

# State Employment Relations Board

“promoting orderly and constructive relationships  
between all public employers and their employees”



## Annual Report 2011

Governor of the State of Ohio  
John R. Kasich

SERB Chairperson  
W. Craig Zimpher

SERB Vice Chairperson  
Robert F. Spada

SERB Member  
N. Eugene Brundige



W. Craig Zimpher, Chair  
Robert F. Spada, Vice Chair  
N. Eugene Brundige, Board Member

John R. Kasich, Governor

Christine A. Dietsch, Executive Director

July 21, 2011

The Honorable John R. Kasich  
Office of the Governor  
Riffe Center, 30<sup>th</sup> Floor  
77 South High Street  
Columbus, OH 43215-6117

Dear Governor Kasich,

Section 4117.02(D) requires the issuance of an Annual Report by the State Employment Relations Board (SERB); accordingly, we are pleased to provide the Fiscal Year 2011 SERB Annual Report to you, your Cabinet, members of the General Assembly, and the citizens of Ohio, who are shareholders in Ohio's system of public sector employer/employee collective bargaining.

FY 2011 has been an active year for SERB, and as the report documents, this agency has been able to continue to execute its mission both effectively and efficiently, notwithstanding a biennial reduction in General Fund appropriation. Adoption of state of the art electronic communication systems, elimination of redundant programs, and refocusing support staff have enabled SERB to maintain its priority statutory objective to "promote orderly and constructive relations between employers and their employees".

As we enter the new Biennium, I want to reaffirm our commitment to the fair, impartial, and objective adjudication of matters over which SERB exercises its authority. We will continue the agency's obligation and responsibilities to the citizens of the Great State of Ohio.

Thanks to you, Ohio's General Assembly, and all other interested parties for your continued support.

Sincerely,

W. Craig Zimpher  
Chairperson

Robert F. Spada  
Vice Chairperson

N. Eugene Brundige  
Board Member

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## Report from the Board

Fiscal Year 2011 was an exciting and action-packed year for the State Employment Relations Board (SERB). On January 18, 2011, W. Craig Zimpher, was appointed by Governor John Kasich as the Chairperson for the SERB. He was joined by Robert Spada as Vice Chairperson and N. Eugene Brundige as the third member of the Board. Christine A. Dietsch was appointed as the new Executive Director. After the prior year of tackling the consolidation of the SERB and the State Personnel Board of Review (SPBR) under the leadership of the SERB umbrella, many positive outcomes were derived. In spite of being two separate and distinct entities the diversity of the SERB and SPBR Boards was embraced. The staff, office space, administration and budgets were blended to produce a unique operation of promoting orderly and constructive relationships that was felt by internal as well as external customers served by both Boards. SERB has facilitated collaborative collective bargaining processes, adjudicated unfair labor practices, and served as a clearinghouse of public employment across the state.

SERB has been in evolution since its inception on April 1, 1984; a 27 year evolution of systems and efficiencies that has been positive and customer driven. It is this evolution and leadership that keeps SERB on the forefront of ever changing policies, procedures and laws that influence and impress its customers. Upon review of its legacy systems it was revealed that some functions were in need of enhancement and updating. Specifically, the recording and confirmation of receipt of statutorily required employee organizational annual reports became one of several priorities in the new system redesign. An investment was made to create a database system entitled SERB Management Docketing System (SMDS). This system mirrors an existing database system for the SPBR side of the house entitled Computerized Management Docketing System (CMDS). CMDS is a case management, document management and docket scheduling system which has become the hallmark of efficiency for customer service and staff use. The CMDS has proven to be an exceptional tool for providing case management for our legal environment and a clearinghouse of information for storage and retrieval. The existing SERB processes have been in place since the inception of SERB 27 years ago and have been allowed to morph and be reduced to islands of computing that have been in use until this year. The staff has been quite resourceful in utilizing any and all known software tools needed to

perform the day to day computer functions. The new SMDS system will implement a single SQL database that replaces the islands of computing and allow all SERB business sections to communicate more effectively and share in a unified and single database. CMDS and SMDS will be able to communicate, thereby enhancing and modernizing our business requirements and providing a secure access to the new system via the web. Because SERB could build on the foundation of the CMDS, and would not be reinventing the wheel, the development of the SMDS would be more cost effective. The SMDS project consists of three (3) phases of development and architecture. The first two (2) phases were completed in this fiscal year. The third and final phase will be completed in the coming fiscal year.

In addition to the three (3) SERB Members, a staff of 28 full time highly trained and dedicated professionals provides the support for continued efficiency in investigating and adjudicating unfair labor practice charges, determining the size and appropriateness of bargaining units, conducting union representation elections, mediations, hearings, research and training, and providing the parties in 1,500 negotiations with comparative wage, benefits, and contract data. 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. To further expedite case processing, more and more cases are being heard directly by the Board. Typically these cases include hearings involving representation issues and unfair labor practice complaints which result in parties getting a decision in a more timely fashion.

Several systems that are used on a daily basis to facilitate the work of SERB were updated this year. Another project that will enhance the Hearing Section was the installation of a 4 Channel Digital Recording System. Each of the four (4) main Hearing Rooms has been outfitted with the new system. This system will allow for the recording of Hearings, provide for immediate feedback of any section of recording during a hearing, stop and start features, long term storage, easy re-trieval and playback for transcription. Again, this will facilitate record transcriptions and allow for a quality of sound not experienced before by SERB.

Wireless, or more commonly known as Wi-Fi, was installed this year. Because many of our internal and external customers utilize lap top computers, wireless capability was essential. Wireless ca-

capacity was installed throughout the SERB offices and hearing rooms which will allow utilization of laptop computers in a safe, full service environment.

A new, professional annual employee performance evaluation tool was developed and implemented. The development of this tool was a collaboration between the managers, the Board Chair and the Executive Director. The tool is comprehensive, fair and meets the criteria set forth by the Department of Administrative Services (DAS). It is set to be placed into service to coordinate with the DAS guidelines for completion in the next fiscal year.

SERB produced its 19th Annual Report on the Cost of Health Insurance in Ohio's Public Sector. This report, produced by SERB's Research and Training Section, fulfills its statutory mission "to promote orderly and constructive relationships between all public employers and their employees" and as mandated by section 4117.02 of the Ohio Revised Code. The report provides the reader with as much information and data as possible on various aspects of health insurance plan design and cost for government entities. The reports goal is to provide our constituents and customers with statistics that may be useful for the employer and employee organizations to promote orderly and constructive relationships between the public employer and their employees. The survey portion of the report is a joint venture between SERB and the School Employees' Health Care Board (SEHCB). The survey portion was created and disseminated using Zarca, an on-line survey tool. The target survey population included: city, county, and township governments; school districts, joint vocational schools/career centers, educational service centers (ESCs); community colleges, state colleges, and state universities; port authorities, transit authorities, metropolitan housing authorities, and regional fire districts. The report will be posted on the SERB Website, [www.serb.state.oh.us](http://www.serb.state.oh.us), for the convenience of our customers.

