board of Education

In case number 2015-ULP-07-0159 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO, and its Local 332 ("Charging Parties") filed an unfair labor practice charge against the Vermilion Local School District Board of Education ("Charged Party"), alleging that Charged Party violated Ohio Revised Code §§ 4117.11(A)(1) and (A)(5).

In case number 2015-ULP-07-0166 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO, and its Local 332 ("Charging Parties") filed an unfair labor practice charge against the Vermilion Local School District Board of Education ("Charged Party"), alleging that Charged Party violated Ohio Revised Code §§ 4117.11(A)(1), (A)(3), and (A)(5).

On October 29, 2015, the State Employment Relations Board ("the Board") 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 matters to hearing. The Board also directed the parties to unfair labor practice mediation. The parties participated in unfair labor practice mediation. The hearing notice and the complaint were not issued pending the outcome of the mediation.

On November 24, 2015, Charging Parties filed a motion to withdraw the unfair labor practice charges, indicating that the parties have reached a settlement resolving the unfair labor practice charges.

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Vice Chair Schmidt moved that the Board grant the motion to withdraw and dismiss with prejudice the unfair labor practice charge in Case Nos. 2015-ULP-07-0159 and 2015-ULP-07-0166. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

3. Case 2015-ULP-09-0192 Ohio Patrolmen's Benevolent Association v. Putnam County Sheriff's Office

On September 3, 2015, Ohio Patrolmen's Benevolent Association ("Charging Party") filed an unfair labor practice charge against the Putnam County Sheriff's Office ("Charged Party"), alleging that Charged Party violated Ohio Revised Code §§ 4117.11(A)(1), (A)(6), and (A)(7). On October 29, 2015, the State Employment Relations Board ("the Board") 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 unfair labor practice mediation. The parties participated in unfair labor practice mediation. The hearing notice and the complaint were not issued pending the outcome of the mediation.

On December 7, 2015, the parties filed a settlement agreement and an email. In the email, Charging Party states that the parties' settlement agreement resolves the unfair labor practice charge and underlying grievance and, therefore, SERB may consider the settlement agreement as Charging Party's motion to withdraw.

Vice Chair Schmidt moved that the Board construe the parties' settlement agreement as a motion to withdraw, grant the motion to withdraw, and dismiss with prejudice the unfair labor practice charge in Case No. 2015-ULP-09-0192. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

4. Case 2015-ULP-02-0042 SERB v. Massillon City School District Board of Education

On February 24, 2015, the Massillon Education Association, OEA/NEA ("Charging Party" or "Union") filed unfair labor practice charges against the Massillon City School District Board of Education ("Respondent" or "School Board"). On July 9, 2015, the State Employment Relations Board ("SERB," "Board," or "Complainant") determined that probable cause existed to believe that Respondent had committed or was committing an unfair labor practice, authorized the issuance of a complaint, and referred the matter to a hearing before the Board. At issue is whether Respondent violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and/or (A)(5) by assigning additional job duties to its guidance counselors.

On July 27, 2015, SERB issued a Notice of Unfair Labor Practice Hearing and Prehearing Order and Complaint. On August 3, 2015, Charging Party filed a Motion to Intervene, which was granted. On August 31, 2015, SERB's General Counsel conducted a telephone prehearing conference with the parties. An evidentiary hearing was conducted by the

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Board on September 17, 2015, wherein testimonial and documentary evidence was presented. Complainant and Intervenor called Guidance Counselor Jamie Marceric as their witness. The School Board called Interim Special Education Coordinator Christine Dieringer as its witness. Ms. Dieringer's testimony was not properly recorded due to an equipment malfunction. The parties agreed to submit joint stipulations stipulating to Ms. Dieringer's testimony. On November 3, 2015, the parties filed joint stipulations regarding Ms. Dieringer's testimony. Subsequently, the parties filed those joint stipulations as well as post-hearing briefs.

