State Employment Relations Board

Board Meeting Minutes
August 16, 2012

The State Employment Relations Board met on August 16, 2012, at 10:00 a.m., at 65 East State Street, 12th Floor, Columbus, Ohio. Present at the meeting were Chair W. Craig Zimpher, Vice Chair Robert F. Spada, and Board Member N. Eugene Brundige.

I. APPROVAL OF MINUTES FOR THE JULY 19, 2012 BOARD MEETING:

Vice Chair Spada moved that the Board approve the minutes for the July 19, 2012 Board meeting. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed

Denied

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

1. Case 2011-MED-09-1335 Chester Township Trustees and Chester Township Firefighters Association

On July 18, 2012, the Employer, Chester Township Trustees, filed a Motion to Stay the Fact Finding/Conciliation Process Pending Resolution on an Unfair Labor Practice Charge filed on July 17, 2012. The sum and substance of the unfair labor practice charge, filed by the employer, is the union was submitting to Fact Finding, a proposal on fair share fees which the employer believes to be impermissible under the law. Specifically, fair share fees, as alleged by the employer, are permissive subjects of bargaining and as a result may not be sent to a Fact Finder for his or her consideration.

Fact Finding took place on July 27, 2012 before E. William Lewis. The union submitted a brief in opposition to the employer’s motion, which was received by the State Employment Relations Board on July 27, 2012.

On August 9, 2012, the Employer, Chester Township Trustees, filed a Motion to Withdraw its Unfair Labor Charge filed against the Chester Township Firefighters Association. The basis of the motion is that the parties have reached an agreement which obviates the need for further action.

Board Member Brundige moved that the Board deny the Employer’s Motion to Stay the Fact-finding. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed

Denied

2. Case 2010-MED-08-0953 Fraternal Order of Police, Ohio Labor Council Inc. and Franklin County Board of Commissioners

On August 11, 2010, the Franklin County Board of Commissioners (“the Employer”) filed a Notice to Negotiate (Case No. 2010-MED-08-0953). On or about November 16, 2010, the Fraternal Order of Police, Ohio Labor Council, Inc. (“the Employee Organization”) filed a Request for Fact-Finding. On November 29, 2010, the State Employment Relations Board (“the Board”) appointed Frank Keenan as the fact finder in this matter.

On December 20, 2010, the Employer filed a Motion Requesting Clarification of Application of Ohio Revised Code § 4117.14(D)(1) to the issue of whether the bargaining unit of Court Security Officers is subject to the final offer settlement
procedures set forth in this statute as "members of a law enforcement security force that is established and maintained exclusively by a board of county commissioners and whose members are employed by that board." On January 3, 2011, the Employee Organization filed a Response to Employer's Motion Requesting Clarification of Application of Ohio Revised Code § 4117.14(D)(1). On October 28, 2011, Fact Finder Frank Keenan conducted a hearing in this matter. On June 29, 2012, Mr. Keenan issued his report and recommendations. On July 6, 2012, the Employee Organization filed a Certification of Fact-Finding Vote rejecting the report and recommendations. On July 6, 2012, the Employer filed its Certification of Fact Finding indicating that the Employer has taken no action with respect to the report and recommendations. On July 18, 2012, the Employee Organization filed a Motion Requesting a Panel of Conciliators. On July 19, 2012, the Employer filed a letter requesting that the Board defer the issuance of a panel of conciliators in this matter until it has ruled on the Employer's December 20, 2010 Motion Requesting Clarification of Application of Ohio Revised Code § 4117.14(D)(1).

A review of the information contained in the record indicates that additional information is needed in order to address the two pending motions concerning Ohio Revised Code §§ 4117.14(D)(1) and (G).