SERB, in coordination with the Moritz College of Law at the Ohio State University, continued a legal intern program in which the majority of the interns volunteered through the summer. These law students gained valuable labor-relations experience while providing SERB with research assistance in carrying out its statutory mission.

SERB hosted four (4) conferences during the year; Continuing Legal Education (CLE's) units were provided. Annually, SERB develops and hosts a Fact Finding Conference which trains practitioners in the art of preparing for a fact finding hearing in addition to reviewing SERB Rules

and Policies, and case reviews pertaining to fact finding and conciliation. A second conference, Developing Labor Law Seminar, updates practitioners on SERB, opinions, court cases, hearings and rule changes. In addition there are sections of this seminar that provide for a panel discussion of "hot" issues in collective bargaining, professionalism, ethics in the public sector, and dealing with substance abuse. A third seminar is entitled SERB Academy. The Academy trains practitioners in the administration of Collective Bargaining Law, Representation, O.R.C. 4117.14 Dispute Settlement, Dispute Settlement Procedures, Clearinghouse services, Unfair Labor Practices, and Hearing practices. And finally, SERB co-hosted the 2011 Arbitrator & Advocate Symposium with The Central Ohio Labor & Employee Relations Association and The Federal Mediation & Conciliation Service. This symposium provided training in high-tech evidence and discovery in labor and employment law, observations and suggestions on arbitration, trends in labor cases at the board and at the courts, avoiding legal pitfalls of the social media, potential collective bargaining changes under SB 5, contract law, and how arbitrators rule.

As part of the primary government of the State of Ohio, SERB was audited in accordance with the Government Auditing Standards as of and for the year ended June 30, 2010. Procedures performed at SERB by the Auditors did not identify matters that must be included in a statewide report as required by the Government Auditing Standards. There were four (4) areas brought to the attention of SERB for which improvements in compliance, internal controls, or operational efficiencies might be achieved. Those included inventory certifications, payroll and personnel action changes, confidential personal information system procedures, and OAKS reconciliations. SERB responded in a positive and affirmative fashion to attend to the recommendations for additional improvements.

Through innovation and increased efficiency, SERB has met the challenges of Fiscal Year 2011. Fiscal Year 2012 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 improving our customer service and to looking for further ways to increase our efficiency. 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.

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 bachelor's 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 confirmation of receipt of annual reports filed. [Section 4117.19]
- Upon receipt of a complaint of non-compliance, investigation of an alleged failure to file annual reports commences. [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.

### W. Craig Zimpher, Chair

W. Craig Zimpher was appointed to the Board by Governor John R. Kasich effective January 21, 2011. Prior to his appointment, he had been Vice President for Government Affairs at Nationwide Insurance Enterprise.

Mr. Zimpher's private-sector positions included service as Assistant V.P. of Ohio Operations for Gates, McDonald and Company and Assistant Dean of Students at Ohio Wesleyan University.

Mr. Zimpher's previous public-sector work includes serving as Chairman of the Industrial Commission of Ohio; an appointment by Governor Richard F. Celeste to the Commission on Workers Compensation Administration; serving as Deputy Assistant to Governor James A. Rhodes and as Legislative Assistant to the Minority Leader of the Ohio House of Representatives. Mr. Zimpher, a native of Piqua, Ohio, received his B.A. and M.A. degrees in History from The Ohio State University. He served as a 1<sup>st</sup> Lieutenant in the U.S. Army. He also lectured as an Adjunct Instructor in History/Humanities at Ohio Dominican University.

### Robert F. Spada, Vice Chairperson

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.

### N. Eugene Brundige, Member

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.

## SERB Fiscal Year 2011 Expenditures Summary

	Payroll	Purchased Personal Services	Training	Supplies / Maintenance	Equipment	Totals
						as of 07/01/11
General Revenue	\$3,284,735	\$22,866	\$0	\$361,374	\$115,364	\$3,784,339
Special Accounts	\$0	\$10,714	\$0	\$0	\$0	\$10,714
<b>TOTAL</b>	<b>\$3,284,735</b>	<b>\$33,580</b>	<b>\$0</b>	<b>\$361,374</b>	<b>\$115,364</b>	<b>\$3,795,053</b>

## SERB Personnel FY 2005- 2011

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

	2005	2006	2007	2008	2009	2010	2011
Staff	31	31	33	33	30	29*	28

\* 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. Additionally, the General Counsel is the Chief Ethics Officer for the agency and provides or arranges annual ethics training for SERB personnel under Executive Order 2011-03K.

## *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, factfinders, 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 avoid 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*

The Clerks Office docket and maintains custody of case-related documents, processing processes an average of more than 2,000 new case filings annually. This section receives and distributes all case filings and other incoming documents, and is responsible for providing assistance to SERB customers. 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.

## *Business/Records Office*

The Business/Records Office is responsible for fiscal and budget functions and records retention and certification of the record in administrative hearings to court for SERB and State Personnel Board of Review cases. It is also responsible for SERB's fleet-management and facilities-management functions.

## *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 SERB's *Annual Report* and SERB's *Annual Cost of Health Insurance Report*.

## Year-End Case Status Summary

<b>Cases Filed</b>	<b>FY 2010</b>	<b>FY 2011</b>
Total Cases	2,393	2,508
Mediation (MED)	1,654	1,927
Strike determinations (STK)	1	0
Representation (REP) <sup>1</sup>	202	153
Rebate Determination(RBT)	8	3
Unfair Labor Practices (ULP)	527	423
Employee Organization Reporting Complaints (ERC)	1	2
Jurisdictional Work Disputes (JWD)	0	0

<b>Agency Activities</b>	<b>FY 2010</b>	<b>FY 2011</b>
State mediator appointed	757	970
Federal mediator appointed	276	276
Fact Finder appointed	349	478
Conciliator appointed	43	66
Strikes	0	0
Elections held <sup>2</sup>	57	85
Board decision to issue complaint	54	48
Hearings held <sup>3</sup>	17	13
Board meetings <sup>4</sup>	22	26
Board opinions issued	14	9

<b>Mediations Conducted<sup>5</sup></b>	<b>FY 2010</b>	<b>FY 2011</b>
ULPs Pre-Determination	35	29
ULPs Post-Probable Cause	19	36
Representation Matters Pre-Direction to Hearing	71	73
Representation Matters Post-Direction to Hearing	9	2
Total Non-Contract Mediations	134	140

<b>Final Dispositions</b>	<b>FY 2010</b>	<b>FY 2011</b>
Total Dispositions	1,887	2,321
Impasse matters settled or withdrawn	1,031	1,543
Election results certified	46	94
Voluntary recognition requests certified	20	16
Recognition requests/election petitions dismissed	17	24
Miscellaneous representation activities	123	183
RBT petitions settled or withdrawn	9	0
ULP charges dismissed	413	307
ULP charges settled or withdrawn	154	108
ULP charges deferred/jurisdiction retained	25	15
ULP complaints settled	47	31

<sup>1</sup> 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.

<sup>2</sup>Includes professional/non-professional unit determination elections.

<sup>3</sup>Includes Board-conducted strike authorization hearings.

<sup>4</sup>Includes only regular board meetings.