Vice Chair Schmidt moved that the Board:

1. find that the unfair labor practice charges were timely filed;
2. find that the Massillon City School District Board of Education did not violate O.R.C. §§ 4117.11(A)(1) or (A)(5) when it assigned the duty to coordinate 504 Plans to its guidance counselors;
3. dismiss the complaint; and
4. dismiss with prejudice the unfair labor practice charges in this case.

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

Vote:	SCHMIDT:	<u>Yes</u>	ZIMPHER:	<u>Yes</u>
	Affirmed	<u>X</u>	Denied	<u> </u>

5. Case 2015-REP-03-0036 Medina City School Psychologists Association, OEA/NEA and Medina City School District Board of Education

On March 20, 2015, the Medina City Schools Psychologists Association, OEA/NEA ("Employee Organization" or "Union") filed a Petition for Representation Election seeking to represent approximately seven School Psychologists employed by the Medina City School District Board of Education ("Employer," or "School Board," or "School District"). On April 10, 2015, the Employer filed a position statement opposing the petition, stating that the School Psychologists are "supervisors" and "management level employees" and are, therefore, not "public employees" as defined by Ohio Revised Code ("O.R.C.") § 4117.01.

On June 4, 2015, The State Employment Relations Board ("SERB" or "the Board") directed this matter to its Office of General Counsel to conduct an inquiry regarding whether the employees in question are "public employees" under O.R.C. Chapter 4117, and for all other relevant issues. The parties requested that the inquiry be held in the fall of 2015.

On September 24, 2015, an inquiry was held in this matter, at which time, testimonial and documentary evidence was presented. The Employer called as witnesses: Kristine Quallich, Director of Education, and Kristen Prough, former Medina City Schools School Psychologist. The Union called School Psychologist Laura Hough. Subsequently, the parties filed post-inquiry briefs and reply briefs.

On November 19, 2015, SERB's staff attorney submitted a Report and Recommendation to the Board with the following findings and recommendations: (1) the evidence demonstrates that the School Psychologists are not "supervisors" or management level employees" as defined by O.R.C. 4117.01(F) and (L) and are, therefore, "public employees" as defined by

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O.R.C. § 4117.01(C). Based upon these findings, it is recommended that the Board grant the Union's Petition for Representation Election and direct SERB's Representation Section to conduct a representation election in accordance with O.R.C. § 4117.07 and the rules set forth in Ohio Administrative Code Chapter 4117-5 in the bargaining unit described below:

INCLUDED: All regularly employed School Psychologists.

EXCLUDED: All other employees, including casual/seasonal employees, confidential employees, management level employees, and supervisors as defined by Ohio Revised Code Chapter 4117.

Vice Chair Schmidt moved that the Board:

1. adopt the Findings of Fact, Conclusions of Law, and Recommendations in the Report and Recommendation finding that the School Psychologists are not "supervisors" or "management-level employees" and are, therefore, "public employees" as defined by O.R.C. § 4117.01(C);
2. grant the Union's Petition for Representation Election;
3. direct SERB's Representation Section to conduct a representation election in accordance with O.R.C. § 4117.07 and the rules set forth in Ohio Administrative Code Chapter 4117-5 in the bargaining unit described below:

INCLUDED: All regularly employed School Psychologists.

EXCLUDED: All other employees, including casual/seasonal employees, confidential employees, management level employees, and supervisors as defined by Ohio Revised Code Chapter 4117.

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

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

6. Case 2015-REP-05-0056 Ohio Patrolman's Benevolent Association and Southeast Emergency Communication Center

In this matter the Ohio Patrolmen's Benevolent Association seeks to organize and represent the four employees in the classification of Dispatcher Supervisor. The union filed a Petition for Representation Election on May 29, 2015. The employer, the Southeast Emergency Communications Center, opposed the petition on the basis that these employees were supervisors under Ohio Revised Code §4117.01(F) and thus ineligible for collective bargaining.

The Board directed this matter to the General Counsel for the purpose of conducting an Inquiry to determine whether these employees are "Supervisors" pursuant to Ohio Revised Code §4117.01 (F).