Vice Chair Spada moved that the Board order the parties to participate in an inquiry regarding the issue of whether the bargaining unit of Court Security Officers is subject to the final offer settlement procedures set forth in Ohio Revised Code §§ 4117.14(D)(1) and (G) as "members of a law enforcement security force that is established and maintained exclusively by a board of county commissioners and whose members are employed by that board," and for all relevant issues. The date and time of the inquiry and specific inquiry procedures to be addressed in a procedural order issued by the Office of General Counsel of the State Employment Relations Board, pursuant to Ohio Administrative Code Rule 4117-3-02(D). Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes

Affirmed X Denied

III. REPRESENTATION MATTERS AT ISSUE:


4. Case 2012-REP-06-0062 Ohio Council 8, American Federation of State, County, and Municipal Employees, AFL-CIO and Knox County Board of County Commissioners (August 28 – September 10, 2012)
5. Case 2012-REP-06-0063 Wright State University Chapter of the American Association of University Professors and Wright State University
(September 18 – October 1, 2012)

All parties have executed and filed the appropriate Consent Election Agreements seeking mail-ballot elections.

Board Member Brundige moved that the Board approve the Consent Election Agreements and direct mail-ballot elections during the polling periods indicated. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed  X Denied

6. Case 2012-REP-02-0026 Butler County Child Support Enforcement Union and Butler County Commissioners

The Employee Organization filed a Request for Recognition. The Employer responded by filing objections and a Petition for Representation Election. The Employer has raised questions of fact regarding the actual job duties performed by three classifications which comprise approximately one-third of the proposed bargaining unit. Subsequent attempts to resolve the dispute have been unsuccessful.

Vice Chair Spada moved that the Board order the parties to participate in an inquiry regarding the actual job duties performed by Attorney Hearing Officer, Legal Liaison, and Investigator/Customer Service Representatives. The date and time of the inquiry and the inquiry procedures will be addressed in a procedural order issued by the Office of the General Counsel of the State Employment Relations Board. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed  X Denied

7. Case 2012-REP-03-0033 Ohio Patrolmen's Benevolent Association and Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO and Tri-County Regional Jail

- There were 28 valid ballots cast
- There were 0 void ballots
- There were 0 challenged ballots
- No Representative received 0 votes
- Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO received 12 votes
- Ohio Patrolmen’s Benevolent Association received 16 votes and prevailed in this election.
8. Case 2012-REP-02-0023  
Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and Crooksville Exempted Village School District Board of Education

- There were 33 valid ballots cast
- There was 1 void ballot
- There were 0 challenged ballots
- No Representative received 14 votes
- Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO received 19 votes and prevailed in this election.

Board Member Brundige moved that the Board certify the election results and certify each prevailing employee organization as the exclusive representative of all employees in the relevant bargaining unit. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes  SPADA: Yes  ZIMPHER: Yes
Affirmed  X  SPADA: Yes  ZIMPHER: Yes
Denied  

9. Cases 2012-REP-03-0036  
Utility Workers Union of America, AFL/CIO and Canton Township Board of Trustees, Stark County

The Employee Organization filed a Petition for Representation Election in Case No. 2012-REP-03-0036. The Employer responded by filing objections. Several conference calls were conducted and the objections were resolved. In response to the Employer's willingness to voluntarily recognize, the Employee Organization has filed an amended Request for Recognition in Case No. 2012-REP-06-0068. The substantial evidence is sufficient. The Employer has complied with the posting requirements.

Vice Chair Spada moved that the Board, in Case No. 2012-REP-06-0068, certify the Employee Organization as the exclusive representative of all employees in the bargaining unit subject to the amended Request for Recognition, and dismiss the Petition for Representation Election as moot in Case No. 2012-REP-03-0036. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes  SPADA: Yes  ZIMPHER: Yes
Affirmed  X  SPADA: Yes  ZIMPHER: Yes
Denied  

10. Case 2012-REP-07-0075  
Miami Valley Professional Firefighters IAFF and Miami Valley Fire District

The Employee Organization filed an amended Request for Recognition. The substantial evidence is sufficient, and no objections have been filed. The Employer has complied with the posting requirements.
Board Member Brundige moved that the Board certify the Employee Organization as the exclusive representative of all employees in the relevant bargaining unit. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes  SPADA: Yes  ZIMPHER: Yes

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:


On January 30, 2012, SERB issued a Deferral to Arbitration in SERB v. Nordonia Hills City School District Board of Education. Initially, SERB had found probable cause to believe that Respondent, Nordonia Hills City School District Board of Education (the BOE), had committed or was committing an Unfair Labor Practice (ULP). The Board then issued a Complaint and the matter was referred to an Administrative Law Judge for hearing.