<sup>5</sup>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, 2011

Employers	Employers with Contracts	Employer Type	Number of Contracts On File	Employees Covered By Contracts
<b>Local Government</b>				
251	245	City	987	45,822
87	5	County Auditor	7	180
28	13	County Children Services	16	1,754
88	7	County Clerk of Courts	7	249
88	42	County Commissioners	82	2,583
88	3	County Coroner	3	35
88	51	County Engineer	55	1,463
35	18	County Health Care	20	1,109
16	2	County Hospital	4	2,314
88	50	County Job and Family Services	55	7,786
48	1	County Mental Health	1	42
88	46	County Board of Developmental Disabilities	77	6,593
1	1	County Narcotics Agency	1	9
2	2	County Prosecutor	2	22
87	7	County Recorder	7	61
88	85	County Sheriff	215	9,163
19	13	County Support Enforcement Agency	14	1,001
88	9	County Treasurer	9	159
13	10	Emergency Medical District	12	402
19	12	Fire District	14	226
83	9	Health District	9	316
52	12	Park District	21	818
5	5	Sanitary District	6	111
18	2	Conservancy District	2	10
20	10	Water/Sewer District	13	437
251	29	Library	32	2,901
40	18	Metropolitan Housing Authority	35	1,612
5	3	Port Authority	6	212
1	1	Regional Turnpike Commission	2	742
15	13	Regional Transit Authority	21	5,165
14	13	State University	43	17,268
14	9	Community College	19	2,103
9	4	Technical College	9	721
157	94	Township	221	3,335
23	15	Miscellaneous	19	640
2,017	859	Total	2,046	117,364
<b>State Government</b>				
1	1	Attorney General	3	595
1	1	Auditor of State	1	32
1	1	Office of the Governor	5	39,837
1	1	Secretary of State	1	63
1	1	Treasurer of State	1	47
5	5	Total	11	40,574
<b>Boards of Education</b>				
722	651	Boards of Education	1,213	190,745
<b>Summary</b>				
Total of all employers.....			2,744	
Total number of employers with contracts .....			1,515	
Total contracts filed with SERB.....			3,270	
Total employees covered.....			348,683	

## Collective Bargaining Agreements by County As Of June 30, 2011

County	Boards of Education	Others	Total	County	Boards of Education	Others	Total
Adams	4	3	7	Licking	17	22	39
Allen	18	22	40	Logan	6	6	12
Ashland	9	12	21	Lorain	32	59	91
Ashtabula	17	35	52	Lucas	21	63	84
Athens	13	25	38	Madison	8	9	17
Auglaize	9	13	22	Mahoning	35	73	108
Belmont	16	13	29	Marion	9	13	22
Brown	9	4	13	Medina	15	35	50
Butler	21	62	83	Meigs	6	5	11
Carroll	4	1	5	Mercer	7	6	13
Champaign	9	9	18	Miami	12	20	32
Clark	15	19	34	Monroe	2	4	6
Clermont	17	19	36	Montgomery	34	77	111
Clinton	6	5	11	Morgan	2	4	6
Columbiana	22	23	45	Morrow	7	2	9
Coshocton	6	7	13	Muskingum	11	14	25
Crawford	10	9	19	Noble	4	3	7
Cuyahoga	87	256	343	Ottawa	9	8	17
Darke	10	9	19	Paulding	4	3	7
Defiance	7	7	14	Perry	7	3	10
Delaware	12	26	38	Pickaway	5	9	14
Erie	14	27	41	Pike	7	3	10
Fairfield	12	16	28	Portage	27	49	76
Fayette	3	4	7	Preble	9	3	12
Franklin	36	89	125	Putnam	14	4	18
Fulton	13	8	21	Richland	18	29	47
Gallia	6	6	12	Ross	13	6	19
Geauga	14	14	28	Sandusky	11	15	26
Greene	17	33	50	Scioto	14	14	28
Guernsey	4	10	14	Seneca	8	15	23
Hamilton	38	114	152	Shelby	10	7	17
Hancock	12	15	27	Stark	39	62	101
Hardin	11	8	19	Summit	41	107	148
Harrison	4	3	7	Trumbull	45	65	110
Henry	8	9	17	Tuscarawas	17	21	38
Highland	7	6	13	Union	3	5	8
Hocking	2	9	11	VanWert	5	7	12
Holmes	3	2	5	Vinton	2	1	3
Huron	13	13	26	Warren	17	30	47
Jackson	6	14	20	Washington	13	10	23
Jefferson	10	22	32	Wayne	18	14	32
Knox	8	9	17	Williams	8	10	18
Lake	21	70	91	Wood	19	39	58
Lawrence	16	17	33	Wyandot	4	3	7

### Summary

Boards of Education .....	1,213
Other Employers.....	2,057
Total 2011 Contracts .....	3,270

## Bureau of Mediation Summaries

Filings and Appointments	FY 2010	FY 2011
<i>Matters filed</i>		
Notices to Negotiate	1,654	1,927
Impasse Matters Settled/Withdrawn	1,031	1,543
Notices of Intent to Strike	12	5
<i>Neutrals appointed</i>		
Mediator Appointments	1,033	1,246
Fact-Finder Appointments	349	478
Conciliator Appointments	43	66

FY 2010 Notices to Negotiate	Statutory	MADs	Total
Initial	71	0	71
Reopener	199	96	295
Successor	1,028	533	1,561
<i>Total</i>	<i>1,298</i>	<i>629</i>	<i>1,927</i>

FY 2011 Fact-Finding Statistical Summary	
<i>Cases with reports accepted</i>	49
Accepted by both parties	22
Deemed accepted . . .	27
by employee organization only	11
by employer only	10
by both parties	6
<i>Cases with reports rejected</i>	57
by employee organization only	23
by employer only	27
by both parties	7
<b>Total FY 2011 reports</b>	<b>106</b>

Results of Fact-Finding		
	FY 2010	FY 2011
Rejections	62	57
Acceptances	71	49

Fact-Finding Cases by Employer Type		
	FY 2010	FY 2011
Cities	66	49
Counties	34	32
School Districts	0	3
Townships	19	10
Universities	4	2
State Government	0	0
Other	10	10

Fact-Finding Cases by Employee Type		
	FY 2010	FY 2011
Police	58	39
Fire	21	13
Teaching	1	3
Nursing	0	0
Other	53	51

### Public Sector Strikes, April 1, 1984—June 30, 2011

Type	04/01/84–06/30/08	FY 2009	FY 2010	FY 2011	Total
Education	147	1	0	0	148
City	10	0	0	0	10
County	44	0	0	0	44
Township	2	0	0	0	2
Other	7	1	0	0	8
<i>Total</i>	<i>210</i>	<i>2</i>	<i>0</i>	<i>0</i>	<i>212</i>

### Public Sector Strikes Before and After the Collective Bargaining Act

1978	67	1983	na	1988	14	1993 <sup>2</sup>	3	1998	14	2003	7	2008	3
1979	56	1984 <sup>1</sup>	4	1989	17	1994 <sup>3</sup>	13	1999	6	2004	4 <sup>4</sup>	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	2011	0
1982	na	1987	19	1992	11	1997	3	2002	6	2007	4		

<sup>1</sup> 04/01/84 – 12/31/84

<sup>2</sup> 01/01/93 – 06/30/93

<sup>3</sup> Beginning with July 1, 1993, all data are reported by fiscal year, July 1 through June 30.

