



SERB ANNUAL REPORT



2016





MISSION

Promoting orderly and constructive relationships between public employers and their employees.

ABOUT SERB

The State Employment Relations Board (SERB) administers the Ohio Public Employees' Collective Bargaining Act through a three-member Board appointed by the Governor and a staff of 28. Board members are appointed to staggered six-year terms, and only two Board members may be of the same political party. One Board member is designated by the Governor as the agency's Chairman and its appointing authority. An Executive Director handles the day-to-day administration of the agency, and a General Counsel provides legal support in-house and serves as liaison with the Ohio Attorney General's office, which represents the agency in court. SERB's key statutory functions include:

- Investigating unfair labor practice charges.
- Adjudicating the merits of unfair labor practice complaints after investigation.
- Processing representation petitions and requests for recognition.
- Determining appropriate bargaining units and conducting secret ballot representation elections.
- Determining fair share fee rebate challenges.
- Analyzing and reporting wage and benefit data from collective bargaining agreements.
- Providing impasse resolution services through mediation fact-finding, and conciliation.
- Resolving disputes as to the legality of strikes and, where appropriate, reviewing the imposition of sanctions.
- Collecting and monitoring registration and financial filings by employee organizations; and
- Training representatives of labor and management in the methods and rules of collective bargaining.

To fulfill these functions, the agency is organized administratively into the following sections: Investigations, Representation, Hearings, Bureau of Mediation, and Research and Training. In addition, the Clerk's Office serves as an intake and docketing center, and an Administrative Services Section is responsible for personnel, fiscal, budget, and facilities management.

LETTER FROM THE BOARD

When SERB was founded in 1984, it was tasked with a mission to promote orderly and constructive relationships between public employers and their employees. At the close of SERB's 32nd year, the Board is proud to report that our office continues to fulfill that original mission, while expanding the services we provide to meet the needs of a continuously changing landscape in labor relations.

Our work is no small undertaking. SERB administers Ohio's Public Employees' Collective Bargaining Law (Ohio Revised Code 4117) for 2,733 employers and 312,506 employees. In FY 2016, 1,783 total cases were filed with our office. Our Labor Relations Specialists processed 120 representation matters and investigated 195 unfair labor practice charges. Our mediators conducted 88 mediations and our administrative law judges held 66 hearings. Working together, our dedicated staff contributes to the success of our office by fulfilling our mission every day.

In addition to our regular statutory duties, our office has expanded its training programs and undertaken several projects to improve our day-to-day operations. Here are some highlights from FY 2016:

Negotiations Training: Our mediators developed three training programs to equip labor professionals to engage in more productive contract negotiations. They conducted three sessions on Practical Negotiations with 73 attendees, two sessions on Intermediate Negotiations with 22 attendees, and an Advanced Negotiations session with 76 attendees.

Microfiche Conversion Project: SERB preserved all original collective bargaining agreements that were stored on microfiche since 1984 by converting 921,699 pages of documents to electronic PDFs. The contracts are now available in our Clearinghouse database.

Case Management System Upgrade: Our office upgraded its case management software environment to be compatible with Windows 10, integrate with Microsoft Word and Outlook 2016, and to improve its docketing functionality and advanced case search capabilities, among other enhancements.

Minority Business Enterprise Award: SERB was recognized at the Minority Business Enterprise (MBE) Awards Ceremony for achieving 28.14% of dollars spent in both the MBE and EDGE categories and for surpassing the statewide goal of 15%.

Annual Staff Retreat: Our staff participated in a full day of professional development training with The Hawks Agency, designed to foster an enhanced team atmosphere and work culture. A second half day of training was held with our section administrators to discuss follow-through steps.

The diligent work by our staff and the accomplishments we've made over the past year demonstrate SERB's commitment to its mission while continuing to improve the services it provides to labor professionals in our state.

Sincerely,



W. Craig Zimpher
Chairman



Aaron Schmidt
Vice Chairman



J. Richard Lumpe
Board Member



W. CRAIG ZIMPHER

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.

