

State Employment Relations Board

Board Meeting Minutes
January 28, 2016

The State Employment Relations Board met on January 28, 2016, 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 JANUARY 7, 2016 BOARD MEETING:

Vice Chair Schmidt moved that the Board approve the minutes for the January 7, 2016 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. Closing of 313 Cases

Vice Chair Schmidt moved that the Board close 313 Mediation cases beginning with Case No. 2012-MED-09-0988 and ending with Case No. 2015-MED-09-0960, not consecutively numbered. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

III. REPRESENTATION MATTERS AT ISSUE:

1. Case 2015-REP-03-0036 Medina City Schools Psychologists Association, OEA/NEA and Medina City School District Board of Education
(February 9, 2016 - February 23, 2016)

There is no dispute as to the mechanics and procedures of the mail-ballot election.

Vice Chair Schmidt moved that the Board direct a mail-ballot election to be conducted during the polling period of February 9, 2016 through February 23, 2016. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

2. Case 2015-REP-05-0056 Ohio Patrolmen's Benevolent Association and South-East Emergency Communications Center
(February 9, 2016 - February 23, 2016)

3. Case 2015-REP-09-0084 Shannon C Boyce and Glass Molders Pottery Plastics & Allied Workers and Columbiana County Clerk of Courts
(February 9, 2016 - February 23, 2016)

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4. Case 2015-REP-09-0091 Ohio Patrolmen's Benevolent Association and Fraternal Order of Police, Lodge 15 and City of Berea
(February 9, 2016 - February 23, 2016)
5. Case 2015-REP-10-0102 Ohio Association of Public School Employees (OAPSE)/ AFSCME Local 4, AFL-CIO and Shaker Heights City School District Board of Education
(February 10, 2016 - February 24, 2016)
6. Case 2015-REP-11-0105 Fraternal Order of Police, Ohio Labor Council, Inc. and Northeast Ohio Medical University
(February 9, 2016 - February 23, 2016)

The parties have entered into Consent Election Agreements.

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 February 9, 2016 through February 23, 2016. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

7. Case 2016-REP-01-0001 International Association of Machinists & Aerospace Workers - District 54 and Municipal Construction Equipment Operators Labor Council and City of Cleveland

International Association of Machinists & Aerospace Workers - District 54 (Rival Employee Organization) filed a Petition for Representation Election seeking to displace Municipal Construction Equipment Operators Labor Council (Incumbent Employee Organization) as the exclusive representative for certain employees of the City of Cleveland.

The Incumbent Employee Organization filed a Motion to Dismiss the Rival Employee Organization's Petition for Representation Election on January 11, 2016.

However, on January 12, 2016, the Rival Employee Organization filed a letter withdrawing the Petition for Representation Election.

Vice Chair Schmidt moved that the Board construe the Rival Employee Organization's letter as a motion to withdraw, grant the motion, dismiss without prejudice the Petition for Representation Election and dismiss the Incumbent Employee Organization's motion as moot. 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-10-0096 Teamsters Local Union No. 507 and City of Maple Heights
9. Case 2015-REP-12-0113 Fraternal Order of Police, Ohio Labor Council, Inc. and Guernsey County Sheriff

Requests for Recognition were filed. The substantial evidence is sufficient, and no objections were filed.

Vice Chair Schmidt moved that the Board certify the Employee Organizations as the exclusive representatives 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. Cases 2015-REP-05-0053 Fraternal Order of Police, Ohio Labor Council, Inc.,
2015-REP-07-0073 and Local 2415 and Ohio Council 8, American Federation of State, County and Employees, (AFSCME), AFL-CIO, and University of Toledo

On May 30, 2015, Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP") filed an amended Request for Recognition, seeking to represent all part-time and full-time Security Officer 1s employed by the University of Toledo ("University" or "Employer") (Case No 2015-REP-05-0053). On June 10, 2015, the University filed objections and a Petition for Representation Election. In its objections, the University states, *inter alia*, that at least ten percent of the employees in question wish to be represented by Local 2415 and Ohio Council 8, AFSCME, AFL-CIO.

