State Employment Relations Board

"promoting orderly and constructive relationships between all public employers and their employees"

Annual Report

2010

Governor of the State of Ohio
Ted Strickland

SERB Chairperson
N. Eugene Brundige

SERB Vice Chairperson
Michael G. Verich

SERB Member
Robert F. Spada

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Report from the Board

Fiscal Year 2010 was a challenging year for the State Employment Relations Board (SERB). With the passage of Am. Sub. H.B. 1, the staff support, housing, and administration of the State Personnel Board of Review (SPBR) were consolidated under the Chairperson of SERB, but the two Boards remained separate and distinct entities. At the same time, the combined budget for the two Boards was reduced by nearly forty percent even though SERB had already undertaken significant cost-cutting measures in the previous fiscal year. Much of this budget cut was eventually restored, but not until nearly halfway through the fiscal year. In December 2009, the General Assembly restored eighty percent of the reduction.

With the consolidation, SERB underwent a reorganization to maximize use of staff and to address its budget deficit. Duplicative positions were eliminated (e.g., executive director, receptionist), and those employees were reassigned to perform other tasks critical to the missions of the two Boards. The administrative law judges from the two Boards were pooled into one Hearings Section. During the first half of Fiscal Year 2010, before part of SERB's budget was restored in Sub. H.B. 318, four of SERB's mediators were "leased" to other state agencies for special projects. At the beginning of Fiscal Year 2009, SPBR had a staff of eight and SERB had a staff of thirty, or a combined total of thirty-eight employees. By the end of Fiscal Year 2010, the combined staff consisted of only twenty-nine employees.

Office space has also been significantly reduced. SPBR staff moved into the space already leased by SERB and with the assistance of DAS Real Estate, SERB was able to reduce the square foot cost, resulting in cutting rental costs by nearly one-third. Staff volunteered to do the moving, eliminating those costs. Excess furniture was donated to other Boards and Commissions, further minimizing moving costs. As a result of combining supplies and equipment, very few expenditures in those areas were required during this fiscal year.

Even though operating with fewer employees, SERB has continued to increase its efficiency. To further expedite case processing, more and more cases are being heard directly by the Board. All hearings involving representation issues are being set before the Board, and some unfair labor practice complaints are being heard directly by the Board or individual Board members. Timelines have been established for case processing that result in the parties getting a decision in a more expeditious fashion.

Another initiative SERB has undertaken to increase efficiency is the use of a contract data summary sheet for gathering information for SERB's Clearinghouse. In the past, SERB staff read all collective bargaining agreements filed with SERB in detail to extract data for the Clearinghouse. SERB has now begun requesting our constituents to report that data on the contract data summary sheet when they complete negotiations and file their contracts. This change has enabled SERB to provide parties with more accurate and up-to-date information from our Clearinghouse.

Previously, completed Collective Bargaining Agreements were submitted to SERB via paper copies and then scanned into the SERB Clearinghouse. All practitioners now submit their contracts via electronic mail, thus eliminating the use of paper and the staff time necessary to scan the documents.

Responses to Unfair Labor Practice Charges are sought and obtained via electronic mail, both speeding up the investigation and reducing the mailing costs previously incurred by the parties.

SERB places great value on mediation, believing that a solution reached between the parties is usually better for those involved than a decision issued through the litigation process. Because of SERB's limited number of mediators, other SERB staff have volunteered and been trained to serve as mediators at all levels of the unfair labor practice and representation process. Due to a shortage of funds, internal staff mediation training has been conducted in-house without any additional cost to the taxpayers. SERB has introduced pre-determination mediation as a means of helping parties resolve matters before they invest significant funds into preparing case positions, thereby saving taxpayer dollars.

SERB has implemented an extensive legal intern program in cooperation with several law schools in which the majority of the interns are paid through the Federal Work Study Program at their law schools. These law students have gained valuable labor-relations experience while providing SERB with valuable legal assistance in carrying out its statutory mission.

SERB continues to provide quality conferences while reducing costs. Last year, SERB began providing its training materials to attendees on a

CD-Rom rather than a large notebook of costly paper. This year SERB held most of its conferences at state-owned facilities, thereby further reducing conference costs.

Under Am. Sub. H.B. 1, SERB was given the authority to hold representation elections by mail ballot. Previously, O.R.C. Chapter 4117 required that SERB conduct only on-site representation elections even though we can now vote for elected officials by mail. SERB promulgated rules to implement the mail-ballot process and has since successfully held more than 45 mail-ballot elections. Not only has the use of mail ballots substantially reduced the costs of holding those elections, which at times required staff to travel to far corners of the state to conduct an election involving only a few voters, it has also resulted in more eligible voters participating in those elections.

Through innovation and increased efficiency, SERB has met the challenges of Fiscal Year 2010. With a significantly reduced staff and continuing economic uncertainty, Fiscal Year 2011 looks to be another challenging year for SERB. The current economic climate in Ohio will continue to fuel the need for the services of SERB and SPBR. SERB remains committed to speeding up our case processing to improve our customer service and to looking for further ways to increase our efficiency, but is concerned that further budget cuts will impair our ability to fulfill our statutory duties

Our commitment to you is that we will do our best to faithfully serve the citizens of Ohio, Public Employers, Public Employees, and the Employee Organizations that represent them to the best of our abilities.

Respectfully submitted,
The State Employment Relations Board

SERB Statutory Functions

The following are the major statutory duties SERB performs pursuant to the Ohio Public Employees' Collective Bargaining Act of 1983, Chapter 4117 of the Ohio Revised Code:

- Investigation or mediation of alleged unfair labor practices. [Section 4117.12]
- Issuance and prosecution of unfair labor practice complaints when probable cause is found after investigation of charges. [Section 4117.12]
- Adjudication of unfair labor practices based upon formal evidence and legal arguments presented by the parties at hearing. Such cases are heard by SERB administrative law judges, the SERB Board, or individual Board members, who make recommendations that are submitted to the Board for ultimate determination. [Section 4117.12]
- Enforcement of unfair labor practice remedial orders. [Section 4117.13]
- Review of employee challenges to fair share fees paid by them to unions. [Section 4117.09]
- Establishment of standards for and review of employee organization trusteeships. [Section 4117.19]
- Establishment and communication of timetables for all negotiation cases to which the statutory impasse resolution procedure applies. [Section 4117.14]
- Analysis and resolution of legal issues raised by negotiation cases in which the parties dispute the proper procedure. [Section 4117.14]
- Assignment of mediators to resolve impasses in negotiations and to prevent or shorten the duration of public-sector strikes. [Section 4117.14]
- Compilation and submission to parties of lists from which fact finders and conciliators are chosen. [Section 4117.14]
- Subsequent appointment of fact finder and conciliator with proper notification to parties and the appointed neutral and revision of assignments as necessary after ascertaining availability. [Section 4117.14]
- Selection of qualified individuals to serve on SERB's Roster of Neutrals. [Section 4117.02]
- Investigation of petitions for election (initial representation elections, challenge elections by rival unions, or decertification elections), including an examination of a showing of interest required to demonstrate adequate employee interest in an election. Also, investigation of requests for voluntary recognition in which elections may be unnecessary. [Sections 4117.05 and 4117.07]
- Determination or mediation of appropriate bargaining-unit configurations (often through hearing) that may involve the determination of whether employees are confidential, management level, or supervisory. [Sections 4117.01 and 4117.06]
- Conducting on-site secret ballot elections for eligible employees in appropriate units. [Section 4117.07]
- Resolution, through evidential hearing, of other disputed issues associated with representation activity, such as contract bar, election bar, standing, objectionable campaign activity by a party, and eligibility of voters. [Section 4117.02]
- Determination, through evidential hearing and legal arguments, whether job actions constitute prohibited strikes. [Section 4117.23]
- Determination, through evidential hearing and legal arguments, whether otherwise legal strikes pose a clear and present danger. [Section 4117.16]
- Acquisition and analysis of more than 2,900 Ohio public-sector collective bargaining agreements for use as an informational clearinghouse. [Section 4117.02]
- Production of reports reflecting bargaining agreement terms for political subdivision categories, in further fulfillment of the clearinghouse and analysis functions. [Section 4117.02]
- Annually update a list of school districts that have collective bargaining agreements with teacher unions to show, for each district for the current fiscal year, the starting salary in the district for teachers with no prior teaching experience who hold bachelors degrees, and send a copy of the updated list to the state board of education. [Section 4117.102]
- Presentation of training programs for representatives of employee organizations and management, and preparation of educational bulletins and manuals. [Section 4117.02]
- Development and implementation of labor-management cooperation initiatives, including interest-based bargaining and labor-management committee training and facilitation. [Section 4117.02]
- Collection, organization, and verification of union financial and organizational reports. [Section 4117.19]
- Investigation of alleged failure to comply with employee organization reporting requirements and possible imposition of penalties. [Section 4117.19]
- Dissemination of information regarding the Ohio Public Employees' Collective Bargaining Act to interested parties such as organizations, public employees, employers, and academicians. [Section 4117.02]

The Board

The three-member State Employment Relations Board and its administrative staff were created by Ohio's Public Employees' Collective Bargaining Act of 1983. The Act was incorporated as Chapter 4117 of the Ohio Revised Code. Acting as a neutral, the quasi-judicial board determines appropriate bargaining units, conducts representation elections, certifies exclusive bargaining representatives, monitors and enforces statutory dispute procedures, adjudicates unfair labor practice charges, and determines unauthorized strikes. Board appointments are made by the governor with the advice and consent of the Senate. A board member's term is six years.