Mr. Zimpher's public-sector work has included 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. His private-sector work has included serving as Assistant VP of Ohio Operations for Gates, McDonald and Company and Assistant Dean of Students at Ohio Wesleyan University.

Mr. Zimpher is a native of Piqua. He received a B.A. and an M.A. in History from The Ohio State University. He served as a First Lieutenant in the U.S. Army. He has also lectured as an Adjunct Instructor in History/Humanities at Ohio Dominican University.



AARON SCHIMDT

Aaron A. Schmidt was appointed to the Board by Governor John R. Kasich effective January 2, 2014. Prior to his appointment, he served as legal counsel to the Ohio Lottery Commission.

Mr. Schmidt's public-sector work as legal counsel to the Ohio Lottery included advising the agency on a variety of legal matters, including contracts, compliance, litigation, labor relations, intellectual property, public records, and administrative law, as well as assisting in the promulgation of administrative rules, policies, and procedures. His private-sector work included practicing law in two Cleveland private law firms and managing litigation in a corporate legal department.

Mr. Schmidt is a native of Cleveland. He received a B.A. in English from The Ohio State University and a J.D. from Cleveland-Marshall College of Law. Mr. Schmidt is a member of the Ohio State Bar Association and the Cleveland Metropolitan Bar Association, where he authors articles on alternative dispute resolution and mediation.



J. RICHARD LUMPE

J. Richard Lumpe was appointed to the Board by Governor John R. Kasich effective June 1, 2016. Prior to his appointment, he served as Vice Chair of the State Personnel Board of Review (SPBR).

Mr. Lumpe's public-sector work has included serving as Legal Assistant for the Columbus City Attorney, an Assistant Prosecuting Attorney for the Franklin County Prosecutor's Office, and an Assistant Attorney General. In the private-sector, he practiced law for more than 50 years at his firm, Lumpe and Raber, Esq, Attorneys at Law, until his retirement. His practice was limited to and specialized in administrative and regulatory law and legislative representation, which included drafting proposed rules and legislation.

Mr. Lumpe is a native of Columbus. He received a B.S. in Business Administration from The Ohio State University and a J.D. from Capital Law School.

A MESSAGE FROM THE EXECUTIVE DIRECTOR



Fiscal year 2016 was a year of renewal in many respects for the staff of the State Employment Relations Board (SERB). The year provided for many opportunities to rededicate ourselves to the mission of SERB which is to promote orderly and constructive relationships between public employers and their employees.

One example came early in the year when the new hire orientation program was completely revamped. SERB sailed into the 21st century with the development and implementation of an On Boarding process. This was based on an evolution in new concepts of bringing staff on board and showing them how we work together, that we value them and care about their growth and career. Like a roadmap leading us forward, SERB was inspired to create its first culture statement which fits hand and glove with the mission. The culture statement has become woven into the fabric of SERB's everyday world of work. There are four prongs to the culture statement:

“Integrity and objectivity in the way we conduct ourselves; teamwork as we act with civility and mutual respect towards achieving the common goal of our mission; greatness achieved by never compromising our work, providing excellent performance in serving our stakeholders, and pursuing continual improvement; sharing and celebrating in each other's successes and viewing challenges as opportunities.”

In the second quarter, it was determined that a review and update of SERB's retention schedules was in order especially in light of the electronic forms of media in use today. After several months of revisions, the final product was completed.

Later, SERB participated in a four phase review by Ohio IT. The goal was to assess our business operations as they relate to information technology and the support that might be needed to create a path for optimization to the State of Ohio Enterprise Solution. The bottom line was to improve security, maintain software licensing, improve overall desktop support, and decrease OIT expenses. The principle recommendation for SERB to meet statewide standards and join the “identity” domain was to replace most of our computer towers. As a result, 33 desktop computers and six laptop computers were purchased for deployment throughout the office as well as implementing an Enterprise eFax program.

Towards the end of the fiscal year, a credit card processing program was developed and is now operational. This will be of advantage to our stakeholders in more efficiently registering for the various SERB Academies and conferences that SERB conducts several times throughout the year.