An Inquiry was held on October 26, 2015 at which time both sides presented testimony and evidence in support of their respective positions. A Report and Recommendation was issued on December 10, 2015 where the General Counsel found the Dispatcher

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Supervisors are not "Supervisors" pursuant to Ohio Revised Code §4117.01(F) and are public employees eligible for collective bargaining.

Based on the finding, it is recommended that the Board grant the union's Petition for Representation Election and direct SERB's Representation Section to conduct a representation election in accordance with Ohio Revised Code §4117.07 and Ohio Administrative Rule 4117-5 in the bargaining unit described below:

INCLUDED: All fulltime Dispatcher Supervisors

EXCLUDED: All other employees

Vice Chair Schmidt moved that the Board:

1. Adopt the Findings of Fact , Conclusions of Law and Recommendations in the Report and Recommendation finding the Dispatcher Supervisors are not "Supervisors" and are therefore "Public Employees" as defined by Ohio Rev. Code 4117.01 (C);
2. Issue a Directive dismissing the employer's objections to the union's Petition for a Representation Election;
3. Direct a representation election be held in accordance with Ohio Rev. Code 4117.07 and Ohio Admin. Code 4117-05 in the following bargaining unit:

INCLUDED: All full time Dispatcher Supervisors

EXCLUDED: All other employees

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

Vote:	SCHMIDT:	<u>Yes</u>	ZIMPHER:	<u>Yes</u>
	Affirmed	<u>X</u>	Denied	<u> </u>

7. Case 2015-REP-05-0051 Service Employees International Union District 1199 WV/KY/OH and Cleveland State University

On May 7, 2015, the Employer filed a Petition for Clarification of Bargaining Unit, seeking to determine the bargaining status of the Head of Library Teaching & Learning Services classification/position. The Employer asserts that the Head of Library Teaching & Learning Services position is a management-level and supervisory position and, therefore, should be excluded from the bargaining unit pursuant to O.R.C. §§ 4117.01(C)(7) and (C)(10). On May 26, 2015, Service Employees International Union District 1199 WV/KY/OH ("Employee Organization") filed a position statement in opposition to the Employer's petition. The Employee Organization asserts that the Head of Library Teaching & Learning Services does not perform job duties that qualify as a "supervisor" as defined by O.R.C. § 4117.01(F).

On August 13, 2015, SERB directed this matter to an inquiry to gather information relevant to the issue as to whether the Head of Library Teaching & Learning Services is a "public employee" under O.R.C. Chapter 4117. The inquiry was scheduled for October 28, 2015. On October 21, 2015, the parties notified SERB that they had reached an agreement on a

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resolution of this matter. On October 22, 2015, SERB issued a notice vacating the inquiry date pending the filing of the parties' settlement agreement.

On December 14, 2015, the Employer filed a request to withdraw its Petition for Clarification of Bargaining Unit.

8. Case 2015-REP-07-0069 Service Employees International Union District 1199 WV/KY/OH and Cleveland State University

On July 24, 2015, Cleveland State University ("Employer") filed a Petition for Clarification of Bargaining Unit seeking to exclude the job classification of Assistant Director of Student Services from the existing bargaining unit as a supervisory position exempt from collective bargaining under O.R.C. Chapter 4117. On August 31, 2015, Service Employees International Union District 1199 WV/KY/OH filed a position statement objecting to the exclusion of the Assistant Director of Student Services position from the bargaining unit.

On September 10, 2015, the Board directed this matter to SERB's Office of General Counsel to conduct an inquiry to determine whether the incumbent employee performs job duties that qualify him as a "supervisor" under O.R.C. Chapter 4117, and for all other relevant issues. The inquiry was scheduled for December 1, 2015. On October 21, 2015, the parties notified SERB that they had reached an agreement on a resolution of this matter. On October 22, 2015, SERB issued a notice vacating the inquiry date pending the filing of the parties' settlement agreement.

On December 14, 2015, the Employer filed a request to withdraw its Petition for Clarification of Bargaining Unit.