However, on December 21, 2011, the BOE filed a motion to stay SERB's proceedings; pending the outcome of the parties' scheduled arbitration that was to address the same issues contained in the Complaint, namely the subcontracting and privatizing of the BOE's transportation services. SERB believed (correctly) that the Arbitrator would determine whether the alleged subcontracting and privatization violated the parties' collective bargaining agreement (CBA).

SERB indicated, in its Deferral to Arbitration, that contract interpretation and application appeared to lie at the heart of both the ULP Charge and the companion grievance dispute. In its Deferral, SERB also expressly stated that any motion to review the Arbitrator's Award must be filed with the Board no later than 30 days after the Award was issued or the Board would assume that the matter had been resolved and would commensurately dismiss the pertinent ULP Charge and Complaint.

On June 15, 2012, Arbitrator Felicia Bernardini issued an Opinion and Award that squarely and extensively addressed the issue of whether the BOE's actions violated the pertinent CBA between the BOE and the Ohio Association of Public School Employees/AFSCME Local 4 AFL-CIO and its Local 246 (OAPSE), the Intervenor herein. Arbitrator Bernardini determined that the BOE's actions did not violate the provisions of the CBA because the employer – the BOE – neither expressly nor by strong implication limited its right to subcontract. Thus, Arbitrator Bernardino denied the grievance.


In its motion for review, OAPSE argues that the pertinent Opinion and Award did not address the issue of whether the BOE committed a statutory violation when it subcontracted and privatized its transportation services. Thus, OAPSE requests that the Board review the Opinion and Award and take such action as may be necessary to
resolve any residual statutory issues in this matter. OAPSE also asks the Board’s indulgence regarding OAPSE’s failure to file within the mandated 30 day time frame established by the Board; based on OAPSE’s counsel being out of state on a family vacation at the time Arbitrator Bernardini’s Opinion and Award was issued.

Conversely, the BOE asserts, in its brief in opposition, that Arbitrator Bernardini issued her Opinion and Award on June 15, 2012 and that it appears that OAPSE’s counsel’s office also received same on June 15, 2012. However, the BOE notes, OAPSE did not file its motion for review until July 20, 2012, past the 30 day deadline expressly established by the Board. Thus, the BOE argues, OAPSE’s motion for review should be denied as untimely filed.

Based on a review of the pertinent pleadings in this matter, including a review of the Board’s Deferral to Arbitration, Arbitrator Bernardini’s Opinion and Award, OAPSE’s motion for review, and the BOE’s brief in opposition, it appears that Arbitrator Bernardini clearly addressed the sum and substance of OAPSE’s issues, which were, after all, the BOE’s subcontracting and privatizing of its transportation services.

Therefore, based on the fact that the request for review was clearly untimely, and the substance of the dispute has been determined, there is no reason for the Board to review this matter further.

Vice Chair Spada moved that the Board deny Intervenor, OAPSE’s, motion for review of arbitration award as untimely filed and dismiss the pertinent Unfair Labor Practice Charge and Complaint in Case No. 2011-ULP-09-0237. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vice Chair Spada moved that the Board deny Intervenor, OAPSE’s, motion for review of arbitration award as untimely filed and dismiss the pertinent Unfair Labor Practice Charge and Complaint in Case No. 2011-ULP-09-0237. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes

Affirmed X Denied


On September 26, 2011, the Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP") filed a Petition for Representation Election, seeking to represent a bargaining unit of non-command employees of the Lucas County Sheriff ("the Employer") who are currently represented by United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW"). (Case No. 2011-REP-09-0088) On October 4, 2011, FOP filed an amended Petition for Representation Election. On December 15, 2011, the State Employment Relations Board ("SERB" or "the Board") dismissed the original petition due to improper service and the amended petition as untimely filed by one day. FOP appealed Case No. 2011-REP-09-0088 to the Franklin County Court of Common Pleas (Case No. 12CV-01-112). The case was assigned to the Honorable Richard A. Frye.