These are only a few snapshots of some of the undertakings that resulted from the assessment of our work and processes, in an attempt to improve, be more efficient, and thus fully execute our mission.

The success of SERB to date can be attributed to the leadership of Chair Zimpher and members of the Board, a very talented and dedicated staff, all working in concert with the specific and clear direction of Ohio Revised Code, Chapter 4117. This is what gives life to our mission. All of this forms a winning combination of ensuring the neutrality of our staff in the execution of their respective responsibilities. We at SERB will continue to strive to be good stewards of those responsibilities entrusted to us.

Sincerely,

Christine A. Dietsch
Executive Director



HEARINGS

The Hearings Section conducts administrative hearings to resolve factual and legal disputes in cases involving significant issues of law arising from unfair labor practice charges, representation matters, impasse resolution, and other issues under Ohio Revised Code 4117.

In addition, the Hearing Section supports the State Personnel Board of Review (SPBR) to hear cases pertaining to exempt employees in the classified service, non-exempt employees in the classified service who have not been organized, and non-exempt employees whose collective bargaining agreements allow an appeal to SPBR.

All cases are heard before an administrative law judge who submits recommended findings of fact and conclusions of law to the Board and report and recommendations to the SPBR.

In FY 2016, our administrative law judges conducted 28 prehearings, held 66 hearings, and prepared 209 report and recommendations.

HEARINGS & RECOMMENDATIONS

(SERB & SPBR)

28

PRE HEARINGS

66

RECORD HEARINGS

209

REPORTS &
RECOMMENDATIONS



INVESTIGATIONS

REPRESENTATION

The Representation Section is responsible for all representation matters filed with SERB. The Board determines appropriate bargaining units, conducts representation elections, and certifies exclusive bargaining representatives.

The section's Labor Relations Specialists review and process petitions for representation and decertification elections, requests for recognition, petitions for amendment or clarification of existing bargaining units, and rebate challenges.

The specialists work with the parties to a proposed election to reach a consent election agreement (where they agree to the description of the bargaining unit, proposed dates, times, and places or polling period of the election, and an employee eligibility date). The specialists schedule and conduct the secret ballot elections and tally the ballots.

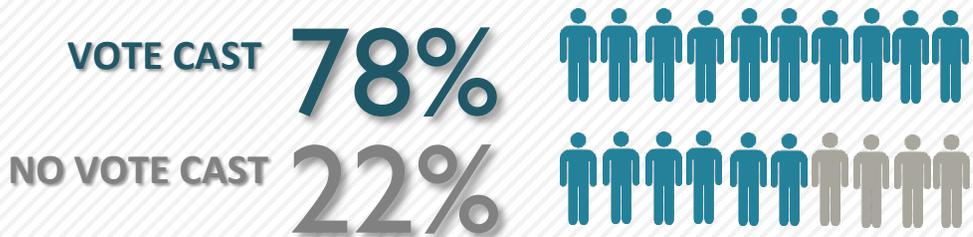
Finally, the section is responsible for preparing recommendations on representation cases for the Board's review and determination.

In FY 2016, 46 elections were held. Out of 1,126 eligible voters, 874 members (78%) voted in an election, a 6% increase in voter turnout over the previous year.