N. Eugene Brundige, Chairperson

Governor Ted Strickland appointed N. Eugene Brundige to the State Employment Relations Board effective May 12, 2008. Governor Strickland appointed him to a second six-year term effective October 6, 2010. At the time of his initial appointment, Mr. Brundige was an arbitrator, mediator and labor relations consultant, serving on the following arbitration rosters: American Arbitration Association (Labor Panel), Federal Mediation and Conciliation Services, Arbitration Mediation Service, and SERB's Roster of Neutrals. In addition to 15 years as a mediator, Mr. Brundige served previously as Vice Chair of the State Employment Relations Board. Mr. Brundige served as Chief Negotiator for the City of Columbus, Director of Classified Personnel for Columbus Public Schools, Chief Negotiator for the State of Ohio, and HR Chief for the Ohio Bureau of Workers' Compensation. He also served in a number of capacities within a statewide union, including President of the Ohio Education Association and Director of Uniserv, supervising 70 staff representatives. He worked on assignment for the National Education Association in Florida. Mr. Brundige is a graduate of Ohio University, where he received his Bachelors Degree in History and Government and also earned a Masters Degree in Education Administration. He has also served as adjunct faculty at Columbus State Community College and The Ohio State University in various labor-management programs.

Michael G. Verich, Vice Chairperson

Michael G. Verich was appointed to the Board by Governor George V. Voinovich in December 1998. Governor Bob Taft appointed him to a second six-year term effective October 7, 2004. At the time of his initial appointment, Board Member Verich was completing his eighth term and had been elected to his ninth term in the Ohio House of Representatives from the 66th District, Trumbull County, serving as Vice Chairman of the Commerce and Labor Committee and Chairman of the Select Commerce and Labor subcommittee reviewing Ohio's Public Employees' Collective Bargaining Bill in 1983. He chaired the Standing Committees on Aging, Housing, and Financial Institutions, and the Select House Committee to Reorganize the Ohio Courts. He also served on the Joint Committee on Agency Rule Review. A Warren, Ohio native, he received his B.A. Magna Cum Laude from Bowling Green State University, earned a Masters Degree in Public Administration from Harvard University's John F. Kennedy School of Government, and his Juris Doctor Degree from the University of Akron School of Law. He received various legislator of the year awards and commendations for public service.

Robert F. Spada, Member

Robert F. Spada was appointed to the Board by Governor Ted Strickland on November 3, 2008. At the time of his appointment Spada was serving in his 10th year in the Ohio Senate representing the 24th Senate District from Cuyahoga County.

He served two terms as Assistant Majority Floor Leader. His Committee assignments included Insurance, Commerce and Labor Committee and State and Local Government Committee, which he chaired. Mr. Spada was also a member of the Joint Committee on Agency Rule Review.

Other public and private sector work includes employment with the U.S. Department of Labor - Labor Management Services Administration, the U.S. Department of the Treasury - Internal Revenue Service, Willoughby South High School and as a partner in an accounting firm.

Board Member Spada, a Cleveland Native, received his BBA in Accounting from Cleveland State University, and an MBA in Systems Management from Baldwin Wallace College. He served in the U.S. Army as a Systems Analyst.

SERB Fiscal Year 2010 Expenditures Summary

	Payroll	Purchased Personal Services	Training	Supplies / Maintenance	Equipment	Totals as of 07/01/10
General Revenue	$3,221,207	$14,943	$0	$344,167	$1,123	$3,581,440
Special Accounts	$0	$3,397	$0	$3,248	$0	$6,645
TOTAL	$3,221,207	$18,340	$0	$347,415	$1,123	$3,588,085

SERB Personnel FY 2004- 2010

Includes Full-Time Permanent, Part-Time Permanent and Interns.

	2004	2005	2006	2007	2008	2009	2010
Staff	30	31	31	33	33	30	29*

* With the passage of Am. Sub. H. B.1, the staff of the State Personnel Board of Review (SPBR) were consolidated with the staff of SERB, effective July 17, 2009. The number of SERB personnel reported for FY 2010 reflects the consolidated staff, which is an overall reduction of 8 employees from the 38 employees serving the two Boards prior to the consolidation.

Organization

Executive Director

The Executive Director is the chief administrative officer of the agency and reports directly to the Board. Charged with its daily operations, the Executive Director oversees the administration of agency funds and personnel. The Executive Director is responsible for implementing Board policy, and manages, directs, and supervises activities of the Board.

Office of the General Counsel

The Office of the General Counsel serves as in-house counsel, providing legal support for the Board and its sections, assisting in the preparation of Board opinions, drafting unfair labor practice complaints, and working with SERB's litigation counsel (the Ohio Attorney General) in the preparation of SERB-related cases pending before Ohio courts.

Representation Section

The Representation Section oversees the review of all representation filings; as well as Requests for Recognition and Petitions for Representation Election to determine sufficiency, coordination of efforts to achieve consent-election agreements, and the subsequent scheduling of 60-70 representation mail-ballot elections annually. Additionally, the section is responsible for the substantive development and presentation of recommendations to the Board on representation issues, and for review and recommendations of rebate cases for fair-share-fee payers.

Investigations Section

The Investigations Section is charged with the initial review, investigation, recommendation to the Board, and maintenance of statistics involving all unfair labor practice charges before SERB. The section is responsible for the investigation and recommendation to the Board of employee organization reporting complaints and jurisdictional work disputes. The agency's Labor Relations Specialists investigate an average of more than 700 of these charges each year. Additionally, the Labor Relations Specialists are involved in the mediation of unfair labor practice disputes before the Board's initial determination of whether probable cause exists.

Bureau of Mediation

The Bureau of Mediation oversees implementation of the collective bargaining impasse-resolution procedures established by Section 4117.14 of the Ohio Revised Code. These procedures provide for strict timelines and for the appointment of mediators, fact finders, or conciliators (interest arbitrators) based upon the circumstances of each case. The bureau reviews Notices to Negotiate to determine whether to apply the statutory impasse resolution process or an alternate process designed by the parties. If the statutory process applies, the bureau establishes timelines for negotiations. If an alternate impasse-resolution process applies, the bureau monitors these negotiations and assists the parties when requested. The bureau reviews strike notices and the progress of negotiations, and intervenes when necessary to prevent or end a strike. The bureau develops and coordinates labor-management-cooperation training and facilitation for interest-based bargaining and labor-management committee effectiveness.

Hearings Section

The Hearings Section conducts administrative hearings to resolve factual disputes or help decide significant issues of law in cases involving representation, impasse resolution, unfair labor practice matters, and other substantive responsibilities imposed by the Ohio Public Employees' Collective Bargaining Act. Cases are heard before an administrative law judge who submits recommended findings of fact and conclusions of law to the Board. Administrative law judges may subpoena witnesses and documents, administer oaths, and receive or exclude evidence for cause. Administrative law judges may also mediate representation matters.

Clerks Office

This section processes an average of more than 2,000 new case filings annually. SERB's intake and record-keeping arm is vital to the agency's operation and is enhanced by a computerized and web-based docketing/imaging system.

Equal Employment Opportunity Officer

The EEO officer advises on equal consideration for equal work and monitors efforts to ensure equal treatment. Additionally, the EEO officer provides Affirmative Action training.

Research and Training Section

The Research and Training Section fulfills SERB's statutory commitment to act as a clearinghouse of information relating to wages, fringe benefits, and employment practices applicable to the various political subdivisions of the state. Also by statute, the section is responsible for training representatives of employee organizations and public employers in the rules and techniques of collective bargaining. The section's primary tool is its computerized *Clearinghouse,* a system providing customized collective bargaining agreement information for all jurisdictions in the state. The section is also responsible for writing, editing, and producing the *SERB Online Journal* magazine, SERB's *Annual Report*, and SERB's *Annual Health Care Report*.

Year-End Case Status Summary

Cases Filed	FY 2009	FY 2010
Total Cases	2,279	2,393
Mediation (MED)	1,443	1,654
Strike determinations (STK)	0	1
Representation (REP)[1]	167	202
Rebate Determination(RBT)	9	8
Unfair Labor Practices (ULP)	660	527
Employee Organization Reporting Complaints (ERC)	0	1
Jurisdictional Work Disputes (JWD)	0	0

Agency Activities	FY 2009	FY 2010
State mediator appointed	677	757
Federal mediator appointed	224	276
Fact Finder appointed	366	349
Conciliator appointed	61	43
Strikes	2	0
Elections held[2]	65	57
Board decision to issue complaint	45	54
Hearings held[3]	23	17
Board meetings[4]	23	22
Board opinions issued	5	14

Mediations Conducted[5]	FY 2009	FY 2010
ULPs Pre-Determination	29	35
ULPs Post-Probable Cause	34	19
Representation Matters Pre-Direction to Hearing	118	71
Representation Matters Post-Direction to Hearing	7	9
Total Non-Contract Mediations	217	134

Final Dispositions	FY 2010
Total Dispositions	1,887
Impasse matters settled or withdrawn	1,031
Election results certified	46
Voluntary recognition requests certified	20
Recognition requests/election petitions dismissed	17
Miscellaneous representation activities	123
RBT petitions settled or withdrawn	9
ULP charges dismissed	413
ULP charges settled or withdrawn	154
ULP charges deferred/jurisdiction retained	25
ULP complaints settled	47

[1] This figure reflects the consolidation into one case of voluntary recognition requests with responsive petitions and multiple petitions of the same unit. It also includes petitions for amendment of certification and for clarification of bargaining unit.

[2]Includes professional/non-professional unit determination elections.

[3]Includes Board-conducted strike authorization hearings.

[4]Includes only regular board meetings.