On January 3, 2012, FOP filed a new Petition for Representation Election (Case No. 2012-REP-01-0003), seeking to represent the same bargaining unit of non-command employees as listed in Case No. 2011-REP-09-0088. On January 4, 2012, UAW timely filed objections to FOP's January 3, 2012 Petition for Representation Election, stating that the current petition is barred because UAW and the Employer have a collective
bargaining agreement as a result of a conciliation award issued on December 30, 2011.

On February 9, 2012, SERB directed the parties to an oral argument before the Board in Case No. 2012-REP-01-0003. On April 5, 2012, the Board directed Case No. 2012-REP-01-0003 to an expedited hearing before an administrative law judge. On July 27, 2012, the administrative law judge issued a Recommended Determination, recommending that the Board dismiss FOP's January 3, 2012 Petition for Representation Election. FOP's request for an extension of time to file exceptions was granted on August 6, 2012. Exceptions are due no later than August 17, 2012.

On or about July 9, 2012, Judge Frye issued a Decision and Final Judgment in Case No. 2011-REP-09-0088 wherein he vacated SERB's decision and remanded the case to SERB for "a full development of the factual record, and for a determination of the legal questions presented once findings of relevant and material facts have been made." Specifically, the court instructed SERB to take the following actions: (1) determine whether the Board followed the time computation procedures set forth in Ohio Administrative Code Rule 4117-1-03; (2) apply those procedures to the facts in the case or, in the alternative, make an explicit ruling in light of Ohio Administrative Code Rule 4117-1-03; (3) determine whether the allegedly day-late service relates back to the original attempt at service, given that FOP apparently used factual information the UAW was required to file annually with SERB that appeared to have been inaccurate and outdated; and (4) evaluate the impact that outdated or materially incomplete information had on the process followed, specifically, whether FOP's use of the outdated information was in substantial compliance with notice requirements otherwise applicable before SERB.

On August 8, 2012, the United Automobile, Aerospace and Agricultural Implement Workers of America filed an appeal with the 10th District Court of Appeals.

Board Member Brundige moved that the Board postpone the matter until all legal matters are resolved. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes

V. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:


The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1), (3), (7), and (8) by interfering, coercing and restraining employees in the exercise of their guaranteed rights and causing or attempting to cause the Union to commit an unfair labor practice.

Board Member Brundige moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by Charged Party. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion.
Board Member Brundige shared the following rationale for his recommendation:

I believe the investigator erred by basing her recommendation on settlement discussions between the parties. In this case the source of funding was removed because the funder was unsatisfied by the services performed by the charging party. The employer made a good faith effort to work out a method by which the charging party might be able to find another position within the College. When a settlement to a pending labor dispute is worked out there must be a "quid pro quo" for both sides. The charging party would have continued to be paid and have an opportunity to find another position. In return, the employer wanted to avoid the inconvenience of processing a grievance. These types of agreements are explored all the time. To find probable cause in this case would be to deliver a message that would have a chilling effect on such discussions and positive labor relations. The fact that the parties were unable to reach agreement does not create an unfair labor practice. Once the investigator found that the charging party was not involved in protected activity, it should have been noted there is no prima facie case. Any remedy for charging party lies in the grievance process.