On July 31, 2015, the University filed a Petition for Amendment of Certification and a Petition for Clarification of Bargaining Unit. (Case Nos. 2015-REP-07-0072 and 2015-REP-07-0073).

On November 19, 2015, the State Employment Relations Board ("SERB" or "Board") dismissed the University's Petition for Amendment of Certification (Case No. 2015-REP-07-0072) as inappropriate. Additionally, SERB coordinated Case Nos. 2015-REP-05-0053 and 2015-REP-07-0073 and directed the matter to an inquiry to gather information relevant to the issues raised by the parties.

On December 11, 2015, SERB's Office of General Counsel issued a Procedural Order, ordering the parties to supplement the record; granting FOP's Motion to Intervene in Case No. 2015-REP-07-0073; and granting the University's Motion to Stay the proceedings in Case No. 2015-REP-05-0053.

The assigned administrative law judge has reviewed the record and determined that the record contains a full statement of the relevant facts and the parties' legal arguments have been fully developed through their motions, position statements, briefs, procedural order responses, and documents. In addition to the documents submitted by the parties,

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administrative notice was taken of the relevant collective bargaining agreements on file with SERB.

On January 5, 2016, the assigned administrative law judge submitted a report and recommendation to the Board, recommending that the Board dismiss the University's Petition for Clarification of Bargaining Unit as inappropriate; lift the stay of proceedings in Case No. 2015-REP-05-0053 and order the mail-ballot election to proceed in accordance with the Board's July 9, 2015 Directive; and dismiss FOP's motion to dismiss as moot.

Vice Chair Schmidt moved that the Board take the following action:

- (1) adopt the Findings of Fact, Conclusions of Law, and Recommendations in the Report and Recommendation, finding that the University's Petition for Clarification of Bargaining Unit is inappropriate;
- (2) dismiss the University's Petition for Clarification of Bargaining Unit in Case No. 2015-REP-07-0073 as inappropriate;
- (3) lift the Stay of the election proceedings in Case No. 2015-REP-05-0053 and order the mail-ballot election to proceed in accordance with the Board's July 9, 2015 Directive; and
- (4) dismiss FOP's Motion to Dismiss the University's Petition for Clarification of Bargaining Unit as moot.

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>

IV. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 2015-ULP-03-0055 Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO v. Brown County Department of Job and Family Services

The unfair labor practice charge alleged that the County violated Ohio Revised Code §4117.11 (A)(1), (2), and (5) by interfering, restraining, and coercing employees in the exercise of their guaranteed rights to self-organization, to join, assist or join in labor organizations, to bargain collectively through agents of their own choosing and to engage in concerted protected activity.

Information gathered during the investigation revealed that the County discovered that its supervisory staff was not uniformly enforcing policies. Accordingly, the County posted a notice to its employees reiterating those policies and insuring an even application of those policies by the supervisors. The County's actions do not rise to a statutory violation.

The Union did not provide sufficient information to support the (A)(1), (2), and (5) violations.

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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-11-0238 Westlake Teachers' Association OEA/NEA v. Westlake City School District Board of Education

The unfair labor practice charge alleged that the School District violated Ohio Revised Code §4117.11 (A)(1) and (5) by interfering, restraining or coercing employees in the exercise of their guaranteed rights by refusing to bargain collectively 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. 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-06-0138 Laborers' International Union of North America, Local Union No. 860 v. Cuyahoga County

The unfair labor practice charge alleged that the County violated Ohio Revised Code §4117.11 (A)(1) and (3) by retaliating against three union stewards for engaging/conducting union business.

Information gathered during the investigation revealed that the allegations made by the Union are not supported by the documentation submitted. Accordingly, the Employer's actions do not rise to the level of an (A)(1) and (A)(3) 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 _____

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4. Case 2015-ULP-08-0185 Forest Park Firefighters, Local 302 v. City of Forest Park

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(5) by proposing to change job descriptions of members in the Union without consulting with the Union on the proposed changes.

