

**State Employment
Relations Board**

ANNUAL REPORT 2022





MISSION

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

CULTURE

SERB embraces a culture based on our core values of Integrity, Teamwork, Greatness and Sharing. These values define who we are and what we do, as individuals and as an agency.

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 improvements; and

Sharing and celebrating in each other's successes and viewing challenges as opportunities.

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 24. 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; 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

We present the State Employment Relations Board's (SERB) Fiscal Year 2022 Annual Report. The attached Report details activities, productivity, and ongoing programs for SERB. As the Board responsible for administering Ohio's public sector collective bargaining system, and adjudicating matters arising therefrom, we are pleased to report that SERB has, in every respect, during both the COVID restrictions and more normalized work environment, met its obligations and exceeded in our production standards.

This past year, however, has not passed without some change in SERB's composition. Our long time and much respected colleague, Mr. J. Richard Lumpe, passed away earlier this year; his wisdom and common sense are missed by all of his SERB colleagues. Also, Ms. Christine Dietsch, the SERB Executive Director for the past eleven years, retired to enjoy time with daughters and grandkids; Chris's diligence and devotion to our mission were key to our successes. Effective June 20, 2022, Governor DeWine appointed Mr. Robert Walter to fill the SERB vacancy; Bob brings invaluable labor/management experience to our organization. Similarly, Ms. Mona Reed joined SERB as our Executive Director.

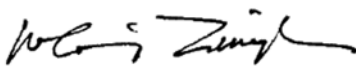
Promoting "orderly and constructive" relationships in Ohio's public labor/management sector has continued to be our primary focus. We again commend our associates for their commitment to serving Ohio.

Notwithstanding the health crisis and the challenges it created to our work and processes, our efforts continued in an almost uninterrupted manner. The following pages reveal the level of activities performed by each of our Sections. In excess of 1,700 matters were filed during the year; 1,258 collective bargaining agreements were received, reviewed, and incorporated into our Clearinghouse database. Our Research and Training associates processed 842 research reports for various labor or management groups. SERB mediators conducted and participated in sixty contract or other mediatory assignments. And, the Representation and Investigations Section continued to improve on its already efficient processing of unfair labor matters, bettering our standard goal of 120 days by at least thirty days. The Board successfully conducted all of its regularly scheduled meetings and adjudicated 257 unfair labor practice charges and 223 union election or representation issues.

One of SERB's primary ways of promoting orderly and constructive relations in the public labor/management sector is by providing training and educational opportunities for stakeholders. Due to the restrictions created by COVID, "in person" seminars were necessarily postponed. However, post-COVID we have renewed our programs and have welcomed hundreds of participants to them.

As we noted in last year's report, Ohio's collective bargaining process has matured, and practitioners in both labor and management have familiarized themselves with the rules, regulations, and processes that have governed since 1984. The result of thirty-eight years of our current collective bargaining system is reflected in the decline of public sector strikes from sixty in the year prior to the law's enactment to zero during the last year. We pledge to continue our efforts of achieving fair, impartial, and neutral adjudication and efficient and effective management of our public resources; we express our appreciation to all stakeholders who share our common mission. Thank you.

Sincerely,



W. Craig Zimpher
Chair



Frederick E. Mills
Vice Chair



Robert J. Walter
Board Member



W. Craig Zimpher was appointed to the Board by Governor John R. Kasich, as Chair, effective January 21, 2011. He was reappointed for a second term effective October 7, 2016.

Prior to his appointment, he had been Vice President for Government Affairs at Nationwide Insurance. Chair 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 Vice President of Ohio Operations for Gates, McDonald and Company and Assistant Dean of Students at Ohio Wesleyan University.

Chair 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.

W. CRAIG ZIMPHER



Frederick E. Mills, Esq. was appointed to the Board by Governor Mike DeWine effective January 17, 2020. He was appointed for a full term effective October 26, 2020.