Vice Chair Schmidt moved that the Board grant the Employer's request and dismiss without prejudice the Petitions for Clarification of Bargaining Unit in Case Nos. 2015-REP-05-0051 and 2015-REP-07-0069. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

IV. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 2012-ULP-05-0117 University of Toledo Chapter, American Association of University Professors (UT-AAUP) v. University of Toledo

The unfair labor practice charge alleged that the University violated Ohio Revised Code §4117.11 (A)(1), (3), and (5) by adversely increasing the workload and failing to properly compensate one of its members in retaliation for Dr. Susan Rice's exercise of her guaranteed rights.

Information gathered during the investigation revealed that the Association has not provided any evidence giving rise to its claim that the University increased Dr. Rice's workload and gave her less compensation than her peers for being a Union supporter. In addition, the charge was untimely filed.

The Association did not provide sufficient evidence to support a violation of Ohio Revised

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Code § 4117.11(A)(1) and (5) allegations.

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

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

2. Case 2012-ULP-05-0118 University of Toledo Chapter, American Association of University Professors (UT-AAUP) v. University of Toledo

The unfair labor practice charge alleged that the University violated Ohio Revised Code §4117.11 (A)(1), (3), and (5) by placing two (2) members on inactive status and failing to offer them full-time positions with the University.

Information gathered during the investigation revealed that the Association has not provided any evidence giving rise to its claim that the University did not retain the faculty members because of their involvement with the bargaining unit. Even assuming that a prima facie case was established, the University provided a persuasive rebuttal that the members' failure to get the positions applied for was not due to anti-union animus, but because they were not qualified for the positions. In addition, this charge is untimely filed.

The Association did not provide sufficient evidence to support a violation of Ohio Revised Code § 4117.11(A)(3).

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

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

3. Case 2015-ULP-05-0103 Terra Faculty Association v. Terra Community College

The unfair labor practice charge alleged that the College violated Ohio Revised Code §4117.11 (A)(1), (2) and (8) by interfering, restraining and coercing employees in the exercise of their guaranteed rights by interfering with the support of the exclusive bargaining representative and attempting to cause an unfair labor practice.

Chair Zimpher moved an alternative recommendation that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed. Vice Chair Schmidt seconded the motion.

Chair Zimpher called for discussion.

Chair Zimpher read the following: "My rationale for this alternative recommendation is that, after a thorough review of the materials, briefs, and related documents submitted by the

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parties, I believe that nothing of an actionable nature arises in the case for which SERB should exercise jurisdiction nor for which SERB could provide any remedy under its adjudicatory authority. However, should the parties believe that a mediatory intervention would be of some assistance in fostering a constructive labor/management environment they are certainly encouraged to avail themselves of SERB's mediation services."

Chair Zimpher called for the vote.

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

4. Case 2015-ULP-07-0147 Service Employees International Union District 1199 WV/KY/OH v. Youngstown Public Library

The unfair labor practice charge alleged that the Library violated Ohio Revised Code §4117.11 (A)(1) and (5) by subcontracting bargaining-unit work to a third party to facilitate the opening of a new library branch.

Information gathered during the investigation revealed that the one-time use of a contract company to fulfill the large material order for the opening ceremony of the new Branch Library does not amount to a change in bargaining unit members' wages, hours or terms and other conditions of employment.

Based on the totality of the circumstances, the Employer's actions do not rise to the level of a 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. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

5. Case 2015-ULP-07-0148 Christopher A. Green v. American Federation of State, County and Municipal Employees, Local 2058

The unfair labor practice charge alleged that the Union violated Ohio Revised Code §4117.11 (B)(1), (2) and (6) by failing to properly represent Christopher Green with issues that stemmed from the abolishment of his management position and his movement back into a bargaining-unit position.

Information gathered during the investigation revealed that Mr. Green was represented fully by his Union at all steps during this process. Mr. Green failed to show through documentation or narrative how the Union failed to represent him. Mr. Green did not provide sufficient information to support the (B)(1), (2) and (6) allegations.

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

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

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6. Case 2015-ULP-07-0175 Chesapeake Union Exempted Village School District Board of Education v. Ohio Association of Public School Employees

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(2) by continuing to file grievances on Article 20 - Extra Trips section of the agreement in spite of subsection G, which provides that "provisions of Article 20 are not subject to the grievance procedure.