<sup>4</sup> FY 2004 strike total adjusted from 2004 annual report.

## Representation Summaries

	04/01/84-06/30/08	FY 2009	FY 2010	FY 2011	Total
Elections held	3,045	66	57 <sup>1</sup>	84 <sup>3</sup>	3,252
Unit Determination elections held (Professional/Nonprofessional)	207	2	1 <sup>2</sup>	1 <sup>3</sup>	211
Choices for representation	2,298	60	48	73	2,479
Approximate number of eligible voters	185,071	1,871	1,420	3,094	191,456
Voter turnout	155,718 84%	1,604 86%	1,197 84%	2,386 77%	160,905 84%
Certification via Request for Recognition	1,231	25	20	16	1,292

<sup>1</sup> 12 onsite, 45 via mail

<sup>2</sup> 1 onsite

<sup>3</sup> via mail only

## Unfair Labor Practice Summaries

Cases	04/01/84-06/30/08	FY 2009	FY 2010	FY 2011	Total
ULP Charges Filed	16,752	660	527	423	18,362
Probable Cause Findings	3,300 <sup>1</sup>	45	54	13	3,412
Complaints Settled	2,606 <sup>2</sup>	67	47	25	2,745
Complaints Adjudicated	509 <sup>2</sup>	4	2	13	528
ULP Charges Dismissed	9,125	358	413	307	10,203
ULP Charges Withdrawn	4,221	157	154	108	4,640
Deferrals to Arbitration (with retention of jurisdiction)	169 <sup>3</sup>	27	25	15	236

<sup>1</sup> Adjusted figures in 1990 used in total.

<sup>2</sup> Does not include 1984-85, when these statistics were not kept.

<sup>3</sup> Does not include 1984-87, when these statistics were not kept.

### FY 2011 Unfair Labor Practice Allegations

Total Allegations of RC 4117.11 violations.....	497
Section 4117.11(A) alleged employer violations.....	361
Section 4117.11(B) alleged employee/employee organization violations.....	136

### Board Findings of Statutory Violations

	04/01/84-06/30/08	FY 2009	FY 2010	FY 2011	Total
	362	4	15	9	390

## Hearings Section Summaries

Action	04/01/84-06/30/08	FY 2009	FY 2010	FY 2011	Total
HOPOs/HORDs	909	18	10	15	952
Settlements	1,412 <sup>1</sup>	36	30	25	1,503
Hearings held	885	23	17	13	938
Pretrials held	977 <sup>1</sup>	50	21	26	1,074

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

<sup>1</sup> Statistic maintained beginning December 1994.

## **Board Opinions Issued in Fiscal Year 2011**

### **In re Harrison Hills City School District Board of Education, SERB 2010-011 (8-12-2010)**

In this unfair labor practice case, the State Employment Relations Board (“SERB” or “the Board”) found that the Harrison Hills School District Board of Education (“the Employer”) violated Ohio Revised Code (“O.R.C.”) § 4117.11(A)(1) when it communicated with the bargaining-unit employees concerning subjects of ongoing collective bargaining negotiations, but did not violate (A)(2) through the school principal’s conversation with bargaining-unit members who were picketing. SERB issued a cease-and-desist order with a Notice to Employees to be posted by the Employer for 60 days where bargaining-unit employees represented by the Harrison Hills Teachers’ Association (“the Union”) work.

The Employer received an anonymous letter that indicated the Union had recently misrepresented to its members certain terms of the Employer’s collective-bargaining proposals. In response, the Employer posted on its website two press releases: the first stating that the union had misstated its position and the second asking the Union to allow its members to vote on a tentative agreement or, alternatively, on the Employer’s last, best offer. These online postings, which were effectively direct communications to employees, were alleged by the Union to violate O.R.C. § 4117.11(A)(1)— interfering with, restraining, or coercing employees in the exercise of their O.R.C. Chapter 4117 rights.

With regard to O.R.C. § 4117.11(A)(1) violation, the Board held that the Union need not prove actual interference with exercise of protected rights; it is enough to demonstrate a reasonable likelihood of interference, restraint, or coercion. The Complainant, however, must also demonstrate that this reasonable likelihood is not outweighed by any competing legitimate managerial or business interest of the employer. Applying this test to employer communications, the Board found that a complainant may establish a prima facie violation by presenting evidence sufficient to sustain a finding that a public employer more likely than not made communications with employees concerning wages, hours, or other terms and conditions of employment.

But the employer has an affirmative defense. If it can demonstrate that it initiated communication with employees solely in response to, and for the limited purpose of, correcting a union’s material misrepresentation of its proposals, it will not be liable. To prevail in this defense, the employer must satisfy the following conditions: (1) that the statement concerning its collective-bargaining proposals is untrue; (2) that it is of sufficient significance that it would reasonably be expected to influence the current bargaining climate; (3) that the misinformation materially interferes with the bargaining process; and (4) that before making the correction, the employer first notified the union of the error and provided a reasonable opportunity to correct the misinformation.

Because the Employer could not meet this affirmative defense, its communications violated O.R.C. § 4117.11(A)(1). The Employer’s website postings did not, however, violate O.R.C. § 4117.11(A)(2). These violations require the Complainant to demonstrate actual interference with the formation or administration of the Union. In this case, the Union failed to present sufficient evidence of actual injury arising from the employer’s unlawful communications. Therefore, no O.R.C. § 4117.11(A)(2) violation was found.

The second instance of alleged misconduct involved a discussion between a high school principal and a music teacher while the music teacher and other bargaining-unit members were picketing. The Board found that the Employer was not responsible for the principal’s statements because he was not acting as an agent of the Employer. At no point in the negotiations did the principal participate or act as a bargaining agent on behalf of the Employer, nor did he act in such a manner as to reasonably appear that he had authority to act on behalf of the Employer. The principal was not an agent of the Employer, and therefore, his conduct could not be imputed to the Employer.

### **In re City of Hamilton, SERB 2010-012 (8-12-2010)**

In this representation case, the State Employment Relations Board (“SERB” or “the Board”) 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), denied the objections of the City of Hamilton (“the Employer”), and certified Hamilton Police Captains, Fraternal Order of Police, Lodge 38 (“the Employee Organization”) as the exclusive bargaining representative for all the employees in the proposed bargaining unit.

The Employee Organization filed a Request for Recognition under Ohio Revised Code (“O.R.C.”) § 4117.05 seeking to represent Police Captains of the City of Hamilton in its Police Department. The Employer filed

objections to the request. The matter was directed to a hearing by the full Board to determine an appropriate bargaining unit and for all other relevant matters.

The sole issue in this case is whether the Captains are “public employees” as defined by O.R.C. § 4117.01(C); specifically whether they fall under the exemptions under O.R.C. § 4117.01(C)(6), (C)(7), or (C)(9). The burden of establishing an exclusion from a bargaining unit rests upon the party seeking it.