Prior to his appointment, Board Member Mills retired from the law firm of Vorys, Sater, Seymour, and Pease, LLP where he served as the Senior Managing Partner of Vorys Advisors and the former leader of the firm's government relations group. He provided counsel on legislative matters and governmental relations to Ohio, regional, national, and international clients. He represented clients in many industries, including the retail, restaurant, technology, telecommunications, chemical and energy sectors in front of the General Assembly, local jurisdictions and administrative agencies. He received several awards including *The Best Lawyers in America*, Government Relations Practice (2012-2017), *Columbus CEO*, Top Lawyers in Columbus, (2010-2014), and he is Martindale-Hubbell AV Peer Review Rated.

In his early professional career, he served in various executive roles in State government including as Deputy Assistant to Governor James A. Rhodes; Ohio Superintendent of Banks; General Counsel and Executive Secretary of the Ohio House of Representatives, serving under former Speaker Jo Ann Davidson. Board Member Mills also served as House Chief of Staff, Majority Counsel and House Clerk. In both his public and private capacities, he has been engaged in the negotiation and resolution of many public policy issues in the State of Ohio.

He received his B.S. from The Ohio State University and a J.D. from Capital University Law School.

FREDERICK E. MILLS



Robert J. Walter was appointed to the Board by Governor Mike DeWine effective June 20, 2022.

Prior to his appointment, Board Member Walter was a partner in the law firm of Weston Hurd LLP focusing on labor and employment, entity formation, complex acquisitions, financings, and commercial and residential real estate purchases, sales, and leases. He served as general counsel to the Ohio AFL-CIO, the Ohio Association of Public School Employees/AFSCME Local 4, AFL-CIO, and several trade associations including the Ohio Restaurant Association. Board Member Walter regularly represented clients in labor and employment matters, handling union grievances and arbitrations, unfair labor practice charges, discrimination charges, and served as chief negotiator for collective bargaining negotiations. He appeared in Common Pleas Courts and Courts of Appeals throughout the state and in the Supreme Court of Ohio. He was an Assistant Attorney General for the State of Ohio assigned to Administrative Agencies and Special Litigation Sections. He represented State agencies before the State Personnel Board of Review. He was Special Counsel and Hearing Officer for the Office of the Attorney General for bingo licenses. He was a Hearing Officer for the Ohio Department of Commerce. He served at various times as President, Vice-President, and Member of the Upper Arlington Civil Service Commission. He was Past President of the Lawyers Club of Columbus. His court admissions include Ohio, the U.S. District Court for the Southern and Northern Districts of Ohio, the U.S. Court of Appeals for the Sixth Circuit, the U.S. Court of Appeals for the Federal Circuit, and the United States Supreme Court.

He received his B.A. from Miami University and his J.D. from The Ohio State University Moritz College of Law.

ROBERT J. WALTER

State Employment Relations Board v. City of Jackson, SERB 2021-001 (8-5-2021)

The issue in this case was whether the City of Jackson (the “City”) violated Sections 4117.11(A)(1), (2), and (5) of the Ohio Revised Code. The Ohio Association of Public School Employees, Local 410 (the “Union”) alleged that the City eroded the bargaining unit through reassignment of most of the bargaining unit employees and bargaining unit work to newly created non-bargaining unit positions as part of a purported reorganization.

Evidence given at the hearing showed that during negotiations for a successor collective bargaining agreement, the City had created a non-bargaining unit “Department Head” position and awarded the position to nearly all of the bargaining unit employees previously serving in nearly identical positions within a bargaining unit. The City argued that it had determined that the employees in the unit were supervisors and thus not eligible for collective bargaining under Chapter 4117. The City further claimed that it had rejected the successor agreement, and thus the duty to bargain was extinguished and the doctrine of exclusive representation was no longer applicable.

SERB found a violation of 4117.11(A)(1) and (5) of the Ohio Revised Code. Regarding the City’s claim that the employees are supervisors, SERB found that a petition was not filed to clarify or amend the existing unit to exempt the employees as required. As to the City’s claim that its rejection of the agreement extinguished its duty to bargain, SERB stated the rejection of the agreement required it to continue bargaining.

