

State Employment Relations Board

Board Meeting Minutes

January 7, 2016

The State Employment Relations Board met on January 7, 2016, at 10:00 a.m., at 65 East State Street, 12<sup>th</sup> 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 DECEMBER 17, 2015 BOARD MEETING:**

Vice Chair Schmidt moved that the Board approve the minutes for the December 17, 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:**

1. Case 2015-MED-04-0374 Ohio Patrolmen's Benevolent Association and Village of Madison

On April 3, 2015, the Ohio Patrolman's Benevolent Association (OPBA) filed a Notice to Negotiate for a new collective bargaining agreement with the Village of Madison.

On December 8, 2015, the Village of Madison filed a "Motion to Exclude Jurisdiction" arguing the Village population is less than 5,000 thus excluding them SERB's jurisdiction pursuant to R.C 4117.01 (B). According, to the Ohio Secretary of State, the Village population is 3,184. The Union has not submitted a reply.

Vice Chair Schmidt moved that the Board Dismiss the Notice to Negotiate for lack of jurisdiction as the Village of Madison is not a public employer pursuant to R.C. § 4117.01 (B). Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

2. Closing of 342 Cases

Vice Chair Schmidt moved that the Board close 342 Mediation cases beginning with Case No. 2012-MED-01-0001 and ending with Case No. 2015-MED-06-0601, not consecutively numbered. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

3. Case 2014-MED-09-1197 Ohio Association of Public School Employees/AFSCME, Local 4, AFL-CIO and it's Local #121 and Highland County Board of Developmental Disabilities

On September 10, 2014, 2015, Ohio Association of Public School Employees/AFSCME, Local 4, AFL-CIO and it's Local #121 filed a Notice to Negotiate for a new collective bargaining agreement representing employees in the unit of Professional and Non-Professional in Highland County Board of Developmental Disabilities.



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5. Case 2015-REP-09-0094 Fraternal Order of Police, Lodge 15 and Ohio Patrolmen's Benevolent Association (OPBA) and City of Broadview Heights  
(January 19, 2016 - February 2, 2016)

The parties have entered into a Consent Election Agreement seeking a mail-ballot election.

Vice Chair Schmidt moved that the Board approve the Consent Election Agreement and direct a mail-ballot election to be conducted during the polling period of January 19, 2016 through February 2, 2016. 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-09-0083 Teamsters Local 436 and International Association of Machinist and Aerospace Workers and City of Rocky River

The Incumbent Employee Organization filed a disclaimer of interest. The remaining parties have entered into a Consent Election Agreement seeking a mail-ballot election.

Vice Chair Schmidt moved that the Board approve the Consent Election Agreement, direct a mail-ballot election to be conducted during the polling period of January 19, 2016 through February 2, 2016; and that the Board grant the Incumbent Employee Organization's disclaimer of interest. 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-12-0112 Ashland County Developmental Disabilities Education Association/OEA/NEA and Ashland County Board of Developmental Disabilities

The Employer filed a Petition for Amendment of Certification seeking to amend the existing bargaining unit to exclude Fiscal/HR Specialist. The Employee Organization did not object. The proposed amendment appears appropriate.

Vice Chair Schmidt moved that the Board construe the petition as jointly filed and amend the unit accordingly. 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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8. Case 2015-REP-11-0110 Tamara Hidy and OAPSE/ AFSCME Local 4, AFL-CIO, Sub unit Local 121 and Highland County Board of Developmental Disabilities

On November 25, 2015, Tamara Hidy (Petitioner) filed a Petition for Decertification Election seeking to decertify OAPSE/AFSCME Local 4, AFL-CIO, Sub unit Local 121 (Incumbent Employee Organization).

On December 16, 2015, the Incumbent Employee Organization filed a Disclaimer of Interest and a Request for Revocation of Certification.