Chair Zimpher called for the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed X Denied

2. Case 2012-ULP-05-0105 Eric Fowler v. Cuyahoga Metropolitan Housing Authority

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1), (3), (4), and (8) and (B)(1) and (2) by interfering, discriminating, harassing, retaliating and terminating him for the exercise of his guaranteed rights.

Information gathered during the investigation revealed Charging Party is a public employee, and was harmed when he was terminated, but Charging Party did not provide any information to show he was engaged in any protected activity prior to his termination. Charging Party has failed to establish a prima facie case of discrimination. Charging Party did not provide sufficient information to support the (A)(1), (4) and (8) allegations. The B)(1) and (2) are not appropriate to be filed against the Employer.

Vice Chair Spada moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by Charged Party. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed X Denied

3. Case 2012-ULP-01-0001 Union Township Board of Trustees, Clermont County v. Union Township Professional Firefighters, IAFF Local 3412

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (B)(1), (3), and (5) by refusing to execute a collective bargaining agreement.
Case 2012-ULP-01-0007  Union Township Professional Fire Fighters, IAFF Local 3412 v. Union Township Board of Trustees, Clermont County

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1), (3), and (5) by unilaterally making changes and modifying articles in the negotiated collective bargaining agreement.

On February 23, 2012, the Board ordered the parties to pre-determination mediation. On March 20, 2012, the parties met for mediation but could not reach an agreement. Since the parties have been unable to reach an agreement on the implementation of their contract, it appears the matters would be best addressed through an expedited hearing.

Board Member Brundige moved that the Board, in Case No. 2012-ULP-01-0001, find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint, and refer the matter to an expedited hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(B)(1) and (3), but not (5) by failing to execute the collective bargaining agreement; and in Case No. 2012-ULP-01-0007, find probable cause to believe an unfair labor practice has been committed, consolidate the case with Case No. 2012-ULP-01-0001, authorize the issuance of a complaint, and refer the matter to an expedited hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(1) and (5), but not (3), by failing to execute the collective bargaining agreement. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed X Denied 


The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1) and (5) by interfering with employees' rights by promoting bargaining-unit employees to nonbargaining-unit positions.

Information gathered during the investigation revealed Charged Party's action of promoting bargaining-unit employees does not amount to the reassignment of bargaining-unit work.

Vice Chair Spada moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by Charged Party. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed X Denied 

5. Case 2012-ULP-05-0109 Municipal Foremen & Laborers’ Union Local No. 1099 v. City of Cleveland - Department of Public Works

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1) and (5) by unilaterally merging two bargaining-unit positions and failing to negotiate over terms and conditions of employment.

Information gathered during the investigation revealed the issues raised in the charge are purely contractual with no evidence of a statutory violation. A grievance is currently pending arbitration. The matter appears to be best addressed through the parties’ final and binding grievance-arbitration procedure.

Board Member Brundige moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by Charged Party. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed X Denied

6. Case 2012-ULP-06-0151 Chris Doolin v. Clark County Sheriff's Office

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(3), (4), and (6) by treating him differently due to his engaging in protected activity and threatening to transfer him if he filed a grievance.

Information gathered during the investigation revealed the issues alleged in the charge are untimely filed. Charging Party did not provide sufficient information or documentation to toll the statute of limitations.

Vice Chair Spada moved that the Board dismiss the charge with prejudice as untimely filed. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed X Denied


The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (B)(6) by failing to fairly represent them.

Information gathered during the investigation revealed the issues addressed in the charge have been previously remedied through Charged Party’s internal dispute resolution process.
Board Member Brundige moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by Charged Parties. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes

Affirmed X Denied

8. Case 2010-ULP-02-0052 Fraternal Order of Police, Lodge 8 v. City of Cleveland

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1), (5), and (7) by attempting to circumvent bargaining by unilaterally modifying staffing levels and attempting to interfere with, coerce or restrain employees in the exercise of guaranteed rights.