Under O.R.C. § 4117.01(K), “confidential employee” means any employee who works in a close continuing relationship with public officers or representatives directly participating in collective bargaining on behalf of the employer. The record demonstrates that the Police Captains are not confidential employees. While one Captain testified that he attended contract negotiations, it was at the request of and on behalf of the Chief that he went, and the purpose behind his attendance was merely informational.

Even after attending the negotiations, the Captain was not a signatory to the collective bargaining agreements as a participant in the negotiations. Also, the Chief testified that Sergeants and Lieutenants had attended negotiations on behalf of management without either Captain present. Attending negotiations for informational purposes on behalf of management, like the Police Captains did here, does not by itself meet the standard of a confidential employee.

While he receives input from the Captains regarding policy decisions, the Chief alone makes the final determinations. The Chief takes similar input from employees at all levels and does not exclusively confer with the Captains; one Captain testified that he has no more authority to suggest policy change than any other member of the organization. Once a policy change is made, neither Captain has the final responsibility for implementation; Sergeants and Lieutenants on each shift explain the new policies to the employees on their shift and ensure that each employee understands and can implement the new policy.

Although both Captains attend disciplinary hearings, the Chief serves as the hearing officer and makes the determination regarding discipline beyond the level of a written reprimand. Because neither Police Captain is an “individual who formulates policy on behalf of the public employer, who responsibly directs the implementation of policy, or who may reasonably be required on behalf of the public employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or have a major role in personnel administration,” the Captains are not management level employees.

Supervisory issues are a question of fact in each case, and such status must therefore be determined on a case-by-case basis. An individual will be excluded from a bargaining unit if the record contains substantial evidence that the employee has the authority to perform one or more of the functions listed in O.R.C. § 4117.01(F), actually exercises that authority, and uses independent judgment in doing so. The Police Captains lack the authority to make personnel decisions that would make them eligible for the supervisor exemption.

The Captains serve as Acting Chief of Police when the Chief is away from the office; however, the Police Department’s General Orders stipulate that “a member serving in the capacity as Acting Chief of Police shall not have the authority to hire or fire departmental personnel, nor make major departmental policy changes without consultation with the Chief of Police.” At least one Sergeant has served in the position of Acting Chief when both Captains were unable to serve as Acting Chief. The record lacks sufficient evidence to show that the Police Captains have discretionary authority “to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees; to responsibly direct them; to adjust their grievances; or to effectively recommend such action” and therefore do not meet the statutory definition of “supervisor.”

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### **In re Amalgamated Transit Union, Local 268, SERB 2010-013 (8-12-2010)**

In this unfair labor practice case, the State Employment Relations Board (“SERB” or “the Board”) found that the Amalgamated Transit Union, Local 268 (“Respondent”) violated Ohio Revised Code (“O.R.C.”) § 4117.11(B) (1) when it denied Terry McGrady the right to run for union office. SERB issued a cease-and-desist order with a Notice to Employees to be posted by the Respondent for 60 days where bargaining-unit employees represented by the Respondent work. SERB also ordered Respondent to conduct a new election for the position of Executive Board Member of Triskett Operations to cover the remainder of the current term and to cooperate with the SERB-appointed Elections Monitor in scheduling and conducting a re-run election within 30 days of the date of this Order between the two individuals who were nominated for the position of Executive Board Member, Triskett Operations. Immediately upon the tallying of the election results the successful candidate shall assume the position of Executive Board Member, Triskett Operations, and shall serve the remainder of the 2008 term.

SERB utilizes an objective case-by-case analysis to assess whether particular conduct violates O.R.C. § 4117.11(B)(1). When an O.R.C. § 4117.11(B)(1) violation is alleged, SERB will determine whether, under all the facts and circumstances, one could reasonably conclude that employees were restrained or coerced, or that their rights under § 4117.03 were interfered with.

It has not been SERB's practice to unnecessarily interfere in internal union affairs. However, this practice does not absolve employee organizations from their statutory obligations to their membership. Before SERB considers the merits of an alleged O.R.C. § 4117.11(B)(1) violation, internal union remedies must be exhausted.

O.R.C. § 4117.03(A)(1) guarantees public employees the right to participate in an employee organization of their choosing. Participation in an employee organization includes the right to seek office within the organization.

By interpreting Section 14.2 of the Union's Constitution and Bylaws as requiring "actual" attendance at six meetings, the International President ("IP") overturned the Union membership's decision that Mr. McGrady complied with its meeting-attendance requirements. The IP's interpretation of Section 14.2 also eliminated the candidacy of Mr. McGrady's opponent. The Union utilized the IP's interpretation of Section 14.2 to overturn Mr. McGrady's challenge to the election and prevent him from being a candidate for the Union office of Executive Board Member, Triskett Operations; however, the Union utilized its local practice of using meeting-cancellation credit toward the requisite six meetings to allow the opponent to run unopposed for that office.

The unequal application of the meeting-attendance requirement interfered with and restrained Mr. McGrady in his effort to run for Union office. Meeting-attendance requirements should be construed narrowly and in a manner that reflect the wishes of the union members.

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### **In re Clark County Board of Developmental Disabilities, SERB 2010-014 (8-19-2010)**

In this unfair labor practice case, the State Employment Relations Board ("SERB" or "the Board") found that the Clark County Board of Developmental Disabilities ("the Employer") violated Ohio Revised Code ("O.R.C.") § 4117.11(A)(1), (A)(2), and (A)(3) for its failure to provide annual wage increases to a group of employees set to vote in an upcoming union-election campaign. SERB issued a cease-and-desist order with a Notice to Employees to be posted by the Employer for 60 days where bargaining-unit employees represented by the Professionals Guild of Ohio ("the Union") work and ordered the Employer to provide access to the Union representatives to meet with Registered Service Worker 1s during non-work time and to cooperate with the SERB Representation Section and the Union to schedule the rerun representation election.

The Union filed a Petition for Representation Election. An election campaign then commenced in the weeks leading up to the election. During the prior ten years it had been customary for the Employer to grant annual wage increases to all non-bargaining unit employees. This year, however, the Employer gave the annual wage increase, as expected, to nonbargaining-unit members only. It withheld the increase for those employees who were eligible to vote in the upcoming union-election.

By not providing these regularly scheduled across-the-board annual raises to the Registered Service Worker 1's, the Employer violated O.R.C. § 4117.11(A)(1), (A)(2), and (A)(3). O.R.C. § 4117.11(A)(1) forbids management from taking any action during an election campaign "that may . . . potentially prejudice [employees'] free choice." Consequently, management may not provide discretionary wage increases or other benefits during the course of an election campaign, nor may it withhold an expected benefit if the provision of the benefit at that time is an established practice or custom. Here, the Employer admitted that there was an established custom of providing across-the-board wage increases around June or July (the time the election took place) of each year. Yet it withheld the wage increase for those employees awaiting the representation election, with no apparent justification for the withholding other than influencing the election. To suspend an established custom of providing wage increases constitutes a failure to maintain the status quo. Thus, the Employer violated O.R.C. § 4117.11(A)(1).