Vice Chair Schmidt moved that the Board construe the Disclaimer of Interest as a Motion to Revoke Certification, grant the motion, revoke the Employee Organization's certification, and dismiss the Petition for Decertification Election as 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-REP-11-0106 Service Employees International Union District 1199 WV/KY/OH and Cleveland State University

The parties jointly filed a Petition for Clarification of Bargaining Unit. However, the parties have entered into an agreement and jointly filed a request to withdraw.

Vice Chair Schmidt moved that the Board construe the joint request to withdraw as a motion, grant the motion to withdraw, and dismiss without prejudice the Petition for Clarification of Bargaining Unit. 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-12-0115 Liberty Benton Teachers' Association/ Support Staff, Local #4943 and Liberty-Benton Local School District Board of Education

The parties have jointly filed a Petition for Amendment of Certification seeking to amend the certification to exclude certain positions in the existing unit. The parties have confirmed that the positions are vacant. Accordingly, dismissal appears appropriate.

Vice Chair Schmidt moved that the Board dismiss without prejudice the jointly filed Petition for Amendment of Certification. 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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11. Case 2014-REP-10-0129 Fraternal Order of Police, Ohio Labor Council, Inc. and Hamilton County Sheriff  
(December 2, 2015 - December 16, 2015)
- There were two (2) valid ballots cast
  - There were zero (0) void ballots
  - There were zero (0) challenged ballots
  - No Representative received zero (0) votes
  - Fraternal Order of Police, Ohio Labor Council, Inc. received two (2) votes
  - Fraternal Order of Police, Ohio Labor Council, Inc. prevailed in this election
12. Case 2015-REP-09-0092 Ohio Council 8, American Federation of State County and Municipal Employees, AFL-CIO and Orange Township, Delaware County  
(December 2, 2015 - December 16, 2015)
- There were three (3) valid ballots cast
  - There were zero (0) void ballots
  - There were zero (0) challenged ballots
  - No Representative received zero (0) votes
  - received three (3) votes
  - Ohio Council 8, American Federation of State County and Municipal Employees AFL-CIO received three (3) votes
  - Ohio Council 8, American Federation of State County and Municipal Employees AFL-CIO prevailed in this election

The mail ballot elections were held and the ballots were tallied.

Vice Chair Schmidt moved that the Board certify the election results and certify each prevailing employee organization as the exclusive representative of all employees in the relevant bargaining unit. 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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13. Case 2015-REP-09-0087 Employees of Greene County Services and Teamsters Local Union No. 957 and Greene County Commissioners  
(December 2, 2015 - December 16, 2015)

- There were sixteen (16) valid ballots cast
- There were zero (0) void ballots
- There were zero (0) challenged ballots
- Teamsters Local Union No. 957 received one (1) vote
- No Representative received fifteen (15) votes
- No Representative prevailed in this election

The mail ballot election was 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           

**IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:**

There were no Administrative Law Judge matters.

**V. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:**

1. Case 2015-ULP-10-0209 Northwest Local School District Board of Education v. Ohio Association of Public School Employees, AFSCME Local 4

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(2) and (3) by grieving a "unilateral increase in wages" after the successor agreement was ratified, which amounts to trying to obtain it through the grievance procedure what it could not get during negotiations.

Information gathered during the investigation revealed that although the "me-too" language in the successor agreement remained unchanged, the parties have different interpretations as to the meaning of the provision. The matter appears to be best addressed through the parties' final and binding grievance/arbitration procedure. Therefore, based on the totality of the circumstances, the Union's actions do not rise to the level of a (B)(3) statutory violation.

The District did not provide sufficient information or documentation to support the (B)(2) 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. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote:   SCHMIDT: Yes    ZIMPHER: Yes  
          Affirmed      X      Denied              

2.       Case   2015-ULP-10-0217   Ohio Patrolmen's Benevolent Association v. City of Olmsted Falls

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1) and (5) by unilaterally assigning additional duties to its members, which changed their terms and conditions of employment and are outside the scope of their job descriptions.