The Board ordered the City to reconstitute the bargaining unit under the terms and conditions that existed before the expiration of the prior collective bargaining agreement, restore all accrued benefits, emoluments, terms and conditions of employment, post a Notice for a minimum period of sixty days regarding the violation, notify the Board in writing within twenty days of the Order as to all steps taken to comply, and to bargain in good faith with the Union on any prospective reorganization involving mandatory subject(s) of bargaining and/or for a successor agreement.

State Employment Relations Board v. City of Jackson, SERB 2021-002 (8-5-2021)

The issue in this companion case to SERB 2021-001 was whether the City of Jackson (the “City”) violated Sections 4117.11(A)(1), (2), and (3) of the Ohio Revised Code. The Ohio Association of Public School Employees, Local 410 (the “Union”) alleged that the City laid off the local Union President and, in doing so, 1) discriminated against her on the basis of her concerted protective activity, and 2) coerced and/or interfered with her exercise of rights guaranteed under Chapter 4117 of the Ohio Revised Code.

In finding a violation of 4117.11(A)(1) and (3) of the Ohio Revised Code, SERB found that the evidence given at the hearing showed that the City laid off the employee to eliminate the last bargaining unit position, or that it was done without bargaining with the union. The Board ordered the City to offer the employee reinstatement to her former position and to provide full back pay, benefits, and seniority, retroactive to her severance, subject to offset. The Board further ordered the City to grant union representation at all pre-disciplinary meeting to bargaining unit members upon request, post a Notice for a minimum period of sixty days regarding the violation, and notify the Board in writing within twenty days of the Order as to all steps taken to comply.

State Employment Relations Board v. Wellington Exempted Village School District Board of Education, SERB 2021-003 (10-7-2021)

The issue in this case was whether the Wellington Exempted Village School District Board of Education (the “District”) violated section 4117.11(A)(3) of the Ohio Revised Code by removing a teacher’s coaching duties as the District’s Head Varsity Baseball Coach and terminating his supplemental coaching contract in retaliation for protected Union activity.

Evidence at the hearing before the full Board showed that while acting in his capacity as the Head Varsity Baseball Coach, the Charging Party teacher was thrown out of a game by an Ohio High School Athletic Association (“OHSSA”) Umpire for his behavior. Thereafter, he was sanctioned by OHSSA, directed to take a behavior class, pay a fine, and serve a two-game suspension. The Board noted that the parties drew different conclusions from largely undisputed facts.

The Charging Party teacher claimed that his supplemental contract was being removed based upon his having won an arbitration to challenge an earlier non-renewal of his supplemental contract. The District argued that it was merely pursuing the same policy throughout, i.e., that the Charging Party teacher would no longer be the Head Varsity Baseball Coach. In looking at the totality of the case, the Board found that the Charging Party teacher presented insufficient evidence that the District’s motivation to remove his supplemental contract was based upon his filing a grievance. The Board noted that from the time the District Superintendent learned of the ejection from the ballgame he intended that the Charging Party teacher no longer be the Head Varsity Baseball Coach. The termination was merely a continuation of that decision. SERB limited its holding to the finding that there was no anti-union animus, which was a separate matter from the action the parties had before the Ohio Department of Education.

State Employment Relations Board v. City of Sharonville, SERB 2021-004 (11-18-2021)

The issue in this case was whether the City of Sharonville (the “City”) violated sections 4117.11(A)(1) and (5) of the Ohio Revised Code by unilaterally installing overt video/audio surveillance cameras without first bargaining their implementation and/or impact, and by directly dealing with members of the bargaining unit.

Evidence given at a hearing showed that following a loss at an arbitration wherein an arbitrator reinstated an employee who was terminated for allegedly tampering with an Excel spreadsheet used by the City’s Fire Department to calculate Fire Department employee wages and associated deductions, the City installed video/audio surveillance cameras throughout the Fire Department building. Despite ongoing bargaining for a successor collective bargaining agreement and the Union’s request to bargain over the cameras, the City denied the request to bargain. At the hearing, the Union argued that the City was retaliating against bargaining unit employees for the arbitration loss and that the City had a duty to bargain the implementation and impact of the cameras. However, the City claimed that the incident with the Excel spreadsheet and the arbitrator’s award, which found the City lacked evidence of the tampering, alerted it to security problems in its Fire Department. The City further argued that its implementation and use of the cameras was a management right and not subject to bargaining. It was acknowledged by all parties that the issue of the installation and use of video/audio surveillance cameras was a matter of first impression.