46

REPRESENTATION ELECTIONS HELD

ELECTION VOTER TURNOUT



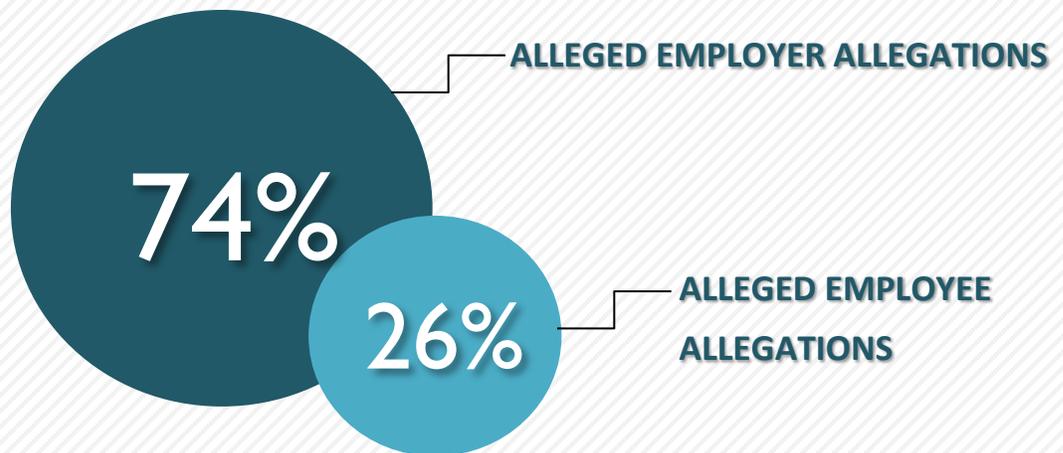
UNFAIR LABOR PRACTICES

The Unfair Labor Practice (ULP) Section is responsible for investigating all ULP charges, non-compliance complaints, or jurisdictional work disputes that are filed with SERB. ULP charges allege that an employer, an employee organization, or a public employee may have violated Ohio Revised Code § 4117.11, the unfair labor practice provision of the statute.

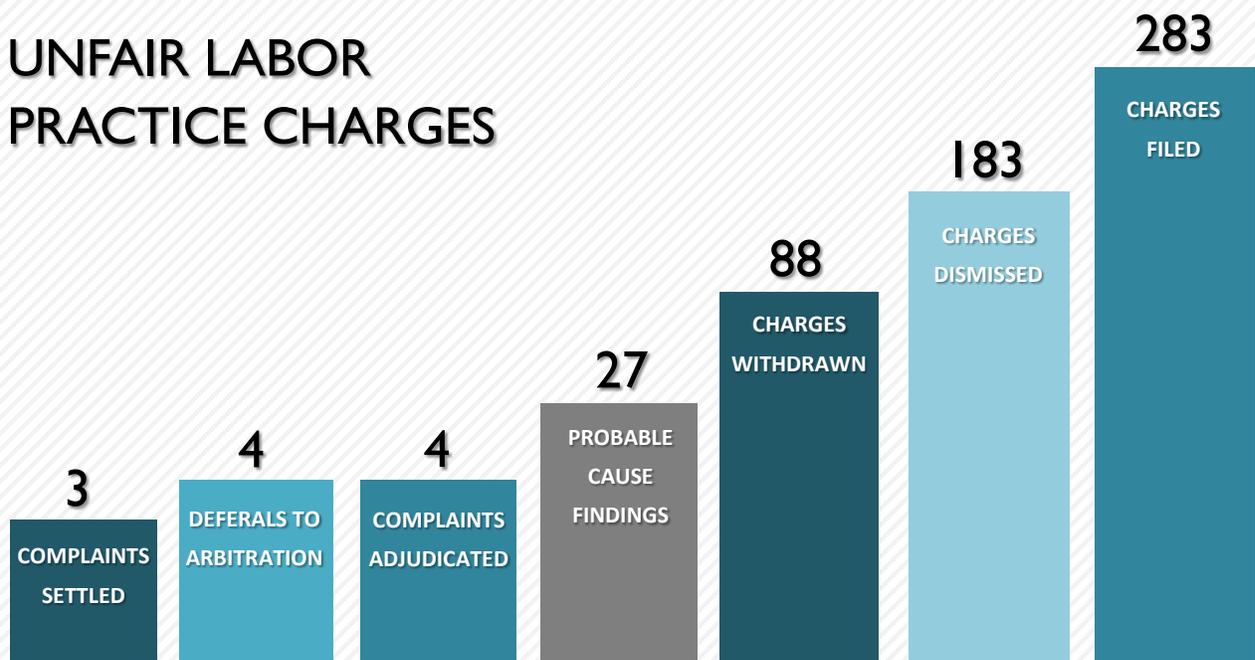
Investigations are conducted by Labor Relations Specialists, who are highly trained and skilled investigators. The Specialists review the parties' position statements and any supporting documentation, and may request additional information from the parties if necessary. After a thorough review of the information provided by the parties, the Specialists prepare an investigative report and recommendation, which is submitted to the Board for review and consideration. In some cases, the Specialists may mediate a ULP charge during the course of the investigation, in an attempt to resolve the parties' dispute.