[5]The statistical report on mediations conducted has been expanded and moved here from the Hearings Section Summaries on Page 15.

Collective Bargaining Agreements by Employer Type
As Of June 30, 2010

Employers	Employers with Contracts	Employer Type	Number of Contracts On File	Employees Covered By Contracts
Local Government				
250	246	City	1,013	48,842
87	5	County Auditor	7	181
28	12	County Children Services	15	1,414
88	7	County Clerk of Courts	7	249
88	42	County Commissioners	79	2,545
88	3	County Coroner	3	37
88	51	County Engineer	56	1,537
35	13	County Health Care	20	1,113
16	2	County Hospital	4	2,314
88	50	County Job and Family Services	53	7,985
48	1	County Mental Health	1	43
88	44	County Mental Retardation	75	6,873
1	1	County Narcotics Agency	1	9
2	2	County Prosecutor	2	24
87	7	County Recorder	7	63
88	85	County Sheriff	212	9,283
19	13	County Support Enforcement Agency	14	1,013
88	9	County Treasurer	9	160
12	11	Emergency Medical District	13	441
18	12	Fire District	14	223
83	9	Health District	9	301
52	12	Park District	20	797
5	5	Sanitary District	6	113
18	2	Conservancy District	2	15
19	10	Water/Sewer District	12	422
251	29	Library	31	2,989
40	18	Metropolitan Housing Authority	36	1,629
5	3	Port Authority	6	212
1	1	Regional Turnpike Commission	2	1,200
15	13	Regional Transit Authority	19	5,100
14	13	State University	43	16,775
14	9	Community College	19	2060
9	4	Technical College	8	710
155	92	Township	214	3,191
27	18	Miscellaneous	22	752
2015	854	Total	2,055	120,615
State Government				
1	1	Attorney General	3	595
1	1	Auditor of State	1	32
1	1	Office of the Governor	5	41,210
1	1	Secretary of State	1	67
1	1	Treasurer of State	1	87
5	5	Total	11	41,991
Boards of Education				
718	653	Boards of Education	1,224	195,670

Summary

Total of all employers	2,738
Total number of employers with contracts	1,512
Total contracts filed with SERB	3,290
Total employees covered	358,276

Collective Bargaining Agreements by County
As Of June 30, 2010

County	Boards of Education	Others	Total
Adams	4	3	7
Allen	18	22	40
Ashland	9	11	20
Ashtabula	17	35	52
Athens	13	23	36
Auglaize	9	12	21
Belmont	16	12	28
Brown	9	4	13
Butler	21	61	82
Carroll	4	1	5
Champaign	9	10	19
Clark	15	19	34
Clermont	17	19	36
Clinton	6	5	11
Columbiana	23	23	46
Coshocton	6	6	12
Crawford	10	11	21
Cuyahoga	86	281	367
Darke	10	9	19
Defiance	7	7	14
Delaware	12	26	38
Erie	15	27	42
Fairfield	12	16	28
Fayette	3	4	7
Franklin	36	89	125
Fulton	13	6	19
Gallia	6	6	12
Geauga	14	14	28
Greene	17	31	48
Guernsey	6	10	16
Hamilton	43	112	155
Hancock	14	15	29
Hardin	10	8	18
Harrison	4	3	7
Henry	8	9	17
Highland	7	6	13
Hocking	2	10	12
Holmes	3	2	5
Huron	13	12	25
Jackson	6	11	17
Jefferson	10	22	32
Knox	8	9	17
Lake	21	70	91
Lawrence	15	16	31
Licking	18	22	40
Logan	6	6	12
Lorain	31	59	90
Lucas	21	64	85
Madison	8	8	16
Mahoning	35	74	109
Marion	9	13	22
Medina	15	35	50
Meigs	6	5	11
Mercer	7	6	13
Miami	12	18	30
Monroe	2	4	6
Montgomery	33	78	111
Morgan	2	5	7
Morrow	7	2	9
Muskingum	11	14	25
Noble	4	3	7
Ottawa	9	8	17
Paulding	4	3	7
Perry	7	4	11
Pickaway	5	9	14
Pike	7	3	10
Portage	27	46	73
Preble	9	2	11
Putnam	14	4	18
Richland	18	29	47
Ross	13	6	19
Sandusky	11	17	28
Scioto	14	14	28
Seneca	9	15	24
Shelby	10	8	18
Stark	39	65	104
Summit	41	107	148
Trumbull	46	64	110
Tuscarawas	17	20	37
Union	3	5	8
VanWert	5	6	11
Vinton	2	1	3
Warren	17	30	47
Washington	13	10	23
Wayne	18	14	32
Williams	8	10	18
Wood	20	39	59
Wyandot	4	3	7

Summary

Boards of Education	1,224
Other Employers	2,066
Total 2010 Contracts	3,290

Bureau of Mediation Summaries

Filings and Appointments	FY 2009	FY 2010
Matters filed		
Notices to Negotiate	1,443	1,654
Impasse Matters Settled/Withdrawn	1,386	1,031
Notices of Intent to Strike	12	12
Neutrals appointed		
Mediator Appointments	901	1,033
Fact-Finder Appointments	366	349
Conciliator Appointments	61	43

FY 2010 Notices to Negotiate	Statutory	MADs	Total
Initial	42	0	42
Reopener	150	71	221
Successor	900	491	1,391
Total	*1,092*	*562*	*1,654*

FY 2009 Fact-Finding Statistical Summary

Cases with reports accepted		71
Accepted by both parties	29	
Deemed accepted . . .	42	
by employee organization only	6	
by employer only	21	
by both parties	15	
Cases with reports rejected		62
by employee organization only	24	
by employer only	29	
by both parties	8	
Total FY 2010 reports		133

Results of Fact-Finding

	FY 2009	FY 2010
Rejections	57	62
Acceptances	69	71

Fact-Finding Cases by Employer Type

	FY 2009	FY 2010
Cities	72	66
Counties	29	34
School Districts	3	0
Townships	10	19
Universities	4	4
State Government	1	0
Other	7	10

Fact-Finding Cases by Employee Type

	FY 2009	FY 2010
Police	51	58
Fire	18	21
Teaching	4	1
Nursing	0	0
Other	53	53

Public Sector Strikes, April 1, 1984—June 30, 2010

Type	04/01/84–06/30/07	FY 2008	FY 2009	FY 2010	Total
Education	144	2	1	0	147
City	9	1	0	0	10
County	44	0	0	0	44
Township	2	0	0	0	2
Other	7	0	1	0	8
Total	*206*	*3*	*2*	*0*	*211*

Public Sector Strikes Before and After the Collective Bargaining Act

1978	67	1983	na	1988	14	1993[2]	3	1998	14	2003	7	2008	3
1979	56	1984[1]	4	1989	17	1994[3]	13	1999	6	2004	4[4]	2009	2
1980	60	1985	9	1990	13	1995	7	2000	2	2005	1	2010	0
1981	na	1986	14	1991	17	1996	4	2001	8	2006	6		
1982	na	1987	19	1992	11	1997	3	2002	6	2007	4		

[1] 04/01/84 – 12/31/84

[2] 01/01/93 – 06/30/93

[3] Beginning with July 1, 1993, all data are reported by fiscal year, July 1 through June 30.

[4] FY 2004 strike total adjusted from 2004 annual report.

Representation Summaries

	04/01/84-06/30/07	FY 2008	FY 2009	FY 2010	Total
Elections held	2,984	61	66	57 [1]	3,168
Unit Determination elections held (Professional/Nonprofessional)	207	0	2	1 [2]	210
Choices for representation	2,240	58	60	48	2,406
Approximate number of eligible voters	181,562	3,509	1,871	1,420	188,362
Voter turnout	152,938 84%	2,780 79%	1,604 86%	1,197 84%	158,519 84%
Certification via Request for Recognition	1,218	13	25	20	1,276

[1] 12 onsite, 45 via mail
[2] 1 onsite

Unfair Labor Practice Summaries

Cases	04/01/84-06/30/07	FY 2008	FY 2009	FY 2010	Total
ULP Charges Filed	16,138	614	660	527	17,939
Probable Cause Findings	3,204 [1]	96	45	54	3,399
Complaints Settled	2,505 [2]	101	67	47	2,720
Complaints Adjudicated	499 [2]	10	4	2	515
ULP Charges Dismissed	8,691	434	358	413	9,896
ULP Charges Withdrawn	4,111	110	157	154	4,532
Deferrals to Arbitration (with retention of jurisdiction)	153 [3]	16	27	25	221

[1] *Adjusted figures in 1990 used in total.*

[2] *Does not include 1984-85, when these statistics were not kept.*

[3] *Does not include 1984-87, when these statistics were not kept.*

FY 2009 Unfair Labor Practice Allegations

Total Allegations of RC 4117.11 violations 527
Section 4117.11(A) alleged employer violations 396
Section 4117.11(B) alleged employee/employee organization violations 131

Board Findings of Statutory Violations

04/01/84-06/30/07	FY 2008	FY 2009	FY 2010	Total
352	10	4	15	381

Hearings Section Summaries

Action	**04/01/84-06/30/07**	**FY 2008**	**FY 2009**	**FY 2010**	**Total**
HOPOs/HORDs	892	17	18	10	937
Settlements	1,367 [1]	45	36	30	1,478
Hearings held	860	25	23	17	925
Pretrials held	940 [1]	37	50	21	1,048

NOTE: The statistical report on mediations conducted has been expanded and moved to the Year-End Case Status Summary report on Page 12.

[1] Statistic maintained beginning December 1994.