Following the hearing, a Board Administrative Law Judge (“ALJ”) issued a Report and Recommendation (“R&R”), which was fully adopted by the Board, and found that the City violated sections 4117.11(A)(1) and (5) of the Ohio Revised Code by refusing to bargain over the cameras. In looking at the question of whether the installation of the cameras was a mandatory subject of negotiation, SERB’s *Youngstown Balancing Test*, set forth in *In re SERB v. City of Youngstown City School Dist Bd of Ed*, SERB 95-010 (6-30-95), was applied. Applying this test, it was found that under the first prong, the use of the cameras in the workplace directly affects employees’ terms and conditions of employment as, not only could the information collected be used in the discipline of employees, but it could reveal concerted protected activities protected under Chapter 4117. As to the second prong, it was noted that the employer at issue is a Fire Department whose core mission is to provide fire protection and emergency services. Thus, while the use of cameras to record fire personnel during an emergency operation or in direct contact with the public could possibly be considered essential to its mission such that its implementation might be a mandatory subject of negotiation (albeit possibly subject to impact bargaining), the same could not be said for the use of cameras in employees break rooms and private offices. As to the final prong, it was noted the parties were in negotiations for a successor agreement and the Union had provided a proposal over the cameras, to which the City never responded. Thus, the City presented no evidence the camera installation would not benefit from the mediatory influence of collective bargaining and, if necessary, the appropriate impasse resolution mechanisms.

The Board ordered the City to bargain in good faith with the Union over the installation and effects of the cameras installed in the non-public areas of the fire department, and over the effects of the use of cameras installed in the public areas of the Fire Department. Additionally, the City was ordered to disable the cameras until the parties completed good faith bargaining, post a Notice for a minimum period of sixty days regarding the violation, and notify the Board in writing within twenty days of the Order as to all steps taken to comply.



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 providing annual ethics training for its employees and the Board.

The Office of General Counsel oversees the Investigations Section, the Bureau of Mediation Section, and the Hearings Section. 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 2022, the office made 949 mediator appointments, 139 fact finder appointments, and 17 conciliator appointments. A total of 85 bargaining units were issued fact-finding reports, from which 54 reports were accepted (64%) and 31 were rejected (36%).

RESULTS OF FACT-FINDING



FACT-FINDING REPORTS ISSUED BY EMPLOYEE TYPE





RESEARCH & TRAINING

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

R&T maintains SERB's Clearinghouse, a database that contains data from 3,519 current labor agreements (see chart on right for detailed breakdown) and 40,015 historical labor agreements.

R&T produces three annual reports: The Wage Settlement Report, Cost of Health Insurance Report in Ohio's Public Sector, 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 2022, R&T responded to 842 research requests.

The Clearinghouse is updated annually by compiling current data from an annual report that employers are required to submit. It is 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 several annual conferences: SERB Academy, SPBR Conference, and Fact-Finding Conference. In FY 2022, we resumed in-person conferences with one SERB Academy and hosted one virtual event on Social Media: Navigating a Changing Legal World. These two trainings were attended by over 750 labor professionals. R&T also produced a Virtual Session on Resources for Municipal Civil Services Commissions, which is available on the SPBR website.