Information gathered during the investigation revealed that the School Board failed to prove that the Union is trying to cause it to commit an unfair labor practice. The dispute between the Association and the School Board is better addressed through the parties' grievance procedure. The School Board did not provide sufficient information to support the (B) (2) 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. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

7. Case 2015-ULP-09-0194 International Association of Firefighters, Local 606 v. City of Delaware

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1), (3), (5) and (7) by choosing to make decisions that are governed by contractual provisions without bargaining, discussing or requesting input from the Union on how the decisions would affect the bargaining-unit staff.

Information gathered during the investigation revealed that the City discussed and met with the Association and the employees on several occasions to discuss the problems. The Association did not provide sufficient information to support the (A)(1), (5) and (7) allegations. Based on the totality of the circumstances, the Employer's actions do not rise to the level of a 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. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

8. Case 2015-ULP-06-0125 Northwest State Community College Education Association-School Support Unit, OEA/NEA v. Northwest State Community College

The unfair labor practice charge alleged that the College violated Ohio Revised Code §4117.11 (A)(1) and (5) by bargaining in bad faith and placing conditions on the negotiations.

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Information gathered during the investigation revealed that the parties participated in Fact-Finding resolving the allegations and thereby rendering the matter moot.

The Union did not provide sufficient information or documentation to support the (A)(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 moot. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: SCHMIDT: Yes ZIMPHER: Yes
 Affirmed X Denied

9. Case 2015-ULP-07-0155 Fraternal Order of Police, Ohio Labor Council, Inc. v. Highland County Sheriff

The unfair labor practice charge alleged that the County violated Ohio Revised Code §4117.11 (A)(1) and (3) by the Sheriff taking away the Deputies "take-home cars", retaliating against Deputy Clint Sharp and Deputy John Adams for their exercise of guaranteed rights and by unilaterally changing the Road Deputies shifts.

Information gathered during the investigation revealed that the County did not provide a persuasive rebuttal to show that the Sheriff's actions were not based on anti-union animus. The Sheriff's actions could have a chilling effect on any future protected activities. The matter would be best addressed through a hearing to determine whether the Sheriff's actions were based on anti-union animus.

Vice Chair Schmidt moved that the Board find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, and refer the matter to a hearing to determine whether the County violated Ohio Revised Code §4117.11(A)(1) but not (3). Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: SCHMIDT: Yes ZIMPHER: Yes
 Affirmed X Denied

10. Case 2015-ULP-08-0189 Northwest State Community College Education Association, OEA/NEA v. Northwest State Community College

The unfair labor practice charge alleged that the College violated Ohio Revised Code §4117.11 (A)(1), (3) and (5) by not renewing the contracts for three (3) of its members based on their exercise of protected/concerted activities.

Information gathered during the investigation revealed that the Association has failed to establish a prima facie case of discrimination. However, had a prima facie case been established, the College provided a persuasive rebuttal to show that it based its non-renewal decisions on the three (3) members' lack of initiative to perform the functions of their positions. Therefore, based on the totality of the circumstances, the College's actions do not rise to the level of an (A)(3) statutory violation.

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The Association did not provide sufficient information or documentation to support the (A)(1) and (5) allegations.

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

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

11. Case 2015-ULP-09-0199 Fraternal Order of Police, Lorain Lodge No. 3 v. City of Lorain

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1) and (5) by directly-dealing with one of its members in an attempt to settle a grievance and by failing to bargain in good faith regarding the processing of grievances and the day-to-day labor-management issues.

Information gathered during the investigation revealed that the Union did not provide sufficient information or documentation to show how Officer Baez's meeting with Captain McCann interfered with, restrained or coerced him in the exercise of his guaranteed rights. The Officer's statement does not indicate whether he requested or was denied Union representation at the September 21st meeting. Based on the totality of the circumstances, the City's actions do not rise to the level of an (A)(1) statutory violation.