In FY 2016, 283 ULP cases were filed with SERB. From that total, 210 cases alleged violations by public employers and 73 cases alleged violations by employee organizations or employees.

ALLEGATIONS OF O.R.C 4117.11 VIOLATIONS



UNFAIR LABOR PRACTICE CHARGES





RESEARCH & TRAINING

The Research & Training (R&T) section provides public employers and employee organizations with detailed information on wages, fringe benefits, health insurance, and employment practices.

R&T maintains SERB's Clearinghouse, a database that contains data from 3,343 current labor agreements (see chart on right for detailed breakdown) and 32,381 historical labor agreements.

R&T produces three annual reports: The Wage Settlement Report, Cost of Health Insurance Report, and SERB's Annual Report. R&T also produces a Job Title Benchmark Report, Benefits Report, Wage Increase Report, Insurance by Employer Report, and custom reports that are available upon request. In FY 2016, R&T responded to 488 report requests.

The Clearinghouse is updated annually by compiling current data from an annual report that employers are required to submit. It's also updated with every collective bargaining agreement that is executed and filed with SERB.

R&T provides training on SERB's rules and procedures through four annual conferences: SERB Academy (a comprehensive two-day conference in the Spring and Fall), SPBR Academy, and a Fact-Finding Conference. Last year, 606 labor professionals attended these training conferences.



SERB ACADEMY: For newcomers to public-sector collective bargaining, new managers or new employee organization officials, staff, and those who are or will be working in positions where they need to know how Ohio's law governs labor relations in the public sector.

FACT-FINDING: Conference on Ohio Public Sector Fact Finding that brings together as presenters and as participants, professionals who are part of the fact-finding process. It includes representatives of labor and management, neutrals who preside as fact-finders, staff of the State Employment Relations Board under whose jurisdiction the fact-finding is conducted, and attorneys whose practice includes representing the parties at fact-finding.

SPBR CONFERENCE: The conference provides attendees with an overview of basic civil service elements, as well as best practices for participating in administrative hearings and administering due process within the civil service laws.

NEGOTIATIONS TRAINING: The objective is to provide "practical negotiations" training to labor relations professionals new to the profession and give new perspective to experienced labor relations professional to facilitate solutions during collective bargaining. The training covers different negotiation strategies with emphasis on those strategies best suited to result in successful negotiations.



MEDIATION

SERB's mission to promote orderly and constructive relationships between public employers and their employees is carried out every day by our mediators. They travel throughout the state to provide a variety of services at no cost to employers and employee organizations. Our mediators assist the parties at every stage of their relationship, from facilitating contract negotiations to mediating unfair labor practice charges.

The Bureau of Mediation offers mediation services in four areas: collective bargaining, grievances, unfair labor practices, and representation. Last year, they conducted 49 collective bargaining mediations (with a 47% settlement rate) and 39 mediations involving unfair labor practices and representation matters (with a 74% settlement rate). Each successful settlement represents a substantial savings in time and costs to the parties.

