

State Employment Relations Board

Board Meeting Minutes  
February 18, 2016

The State Employment Relations Board met on February 18, 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 JANUARY 28, 2016 BOARD MEETING:**

Vice Chair Schmidt moved that the Board approve the minutes for the January 28, 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. Case 2015-MED-01-0035 City of Fairborn and Fairborn Professional Fire Fighters Association, Local 1235

The above captioned case involves one of the parties requesting a Conciliation Panel based on the Impasse Procedure in the Collective Bargaining Agreement (CBA). The parties have been unable to make a selection and the union has now requested SERB to make an appointment. The CBA expired December 31, 2015. Article 39, titled IMPASSE PROCEDURE, allows the parties to go directly to Conciliation bypassing Fact Finding.

That the parties can go directly to Conciliation is without question. Any Mutually Agreed Dispute Procedure (MAD), as here, must comport with the terms of the Revised Code, 4117.14 (E) and include Conciliation if a Public Safety unit is involved.

The employer alleges that the terms of the agreement expired December 31, 2015 along with any agreement to go directly to Conciliation. In support they cite Article 43, DURATION which provides in part:

A notice of a desire to amend shall have the effect of terminating the entire agreement a 12:00 midnight on December 31, 2014 or of any later year, as the case may be, in the same manner as a notice of desire to terminate, unless before 12:00 midnight on December 31, 2014 or any subsequent year, all subjects of amendments proposed by either party have been disposed of by agreement or by withdrawal by the party proposing the same.

In short, the Employer's Desire to Amend, which was filed in January of 2015, is treated as a Desire to Terminate the agreement which expired on December 31, 2015. The only caveat is if the parties had reached an agreement earlier.

SERB's policy is to intervene as little as possible in the contractual provisions of a MAD. *In re Niles City Bd of Ed*, SERB 91-010 (11-8-91) at 3-58. SERB will intervene where a MAD is faulty and inoperative, e.g., the MAD was ambiguous and open to various interpretations and manipulations, [*Weathersfield Local Board of Education*, SERB 91-009 (11-8-91)] or the MAD's provisions rendered it virtually inexhaustible [*In re Mad River-Green Local Board of Ed*, SERB 88-016 (9-29-88)] SERB has held that a "... MAD will be sustained absent some compelling public policy against it." *In re Vandalia-Butler City School Dist*, SERB 86-012 (3-27-86) at 250.



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2. Case 2015-REP-11-0109 Good Samaritan Education Association OEA/NEA and Defiance County Board of Developmental Disabilities  
(March 1, 2016 - March 14, 2016)
3. Case 2015-REP-11-0111 Ohio Patrolmen's Benevolent Association and City of Seven Hills  
(March 1, 2016 - March 14, 2016)
4. Case 2015-REP-12-0116 Coshocton County Professional EMS Association IAFF Local #5078 and Coshocton County Commissioners  
(March 1, 2016 - March 14, 2016)

The parties have entered into Consent Election Agreements seeking mail-ballot elections.

Vice Chair Schmidt moved that the Board approve the Consent Election Agreement and direct mail-ballot elections to be conducted during the polling period of March 1, 2016 through March 14, 2016. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

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

5. Case 2016-REP-01-0004 Fraternal Order of Police/Ohio Labor Council, Inc. and Knox County 911 Board

The parties jointly filed a Petition for Amendment of Certification seeking to amend the existing unit into two separate units.

The proposed amendment appears appropriate.

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

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

6. Case 2016-REP-01-0005 American Association of University Professors-Central State Chapter and Central State University

The parties have jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to include the classification of research faculty that the University is anticipating adding over the next two years. The parties have confirmed that the positions are vacant.

In the instant case, in as much as the positions have not been created or filled, it would be premature for the Board to render a determination and as a result, dismissal appears appropriate.

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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 \_\_\_\_\_

7. Case 2016-REP-01-0007 Findlay Education Association and Findlay City Schools

The parties jointly filed a Petition for Amendment of Certification seeking to amend the existing unit to include the classification of School Psychologists.

The proposed amendment appears appropriate.

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

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

8. Case 2015-REP-11-0107 Ohio Patrolmen's Benevolent Association and City of Brooklyn

9. Case 2015-REP-12-0114 Ohio Council 8, American Federaton of State County and Municipal Employees, AFL-CIO and City of Brooklyn

The issue is the appropriate bargaining unit for the Secretary Supervisor to the Chief and the Law Enforcement Clerk positions.