The Union did not provide sufficient information or documentation to support the (A)(5) 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. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

12. Case 2015-ULP-09-0201 Jeffrey J. Carnes v. State of Ohio

The unfair labor practice charge alleged that the State violated Ohio Revised Code §4117.11 (A)(1) and (3) by unjustly terminating Jeffrey J. Carnes' employment on September 18, 2014.

Information gathered during the investigation revealed that Mr. Carnes failed to establish a prima facie case of discrimination. However, had a prima facie case been established, the State provided a persuasive rebuttal to show that Mr. Carnes was terminated for work rule violations and that its decision was not based on anti-union animus. Therefore, based on the totality of the circumstances, the State's actions do not rise to the level of an (A)(3) statutory violation. In addition, the charge was untimely filed.

Mr. Carnes did not provide sufficient information or documentation to support the (A)(1) allegation.

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

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

13. Cases 2015-ULP-10-0210 City of North Canton v. William McKinney
 2015-ULP-10-0211 City of North Canton v. Dan Richards
 2015-ULP-10-0212 City of North Canton v. Anthony Brown
 2015-ULP-10-0213 City of North Canton v. Service and Clerical Utility
 Workers of America, Service and Clerical, Local 605

The unfair labor practice charges alleged that William McKinney, Dan Richards, Anthony Brown, and the Union violated Ohio Revised Code §4117.11 (B)(1), (2), (3) and (6) when the Service Unit interfered with, restrained and coerced the Water Plant Unit in the exercise of their guaranteed rights by refusing to leave the Water Plant Unit's negotiating session and that refusal caused or attempted to cause the City to commit an unfair labor practice.

Vice Chair Schmidt moved an alternative recommendation that the Board find probable cause to believe an unfair labor practice has been committed, order the parties immediately to ULP mediation for a period not to exceed 45 days, authorize the assigned mediator, after consultation with the parties, to issue and email a mediator's procedural order, including date, time, and location of mediation within the time period designated. If the mediation is unsuccessful, authorize the issuance of a complaint and refer the matter to hearing to determine whether Charged Parties violated Ohio Revised Code 4117.11 (B)(1), (2), (3) and (6) when the union interfered with, restrained and coerced the Water Plant Unit in the exercise of their guaranteed rights, which caused or attempted to cause the City to commit an unfair labor practice, and whether this charge has been timely filed. These cases are to be coordinated with Case No. 2015-ULP-10-0223 for mediation and hearing. Chair Zimpher seconded the motion.

Chair Zimpher called for discussion.

Vice Chair Schmidt read the following: "My rationale for this alternative recommendation is since Case Nos. 2015-ULP-10-0210 through 2015-ULP-10-0213 and 2015-ULP-10-0223 arise from the same set of facts and allege the same or similar misconduct by both parties, the issues presented in these cases would be best addressed through a hearing."

Chair Zimpher called for the vote.

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

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14. Case 2015-ULP-10-0223 Utility Workers Union of America, Local 605 v. City of North Canton

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1), (2), (5) and (8) by interfering with the section of its bargaining team representatives and refusing to bargain with its bargaining team, which may cause it to commit an unfair labor practice by failing to represent its members.

Information gathered during the investigation revealed that the issue of whether the City's actions may have been an attempt to interfere with the Union's selection of its bargaining team when it refused to bargain with the Union's officers is best addressed through a hearing.

Vice Chair Schmidt moved that the Board find probable cause to believe an unfair labor practice has been committed, order the parties immediately to ULP mediation for a period not to exceed 45 days, authorize the assigned mediator, after consultation with the parties, to issue and e-mail a mediator's procedural order, including date, time, and location of mediation within the time period designated. If the mediation is unsuccessful, authorize the issuance of a complaint and refer the matter to hearing to determine whether the City violated Ohio Revised Code 4117.11(A)(1), (2) and (5) but not (8), and in accordance with the alternative in ULP matter # 13, that this case be coordinated with case numbers 2015-ULP-10-0210, 0211, 0212 and 0213. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

15. Case 2015-ULP-10-0218 Canton Professional Educator's Association, OEA/NEA v. Canton City School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(1) and (5) by unilaterally implementing a "stricter and specific" dress code for its members.