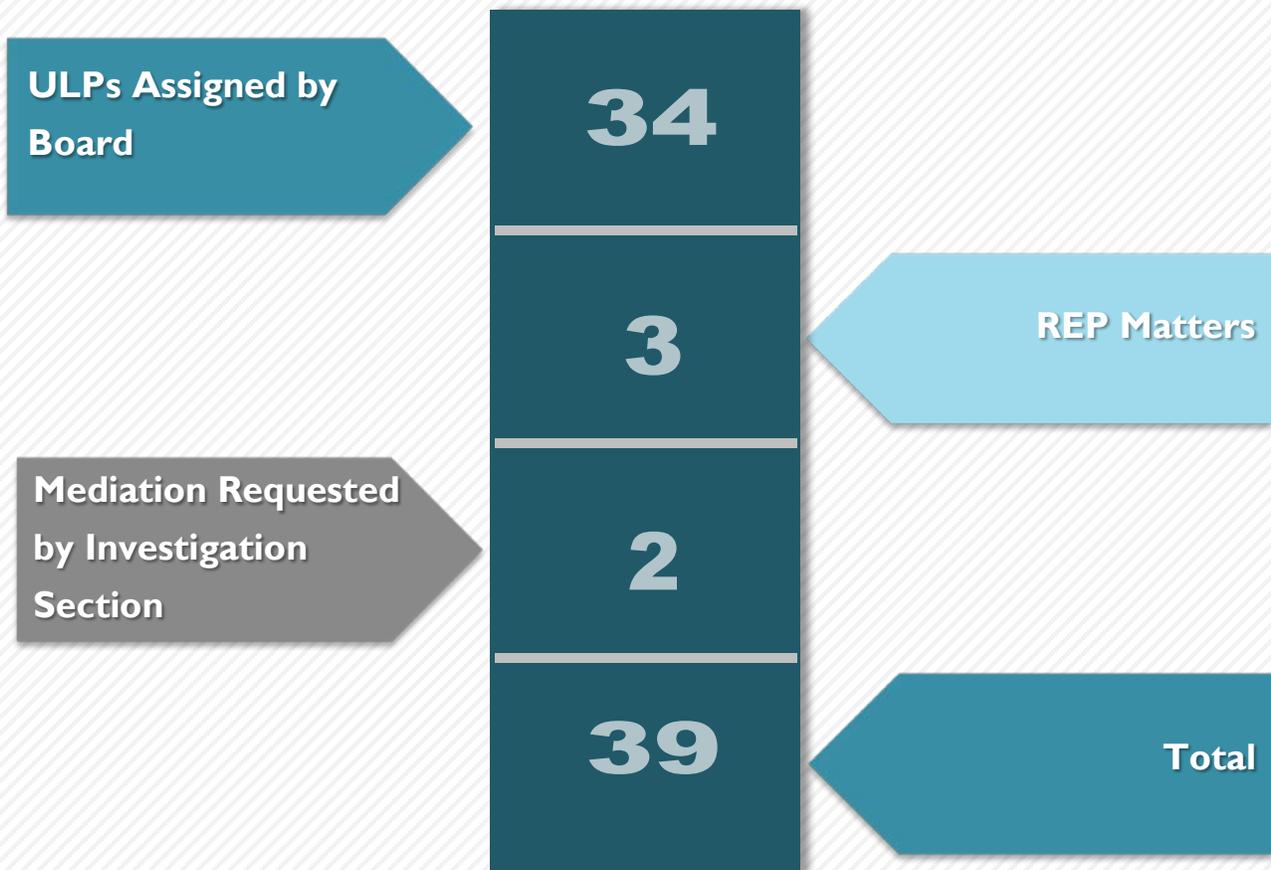
The Bureau of Mediation offers several training programs to help prepare parties for contract negotiations. Last year, they conducted six training sessions on practical negotiations for 171 participants. The mediators also provided 21 individual training sessions on interest-based bargaining (IBB) or modified-traditional bargaining (MTB). The mediators facilitated actual contract negotiations with the parties, when requested.

The Bureau of Mediation plays a key role in SERB's success. As our mediation services and training programs have expanded, we have seen a decrease in unfair labor practice filings.

LABOR CONTRACTS MEDIATED



UNFAIR LABOR PRACTICE AND REPRESENTATION MATTERS



Number of training sessions held

101



GENERAL COUNSEL

The Office of General Counsel serves as the Board’s in-house legal counsel. The General Counsel provides legal support to the Board, issues unfair labor practice complaints, assists in the preparation of Board opinions, and works with the Ohio Attorney General’s Office (SERB’s litigation counsel) in the preparation of cases pending before Ohio courts. The General Counsel also serves as the agency’s Chief Ethics Officer and provides annual ethics training for its employees and the Board.