Information gathered during the investigation revealed on April 22, 2010, the Board deferred the matter to the parties’ grievance-arbitration procedure. On March 13, 2011, an arbitration award was issued. Neither party filed a Motion for Review of the award. The thirty-day time limit for filing such motions has expired. It appears the matter has been resolved.

Vice Chair Spada moved that the Board dismiss the charge with prejudice as having been resolved between the parties pursuant to the grievance-arbitration process. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes

Affirmed X Denied


The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1), (2), and (5) by unilaterally canceling school for state basketball semifinals and scheduling the make-up day for Saturday, April 10, 2010, then demanding the Union President explain why he involved the Union Field Representative in the matter.

Information gathered during the investigation revealed on July 8, 2010, the Board deferred the charge to the parties' grievance-arbitration procedure. On April 20, 2011, an arbitration award was issued. Neither party filed a Motion for Review of the arbitration award. The thirty-day time limit for filing such motions has expired. It appears the matter has been resolved.

Board Member Brundige moved that the Board dismiss the charge with prejudice as having been resolved between the parties pursuant to the grievance-arbitration process. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1) and (3) by intimidating and/or coercing him in retaliation for his protected activities.

Information gathered during the investigation revealed Charged Party has the right to have the questions answered without the employee's representative advising them not to answer the questions. Mr. LaGuardia has also failed to establish a prima facie case of discrimination because he did not provide any information to show he was engaged in any protected activity as defined by Chapter 4117 prior to his contract termination. The matter appears to be best addressed through the parties' final and binding grievance-arbitration procedure.

Vice Chair Spada moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed by Charged Party. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed X Denied


The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1) by restraining and/or coercing its members in the exercise of their guaranteed rights.

Information gathered during the investigation revealed the statements made by Deputy Chief Haueter regarding the grievances to both Deputy Price, who is not a Union official, and the newspaper, may have a chilling effect on the members by making them reluctant to file grievances for fear of retaliation or reprisal. Charged Party did not provide a persuasive rebuttal to show that the Deputy Chief's statements were not anti-union animus. The matter appears to be best addressed through a hearing.

Board Member Brundige moved that the Board find probable cause to believe an unfair labor practice has been committed, order the parties immediately to ULP mediation for a period not to exceed 45 days, authorize the assigned mediator, after consultation with the parties, to issue and e-mail a mediator's procedural order, including date, time, and location of mediation within the time period designated. If the mediation is unsuccessful, authorize the issuance of a complaint and refer the matter to hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(A)(1) by restraining and/or coercing Charging Party's members for the exercise of their guaranteed rights. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.
The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1) and (5) by unilaterally changing the terms and conditions of employment for its members.

The investigation revealed that the collective bargaining agreement between the parties includes a grievance procedure culminating in final and binding arbitration. A grievance regarding the alleged unilateral change has been filed and is proceeding through the grievance procedure. While interpreting contract provisions such as Article 27 - Staffing, the arbitrator will determine whether the City has complied with the provisions outlined in this Article. Contract interpretation and application appear to lie at the heart of both the unfair labor practice charge and grievance dispute.

On June 21, 2012, the Board deferred Case No. 2012-MED-04-0477 to arbitration to resolve the same issue.

Vice Chair Spada moved that the Board coordinate this case with Case No. 2012-MED-04-0477, and sua sponte defer the matter for resolution through the grievance-arbitration procedure and retain jurisdiction in accordance with In re Upper Arlington Ed Assn, SERB 92-010 (6-30-92). Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.


The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (B)(3) by creating a website which contains the parties' bargaining proposals, and is an attempt to "smear and discredit" the District in the eyes of the public and its employees.

Information gathered during the investigation revealed Charged Party may have violated the statute when it established a website for the purpose of countering the information on Charging Party's website, published the parties' bargaining proposals, and asked "people" to submit questions regarding the content of the website. It appears Charged Party, through its website, may have attempted to influence Charging Party to revise its bargaining proposals.