Vice Chair Schmidt moved that the Board grant AFSCME's Motion to Intervene, consolidate cases 2015-REP-11-0107 and 2015-REP-12-0114, and order the parties to participate in an Inquiry to determine the appropriate bargaining unit for the Secretary Supervisor/Administrative Assistant and Law Enforcement Services Clerk classifications. The date and time of the Inquiry and the Inquiry procedures will be addressed in a procedural order issued by the Office of the General Counsel of the State Employment Relations Board. 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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10. 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)
- There were one hundred fifty two (152) valid ballots cast
  - There were three (3) void ballots
  - There were eleven (11) challenged ballots
  - No Representative received twenty six (26) votes
  - Perry Association of Support Staff OEA/NEA received one hundred twenty six (126) votes and prevailed in this election
11. 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)
- There were eighteen(18) valid ballots cast
  - There was one (1) void ballot
  - There were zero (0) challenged ballots
  - No Representative received five (5) votes
  - Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO received thirteen (13) votes and prevailed in this election
12. Case 2015-REP-10-0101 Ohio Patrolmen's Benevolent Association and City of Wickliffe  
(December 29, 2015 - January 12, 2016)
- There were ten (10) valid ballots cast
  - There were zero (0) void ballots
  - There were zero (0) challenged ballots
  - No Representative received two (2) votes
  - Ohio Patrolmen's Benevolent Association received eight (8) votes and prevailed in this election

Mail ballot elections were held.

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 \_\_\_\_\_

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

1. Cases 2015-ULP-10-0210 City of North Canton v. Utility Workers Union of America and its Local 605, William McKinney, Dan Richards, and Anthony Brown  
2015-ULP-10-0211  
2015-ULP-10-0212  
2015-ULP-10-0213  
2015-ULP-10-0223

On October 7, 2015, the City of North Canton ("Charging Party") filed unfair labor practice charges against William McKinney, Dan Richards, Anthony Brown, and Utility Workers Union of America and its Local 605 ("Charged Parties"), alleging that Charged Party violated Ohio Revised Code ("O.R.C.") §§ 4117.11(B)(1), (B)(3), and (B)(6). On December 17, 2015, the State Employment Relations Board ("Board") found probable cause to believe Charged Parties had committed unfair labor practices and directed the parties to participate in unfair labor practice mediation. If mediation is unsuccessful, the Board has authorized the issuance of a complaint and directed the matter to hearing.

On October 19, 2015, Utility Workers Union of America and its Local 605 ("Charging Party") filed unfair labor practice charges against the City of North Canton ("Charged Party"), alleging that Charged Party violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1), (A)(2), (A)(5), and (A)(8). On December 17, 2015, the Board found probable cause to believe Charged Party had committed unfair labor practices and directed the parties to participate in unfair labor practice mediation. If mediation is unsuccessful, the Board has authorized the issuance of a complaint and directed the matter to hearing.

The parties participated in unfair labor practice mediation and were able to resolve their differences. On February 1, 2016, the parties filed an executed settlement agreement that resolves the issues raised in the unfair labor practice charges. In paragraph 3 of the agreement, the parties request that the Board construe their agreement as a motion to dismiss the unfair labor practice charges in the above-referenced cases with prejudice.

Vice Chair Schmidt moved that the Board construe the parties' settlement agreement as a motion to dismiss, grant the motion, and dismiss with prejudice all unfair labor practice charges in Case Nos. 2015-ULP-10-0210, 2015-ULP-10-0211, 2015-ULP-10-0212, 2015-ULP-10-0213, and 2015-ULP-10-0223. The State Employment Relations Board retains jurisdiction over this matter for purposes of enforcing the parties' settlement agreement. 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-02-0014 Fairborn Professional Firefighters, IAFF Local 1235 and City of Fairborn

The Fairborn Professional Firefighters, IAFF Local 1235 ("Union") is the deemed-certified exclusive representative of certain employees of the City of Fairborn ("Employer" or "City"). On March 9, 2015, the Union filed an amended Opt-In Request for Recognition and "Showing of Interest" cards with the State Employment Relations Board ("SERB" or "Board"), seeking to add three Battalion Chiefs to the existing bargaining unit of sworn fulltime Firefighters and Lieutenants.

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On April 2, 2015, the City filed objections and a Petition for Representation Election. In its objections, the City asserts that the Battalion Chiefs are "confidential employees," management level employees," and "supervisors" as those terms are defined in Ohio Revised Code ("O.R.C.") § 4117.01 and are, therefore, not public employees under O.R.C. Chapter 4117. The Union asserts that the Employer's objections were untimely filed pursuant to O.R.C. § 4117.05(A)(2) and Ohio Administrative Code Rule 4117-3-02.