Information gathered during the investigation revealed that based on the totality of the circumstances, the dress code clarification/explanation does not rise to the level of an (A)(5) statutory violation.

The Union did not provide sufficient information or documentation to support the (A)(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. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

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16. Case 2015-ULP-10-0220 Wooster Education Association, OEA/NEA v. Wooster City School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(1) and (5) by directly dealing with its members regarding the award and assignment of field trips for the bus driver classification and creating a Memorandum of Understanding (MOU) with those members.

Information gathered during the investigation revealed that the Superintendent had direct contact with the bus drivers regarding the addition of a midday route, which resulted in a change in the drivers' hours, wages and terms and conditions of employment without involving the Association's leadership. Based on the totality of the circumstances, whether the District's actions constitute direct dealing would be best addressed through a hearing.

The Association did not provide sufficient information or documentation to support the (A)(1) allegation.

Vice Chair Schmidt moved that the Board find probable cause to believe an unfair labor practice has been committed, order the parties immediately to ULP mediation for a period not to exceed 45 days, authorize the assigned mediator, after consultation with the parties, to issue and e-mail a mediator's procedural order, including date, time, and location of mediation within the time period designated. If the mediation is unsuccessful, authorize the issuance of a complaint and refer the matter to hearing to determine if the School Board violated Ohio Revised Code 4117.11(A)(5) but not (1). Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied

17. Case 2015-ULP-10-0222 Marie Shrider v. Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO and Its Local 500

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B) (1) and (6) by failing to properly represent Marie Shrider during the grievance process and by refusing to advance her grievance to arbitration.

Information gathered during the investigation revealed that the Association's actions were not arbitrary, discriminatory or in bad faith in its representation of Ms. Shrider. Based on the totality of the circumstances, the Association's actions do not rise to the level of a (B)(6) statutory violation.

Ms. Shrider did not provide sufficient information or documentation 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. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied

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18. Case 2015-ULP-10-0227 Service Employees International Union, District 1199 v. State of Ohio

The unfair labor practice charge alleged that the State violated Ohio Revised Code §4117.11 (A)(1), (6) and (8).

Information gathered during the investigation revealed that pursuant to the Board's investigation, under Ohio Revised Code § 4117.12, information was requested, in writing, from the Union. The Union failed to respond to the written requests for information.

Vice Chair Schmidt moved that the Board dismiss the charge with prejudice for failure to pursue the matter. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

19. Case 2015-ULP-04-0076 Robin Hager v. City of Warren

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1), (2), (3) and (7) by interfering, restraining, coercing and discriminating against Robin Hager in the exercise of her guaranteed rights by locking her out during a labor dispute.

Information gathered during the investigation revealed that Ms. Hager timely filed a motion for reconsideration pursuant to Ohio Administrative Code 4117-1-04(E). Although Ms. Hager submitted new information, it does not warrant the Board changing its previous decision.

20. Case 2015-ULP-04-0077 Robin Hager v. Ohio Patrolmen's Benevolent Association

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(1) and (B)(6) by interfering with Robin Hager in the exercise of her guaranteed rights by failing to fairly represent her.

The investigation revealed that Ms. Hager filed a motion for reconsideration in accordance with Ohio Administrative Code 4117-1-04(E). Although Ms. Hager submitted new information, it does not warrant the Board changing its previous decision.

Vice Chair Schmidt moved that the Board construe the Ms. Hager's requests for reconsideration as motions for reconsideration, and deny the motions with prejudice. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

21. Case 2015-ULP-10-0207 City of Parma Heights v. International Association of Firefighters, Local 1690

The City filed a request to withdraw the charge.

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

Vote:	SCHMIDT:	<u>Yes</u>	ZIMPHER:	<u>Yes</u>
	Affirmed	<u>X</u>	Denied	<u> </u>

VI. TABLED AND OTHER MATTERS:

There are no tabled matters.