Information gathered during the investigation revealed that the matter is purely contractual encompassing no arguable statutory violation. The matter appears to be one of contract interpretation, which would fall within the purview of an arbitrator and not SERB. Based on the totality of the circumstances, the City's actions do 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 and deny the City's Motion to Defer as moot. 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-10-0221   Ohio Council 8, AFSCME, AFL-CIO v. Lima-Allen County Regional Transit Authority

The unfair labor practice charge alleged that the Transit Authority violated Ohio Revised Code §4117.11 (A)(1), (2) and (3) by restraining and coercing its bargaining-unit member, Robert Mooney, in the exercise of his guaranteed rights and by failing to reinstate his employment.

Information gathered during the investigation revealed that Mr. Mooney is a public employee, engaged in protected activity with the Employer's knowledge and was harmed when he was terminated. The Union has established a prima facie case of discrimination. However, the Employer provided a persuasive rebuttal to show that its termination of Mr. Mooney was not based on anti-union animus, but on his violation of the established rules of conduct. Therefore, based on the totality of the circumstances, the Employer's actions do not rise to the level of an (A)(3) statutory violation.

The Union did not provide sufficient information or documentation to support the (A)(1) and (2) allegations.



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6. Case 2015-ULP-11-0242 Service Employees International Union, District 1199 v. Greene County District Library

The unfair labor practice charge alleged that the County violated Ohio Revised Code §4117.11 (A)(1) and (5) by refusing to schedule additional negotiating sessions in order to resolve the parties' "few outstanding matters."

Information gathered during the investigation revealed that due to the fact that the parties are meeting again for fact-finding, the allegation contained in the instant charge is moot. The County's actions do 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 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 \_\_\_\_\_

7. Case 2015-ULP-07-0174 Westlake Teachers' Association, OEA/NEA v. Westlake 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 (3) by treating two (2) Union leaders, Daniel Berkheimer and Scott McWilliam, in a coercive, disparate and targeted manner due to their work on behalf of the Union.

Information gathered during the investigation revealed that the Union failed to establish a prima facie case of discrimination. However, had such a case been established, the School Board provided a persuasive rebuttal.

The Employer's actions do not rise to the level of statutory violations for either Mr. Berkheimer or Mr. McWilliam.

The Union did not provide sufficient information to support the (A) (1) and (3) 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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8. Case 2015-ULP-08-0182 Timothy W. Johnson v. Madison Township, Franklin County

The unfair labor practice charge alleged that the Township violated Ohio Revised Code §4117.11 (A)(1), (2), (3) and (8) by failing to pay Timothy Johnson back wages, failing to purchase his military time for his retirement and by interfering with the Union's ability to represent him.

Information gathered during the investigation revealed that Mr. Johnson failed to establish a prima facie case. Even if such a case was established, the Township's action was not based upon anti-union animus, but because Mr. Johnson did not meet the criteria set forth in the successor bargaining unit for the retroactive wages and because the Township is not required to purchase his military time.

In addition, this charge was filed outside of the 90-day statute of limitations for filing an unfair labor practice charge.

Mr. Johnson failed to provide sufficient information to support the (A) (1), (2), (3), and (8) 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:	<u>Yes</u>	ZIMPHER:	<u>Yes</u>
	Affirmed	<u>X</u>	Denied	<u>          </u>

9. Case 2015-ULP-08-0183 Timothy W. Johnson v. Fraternal Order of Police

The unfair labor practice charge alleged that the FOP violated Ohio Revised Code §4117.11 (B)(1) and (6) by failing to fairly represent Timothy Johnson's interests during the negotiation of Section 28.1 of the collective bargaining agreement, by being unresponsive to his request for assistance and representation on other related matters regarding his resignation/retirement.

Information gathered during the investigation revealed that Mr. Johnson failed to provide documentation or information to demonstrate that the Union purposefully entered into contract terms regarding retroactive wages to exclude him and he failed to specify the "other related matters." A review of the information reveals that the Union's actions do not rise to a (B) (6) violation.