On May 7, 2015, SERB directed this matter to an inquiry to proceed in a bifurcated manner, addressing the timeliness issue as a prerequisite to considering the merits of the Opt-In Request for Recognition.

On May 11, 2015, SERB's Office of General Counsel issued a procedural order, directing the parties to submit legal briefs regarding whether the Employer's objections and Petition for Representation Election were timely filed.

On June 17, 2015, the parties filed their legal briefs regarding this issue. On June 25, 2015, SERB's Office of General Counsel issued a procedural order recommending that SERB allow the Employer's objections and Petition for Representation Election and directing the inquiry to proceed to consider the Union's Opt-In Request for Recognition.

An inquiry as held on September 25, 2015, at which time, testimonial and documentary evidence was presented. At the inquiry, the Employer called two witnesses: Fire Chief Michael G. Riley and Operations Division Chief David Reichert. The Union called four witnesses: Battalion Chiefs Adam Howard, Laura Kerr, and Patrick Ricketts, and Lieutenant Thomas P. O'Malley.

On February 3, 2016, SERB's Staff Attorney submitted a Report and Recommendation to the Board, recommending that the Opt-In Request for Recognition be dismissed with prejudice based upon the inquiry findings that the Battalion Chiefs are "confidential" and "management level" employees as defined by O.R.C. § 4117.01(C) and are, therefore, excluded from the definition of a "public employee" for purposes of collective bargaining under O.R.C. Chapter 4117.

Vice Chair Schmidt moved that the Board:

1. waive the technical defects in the City of Fairborn's filings of its objections and Petition for Representation Election.
2. adopt the Findings of Fact, Conclusions of Law, and Recommendations in the Report and Recommendation, finding that the Battalion Chiefs are "confidential" and "management level" employees as defined by O.R.C. § 4117.01(C) and are, therefore, excluded from the definition of a "public employee" for purposes of collective bargaining under O.R.C. Chapter 4117;
3. dismiss the Union's Opt-In Request for Recognition with prejudice; and
4. dismiss the City's Petition for Representation Election 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-11-0239 Westlake Teachers' Association OEA/NEA v. Westlake City School District Board of Education

The unfair labor practice charge alleged that School Board violated Ohio Revised Code §4117.11 (A)(1) and (5) by interfering, restraining or coercing employees in the exercise of their guaranteed rights and by failing to process grievances.

Information gathered during the investigation revealed that the School Board refused to process all four grievances filed on behalf of Scott McWilliams because the grievances contained the same facts and information. The Association did not provide sufficient evidence 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 \_\_\_\_\_

2. Case 2015-ULP-09-0191 Celina Education Association, OEA/NEA v. Celina City School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(1), (3) and (5) by filing an unfair labor practice charge against the Association and the Negotiation Chairperson, Lora Darra, in order to intimidate and retaliate against the Association during negotiations for a successor agreement.

Information gathered during the investigation revealed that the parties resubmitted documentation, arguments and counter arguments that were previously submitted in SERB Case No. 2015-ULP-08-0177, which was subsequently dismissed by the Board. Based on the information submitted, the Association did not provide sufficient information to support the (A)(1), (3), or (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 \_\_\_\_\_

3. Case 2015-ULP-09-0198 Matthew Congleton v. Fraternal Order of Police, Ohio Labor Council Inc., Fraternal Order of Police EAGLE Lodge 177, Brenda Goheen & Andrew Chappell

The unfair labor practice charge alleged that Union violated Ohio Revised Code §4117.11 (B)(3) and (6) by failing to fairly represent the bargaining-unit employees during contract negotiations with the Employer.

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Information gathered during the investigation revealed that Matthew Congleton did not provide documentation to show that the Union failed to represent him and bargaining unit employees during contract negotiations for a successor agreement. In addition, Mr. Congleton filed the instant charge outside of the 90-day statute of limitations.

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              

4.     Case   2015-ULP-10-0226   Timothy A. Short v. Ohio Civil Service Employees Association, AFSCME Local 11

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(6) by failing to represent Timothy Short's interests regarding his job classification.

Information gathered during the investigation revealed that Mr. Short failed to provide documentation to prove that the Association's actions regarding the MOU were arbitrary, discriminatory, or in bad faith. Accordingly, Mr. Short did not provide sufficient information to support the (B)(6) 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              

5.     Case   2015-ULP-11-0244   Kimberly Childs v. Ohio Civil Service Employees Association, AFSCME Local 11

We received an email at 10:16 p.m. on February 17, 2016 that Ms. Childs wishes to withdraw her case.