Board Member Brundige moved that the Board find probable cause to believe an unfair labor practice has been committed, coordinate the case with Case No. 2012-ULP-04-0081, authorize the issuance of a complaint, refer the matter to an expedited hearing to determine if Charged Party violated Ohio Revised Code § 4117.11(B)(3) by establishing a website for the purpose of countering Charging Party's website, publishing the parties' bargaining proposals, and asking "people" to submit questions regarding the content of the website, and direct the parties to expedited mediation not to exceed thirty days to run concurrently with the expedited processing of the charge and complaint. Vice Chair
Spada seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed X Denied

14. Case 2012-ULP-06-0156 Talawanda Classified Staff Association and Talawanda Educators’ Association, OEA/NEA v. Talawanda School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1) and (5).

Chair Zimpher moved that the Board dismiss the charge with prejudice for failure of the Charging Parties to pursue the matter. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion.

Chair Zimpher shared the following rationale for his recommendation:

After review of relevant material in the above ULP, I cannot accept the Supplemental Recommendation as offered on August 13, 2012. Charging Parties were provided ample opportunity to provide a position statement in support of their position. As of August 16, 2012 such has not been received. Therefore, I recommend that the Board adopt the recommendation as originally submitted.

Chair Zimpher called for the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed X Denied

15. Case 2012-ULP-07-0179 John W. Marks, Jr. v. Ohio Patrolmen’s Benevolent Association

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 12-ULP-07-0179.

Information gathered during the investigation revealed the unfair labor practice charge was filed on July 11, 2012. Charging Party was notified in writing on July 12, 2012 that a dismissal recommendation would be made to the Board unless information and/or allegations were provided to toll the statute of limitations. The unfair labor practice charge does not appear to be timely filed. Using the March 19, 2012 date referenced in the charge, the charge should have been filed on or before June 17, 2012. Charging Party was afforded until July 20, 2012 to provide the information in the form of an amended unfair labor practice charge. To date, Charging Party has failed to provide any information or documentation to toll the statute of limitations.

Board Member Brundige moved that the Board dismiss the charge with prejudice as untimely filed. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed X Denied
16. Case 2012-ULP-05-0097  
Westerville Education Association, OEA/NEA v. Westerville City School District Board of Education

The unfair labor practice charge alleged that Charged Party violated Ohio Revised Code § 4117.11 (A)(1) and (5).

On August 3, 2012, the parties filed a Joint Motion to Hold in Abeyance the above referenced charge through September 4, 2012, to allow the parties the opportunity to explore potential settlement of this dispute. In the event the matter is not resolved by September 4, 2012, Charged Party’s position statement shall be submitted to SERB on or before September 10, 2012.

Vice Chair Spada moved that the Board grant the motion to hold the charge in abeyance through September 4, 2012. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes  SPADA: Yes  ZIMPHER: Yes

Affirmed  X  Denied

17. Case 2010-ULP-11-0437  
Massillon Small Group Teachers Association v. Massillon City School District Board of Education

18. Case 2010-ULP-11-0438  
Massillon Education Association, OEA/NEA v. Massillon City School District Board of Education

19. Case 2011-ULP-10-0257  
Revere Education Association, OEA/NEA v. Revere Local School District Board of Education

20. Case 2012-ULP-04-0075  
Communications Workers of America, AFL-CIO, Local 4319 v. University of Toledo

21. Case 2012-ULP-06-0144  
State Council of Professional Educators, OEA/NEA v. State of Ohio Department of Rehabilitation and Correction - Ohio Reformatory for Women

22. Case 2012-ULP-06-0162  
Cleveland Teachers Union, AFT Local 279, AFL-CIO v. Cleveland Metropolitan School District Board of Education

Board Member Brundige moved that the Board construe the settlement agreement and requests to withdraw as motions to withdraw, and grant the motions with prejudice. Vice Chair Spada seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes  SPADA: Yes  ZIMPHER: Yes

Affirmed  X  Denied
VI. TABLED AND OTHER MATTERS:

There are no tabled matters.