The Office of General Counsel oversees the Investigations Section and the Bureau of Mediation. The General Counsel maintains SERB’s Roster of Neutrals and monitors the roster to ensure that standards of neutrality are maintained. The office assigns mediators and provides fact-finder and conciliator panels to parties.

In FY 2016, the office made 893 mediator appointments, 235 fact-finder appointments, and 35 conciliator appointments. A total of 84 fact-finding reports were issued, from which 48 reports were accepted (57%) and 36 were rejected (43%).

FACT-FINDING REPORTS ISSUED BY EMPLOYEE TYPE



RESULTS OF FACT-FINDING



International Union of Operating Engineers, Local 20, and the City of Hamilton. SERB 2015-001

In this matter, SERB determined that it had jurisdiction over Ohio public employees working in another state. The employees were, in fact, employed by the City of Hamilton, Ohio and were assigned to work at the City's Meldahl Hydroelectric Power Plant which is physically located in the State of Kentucky.

The Hearing Officer found that the employees, in question, are subject to the City's employment policies, receive their paychecks from the City of Hamilton, and participate in OPERS. The City acknowledged that it hired and employed the Meldahl plant workers. Lastly, the Hearing Officer found that the City maintained the right to assign work to and control these employees.

The question before the Board was whether it has jurisdiction over employees assigned to a work location outside of Ohio. Relying on R.C. 4117.01(B), the Board noted that the definition of public employer includes "...any political subdivision of the state located within the state, including without limitation, any municipal corporation with a population of at least five thousand..." There was no dispute that the City of Hamilton is located in the State of Ohio or that its population exceeded five thousand.

The employer argued that it pays Kentucky worker's compensation premiums for these employees, which is an indication of the employees status non-Ohio employee status. The Hearing Officer noted, the employer also paid worker's compensation premiums into the Ohio Workers' Compensation system and that under Ohio Law, any awards from a claim in another state are credited toward awards made under Ohio workers compensation.

SERB adopted the Hearing Officer's conclusion that there were no statutory or constitutional exclusions from SERB's jurisdiction for public employees employed by an Ohio public employer, but assigned to work in another state.

SERB V. Massillon City School District Board of Education, SERB 2015-002

The two issues in this case were the timeliness of the unfair labor practice charge filed by the union and whether the employer failed to bargain in good faith when it assigned additional duties to Guidance Counselors.

Regarding the timeliness issue, the Board found the Guidance Counselors were told on October 9, 2014 that they would be responsible for duties associated with Student 504 Plans. However, it wasn't until December 10, 2014 that they were actually assigned the duty to handle Student 504 plans. The unfair labor practice charge (ULP) was filed on February 23, 2015. The employer argued this was well past the 90 day limit for filing ULPs. The Guidance Counselors were notified of the new duties on October 9th, thus the last day for filing a ULP was January 7, 2015. The Board cited its standard for when the 90-day period for the filing of an unfair labor practice charge begins to run. Specifically, when the charging party has (1) knowledge of the practice and (2) when actual damage is caused by the practice. *In re City of Barberton*, SERB 88-008 (7-5-88). Here, the actual damage or event occurred when the Guidance Counselors were assigned and held responsible for the Student 504 plans which was December 9th. Accordingly, the ULP charge was timely filed.

The second issue is whether the employer failed to engage in good faith bargaining when it assigned these duties. Here the Board found that assignment of the duties is an inherently managerial task and that the impact of Student 504 Plans on Guidance Counselor's duties was *de minimis*. The Board noted that during the course of the year, each plan required no more than three hours of Guidance Counselor time and that each of the eight Guidance Counselors would be responsible for approximately four Student 504 plans. Guidance Counselors already performed tasks similar to Student 504 Plans in other areas. Thus, the Board found no violation of R.C. 4117.11(A)(1) or (A)(5) when the employer did not bargain with the union on these assignments. The Board relied on the balancing test set forth in the case of *In re SERB v. Youngstown City School Dist. Bd. Of Ed.* SERB 95-010 (6-30-95).