In addition, this charge was filed outside of the 90-day statute of limitations.

Mr. Johnson failed to provide documentation and information to support the (B)(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              

10.    Case   2015-ULP-09-0200   Jeffrey J. Carnes v. Ohio Civil Service Employee Association, AFSCME Local 11, AFL-CIO

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(6) by failing to properly investigate Jeffrey J. Carnes' grievance during the Union's Discharge Review and by failing to advance his grievance to arbitration.

Information gathered during the investigation revealed that on November 19, 2015, the Board dismissed the above charge for lack of probable cause. On November 23, 2015 and December 1, 2015, Mr. Carnes timely filed a request for reconsideration. On December 7th, the Association filed its Brief In Opposition to the Request for Reconsideration. Mr. Carnes failed to provide any new information warranting the Board changing its previously considered decision.

Vice Chair Schmidt moved that the Board construe Mr. Carnes' request for reconsideration as a motion for reconsideration, and deny the motion with prejudice. 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-11-0235   Ohio Patrolmen's Benevolent Association v. Wayne County Sheriff

12.    Case   2015-ULP-11-0248   Norwalk Teachers Association, Ohio Education Association, NEA v. Norwalk City School District Board of Education

13.    Case   2015-ULP-10-0229   Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO v. State of Ohio

Items 11 through and including 13 were withdrawn pursuant to a settlement agreement or a motion to withdraw.

Vice Chair Schmidt moved that the Board construe the settlement agreement as a motion to withdraw, and grant 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

**VI. TABLED AND OTHER MATTERS:**

There are no tabled matters.

**VII. ADMINISTRATIVE MATTERS:**

**SERB REGULAR SCHEDULED MEETING DATES:**

- 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 8/30/2015, 14 Employee Organizations are required to report not later than 01/15/2016. To date, 5 Employee Organizations have not 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.
- **Proposed XLN Updates to SMDS/CMDs:** JAVA 1.6 application software used in the development of the current SMDS/CMDs/"Barn Burner"/CIVITAS systems begun in 2011 is now no longer supported by OIT. We are in the process of exploring with XLN and OIT avenues to upgrade the current applications to JAVA SE Public 1.8, the latest version of JAVA supported by OIT. This proposed update was captured in SERB's 2015 Workforce Plan.
- **Human Trafficking Annual Report:** Per the policy ensuring training has been completed for all staff, the required annual report on Human Trafficking was submitted to DAS/OCB on 12/31/15. SERB is 100% compliant with the policy.

**TRAINING:**

- **Intermediate Negotiations Training:** Training is scheduled for January 28<sup>th</sup>; it will be 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. Currently there are 6 registrations for the January 28<sup>th</sup> training. Upcoming Negotiations Trainings following the same formats are scheduled for 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 were applied for with the Ohio Supreme Court on December 29, 2015. Currently there are 14 registrations, with an email "blast" sent out on Monday, January 04, 2016 to encourage registrations.

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- **Spring SERB Academy:** Scheduled for May 19 and 20, 2016. CLE's will be applied for after the January 19<sup>th</sup> meeting with staff.
- **Fact-Finding Conference:** Scheduled for August 19, 2016. On Monday, January 04, 2016, save the date reminders were sent to all the Neutrals on SERB's roster.

**VIII. EXECUTIVE SESSION:**

Vice Chair Schmidt moved that the Board go into executive session, pursuant to Ohio Revised Code § 121.22(G)(3) to confer with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

The Board went into Executive Session at 10:28 a.m.

Vice Chair Schmidt moved that the Board exit from Executive Session. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

The Board exited from Executive Session at 10:58 a.m.

**IX. ADJOURNMENT:**

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

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

The Board meeting adjourned at 10:58 a.m.

/s/   
W. Craig Zimpher, Chair