Vice Chair Schmidt moved that the Board construe the 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:   Yes    ZIMPHER:   Yes  
          Affirmed      X      Denied              

6.     Case   2015-ULP-11-0245   Kimberly Childs v. State of Ohio - Public Utilities Commission of Ohio (PUCO)

The unfair labor practice charge alleged that the Commission violated Ohio Revised Code §4117.11 (A)(3), (4) and (5) by retaliating against Kimberly Childs when it failed to remove "incomplete and/or misleading information" from her personnel file, which had been used

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as the basis for her written reprimand.

Information gathered during the investigation revealed that Ms. Childs failed to establish a prima facie case of discrimination. However, had a prima facie case been established, the Commission provided a persuasive rebuttal to show that the written reprimand was not based on anti-union animus, but for Ms. Child's violation of a work rule. Therefore, the Commission's actions do not rise to the level of (A)(3) and (4) violations of the statute.

Ms. Childs 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              

7.       Case   2015-ULP-12-0254   Sheree Broughton v. Ohio Council 8, AFSCME, AFL-CIO and Its Local 3501

The unfair labor practice charge alleged that the Union violated Ohio Revised Code §4117.11 (B)(1), (3) and (6) by failing to file and/or take Sheree Broughton's "meritorious" grievances to arbitration.

Information gathered during the investigation revealed that Ms. Broughton did not provide sufficient information or documentation to show how the Union's actions were arbitrary, discriminatory or in bad faith when it did not advance her grievance to arbitration. Ms. Broughton's charge also contains allegations regarding the internal workings of the Union which SERB lacks jurisdiction to address. Based on the totality of the circumstances, the Union's actions do not amount to a (B)(6) statutory violation.

Ms. Broughton did not provide sufficient information or documentation to support the (B)(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              

8.       Case   2015-ULP-12-0260   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) and (3) by retaliating against the Union's Vice-President, Rick Hesser, for engaging in protected/concerted activity when it refused to pay him for his time while he participated in the Board-ordered mediation of Case Nos. 2015-ULP-03-0056 and 2015-ULP-08-0184.

Information gathered during the investigation revealed that based on the totality of the

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circumstances, the matter would be 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 Transit Authority violated Ohio Revised Code § 4117.11(A)(1), but not (5) by failing to provide Mr. Hesser with his daily wage for the October 19, 2015 Board-ordered mediation and requiring him to use his personal time to compensate for his lost wages. 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-12-0268   Timothy A Greene v. Twinsburg City School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(3) and (6).

Information gathered during the investigation revealed that Timothy Greene was given until January 22, 2016 to correct the deficiencies contained in his original December 28, 2015 ULP filing. On January 22, 2016, Mr. Greene filed an "amended" charge which contained deficiencies identical to those contained in the original charge. Mr. Greene failed to provide a clear and concise statement of the facts constituting an unfair labor practice as required by Ohio Administrative Code 4117-7-01.

Vice Chair Schmidt moved that the Board dismiss the charge without prejudice. Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote:   SCHMIDT:   Yes   ZIMPHER:   Yes  
          Affirmed      X     Denied              

10.    Cases 2015-ULP-12-0270   Maricia L. Schell v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO

          2015-ULP-12-0272   Andrea R. Minch v. Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO

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The unfair labor practice charges alleged that the Association violated Ohio Revised Code §4117.11 (B)(6) by failing to take the basic and required steps to advance Marcia Schell's and Andrea Minch's grievances to Step 3 (Mediation).

Information gathered during the investigation revealed that nowhere in the electronic grievance filing instructions for the members, which is on the Association's website, does it indicate what they need to do after they file the grievance. Nor was there an indication that it was the grievants' responsibility to advance the grievances to the Step 3. Based on the totality of the circumstances, the matter would be best addressed through a hearing to determine whether the Association failed to properly represent the Ms. Schell and Ms. Minch during the grievance process.

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 Association violated Ohio Revised Code § 4117.11(B)(6) by failing to take the basic and required steps to advance Marcia Schell's and Andrea Minch's grievances to Step 3 (Mediation). Chair Zimpher seconded the motion. Chair Zimpher called for discussion and the vote.

Vote:   SCHMIDT:   Yes   ZIMPHER:   Yes  
          Affirmed      X     Denied              

11.    Cases 2015-ULP-12-0271   Andrea R. Minch v. State of Ohio - Department of Transportation  
                                  2016-ULP-01-0001   Maricia L. Schell v. State of Ohio - Department of Transportation

The unfair labor practice charges alleged that the Department violated Ohio Revised Code §4117.11 (A)(1) and (3) by failing to adhere to the contract in regard to the "pre-positioning, interviewing and selection of the Liaison Officer 1 position", which resulted in Marcia Schell and Andrea Minch having to file a grievance.