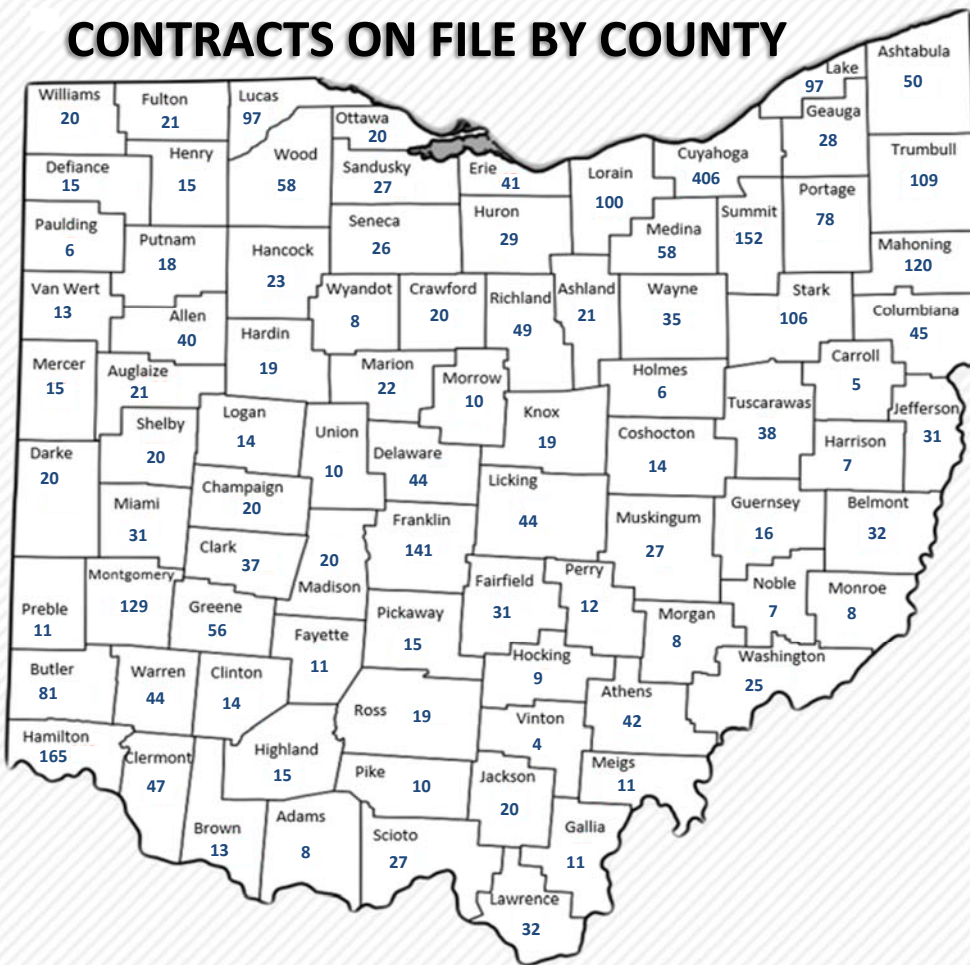
SERB ACADEMY: For newcomers to public-sector collective bargaining, new managers or new employee organization officials, staff, and those who are or will be working in positions where they need to know how Ohio's law governs labor relations in the public sector.

FACT-FINDING CONFERENCE: The Ohio Public Sector Fact-Finding Conference brings professionals together -as presenters and as participants- who are part of the fact-finding process. This includes representatives of labor and management, neutrals who preside as Fact Finders, 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 training to labor relations professionals, new and experienced, to share experiences and to facilitate solutions during collective bargaining negotiations. This training covers different negotiation strategies with emphasis on those strategies best suited to result in successful negotiations.