Board Opinions Issued in Fiscal Year 2010

In re Salem Fire Fighters, Local 283, IAFF, SERB 2009-002 (10-1-2009)

In this unfair labor practice case, the State Employment Relations Board ("SERB" or "the Board") found that the Salem Fire Fighters, Local 283, IAFF ("the Union") did not violate Ohio Revised Code ("O.R.C.") § 4117.11(B)(2) and (B)(3) when it insisted on maintaining the original minimum staffing requirement and pursuing the subject through the statutory fact-finding process outlined in O.R.C § 4117.14. The Board dismissed the complaint and dismissed with prejudice the unfair labor practice charge.

The Union and the City of Salem ("the City") were parties to a collective bargaining agreement ("CBA") that expired June 30, 2008. The City and the Union started negotiations for a successor CBA in May 2008. The City wanted to eliminate the "minimum staffing clause" in the old agreement that required a minimum of four fire fighters per shift and change it to three fire fighters per shift. The Union wanted the same terms and conditions in the current CBA to continue, including the original minimum staffing clause of four fire fighters per shift. The negotiations went to fact finding, and the fact finder issued a recommendation in favor of the Union. Both parties approved the fact-finder's report.

The City charged the Union with violating O.R.C. §§ 4117.11(B)(2) and (B)(3). O.R.C. § 4117.11(B)(3) is violated if a union refuses to bargain with an employer or if a union bargains in bad faith. The subject over which O.R.C.§ 4117.11(B)(3) charge is directed is the minimum staffing clause. The City's position was that the Union's refusal to resolve that issue before submitting it to the fact finder constituted a refusal to bargain or bargaining in bad faith. The City maintained that because the minimum staffing requirement is a permissive bargaining subject, the Union is not allowed to maintain its position until a bargaining impasse.

In SERB v. Youngstown City School Dist. Bd. of Ed., SERB 95-010 (6-30-95) ("Youngstown"), SERB stated that a bargaining subject that is permissive "is enforced like a mandatory bargaining subject, [once it is included in a CBA] but its continuation depends upon the contract terms." Under O.R.C. § 4117.08, once a permissive subject is included in a CBA, the Union gains the absolute right to bargain over it.

A conciliator or fact finder is not bound to exclude a permissive subject from his/her report because permissive subjects constitute "unresolved issues." SERB found the argument that these subjects must not be presented to the agreed or statutory impasse procedure was not well founded. O.R.C. § 4117.14(C)(3)(a) states that "the fact finding panel shall make final recommendations as to all the unresolved issues." Ohio Administrative Code Rule 4117-9-05(J) and (K) allow fact finders to decide all "unresolved issues." It is within the fact finder's statutory power, or other dispute resolution mechanism, to make determinations and recommendations regarding all unresolved issues.

The Union did not violate O.R.C. § 4117.11(B)(3) because it is allowed to take unresolved issues to fact-finding. Statutory language does not distinguish between permissive or mandatory subjects of bargaining when it addresses "unresolved issues"; therefore, the power to address unresolved issues encompasses both mandatory and permissive bargaining subjects. The Union simply took an unresolved issue to fact-finding, which was within statutory rights, even if it was a permissive subject of bargaining.

O.R.C. § 4117.11(B)(2) is violated when a union causes or attempts to cause an employer to violate O.R.C. § 4117.11(A). SERB found that the Union caused the Employer to engage in conduct that is not an unfair labor practice and that O.R.C. § 4117.11(B)(2) was not violated.

Teamsters Local Union No. 348 v. Clerk of Courts, Stow Municipal Court District, SERB 2009-003 (10/29/09)

In this representation case, the State Employment Relations Board ("SERB") found that the employees of the Clerk of Courts, Stow Municipal Court District ("Stow Clerk") are "public employees" under the meaning of Ohio Revised Code ("O.R.C.") § 4117.05, and thus entitled to representation for collective bargaining. SERB also found that the proposed bargaining unit in the Request for Recognition is "the unit appropriate for purposes of collective bargaining" under O.R.C. § 4117.06(A). Consequently, Teamsters Local Union No. 348 ("Local 348") was certified as the exclusive representative for all of the employees in the bargaining unit.

Local 348 sought to represent certain employees of the Clerk of Courts, Cuyahoga Falls Municipal Court District (now known as Stow Municipal Court District). The Clerk did not file a response, but the Judges of the Cuyahoga Falls Municipal Court asserted that O.R.C. § 4117.01(C)(8) exempted the employees in the proposed public bargaining unit from the definition of "public employee" for the purposes of public sector collective bargain-

ing," claiming that the employees performed judicial functions when they administered oaths, issued subpoenas, granted continuances, and signed arrest warrants.

This case dealt with whether employees of Clerks of Courts are "public employees" under the meaning of O.R.C. § 4117.01, and thus entitled to representation for collective bargaining. Under O.R.C. § 4117.01, all "public employees" are entitled to representation for collective bargaining. O.R.C. § 4117.01(C)(8) sets forth an exception to that rule. If a person is an "employee of the clerks of courts who perform[s] a judicial function," then that person is subject to the exception and is not a "public employee" under the meaning of O.R.C. § 4117.01 for purposes of collective bargaining.

SERB stressed that only a subset of municipal clerks fall within the statutory exception, that is, those "who perform a judicial function." SERB determined that, under O.R.C. § 4117.01(C)(8), to "perform a judicial function" required two elements: (1) the act in question must involve the exercise of independent judgment and discretion and (2) the act must involve the determination of a fact or legal principle that affects the rights of one or more parties. If a function does not involve both of these elements, it is classified as ministerial or clerical.

Although SERB did not set forth a specific test for what constitutes an exercise of independent judgment and discretion in the context of judicial functions, it noted that the discretion and independent judgment does not have to have a finality that goes with unlimited authority and is free from review. SERB also noted that the National Labor Relations Board (NLRB) requires that, in order for an employee to exercise "independent judgement," the employee must "at a minimum act, or effectively recommend action, free from the control of others and form an opinion or evaluation by discerning and comparing data."

SERB further determined that a "judicial function" is one in which a fact or legal principle is determined. The use of mental processes in the determination of law or fact is necessary. Since the purpose of O.R.C. Chapter 4117 is to extend collective bargaining rights to all public employees, if an employee performs a judicial function, then the employee must perform that judicial function on a substantial and regular basis in order to fall under the exception set forth in O.R.C. § 4117.05(C)(8).

SERB found that these employees did not fall under the exemption set forth in O.R.C. § 4117.05(C)(8) for two reasons. First, the majority of the duties that the clerks of court perform are ministerial rather than judicial in nature as they do not involve the determination of a fact or legal principle. Second, even the duties that could possibly be classified as judicial in nature (such as the signing of arrest warrants) fail to meet the "regular and substantial" test as they occupy a small fraction of the employees' time. Thus, SERB determined that the employees in the proposed bargaining unit are "public employees" within the meaning of O.R.C. § 4117.01(C).

In re Sylvania Township Trustees, Lucas County, SERB 2009-004 (1-5-2010)

In this unfair labor practice case, the State Employment Relations Board ("SERB" or "the Board") found that the Sylvania Township Trustees, Lucas County ("the Township") violated Ohio Revised Code ("O.R.C.") § 4117.11(A)(1) when it threatened to discipline Patrolman Todd Slaman if he filed a grievance, but that the Township did not violate O.R.C. §§ 4117.11(A)(1) or (A)(3) when it disciplined Sgt. Colwell.

While working as a Detective for the Township's Police Department, Todd Slaman received a special assignment to the Northwest Ohio Fugitive Task Force, a combined FBI and local agency task force created to investigate cases with a federal connection or nexus. Mr. Slaman served on the Task Force for approximately five years. Mr. Slaman's immediate Task Force supervisor informed the Township's Police Chief that Mr. Slaman's vehicle had incurred some damages while in his possession, and following an investigation, the Task Force supervisor concluded that Mr. Slaman knew about the damage but had failed to report it.

The Chief called Mr. Slaman to a meeting, attended only by the Chief, his Deputy Chief, and Mr. Slaman. During the meeting, the Chief informed Mr. Slaman that, because of his dishonesty about the vehicle damage, he was being removed from the Task Force. Mr. Slaman was also informed that he was being reassigned to Road Patrol, rather than back to the Detective Bureau, because the Township had a sufficient number of Detectives at the time. To allay Mr. Slaman's concerns that the transfer would appear as discipline, Chief Metzger told Mr. Slaman that it would not appear as discipline in his file and that if another officer or employer asked about the situation, Chief Metzger would indicate that it was a transfer.

The Chief then informed Mr. Slaman that if he decided to contest the transfer or file a grievance, the Township would be required to do a complete investigation, from which discipline could result. Before this statement, Mr. Slaman did not make any reference to filing a grievance or to the grievance process, nor had he previously filed a grievance or unfair labor practice charge.

Sgt. Robert Calwell, President of the Command Officers bargaining unit, received a one-day suspension after he failed to note a one half-hour meeting concerning union business on his daily activity log as required by department policy. The collective bargaining agreement allows on-duty time to discuss union business if permission is obtained prior to doing so; however, Sgt. Calwell failed to obtain such permission. Through a third party, Chief Metzger learned of the inaccurate activity log and disciplined Sgt. Calwell with a one-day suspension. While Sgt. Calwell received the suspension thirty minutes after he criticized a plan proposed by Chief Metzger at a meeting for that purpose, Chief Metzger had decided to discipline Sgt. Calwell two days prior to the meeting and had informed Sgt. Calwell's superior the day before the meeting.