Information gathered during the investigation revealed that Ms. Schell and Ms. Minch did not provide sufficient information or documentation to show how the Department's actions were the result of retaliation for their participation in any protected/concerted activities. As a result, the Department's actions do not rise to the level of (A)(1) and (3) statutory violations.

In addition, based on the parties' May 4, 2015 notification that they did not receive the position, Ms. Minch's charge should have been filed on or before August 4, 2015, but was not filed until December 28, 2015, 238 days later. Ms. Schell's charge also should have been filed on or before August 4, 2015, but was not filed until January 4, 2016, 245 days later. The parties did not provide any information to justify tolling the 90-day statute of limitations for filing an unfair labor practice charge.

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Vice Chair Schmidt moved that the Board dismiss the charges 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 \_\_\_\_\_

12. 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 Community 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 on January 18, 2016, the Association timely filed a Motion for Reconsideration. The Community College did not file a Brief In Opposition to the motion.

The Association did not provide any new or additional information meriting reconsideration.

Vice Chair Schmidt moved that the Board deny the Community College's 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 2014-ULP-12-0261 Teamsters Local 436 v. Cuyahoga County
14. Case 2015-ULP-11-0240 South Euclid-Lyndhurst Teachers' Association v. South Euclid-Lyndhurst City School District Board of Education
15. Case 2015-ULP-12-0255 Troy Nemitz v. Perkins Township, Erie County
16. Case 2016-ULP-01-0004 Deborah L. Stewart v. State of Ohio - Department of Rehabilitation and Corrections
17. Case 2016-ULP-01-0005 Deborah L. Stewart v. Ohio Civil Service Employees Association, AFSCME Local 11

Motions and requests for withdrawal were filed in ULP matters 13 through and including 17.

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:**

- 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 9/30/2015, 18 Employee Organizations were required to report not later than 02/15/2016. To date, 17 Employee Organizations have filed. One employee organization has not yet 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.
- **ePerformance Quarterly Metrics:** Submitted to DAS by Erin Conn on February 02, 2016. The report measures performance evaluations due. Specifically measured were: Completion rates – SERB is at 100%, and Timeliness rate – SERB is at 100%.
- **XLN SMDS 3.0:** The contract for the upgrade to the supported level of Java for the current case management software environment and systems of SMDS and CMDS was signed on February 05, 2016. This phase of the project has begun and is scheduled to be completed by June 30, 2016.
- **Performance Evaluation Policy and Work Force Plan Update:** Per the request of CSA/DAS, updated/revisions to the Performance Evaluation Policy and 2015 Workforce Plan were submitted on 2/16/2016. There was only a bit of minor tweaking to mirror the states Performance Evaluation policy specifically regarding the three competency standards for all staff under performance evaluation reviews.
- **OBM CFO Quarterly Meeting:** Attended the quarterly OBM sponsored CFO meeting on 2/17/16.

**TRAINING:**

- **Intermediate Negotiations Training:** Training was held January 28<sup>th</sup>; it 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 16 attendees.

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- **Upcoming Intermediate Negotiations Training:** Following the same format detailed above, the next Negotiations Training is scheduled for March 15, 2016; currently there are 8 registrations.
- **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 96 registrations.
- **Contract Data Sheet Summary (CDSS) Training:** Research and Training has set up webinar training for practitioners to learn how to complete the CDSS (OAC 4117-09-07). Research and Training will be sending out a mass mailing to public employers with contracts encouraging them to RSVP to one or more of the following CDSS Training dates:
  - Employers with Fire Contracts is March 16, 2016
  - Police Contracts is March 23, 2016
  - General Contracts is March 30, 2016
  - Teacher Contracts is April 06, 2016
  - Non-Teacher Contracts is April 07, 2016

All sessions will occur in Hearing Room 1 at 10 a.m., with a maximum of up to 25 "webinar" attendees per session, and will last approximately 1.5 hours. The sessions will be broadcast using the website Gotowebinar.com, which is a State of Ohio approved source. Contracts specific to the employer bargaining unit type will be used in the training to lend to the clarity of completing the CDSS for each bargaining unit type. Future training sessions may involve having practitioners come to SERB for classroom style training.

- **Spring SERB Academy:** Scheduled for May 19 and 20, 2016. CLE's will be applied for March 10, 2016.
- **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 10:31 a.m.

/s/   
W. Craig Zimpher, Chair