Information gathered during the investigation revealed that the inclusion of the hazard section does not affect the terms and conditions of employment.

In addition, there were no changes enacted to the Fire Training Captain position.

Accordingly, 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:	<u>Yes</u>	ZIMPHER:	<u>Yes</u>
	Affirmed	<u>X</u>	Denied	<u> </u>

5. Case 2015-ULP-08-0190 Ron Gresco v. Lorain County Joint Vocational School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(4) and (6) by informing several staff members that Mr. Gresco filed a claim with the Public Employment Risk Reduction Program (PERRP) creating a hostile work environment, and by failing to satisfy a grievance he filed in 2010.

Information gathered during the investigation revealed that the School District's conduct did not rise to the level of an (A)(4) and (A)(6) violation.

In addition, the allegation regarding the 2010 grievance was untimely filed.

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>

6. Case 2015-ULP-09-0196 Fraternal Order of Police, Lodge #4 v. City of Uhrichsville

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1) and (5) by failing to provide a 5% pension pick up that employees in a different union are receiving.

Information gathered during the investigation revealed that the City has provided un rebutted documentation demonstrating that it has not paid any portion of either the police

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or fire fighter's pension pick-up between May of 2012 continuing through 2015. The Union failed to provide sufficient information 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 _____

7. Case 2015-ULP-09-0202 John C. Merz v. City of Hamilton

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(3) and (4) by not offering Mr. Merz other employment with the City after his layoff, in retaliation for a past grievance that had been filed against the City.

Information gathered during the investigation revealed that Mr. Merz failed to provide substantial documentation and information to demonstrate that he was not considered for the positions due to his past grievance against the City. As a result, the City's conduct does 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-10-0204 Greene County Career Center Classified Education Association, OEA/NEA v. Greene County Career Center

The unfair labor practice charge alleged that the County violated Ohio Revised Code §4117.11 (A)(1), (3) and (5) by changing the work location of the Association's President to a different building and changing her job duties in retaliation for her unwillingness to relinquish bargaining unit positions, by directly bargaining with the members and by-passing the Association representative, and by threatening Association members with the possibility of subcontracting out their jobs.

Information gathered during the investigation revealed that the Association did not establish a prima facie case.

In addition, the allegation referring to the June 3, 2015 conversation is untimely filed.

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 _____

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9. Case 2015-ULP-10-0206 Christopher A. Green v. City of Toledo

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1), (3) and (6) by failing to process a grievance that was filed directly with the Employer by Mr. Green.

Information gathered during the investigation revealed that the Union previously filed three grievances on his behalf regarding Mr. Green's move back into the bargaining unit and to his prior bargaining unit position and that there was nothing more the Union could do regarding the matter.

Information further revealed that Mr. Green failed to follow the grievance procedure in the CBA.

In addition, the instant charge is untimely filed.

Mr. Green did not provide sufficient information to support the (A)(1), (3), or (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 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-11-0233 April Clark v. State of Ohio - Department of Rehabilitation and Correction

The unfair labor practice charge alleged that the State violated Ohio Revised Code §4117.11 (A)(1), (3), (4), (6), (7) and (8) by discriminating, harassing, threatening and retaliating against her and creating a hostile work environment.

Information gathered during the investigation revealed that Ms. Clark is a public employee, engaged in the protected activity of filing grievances and having them heard and was harmed when she was terminated. Ms. Clark has established a prima facie case of discrimination. However, the State provided a persuasive rebuttal to show that Ms. Clark's termination was not based on anti-union animus, but on her refusal to follow the November 24, 2015 directive. Therefore, the State's actions do not rise to the level of (A)(3) and (4) statutory violations.