The Board found that the Township violated O.R.C. § 4117.11(A)(1) when it threatened to discipline Mr. Slaman if he filed a grievance. Two elements must be proven by a preponderance of the evidence in order to prove a violation of O.R.C. § 4117.11(A)(1): (1) that the activity that the employer is alleged to have discouraged is a right protected by O.R.C. Chapter 4117, and (2) that the employer's conduct with respect to the exercise of that right sufficiently amounts to interference, restraint, or coercion. This test is an objective one, considering the totality of the circumstances.

It is well established that the filing of a grievance is a protected right under O.R.C. Chapter 4117. Therefore, because the Chief's statements may have a discouraging or chilling effect on the right to file a grievance, the Board found that the first element was met.

The Board then examined the second element by asking, if, under the totality of the circumstances, an employee would reasonably perceive the actor's conduct as interfering with, restraining, or coercing an employee in the exercise of O.R.C. Chapter 4117 rights. The purpose of O.R.C. § 4117.11(A)(1) is to prevent the impact of certain conduct, as well as conduct itself; therefore, the focus of the Board's inquiry was on the employee, not the intent of the actor. While the employee's perception is instructive, it is not controlling, and must be considered in light of the totality of the circumstances.

After determining that a threat of consequence for engaging in protected activity may constitute interference, restraint, or coercion, the Board focused on the question of whether a reasonable person would perceive the employer's communication as a threat, or as merely an objective prediction or statement contemplating adverse consequences. The Board concluded that a reasonable person would find the Chief's unsolicited prediction of the possible effects of filing a grievance sufficiently threatening to dissuade Mr. Slaman from the full exercise of his guaranteed rights. Thus, the Board held that the Township did violate O.R.C. § 4117.11(A)(1).

The Board held that the Township did not violate O.R.C. §§ 4117.11(A)(1) or (A)(3) when it disciplined Sgt. Calwell. The evidence did not support a finding that Sgt. Colwell's union activity, while known to the Chief, was the basis for Sgt. Colwell's discipline for a log-book violation. The Township articulated a legitimate, non-discriminatory reason for the action it took against Sgt. Calwell, namely that Sgt. Colwell purposefully kept the meeting out of his log, in violation of department policy. The Board indicated that while strict, the suspension would not be questioned so long as it was not meted out because of the employee's protected activity.

SERB v. Lima Public Library Board of Trustees, SERB 2010-001 (12-19-2009)

This unfair labor practice ("ULP") case came before the State Employment Relations Board ("SERB" or "the Board") as the result of a consolidation of three ULP charges filed against the Lima Public Library Board of Trustees ("the Library") by the Ohio Association of Public School Employees, AFSCME, and the AFL-CIO ("the Union"). SERB held that, by failing to sign the successor collective bargaining agreement ("CBA"), the Library violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(5). SERB also found that the Library's denial of access to the Union to library rooms in attempts to dominate or interfere with Union administration, and that the Library's concerted and continuing effort to convince bargaining-unit members to withdraw from the Union, violated O.R.C. §§ 4117.11(A)(1) and (A)(2).

The parties' 2004-2006 CBA included a fair-share-fee provision, requiring non-union members to pay a fee to the Union when 90% of the employees were members of the Union. Upon the employer's receipt of a Notice to Negotiate for the next CBA, the parties negotiated and reached a Tentative Agreement ("TA") for the next CBA; both teams agreed to recommend it to their respective groups. The TA included a provision reducing the percentage of employees needed in the union to establish an agency fee from 90% to 70%. The Library's negotiating team warned that this percentage could be a deal breaker, but it presented the term as part of the TA to the Library board. A motion was made at the board meeting for the TA to be accepted except for the fair-share-fee provision, and it carried.

Additionally, in August 2007, notices accompanied paychecks and emails were sent informing employees how to join and withdraw from the Union. The Union gave notice of its intent to picket. Before the picket, the Library placed signs in the windows stating that the library staff does not support "forced union dues" and that union membership was down. One sign stated, "If library staff wanted to pay dues, they would have already joined the union."

The policies of the Library require certain steps to be taken to reserve a room for outside use. Since 1985, the Union has not been held to the requirements of the policy for its meetings; however, three days after the picket, the Union was denied its room request because, as the Library informed it, the Library and the Union were at odds with each other at that time.

The Library argued that because there had been two previous cases before SERB that were dismissed, the claims are precluded from being brought forward again and therefore, the present case could not be continued. The Board held that previous dismissals that are not the product of the issuance of a complaint and a formal hearing on the merits are not final appealable orders, so that such dismissals are not adjudications. Therefore, res judicata does not bar this issue from going forward.

O.R.C. § 4117.10(B) mandates that a legislative body "approve or reject the submission as a whole[.]" If the legislative body fails to act within thirty days after the public employer submits the agreement, the submission is deemed approved. Case law explains that if the agreement is not approved or rejected as a whole, but only in part, the thirty day timeline of inaction still applies. Therefore, the motion made at the December 19, 2006 Library Board meeting to accept the presented contract except for the fair-share-fee provision does not constitute acceptance or rejection of the agreement as a whole, and the agreement was deemed accepted thirty days after that meeting. Case law also states that "failure to sign and execute is an unfair labor practice. Such omission constitutes an interference with employees' rights and the refusal to bargain." As a result, the Library violated O.R.C. §§ 4117.11(A)(1) and (A)(5) by failing to sign and execute the successor agreement.

SERB accepted the Administrative Law Judge's findings of fact and conclusions of law for the other two ULP charges and amended the disposition of the third complaint regarding the Library Board's failure to properly accept or reject the agreement as a whole to fit with case law. SERB also denied the Library's motion for attorney's fees. The case was remanded to the Hearings Section to determine the appropriate remedy.

In re Cincinnati School District Board of Education, SERB 2010-002 (2-12-2010)

In this unfair labor practice ("ULP") case, the State Employment Relations Board ("SERB") found that Cincinnati School District Board of Education ("CPS") violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1), (A)(5), and (A)(8) by refusing to bargain with the Greater Cincinnati Building and Construction Trades Council ("GCBTC") concerning wages, hours, and terms and conditions of employment of the carpenters employed by CPS. The Board ordered CPS to cease and desist from violating these provisions, recognize GCBTC as the exclusive representative of CPS carpenters for the purpose of bargaining, post a Notice to Employees for 60 days, and notify SERB of steps taken in compliance with this order.

GCBTC is an employee organization as defined by O.R.C. § 4117.01(D) and has been the Board-certified representative of this bargaining unit, including the carpenters, since 1985. CPS is a public employer as defined by O.R.C. § 4117.01(B) and has negotiated several collective bargaining agreements with GCBTC. The carpenters employed by CPS were members of local unions affiliated with the Southwest Ohio District Council of Carpenters ("Carpenters Union") prior to December 2001, and the Carpenters Union had participated in collective bargaining agreements with CPS. On March 20, 2001, SERB issued a "Dismissal of Petition for Representative Election" setting forth that GCBTC remains the Board-certified exclusive representative of the carpenters.

On April 24, 2001, several carpenters employed by CPS filed an unfair labor practice charge against the Carpenters Union. The case was settled on December 20, 2001; as part of the settlement the Carpenters Union, disclaimed all interest in representing carpenters at CPS.

On December 8, 2006, GCBTC and CPS began negotiating a successor collective bargaining agreement. CPS' initial contract proposal removed the carpenter classification of the recognition clause, and CPS told GCBTC that they could not represent the carpenters and that CPS would negotiate separately with the carpenters they employed. GCBTC then filed a ULP charge against CPS.

CPS argued that GCBTC had actual constructive knowledge that CPS did not consider the carpenters to be represented by GCBTC. In correspondence with GCBTC, CPS never stated that GCBTC was not the representative of the carpenters. While the initial contract proposal from CPS did inform GCBTC that CPS considered the

carpenters unrepresented, CPS representatives left those from GCBTC under the impression they would review the legality of that position. CPS subsequently informed GCBTC that the carpenters could not be represented by them over a month later. As a result, the charge was timely filed.

CPS also argued that this charge should be barred due to the doctrine of laches. Since GCBTC only received actual or constructive knowledge of CPS' position approximately sixty days before filing the charge, GCBTC did not unreasonably delay and laches did not apply. CPS argued that laches applied because of the 2001 settlement between the carpenters and the Carpenters Union, but GCBTC was not a party to the agreement, and the agreement was silent on GCBTC's status as the carpenters' representative.

The Board also ruled that GCBTC is an "employee organization" as defined by O.R.C. § 4117.01(D) with regard to the carpenters. SERB certified GCBTC as the exclusive representative of all trades employees in the multi-bargaining craft at CPS, including carpenters, and SERB subsequently confirmed this status in 2001.

CPS alleged that GCBTC is still not an employee organization because GCBTC's bylaws lack an individual membership provision, no craft employees at CPS have ever been members of GCBTC, and GCBTC does not perform representative functions other than assisting with negotiations. The Board, however, interprets the meaning of "employee organization" broadly. An employee organization does not need to have a constitution, by-laws, elected officials, or other formal structures at the time of certification. Here, craft employees have participated in negotiations with CPS led by GCBTC and in the administration of the resulting collective bargaining agreements since 1980. Because GCBTC is an organization in which public employees participate and because GCBTC exists, in whole or in part, for the purpose of collective bargaining, GCBTC fulfills the statutory definition of an "employee organization." GCBTC has historically functioned as an employee organization and has been recognized as such by SERB in various cases over the years.