VII. ADMINISTRATIVE MATTERS:

SERB REGULAR SCHEDULED MEETING DATES:

- January 07, 2016
- January 28, 2016
- February 18, 2016
- March 10, 2016
- March 31, 2016
- April 21, 2016
- May 12, 2016
- June 02, 2016
- June 23, 2016

SYSTEM UPDATES:

- **Employee Organization Annual Report Filings:** For fiscal year ending 7/30/2015, 16 Employee Organizations were required to report not later than 12/15/2015. To date, all 16 Employee Organizations have filed. Licia Sapp of the Research and Training Section tracks their status and works with the Employee Organizations to encourage compliance before the deadline. At this time, there are no employee organizations 31 days past due.
- **SERB Microfilm Conversion Project for Contracts:** Integrated Solutions and Services Unlimited Inc. (ISS Unlimited) has converted the first 400,000 deteriorating microfiche images (pages) of original contracts filed since SERB began in 1984. They will begin work on a second batch of 400,000 images within the week. It takes 4-5 minutes to process a single microfiche document for best quality. Completion is estimated to be February 26, 2016.
- **Statewide Cost Allocation Plan (SWCAP):** The annual report was submitted to the Office of Budget and Management on 12/09/2015, ahead of schedule. Elaine Stevenson provided assistance with the final review of the report.
- **Enterprise Shared Solutions:** Representatives of a new program within DAS/OIT met with Justin Brown, Erin Conn, Shane Trace and Christine Dietsch on 12/16/15 to review a pilot project being conducted with five state agencies to image, scan, store, index, search and do overall basic records management. The pilot project is not scheduled to conclude until late February 2016. They will, however, provide us with a quote for the same services we are involved with for converting microfiche into PDF's

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so that we can compare and contrast the cost and service components for possible future projects of similar size and scope.

- **Unsupported OIT JAVA 1.6 Applications:** Justin Brown and Christine Dietsch have been meeting with our current software vendor, XLN, to determine steps needed to bring the SERB Management and Docketing System (SMDS), Employee Org. (aka: BarnBurner), and Hearings in addition to the Case Management and Docketing System (CMDS) and Civitas which support SPBR functions, up to the new programming code that will be supported by OIT since JAVA 1.6 is no longer supported. This update is needed to continue to run our recently developed systems which were written with JAVA 1.6 programming and at the time was fully compatible and supported by OIT. The Section Administrators have been updated on the situation, understand the need to update the existing software and are working with Justin Brown section by section including their staffs.

WELCOME:

- We're very pleased to announce that effective November 30th Ms. Ronda Brigner accepted our offer to join SERB as a Customer Service Assistant 1 in the Clerk's Office.

Ronda brings a wide range of experience, knowledge, and customer service skills. For the past 13 years Ronda worked as a Communication Technician/911 Dispatcher for the New Albany Police Department where she developed and displayed outstanding customer service, computer and data entry skills. She also served as the police department's Terminal Agency Coordinator (TAC) Officer, a position that required her to respond to court filings and preparation of all related paperwork associated with such processes. Ronda also completed Paramedic training at Columbus State Community College.
Welcome to Ronda!

TRAINING:

- **Fall SERB Academy:** Was held on November 12 and 13, 2015 at the Crowne Plaza Hotel in Worthington; CLE's were provided. 111 participants attended. The reviews from the evaluations were great!
- **Intermediate Negotiations Training:** Was held on November 19, 2015 at the State Library. The participants from the August 24th class were scheduled to come back for the November 19th Intermediate Negotiations Training. This training followed the same format as the October 8th session. The training was conducted by SERB Mediators Ken Hickey and Brian Eastman, supported by Don Collins, General Counsel and Mary Laurent, Administrative Professional 2 of the Bureau of Mediation. There were 18 in attendance. Upcoming Negotiations Trainings following the same formats are scheduled for January 28, February 11, and March 15, 2016.
- **Spring SPBR Academy:** Scheduled for March 10, 2016 at the Crowne Plaza Hotel in Worthington. Agenda, topics and speakers have been arranged. CLE's will be applied for with the Ohio Supreme Court by January 1, 2016.