Not only did the Employer's decision to withhold wages violate O.R.C. 4117(A)(1), but it also had the objective effect of interfering with the formation of a union, thus violating O.R.C. § 4117.11(A)(2) as well. In an addendum to the ALJ's Proposed Order, the Board held that the Employer's action impeded the union's ability to obtain the necessary votes for representation; therefore, the employees "were not afforded the full freedom in their choice of representatives which [the statute] affords."

Finally, the Employer's decision to withhold wages violated O.R.C. § 4117.11(A)(3), which prohibits an employer from discriminating employees with respect to terms and conditions of their employment, based on their exercising the rights under O.R.C. Chapter 4117. Wages are a condition of employment, and the Employer withheld the wages based on the employees' decision to seek union representation. Thus, the Employer violated O.R.C. § 4117.11(A)(3).

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### **In re City of Twinsburg, SERB 2010-015 (11-12-2010)**

In this representation case, the Twinsburg Fire Captains (“the Union”) sought to represent Captains of the City of Twinsburg (“the Employer”) in its Fire Department. The Employer objected on the grounds that the Captains were management-level employees under Ohio Revised Code (“O.R.C.”) Chapter 4117 and not “public employees.” Specifically, the Employer claimed that the Captains fulfilled at least one of two key management-level functions: formulating organizational policy and playing a major role in personnel administration. The Board disagreed, finding that the Captains are “public employees” as defined by O.R.C. § 4117.01(C) and 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). The Employee Organization was certified as the exclusive bargaining representative for all the employees in the proposed bargaining unit.

The Board held that the Captains do not sufficiently formulate policy for the Fire Department. The Captains are involved in policy activities, such as building budget proposals, interviewing applicants, and organizing various committees. Insofar as they are involved in the formation and implementation of policy, however, the Board found that it always is at the request and under the direction of the Fire Chief; the Captains themselves have no independent discretion or authority. For example, some of the Captains are responsible for preparing various budgets. All of these budget proposals, however, are sent to the Chief, and he conducts an independent review of the proposals before sending them to the Mayor’s Office for approval. Similarly, the Captains (along with other bargaining-unit employees) have conducted interviews of applicants for open positions and have made recommendations to the Chief that applicants be hired. However, the Chief makes the decision on whether to actually hire the applicant, and he has used his discretion at times to deny the recommendation of the interviewers.

The Board also held that the Captains do not have sufficient personnel administration duties. The Captains do have some role in grievance procedures. Specifically, at step two of the grievance procedure, Captains are charged first with reviewing the findings made by the Lieutenants in Step 1 of the grievance procedure. Then, if they believe that the grievance warrants further action, they consult with the Chief. They do not, however, have discretion to impose discipline or effectively recommend any action. Rather, they must discuss with the Chief how the grievance should be handled. Moreover, before any disciplinary action is ultimately taken, it must be referred to the City’s HR Department and approved by the City. Because the Captains lack independent authority to impose discipline, the Board held that the Captains did not exercise personnel administration sufficient to qualify them as management-level employees.

Since the Captains did not fulfill at least one of two key management-level functions, formulating organizational policy or playing a major role in personnel administration, the Board found that they were not management level employees.

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### **In re Akron Metropolitan Housing Authority, SERB 2010-016 (11-30-2010)**

In this representation case, the State Employment Relations Board (“SERB”) found that the current position of Network Administrator does not meet the criteria for exclusion from the definition of “public employee” under Ohio Revised Code (“O.R.C.”) §§ 4117.01(C)(7) or (C)(10) and that the current position of Network Administrator shares a community of interest with other members of the bargaining unit identified in the Petition for Amendment of Certification. The Board denied the objections filed by the Akron Metropolitan Housing Authority (“the Employer”), granted the Petition for Amendment of Certification filed by Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (“AFSCME”), and amended the bargaining unit accordingly.

This representation case was brought by AFSCME to determine whether Patty Taylor, who had worked for several years as a bargaining-eligible hardware technician for the Employer, should be excluded from the bargaining unit upon promotion into a new position, Network Administrator. The Employer argued that the Network Administrator position should be excluded from the bargaining-unit on three grounds: (1) she is a supervisor; (2) she is a managerial employee; and (3) she does not share a community of interest with the other unit members. The Board disagreed with all three objections.

First, the Board concluded that the Network Administrator position was not a supervisor. The touchstone of supervisory status is the ability to hire, fire, promote, discharge, transfer, or lay off public employees. The Employer argued that because the Network Administrator had some discretion in directing the work of two temporary workers, she was a supervisor. However, the Employer did not establish that these temporary employees were “public employees” within the meaning of the statute —namely, that they were employed pursuant to a contract between the temporary agency and the employer, or if there was such a contract, that the National Labor Relations Board had declined to exercise jurisdiction over the agency. Nor did the Employer prove that the Network

Administrator had the “right to control” the individuals’ work under the common law test for determining employee status. Moreover, even if the temporary workers were public employees, the Network Administrator did not have supervisory responsibilities over them. Her authority was limited, and her recommendations appeared to carry little weight. Indeed, the evidence indicated that if anyone had supervisory authority over the employees, it was the Information System Director, not the Network Administrator.

Second, the Board concluded that there was no evidence to show that the Network Administrator had managerial responsibilities. An individual is a “managerial employee” if he or she formulates policy on behalf of the public employer, responsibly directs the implementation of policy, or may reasonably be required on behalf of the public employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or have a major role in personnel administration. The Employer provided no evidence that the Network Administrator performs the functions of a managerial employee. To the extent that Information Systems Director permits the Network Administrator to make any policy recommendations or to implement them, the testimony indicates that those activities are infrequent and are limited to her area of responsibility.

Third, the Board held that the Network Administrator position did not lack a community of interest with the bargaining-unit members. The employee continued to perform the same work that she performed under her previous, bargaining-unit position, and she also shared the same hours and working conditions as the bargaining-unit employees. The one factor supporting a lack of community interest was that the employee did receive a wage increase. Taking into account, however, the overtime-pay and compensation time which she had previously earned but for which was no longer eligible, the overall increase in her compensation was minimal. Therefore, she did not lack a community of interest with other bargaining-unit members.

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### **In re City of Toledo, SERB 2011-001 (4-28-2011))**

In this unfair labor practice case, the State Employment Relations Board (“SERB” or “the Board”), by a 2-1 vote, found that the City of Toledo (“the City”) did not violate Ohio Revised Code (“O.R.C.”) §§ 4117.11(A)(1) and (A)(5) when the City unilaterally increased the health-care premiums for the bargaining-unit members represented by the Toledo Police Command Officers’ Association (“the TOCOA”) and rescinded the City’s 10% payment into the TPCOA’s pension fund. The Board dismissed the complaint and dismissed with prejudice the unfair labor practice charge. Board Member Brundige dissented and would find that the City violated O.R.C. § 4117.11(A)(5) by failing to bargain in good faith following the declaration of exigent circumstances.