The carpenters had been represented by GCBTC since 1985. CPS claimed that the carpenters were rendered unrepresented by the 2001 settlement agreement. The Board determined that this settlement agreement had no impact on the duty of CPS to bargain with GCBTC: GCBTC was not a party to the settlement agreement, and the agreement was silent with regards to GCBTC's status. Furthermore, GCBTC continued to act as the representative of the carpenters after the 2001 settlement.

Finally, this claim was not barred by res judicata. While prior cases involved the same parties, none of them barred the present action. The first two cases did not raise the issue of representation. The other two charges brought by GCBTC were dismissed as untimely filed and, therefore, were not fully litigated.

In re City of Reynoldsburg, SERB 2010-003 (2-22-2010)

In this unfair labor practice case, the State Employment Relations Board ("SERB" or "the Board") found that the City of Reynoldsburg ("the City") did not violate Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(5) when it unilaterally changed the healthcare benefits during negotiations because changing healthcare was not inconsistent with the City's obligation to maintain the status quo.

The United Steelworkers of America ("the Union") was certified as the exclusive representative of employees in the City's Water/Wastewater, Street Division, Storm Water/Utility Division, and Parks and Recreation Department. The parties had their initial negotiations on November 21, 2006.

On November 13, 2007, the City notified the Union that the monthly premiums to the health insurance plan would be increased effective December 1, 2007. The premiums were increased for all City employees, including nonunion employees. The Union had not yet reached an initial collective bargaining agreement.

Bargaining-unit members had not received wage increases since 2006. Nonbargaining-unit employees of the City received wage increases in 2006, 2007, and 2008. The City stated that it could not give wage increases to bargaining-unit members because it would breach its duty to maintain the status quo during the organizing process.

An employer must maintain the status quo ante after the conclusion of a successful election, "at least as long as negotiations continue." NLRB v. Katz, 369 U.S. 736, 743 (1962). Some unilateral changes are themselves a part of the status quo and therefore do not require bargaining impasse. The central inquiry in determining whether a change may constitute part of the status quo is whether the unilateral change was part of "an established practice." Peabody Coal Co. v. NLRB, 725 F.2d 357 (6th Cir. 1984). The test is whether "a practice [was] longstanding…, whether the employer has created an expectation on part of employees, [and] whether an employer has announced a policy or taken other action consistent with a formal policy change."

Healthcare is a condition of employment that, for pragmatic and economic reasons, must be treated more restrictively in determining whether the action is consistent with a formal policy. Healthcare is an essential condition of employment; healthcare is also unique because it is provided by a third-party entity, and everyone in the plan pays a set rate. Where bargaining units are small, both the employer and the employees would be at a disadvantage if they were forced to separate bargaining-unit from nonbargaining-unit employees for the purpose of coverage. Usually, the bargaining process will serve as an effective and proper mechanism for balancing this tension. But where the first contract negotiation does not result in a timely concluded agreement, that mechanism fails.

Even though pragmatic and doctrinal reasons existed to permit unilateral changes in healthcare, the circumstances that grant such changes as permissible must be limited. This case presented such circumstances. Healthcare review was a longstanding practice, and no previous CBA language existed that would resolve the issue. The City demonstrated a willingness to bargain with the Union throughout the post-certification period, and the changes to healthcare are subject to future negotiations.

In addition to these factors, there was no evidence of bad faith or improper motives guiding the City's decision. Instead, the City argued that because the bargaining unit was small, it was a valid business justification to make changes for both nonbargaining-unit employees and bargaining-unit employees because changing some without the others would be unduly burdensome.

Finally, the parties had already tentatively agreed on the terms of the healthcare provision. It is untenable to find that the City failed to bargain to impasse the healthcare issue because the issue was actually agreed upon during bargaining. The Union did not designate healthcare as an impasse issue. The Complainant did not meet its O.R.C. § 4117.12(B)(3) burden of demonstrating by a preponderance of the evidence that the City has committed an unfair labor practice.

In re Nimishillen Township Board of Trustees, Stark County, SERB 2010-004 (2-22-2010)

In this unfair labor practice case, the State Employment Relations Board ("SERB" or "the Board") found that the Nimishillen Township Board of Trustees ("the Township") violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(2) by interfering with employees of the Township's Road Department in their efforts to unionize; the Board also found that the Township did not violate Ohio Revised Code § 4117.11(A)(3) when it terminated the employment of Chris Peterson.

The Utility Workers Union of America, AFL-CIO ("the Union") was attempting to organize the Township's Road Department employees. The Union filed a Request for Recognition. The four employees of the Road Department signed "showing of interest" cards. The Township received the Union's Request for Recognition, and then one of the Township's Trustees held a meeting with Road Department employees. The Trustee asked the employees what it would take for the union-organizing efforts to go away and told the employees that the cost of health insurance would increase if the department organized. The Trustee then talked to one of the employee's, Mr. Chris Peterson, separately; Mr. Peterson was told that that the Trustee was upset that Mr. Peterson had brought the union organization to the Road Department. The Trustee told Mr. Peterson that this act could jeopardize Mr. Peterson's job. The Township's trustees voted 2-1 to terminate Mr. Peterson.

Mr. Peterson performed the job duties of a Road Department Superintendent. As a superintendent, he planned the daily and monthly work for the other three employees, prepared the Department's budget, and directed the Department employees by approving or denying employees leave requests, disciplining employees, and signing off on employee's work logs.

When the Township's Trustee met with the Department employees and asked them what it would take for the union to go away and told them their health costs would increase, the Township interfered with the exercise of the employees O.R.C. Chapter 4117 rights, violating O.R.C. § 4117.11(A)(1). This meeting was also an attempt to interfere with the formation of the Union violating O.R.C. § 4117.11(A)(2).

The Township was also charged with O.R.C. § 4117.11(A)(3) for the termination of Mr. Peterson. O.R.C. § 4117.01(F) defines supervisor as an individual who has the power to "hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline" other employees." If the individual's authority is "not of a merely routine or clerical nature but requires the use of independent judgment" then the individual is a supervisor. So long as the record contains substantial evidence that the employee has the authority to perform one or more of the functions listed that section, the individual will be excluded from the bargaining unit as a supervisor.

Mr. Peterson was responsible for assigning work as well as making recommendations regarding the hiring of employees. Mr. Peterson also had the authority to discipline employees and approving or denying the employees leave requests. Mr. Peterson was a "supervisor" within the meaning of O.R.C. § 4117.01(F) and therefore outside of the scope of O.R.C. Chapter 4117. Mr. Peterson was also a "management level employee" who the Township Trustees could reasonably expect to call upon to assist in the negotiations over collective bargaining. When the Township terminated Mr. Peterson it was acting outside of the scope of O.R.C. Chapter 4117 and therefore not violating O.R.C. § 4117.11(A)(3).

Thus, SERB found that Mr. Peterson is not a "public employee" within the meaning of O.R.C. § 4117.01(C). Instead, Mr. Peterson is a "supervisor" and a "management level employee" as defined by O.R.C. § 4117.01(F) and (L), and as a "supervisor" or "management level employee," Mr. Peterson does not have any rights under O.R.C. Chapter 4117.

In re Multi-County Juvenile Attention System, SERB 2010-005 (3-26-2010)

In this representation case, the State Employment Relations Board ("SERB") found that two Petitions for Representation Election filed by the Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP"), seeking to represent Cooks, Maintenance Workers, and Repair Workers 1 and 2 employed by Multi-County Juvenile Attention System ("Multi-County"), were barred by Ohio Revised Code ("O.R.C.") § 4117.07(C)(6).

On October 26, 2007, SERB certified American Federation of State, County, and Municipal Employees, AFL-CIO ("AFSCME") as the exclusive representative for the bargaining unit for the Cooks, Maintenance Workers, and Repair Workers 1 and 2 employed by Multi-County. AFSCME negotiated with Multi-County on a collective bargaining agreement over several months before declaring impasse and proceeding to fact finding.

On January 30, 2009, the fact finder issued a report and recommendation, incorporating all tentative agreements the parties had reached. On February 6, 2009, Multi-County ratified the fact-finder's report and recommendation. AFSCME similarly ratified the report and recommendation on February 9, 2009. Following the ratification, Multi-County refused to execute the collective bargaining agreement.

On February 27, 2009, FOP filed a Petition for Representation Election. SERB dismissed the petition on March 5, 2009. Subsequently, on March 27, 2009, Multi-County and AFSCME filed with SERB a collective bargaining agreement executed on March 19, 2009.

The issue in this case is whether O.R.C. § 4117.07(C)(6)'s "election bar" barred FOP from filing a Petition for Representation election. The election bar prohibits SERB from conducting an election "during the lawful collective bargaining agreement between a public employer and an exclusive representative." This clause of O.R.C. § 4117.07(C)(6) is known as the "contract bar."

The narrow focus here is the meaning of "lawful collective bargaining agreement." The two parties offered competing theories. FOP contended that ratification and execution of a collective bargaining agreement by both parties were required. AFSCME maintained that ratification of the collective bargaining agreement by both parties was sufficient.

Relying on statutory interpretation, legislative intent, and labor policy, SERB concluded that ratification is sufficient to begin the contract bar. First, SERB notes that O.R.C. § 4117.14(C)(6) states that "if neither party rejects [the fact-finder's] recommendations, the recommendations shall be deemed agreed upon as the final resolution of the issues submitted." It logically follows that the fact-finder's recommendations, when ratified, constitute a lawful collective bargaining agreement.

Additionally, SERB has repeatedly held that an employer commits an unfair labor practice when it refuses to execute a collective bargaining agreement after ratification. SERB makes clear that a ratified agreement is legally effective before the agreement has been executed.

Finally, SERB expresses its policy concern that requiring execution of the agreement would effectively give the employer veto power against the union. This position would allow the employee to refuse to sign and force the union to compete with rival unions for representation rights.