VII. ADMINISTRATIVE MATTERS:

Donald Collins reported on Administrative Matters:

SERB REGULAR SCHEDULED MEETING DATES:
- Reminder of the next regular scheduled meeting date of the State Employment Relations Board:
  - September 13, 2012
  - October 04, 2012
  - October 25, 2012
  - November 15, 2012
  - December 13, 2012

SYSTEM UPDATES:
- SERB Annual Report 2012: The report was hand delivered by Chairman Zimpher to Governor Kasich's office and the Legislative leadership offices on August 1, 2012. The report is on the Website.
- Annual Report on the Cost of Health Insurance in Ohio's Public Sector: Report was published August 1, 2012 and is on the Website. Thank you letters were sent to each of the survey participants/respondents for their participation along with a copy of the final report.
- Employee Organization Compliance tracking of requirement to annually file certain reports: To date, all Employee Organizations previously out of compliance have filed their annual reports.
- Audit Update: SFY 2011-12 audit of the State Employment Relations Board has been completed. The audit began on Tuesday, May 1, 2012. Anticipating the Exit Conference will be scheduled soon.
- Performance Management Evaluations data collection: Submitted to Phyllis Gorman PhD, Ohio Department of Administrative Services, Statewide Performance Management, Human Resources Division, Workforce Administration, the FY2012 (Employee Performance Evaluations), on July 16, 2012 per the deadline. The following SERB Employee Performance Evaluations were submitted:
  - 24 Performance Evaluations were due for the period (by 7/16/2012)
  - 20 Performance Evaluations were completed on or before the deadline (7/16/2012)
  - 4 Performance Evaluations were completed past the deadline (7/30/2012)
- Program Administrator 1 position: Shane Trace was the successful candidate for the position of Program Administrator 1 which was open as a result of the pending retirement of Barb Kelly, Business Office. Barb Kelly Officially retires on September 07, 2012. His official start date was August 13, 2012. Congratulations to Shane.
- FY14/15 Biennial Budget: Attempting to finalize the budget as quickly as possible. We have made great progress and the budget framework is almost complete. The budget will be submitted on time or ahead of schedule since we got an early start and a jump on the process. Elaine, Erin and I are working on this project.
- Procedures Committee is continuing to meet once a week. We are whittling down the list. To date 74 procedures covering both SERB and SPBR have been finalized. Twelve (12) are remaining to be completed. As procedures are produced and approved, they are placed in a binder.
FORWARD LOOK FOR FUTURE TRAINING:

- **Fact Finders Conference** – Held on August 10, 2012. A total of 186 individuals attended the conference. Participant surveys indicate the conference was well received.
- **Upcoming conferences** - SERB ACADEMYs for December 6 and 7, 2012 and March 7 and 8, 2013. SPBR Academy is proposed for the spring 2013.

Congratulations and best wishes to Barb Kelly as she prepares to embark on her well earned retirement beginning September 07, 2012! Barb Kelly has served SERB well in a variety of capacities since 1998, 14 years of dedicated service. Most recently Barb provided support for the Business Office and backup for the Clerk’s Office. She has done a great job and will certainly be missed. In addition to her “real job”, if it were not for Barb, SERB would likely always be low on supplies for the staff use, she has stayed on top of making sure that the lunch room was equipped with necessary supplies such as dish soap, paper towels, paper plates, cups, forks, spoons, knives, etc. She made sure the staff was well taken care of in our work-a-day world. In addition, Barb coordinated the Operation Food Campaign for SERB for many years and always did a stellar job. Shane has some big shoes to fill!

IX. **ADJOURNMENT:**

Vice Chair Spada moved that the Board adjourn the meeting. Board Member Brundige seconded the motion. Chair Zimpher called for the vote.

Vote: BRUNDIGE: Yes SPADA: Yes ZIMPHER: Yes
Affirmed X Denied

The Board meeting adjourned at 10:37 a.m.

/s/ W. Craig Zimpher, Chair