It was not disputed that the City increased unit members’ healthcare premiums and rescinded contributions to their pension funds, nor was it disputed that such action directly contradicted the parties existing collective-bargaining agreement (“CBA”). The question was whether such changes were justified by SERB’s previous Toledo Schools decision, which permits unilateral changes under certain circumstances arising while a CBA is in place.

Under well-settled law, management decisions that are mandatory subjects of bargaining generally must be bargained before implementation (upon notice by the employer and timely request by the union). But SERB set forth two exceptions to this rule in Toledo Schools that apply in the context of mid-term disputes: prior negotiation by and agreement of both parties are unnecessary when “immediate action is required due to (1) exigent circumstances that were unforeseen at the time of negotiations or (2) legislative action taken by a higher-level legislative body. This case dealt with the first of these, the exigent-circumstances exception. To qualify for this exception, a decision must meet the following requirements: the circumstances driving the action must be “exigent,” and the circumstances must have been unforeseen at the time of negotiations. SERB found that the City met both requirements.

SERB determined that exigent circumstances were present. An “exigent circumstance” is “a situation that demands unusual or immediate action and that may allow people to circumvent the usual procedures” (quoting BLACK’S LAW DICTIONARY, EIGHTH EDITION). Upon taking office on January 4, 2010, new Mayor Michael Bell was presented with a projected budget deficit for FY 2010 of \$37 million, not including a carry-over deficit from the previous year of \$8.4 million. Furthermore, the City had no “rainy-day” fund to mitigate the deficit. Yet, all within three months of taking office, Mayor Bell was required not only to create a balanced budget, but also to submit it to the legislature and have it approved by the legislature. This task, SERB concluded, was an exigent circumstance.

SERB also determined that the exigent circumstance was unforeseen at the time of negotiations. While campaigning for office in 2009, the Mayor was told that the City had a potential deficit for the next fiscal year in April 2009 of \$10-15 million. Then he was told in December 2009 that the deficit would be \$40 million, and finally in February 2010 he learned that the deficit was approximately \$48.2 million. SERB determined that such these

drastic initial underestimations made it practically “impossible” to have foreseen the magnitude of the later deficit at the time negotiations concluded in July 2009. This was especially true, given that the CBA was retroactively effective: it was negotiated in July 2009, but effective beginning in January 2009.

Because the City faced an exigent circumstance and the exigent circumstance was unforeseen at the time of negotiations, SERB found that the City’s decision fit within the Toledo Schools’ exigent-circumstances exception. Therefore, the City did not violate R.C. §4117(A)(1) or (5) when it unilaterally implemented changes to the CBA’s healthcare and pension provisions.

In his dissenting opinion, Board Member Brundige stated that in the Toledo Schools case, the Board established the mechanism by which mid-term bargaining might occur if the parties had not provided for such possibility within their collective bargaining agreement. In the present case, the issues presented are first, how should the Board define “exigent circumstances” and do they exist in this case? Secondly, if exigent circumstances do exist, what are the consequences for bargaining? Based upon the BLACK’S LAW DICTIONARY definition of exigent circumstances, the majority explicitly addresses the first part by determining that the projected 48.2 million dollar budget shortfall for FY 2010 constituted exigent circumstances. In this specific case, presented with the size of the projected deficit as a percent of the total General Fund Budget, I agree with the majority’s determination in this regard, while adding the caution that a lesser budget shortfall does not, in and of itself, constitute exigent circumstances.

The second key issue is addressed only implicitly in the judgment. Having found that the City Council faced exigent circumstances, the majority holds, ipso facto, that the City Council did not commit an unfair labor practice when it made changes with no further bargaining. Thus, the majority assumes that once exigent circumstances are duly declared, the duty to bargain is over: the union disappears, and the employer is free to make whatever changes it wants, in whatever manner it deems appropriate. He does not read Toledo Schools so broadly and respectfully dissents.

Toledo Schools was adopted to deal with the specific situation where no vehicle existed to re-open the collective bargaining agreement currently in place. The “exigent circumstances” or “higher legislative body” exceptions establish the ability to re-open the current agreement. Re-opening requires good-faith bargaining prior to any unilateral changes to the existing agreement. It is not an unfair labor practice to declare exigent circumstances. The existence and validity of such circumstances is determined by SERB on a case-by-case basis.

In the instant case, no bargaining took place. To allow an employer to unilaterally pick sections of the CBA and abolish them without any attempt at good-faith bargaining flies in the face of SERB’s mission to promote orderly and constructive labor relations. Following the determination of exigent circumstances, his reading of Toledo Schools convinces him that negotiation, or “bargaining,” is still required, but that ultimate agreement is not. After exigent circumstances have been declared, the employer must bargain with the union to the extent reasonably practicable. Absent such action, Board Member Brundige would find that the Employer violated O.R.C. § 4117.11(A)(5) by failing to bargain in good faith following the declaration of exigent circumstances.

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### **In re Mahoning County Board of Developmental Disabilities, SERB 2011-002 (6-6-2011)**

In this unfair labor practice case, the State Employment Relations Board (“SERB” or “the Board”) found that the Mahoning County Board of Developmental Disabilities (“the Employer”) did not violate Ohio Revised Code (“O.R.C.”) §§ 4117.11(A)(1) or (A)(5) when a bargaining-unit member obtained a “Negotiations Management Update” document. The Board also found that whether the Employer violated O.R.C. §§ 4117.11(A)(1) or (A)(5) by refusing to arbitrate a grievance as required by the parties’ expired collective bargaining agreement was rendered moot by settlement of the underlying grievance.

The most recent collective bargaining agreement (“CBA”) between the Employer and the Mahoning Education Association of Developmental Disabilities (“the Union”) expired on August 31, 2007. On June 26, 2007, the Union filed a statutory Notice to Negotiate with the Employer, and the parties began negotiations for a successor collective bargaining agreement. As of the date of the hearing, the parties had not obtained a successor agreement.

In April 2008, a union member filed a grievance. The grievance went through the levels identified in the expired CBA’s grievance procedure. Because no resolution was achieved, the grievance was ultimately submitted for “final and binding arbitration,” as required by the expired CBA.

Before arbitration, the Employer raised the question of arbitrability. The arbitration was then bifurcated; the arbitrator rendered a decision, concluding that he was “without jurisdiction.”

On April 2, 2009, the Union's chief spokesperson was handed a piece of paper from a bargaining-unit member. The member told him it had been found on top of a tow motor, in an area where there were only bargaining-unit members. The document was entitled "MEAD NEGOTIATIONS MANAGEMENT UPDATE," and it contained information about the ongoing negotiations between the Union and the Employer. Who found the document, who authored it, and why it was created, however, remained unknown.

In the Proposed Order issued after the hearing, the Administrative Law Judge ("the ALJ") recommended that the Board find the following: (1) that the Union timely filed its unfair labor practice charge; (2) that the Employer did not violate O.R.C. §§ 4117.11(A)(1) or (A)(5) when a bargaining-unit member obtained the "Negotiations Management Update" document; and (3) that the Employer did not violate O.R.C. §§ 4117.11(A)(1) or (A)(5) by refusing to arbitrate a grievance as required by the parties' expired collective bargaining agreement.