Because both parties had ratified the fact finder's report before FOP filed its Petitions for Representation Election, the report was a "lawful collective bargaining agreement" and thus precluded the filing of a Petition for Representation Election at that time.

SERB v. City of Cleveland, SERB 2010-006 (3-26-2010)

In this unfair labor practice case, the State Employment Relations Board ("SERB" or "Complainant") found that the City of Cleveland ("the City") and Mayor Frank Jackson (collectively, "Respondents") did not violate Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(5) when Mayor Jackson made statements to bargaining-unit employees during a meeting at which time negotiations were taking place between the City and unions employed by the City. The unfair labor practice charge was dismissed with prejudice.

At issue in the present case is whether the City violated O.R.C. § 4117.11(A)(1) and (A)(5) when Mayor Jackson made certain statements to a group of City employees during a meeting in which the Mayor was thanking employees for their hard work while negotiations were taking place between the City of Cleveland and several unions and whether those statements constituted direct dealing within the meaning of the statute.

A violation under O.R.C. § 4117.11(A)(1) occurs when an employer interferes with, restrains, or coerces bargaining-unit employees in the exercise of the rights under O.R.C. Chapter 4117. When a violation of O.R.C. § 4117.11(A)(1) is alleged, the appropriate inquiry is an objective, rather than a subjective, one. The Complainant has the burden of proof by a preponderance of the evidence that an unfair labor practice has been committed. After review of the testimony presented and evidence admitted, SERB found that the testimony and evidence failed to establish that Mayor Jackson's statements violated O.R.C. § 4117.11(A)(1).

A violation under O.R.C. § 4117.11(A)(5) occurs when an employer deals directly with bargaining-unit employees on mandatory subjects of bargaining affecting wages, hours, terms and other conditions of employment, circumventing the employee's certified exclusive representative. Direct dealing occurs when there is an attempt to deal with the union through the employees, rather than the employees through the union. Vandalia-Butler City School District Board of Education, SERB 90-003 (2-9-90).

The testimony and evidence also failed to show that Mayor Jackson's comments amounted to direct dealing. SERB considered the number of different unions represented at the meetings, the innocuous purpose of the meeting (thanking employees for hard work), and the description of the statements made by the Mayor in direct response to employee questions. SERB concluded that the statements made by the Mayor, when viewed in context, did not amount to direct dealing and, therefore, did not violate O.R.C. § 4117.11(A)(5). SERB dismissed the complaint and unfair labor practice charge with prejudice.

In re Harrison Hills Teachers Association, OEA/NEA, SERB 2010-007 (3-31-2010)

In this unfair labor practice case, the State Employment Relations Board ("SERB") found that the Harrison Hills Teachers Association, OEA/NEA ("HHTA" or "Respondent") violated Ohio Revised Code ("O.R.C.") § 4117.11(B)(7) by engaging in picketing related to a labor-relations dispute at the place of private employment of a School Board member of the Harrison Hills City School District Board of Education ("BOE"). SERB ordered HHTA to cease and desist from inducing or encouraging its members to engage in activity that violates O.R.C. § 4117.11(B)(7), to post a Notice to Employees furnished SERB for 60 days in all of the usual and normal posting locations where bargaining-unit employees represented by HTTA work, to provide to the employees a copy of said notice, to provide The Health Plan of the Upper Ohio Valley (the School Board member's place of private employment) with a copy of the notice, and to notify SERB in writing within twenty days from the date the order becomes final of the steps taken to comply with the order.

At issue in this case is whether HHTA violated O.R.C. § 4117.11(B)(7) by engaging in picketing related to successor contract negotiations on a public street outside of a BOE member's place of private employment. HHTA admits that it engaged in picketing related to successor contract negotiations, a labor relations dispute, on a public street outside of the School Board member's place of private employment.

Respondent argues that the unfair labor practice charge should be dropped because O.R.C. § 4117.11(B)(7) is unconstitutional on its face and as applied. As an administrative agency without the authority to declare any portion of its enabling statute unconstitutional, SERB, like other administrative agencies, does not have jurisdiction to determine constitutional claims. State ex rel. Rootstown Local School Dist. Bd. of Ed. v. Portage Cty. Court of Common Pleas (1997), 78 Ohio St.3d 489.

All legislative enactments carry a presumption of constitutionality. SERB must interpret and apply the statutory provision(s) as though the statute is constitutional. SERB upheld the statute for want of authority to rule otherwise and because of the presumption granted to the legislature.

Because the conduct of HHTA was undisputed and Respondent's only argument was that O.R.C. § 4117.11(B)(7) is unconstitutional on its face and as applied, SERB found that HHTA violated O.R.C. § 4117.11(B)(7) by engaging in picketing activity at the place of private employment of a School Board member.

In re Mahoning Education Association of Developmental Disabilities, SERB 2010-008 (4-29-2010)

In this unfair labor practice case, the State Employment Relations Board ("SERB") found that Mahoning Education Association of Developmental Disabilities ("MEADD") violated Ohio Revised Code ("O.R.C.") § 4117.11(B)(8) by engaging in picketing related to negotiations for a successor collective bargaining agreement without providing a written ten-day notice. MEADD was ordered to cease and desist from inducing or encouraging its members to engage in activity that violated O.R.C. § 4117.11(B)(8), to post the Notice to Employees furnished by SERB for sixty days in all of the usual and normal posting locations where bargaining-unit employees represented by MEADD work, to provide copies of such notice to all said employees, and to notify SERB in writing within twenty days from the date the order becomes final of steps that have been taken to comply with such order.

At issue in this case was whether MEADD committed an unfair labor practice in violation of O.R.C. § 4117.11(B)(8) when, through its agents or representatives, MEADD engaged in picketing activity related to successor contract negotiations outside of a public meeting of the Mahoning County Board of Developmental Disabilities ("BDD" or "the Employer"). Any picketing that relates to those activities intended by the legislature to be regulated by O.R.C. Chapter 4117 and falling within SERB's jurisdiction constitutes picketing subject to the notice requirements of O.R.C. § 4117.11(B)(8). Picketing related to labor disputes or successor contract negotiations are both examples of activities regulated by the statute.

SERB has articulated previous examples of those activities not covered by O.R.C. § 4117.11(B)(8), namely as "informational picketing". Informational picketing is protected by the First and Fourteenth Amendments right to freedom of expression. Purely informational picketing includes picketing in support of political candidates or general social issues not related to a labor dispute involving a public employer or public employee." Picketing activity at the residence of a public official or representative is also constitutionally protected, which is also not subject to the notice requirement set forth in O.R.C. § 4117.11(B)(8).

In the present case, MEADD did not give written notice to the Employer or SERB prior to engaging in picketing at BDD's meeting. Respondent admitted engaging in picketing activities related to a labor relations dispute with BDD. As an affirmative defense, MEADD asserted that O.R.C. § 4117.11(B)(8) did not require a ten-day notice for informational picketing. The content of the signs that were used in the picketing outside of the BDD meeting was undisputed: "Settle Now," "MEADD Deserves a Fair Contract," and "Tell Superintendent Duck to Give us a Fair Deal." The statements plainly focused on the parties' labor-relations dispute, thus the activity fell within the sphere of coverage proscribed by O.R.C. § 4117.11(B)(8) and is not informational picketing.

MEADD's final argument rested on the constitutionality of O.R.C. § 4117.11(B)(8), arguing that the unfair labor practice charge ought to be dismissed due to the unconstitutionality of the law. SERB has consistently maintained the position that SERB is an administrative agency without authority to declare any portion of its enabling statute unconstitutional. Also, a regularly enacted statute is entitled a presumption of constitutionality, unless such enactments are unconstitutional beyond a reasonable doubt. Consequently, SERB found that MEADD committed an unfair labor practice in violation of O.R.C. § 4117.11(B)(8).

SERB v. State of Ohio, Department of Rehabilitation and Correction, Correctional Reception Center and Virginia Lamneck, SERB 2010-009 (05-28-2010)

In this unfair labor practice case, the State Employment Relations Board ("SERB") adopted the Findings of Fact and Conclusions of Law in the Administrative Judge's Proposed Order, finding that the State of Ohio, Department of Rehabilitation and Correction, Correctional Reception Center and Warden Virginia Lamneck (collectively, "the Employer") violated Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(2) when the Employer obtained communications via email between union delegate Robert F. Dalton ("Mr. Dalton") and a grievant and subsequently used the communications in a grievance-arbitration hearing. As a result, SERB issued an order to the Employer to cease and desist from using email communications between a union delegate and a grievant in the grievant's arbitration hearing and to post for sixty days in all the usual and normal posting locations where bargain-unit employees work the Notice to Employees furnished by SERB.

At issue was whether the Employer committed an unfair labor practice in violation of O.R.C. §§ 4117.11(A)(1) and (A)(2) when it obtained email communications on the Employer's email system between Mr. Dalton and a grievant, without their knowledge, and subsequently used the communications in a grievance-arbitration hearing. When a violation of O.R.C. § 4117.11(A)(1) is alleged, the appropriate inquiry is an objective, rather than a subjective, one. It must be determined whether, under all the facts and circumstances, one could reasonably conclude that employees were interfered with, restrained, or coerced in the exercise of their O.R.C. Chapter 4117 rights by the employer's conduct.