Ms. Clark did not provide sufficient information or documentation to show how the State's actions violated (A)(1), (6), (7) and (8)

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 for events occurring on or before August 6, 2015. 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 2015-ULP-11-0249 Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO v. Chippewa Local School District Board of Education

The unfair labor practice charge alleged that the School District violated Ohio Revised Code §4117.11 (A)(1), (3) and (5) by posting the parties' September 21, 2015 bargaining proposals on its website, by Board member, Doug Zook, directly-dealing with its members and by retaliating against its Union President for her exercise of concerted/protected activities.

Information gathered during the investigation revealed that the School District's actions do not amount to an (A)(3) and (A)(5) statutory violation.

Furthermore, 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 _____

12. Case 2015-ULP-03-0064 Lorain Education Association, OEA/NEA v. Lorain City School District Board of Education

The unfair labor practice charge alleged that the School District violated Ohio Revised Code §4117.11 (A)(1) and (3) by interfering, restraining and coercing its members in the exercise of their guaranteed rights.

Information gathered during the investigation revealed that on September 11, 2015, the Association filed a timely request/motion for reconsideration with new factual information.

The investigation also revealed that Union failed to demonstrate that Principal Keefer's conduct was motivated by anti-union animus and does not rise to the level of a statutory violation.

Vice Chair Schmidt moved that the Board deny the motion for reconsideration with prejudice. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

13. 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 his employment on September 18, 2014.

Information gathered during the investigation revealed that on January 3, 2016, Jeffrey Carnes timely filed a Request for Reconsideration. On January 12, 2016, the State timely

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filed a Brief In Opposition to the Request for Reconsideration.

Mr. Carnes did not provide any new and/or additional information warranting the Board to reverse its previously considered decision.

Vice Chair Schmidt moved that the Board construe the 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 _____

- 14. Case 2015-ULP-07-0171 Kenston Education Association v. Kenston Local School District Board of Education
- 15. Case 2015-ULP-09-0195 Xenia Firefighters IAFF Local 698 v. City of Xenia
- 16. Case 2015-ULP-10-0224 Linda Amtower v. International Brotherhood of Teamsters Local Union No. 957
- 17. Case 2015-ULP-12-0265 BGSU Police Employees Association, IUPA Local #103 v. Bowling Green State University

Items 14 through and including 17 were withdrawn pursuant to requests and motions to withdraw.

Vice Chair Schmidt moved that the Board construe the requests to withdraw as motions 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:

- 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 were required to report not later than 01/15/2016. To date, all 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.
- **Association of Labor Relations Agencies (ALRA):** On January 13, 2016 SERB responded to the request for submission of articles for the February edition of the ALRA Advisor. General Counsel Donald Collins provided case decisions of interest and Research and Training provided a schedule of upcoming conferences for both SERB and SPBR.
- **31st Annual Commemorative Martin Luther King Jr. Celebration:** Representing SERB, Christine Dietsch and Shane Trace (MBE oversight for SERB) attended the 31st Annual Commemorative Martin Luther King Jr. Celebration on January 14, 2016.

TRAINING:

- **Intermediate Negotiations Training:** Training is scheduled for today, January 28th; it is being 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 12 registrations for the January 28th training. Upcoming Intermediate Negotiations Training, following the same format, is scheduled for 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 approved by the Ohio Supreme Court on January 14, 2016. Currently there are 72 registrations.
- **Spring SERB Academy:** Scheduled for May 19 and 20, 2016. CLEs will be applied for after the finalization of the schedule/program updates have been completed.
- **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.

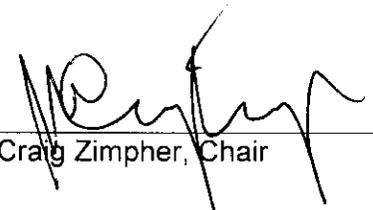
IX. ADJOURNMENT:

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

Vote: SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied

The Board meeting adjourned at 10:24 a.m.

/s/


W. Craig Zimpher, Chair