The Board agreed with the first and second recommendations and adopted her Conclusions of Law with regard to these recommendations. The Board did not adopt the third recommendation; instead the Board that the issue was moot.

The grievance proceeded through the grievance procedure in accordance with the collective bargaining agreement. It was submitted for arbitration. Sometime before the SERB proceeding, however, the grievance was settled. The Union therefore, does not seek relief pertaining to the specific grievance that went to arbitration that caused this action to be filed; that grievance was ultimately settled. The Union argues, rather, that the Employer is bound to follow the grievance and arbitration procedure for "future grievances that may arise during the on-going negotiations."

Because this controversy was rendered moot by settlement of the underlying grievance, any further opinion we might render on the survival of arbitration provisions past expiration of collective bargaining agreement would be, in effect, an advisory opinion. O.R.C. Chapter 4117 does not authorize SERB to issue advisory opinions.

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### **In re City of Elyria & Mayor Grace, SERB 2011-003 (6-7-2011)**

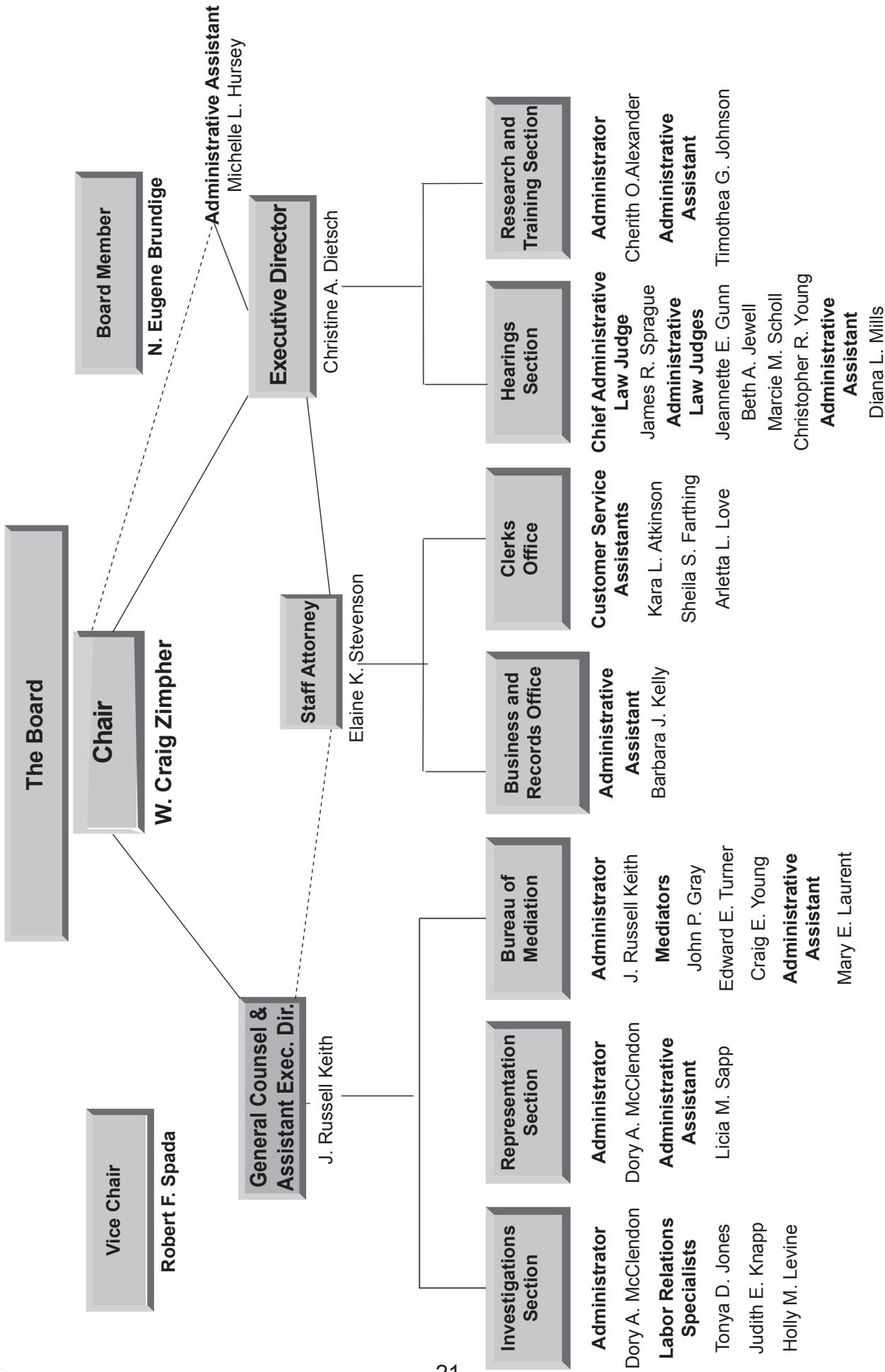
In this unfair labor practice case, the State Employment Relations Board ("SERB" or "the Board") found that the City of Elyria and Mayor William Grace ("the Respondents") did not violate Ohio Revised Code ("O.R.C.") §§ 4117.11(A)(1) and (A)(5) because their actions did not rise to the level of direct dealing as prohibited by O.R.C. Chapter 4117. Consequently, the complaint was dismissed, and the unfair labor practice charge was dismissed with prejudice.

During contract negotiations with the Elyria Firefighters, Local 474, IAFF ("the Union"), Mayor Grace allegedly made several statements concerning those negotiations that ultimately reached employees through a newspaper article. In response the Union filed an unfair labor practice charge, alleging that the statements violated O.R.C. §§ 4117.11(A)(1) and (A)(5)—specifically, the prohibition against direct dealing.

The Respondents argued first that the statements contained in the newspaper article itself could not form the basis of an unfair labor practice because the newspaper article was inadmissible hearsay. Although Ohio Administrative Code ("O.A.C.") Rule 4117-7-05 permits the Board to consider some hearsay evidence, courts have cautioned against acting solely on the basis of inadmissible or incompetent evidence. Here, the Union presented no evidence of the alleged statements other than the newspaper article. The Board concluded that the only statements that should be considered were those to which the Mayor admitted at the hearing.

The Mayor admitted that he did make some statements concerning negotiations to the newspaper: he conveyed his sentiment about the need for parity; he declared that firefighters should come to work more often (while referencing their current vacation, holiday, and sick time); finally, he discussed the financial consequences of the current labor contract. The Board concluded, however, the essence of these statements was merely conveying the Mayor's goals and views on public policy to the public. Moreover, the Mayor did not publish the communication himself, nor did he ensure that it was delivered to the employees, and the City of Elyria had no control over the content of the article. In short, the statements taken as a whole could not be viewed as an attempt to bypass the Union and deal directly with employees. Thus, the Respondents did not violate O.R.C. §§ 4117.11(A)(1) and (A)(5).

# 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
STK	Employer's Request for Determination of Unauthorized Strike <i>and</i> 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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***SERB is an Equal Opportunity Employer.***

*EEO Officer: Marcie M. Scholl, Administrative Law Judge, Hearings Section*

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