Whether the Employer engaged in unlawful surveillance is one of first impression before SERB. There was no SERB precedent on point. Precedent from the National Labor Relations Board ("NLRB") can be instructive. The NLRB has held that "an employer's mere observation of open, public union activity on or near its property does not constitute unlawful surveillance…the inquiry is whether the act which brought the surveillance charge has a reasonable tendency to interfere with protected activity under the circumstances in each case." An employer may properly be required to present a strong justification for its resort to surveillance when that surveillance has a tendency to interfere with its employees' right to engage in protected activity.

The appropriate analysis of a surveillance case is as follows: (1) did protected activity occur; (2) did the employer engage in an act of surveillance of that activity; (3) did the surveillance have a tendency to interfere with the protected activity under the circumstances of the case; (4) did the employer demonstrate solid justification for the surveillance; and, if so, (5) does the employer's proffered reason for the surveillance justify the potential interference with protected activity.

In the present case, the Employer felt that Mr. Dalton was engaging in inappropriate political activity on work time. After receiving authorization, Mr. Dalton's email account was searched. When the communication in question between Mr. Dalton and the grievant was discovered, the email was reported, and it eventually made its way to the Office of Collective Bargaining ("OCB") and the first-chair representative for the Employer in the grievant's arbitration case.

Mr. Dalton was engaging in protected activity, as the email communication was within his union capacity. The Employer, however, had a legitimate purpose in observing and reading the email chain; the Employer suspected that Mr. Dalton was engaging in inappropriate political activity on work time. The Employer's actions were sanctioned under §42.05 of the Collective Bargaining Agreement ("CBA"). The actions of the Employer are divided into two separate actions from this point: first, the discovery of the email, and second, the delivery of the email and its use in the grievant's arbitration. The first is a legitimate exercise of surveillance powers of the Employer. The second is precisely what the NLRB was concerned of, and did have interference and a chilling effect on protected activity. Thus, the delivery of the email chain to OCB and its eventual use at arbitration were unlawful because of the "tendency to intimidate" employees in their exercise of protected activity and the Employer's lack of proper justification for such actions.

SERB issued a cease and desist order and a Notice to Employees to post in accordance with O.R.C. § 4117.11(B)(3). A request ordering reinstatement of the grievant with back pay was not awarded because the arbitrator focused her opinion on an analysis of evidence before the incidents leading to the grievant's termination had even occurred. The arbitrator did not rely upon the email chain in making her findings.

In re Hamilton County Commissioners and Ralph Linne, SERB 2010-010 (6-21-2010)

In this unfair labor practice case, the State Employment Relations Board ("SERB" or "the Complainant") found that the Hamilton County Commissioners and Ralph Linne (collectively, "Respondents") did not violate Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(3) when a probationary employee was terminated, following a pre-disciplinary hearing, during his probationary period.

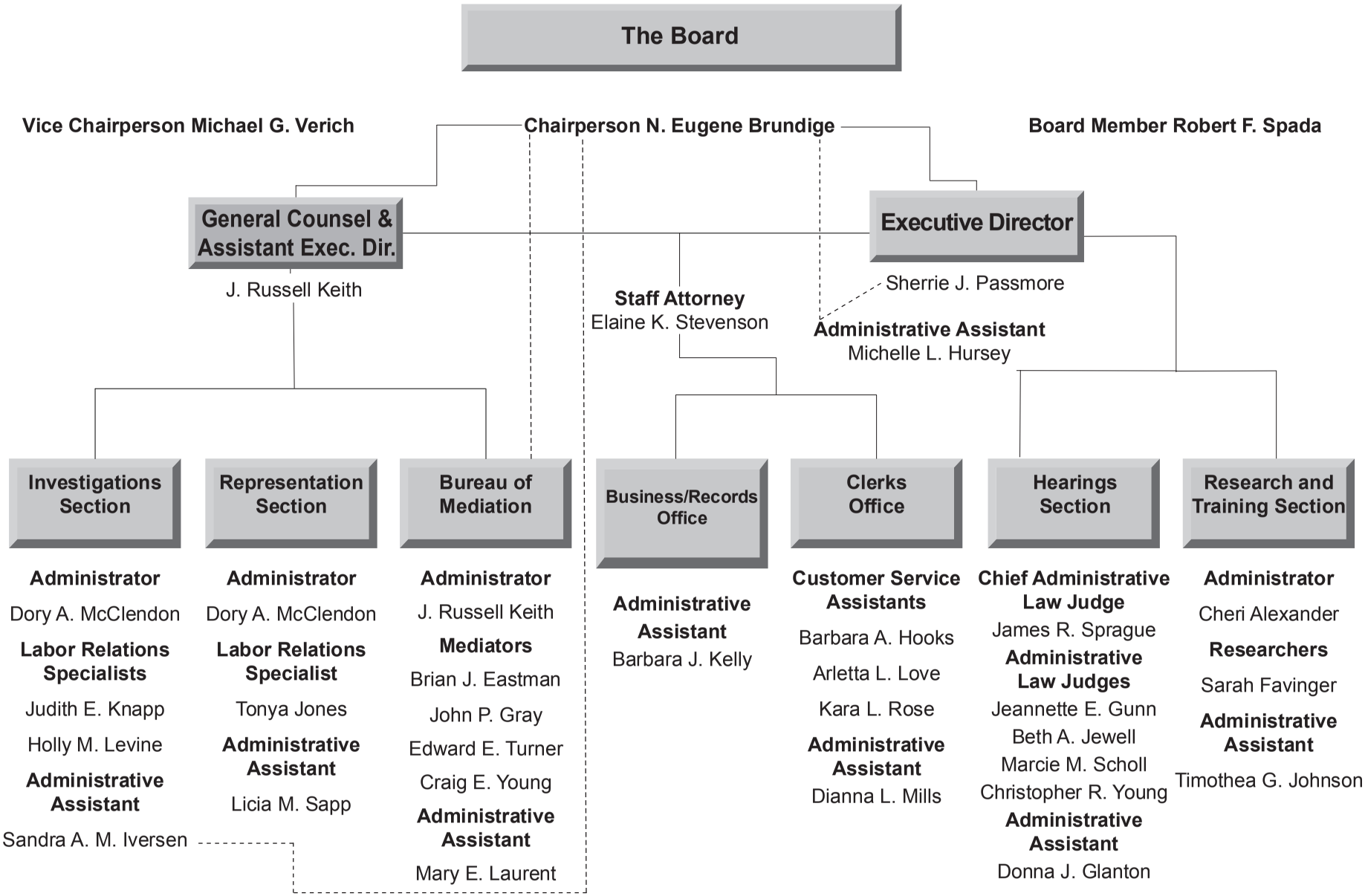
At issue was (1) whether Respondents interfered with, restrained, or coerced an employee when the employee was exercising rights protected under O.R.C. Chapter 4117 and (2) whether the employee was discriminated against in regards to his employment with the Hamilton County Commissioners ("the Employer").

When a violation of O.R.C. § 4117.11(A)(1) is alleged, the appropriate inquiry is an objective, rather than subjective, one. A violation will be found if, under the totality of the circumstances, it can be reasonably concluded that the employee was interfered with, restrained, or coerced in the exercise of O.R.C. Chapter 4117 rights by the public employer's conduct. Here, the Complainant failed to establish that the Employer committed an unfair labor practice.

When a violation of O.R.C. § 4117.11(A)(3) is alleged, the test is whether Respondents actually took adverse action against the individual under circumstances that could lead to a reasonable inference that the Respondents' actions were related to the individual's exercise of concerted, protected activity under O.R.C. Chapter 4117. SERB found no evidence of a causal link between the employee's protected activity and the Employer's decision to terminate the employee. Thus, the prima facie case for an O.R.C. § 4117.11(A)(3) violation was not established.

In this case, the employee was employed in the position of Ironworker, a bargaining-unit position. The employment was for a 180-day probationary period. Following a pre-disciplinary hearing, his employment was terminated within the probationary period for unsatisfactory job performance. Because no evidence was presented to indicate that the Employer's decision to terminate the probationary employee had anything to do with the employee's concerted, protected activity, the unfair labor practice charge and complaint were dismissed with prejudice.

State Employment Relations Board



Glossary of Terms

SERB's current case-typing system uses these designations:

ERC	Employee Organization Reporting Complaint
JWD	Jurisdictional Work Dispute
MED	Mediation
RBT	Fair Share Fee Rebate Determination
REP	Representation
RLX	Religious Exemption
STK	Employer's Request for Determination of Unauthorized Strike *and* Request for Determination of Clear and Present Danger
ULP	Unfair Labor Practice

The following case designations were in use before January 1, 1987:

AC	Amended Certification
CE	Conscientious Exemption
CPS	Request for Determination of Clear and Present Danger (Strike case)
FR	Fair Share Rebate Determination
GR	Grandfather (Notification of historical status)
MF	Mediation/Fact-finding/Conciliation
OR	Organization Report
RC	Representation Certification by Election
RD	Petition for Decertification Election
RE	Representation Certification by Election
REPF	Fair Share Fee Rebate Determination
SD	Representation Certification for Self-Determination Election
UC	Unit Clarification
UE	Unfair Labor Practice Charge Filed Against an Employee
UR	Unfair Labor Practice Charge Filed Against an Employer
US	Notice of Strike/Request for Determination of Unauthorized Strike
UU	Unfair Labor Practice Charge Filed Against an Employee Organization
VR	Request for Voluntary Recognition by an Employee Organization

The following abbreviations are in common administrative use:

HOPO	Hearing Officer's Proposed Order (hearing officer's recommendation in a ULP complaint case)
HORD	Hearing Officer's Recommended Determination (hearing officer's recommendation in a non-ULP case)
MAD	Mutually Agreed-Upon Dispute Settlement Procedure (negotiations procedure adopted by the parties that supersedes the statutory procedure)

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