CONTRACTS ON FILE BY COUNTY



3,519

Number of
current
contracts
on file

Public
Employees
Covered by
Contracts

328,819

1,199

Public
Employers
without
Contracts

Public
Employers
with
Contracts

1,533

BOARD OF ED

1,257

CITY

1,077

COUNTY

636

TOWNSHIP

249

OTHER

198

COLLEGE/UNIV

91

STATE

11

Number of Collective
Bargaining Agreements by
Employer Type



MEDIATION

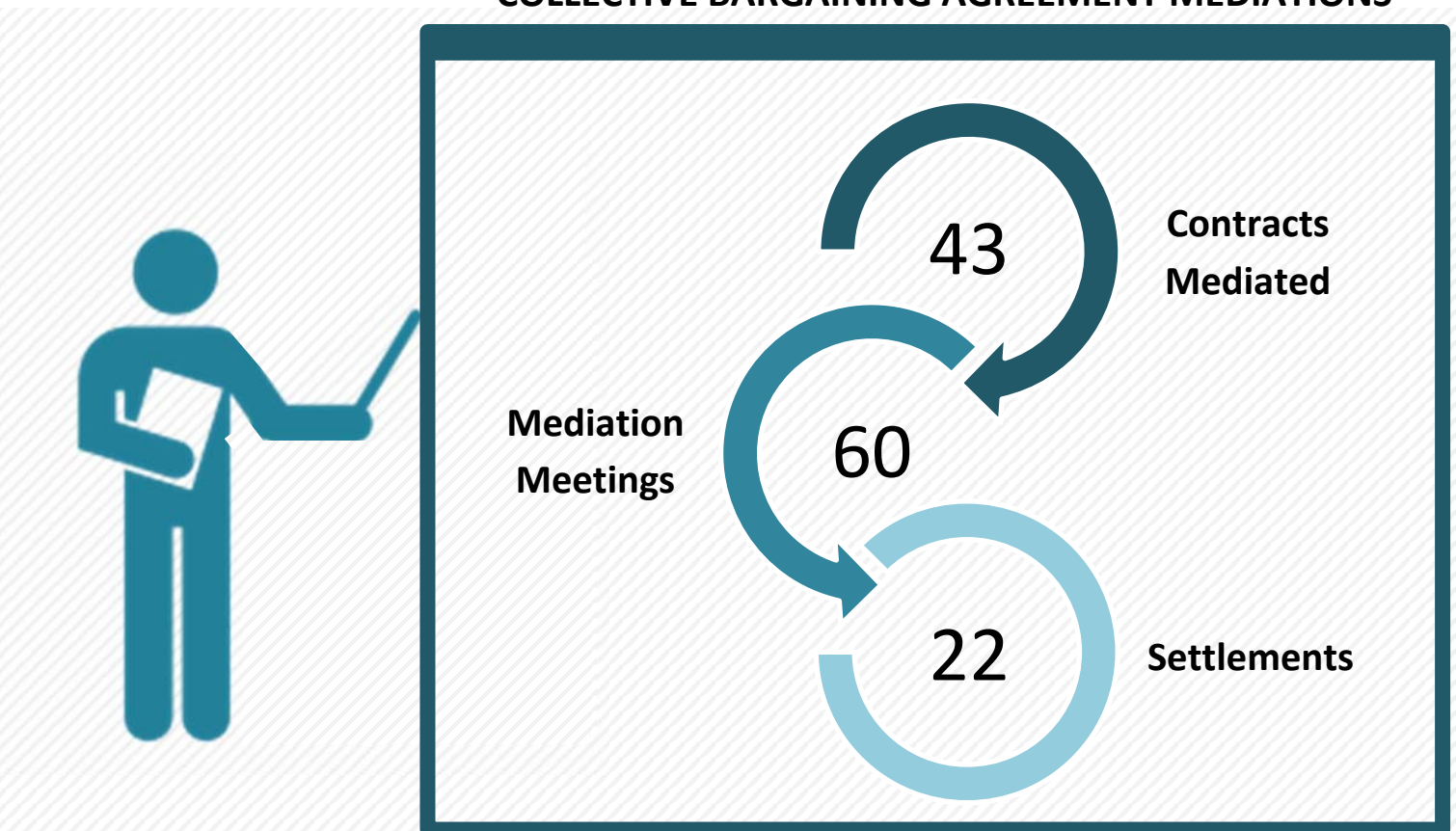
SERB's mission to promote orderly and constructive relationships between public employers and their employees is carried out every day by our mediators. They travel throughout the state to provide a variety of services at no cost to employers and employee organizations. Our mediators assist the parties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

The Bureau of Mediation offers mediation services in the following areas: collective bargaining, grievances, unfair labor practices, representation, and training. Last year, they conducted 60 collective bargaining agreement mediation meetings with a 51.2% settlement rate and 18 mediation meetings involving unfair labor practices and representation matters with a 57.1% 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. 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.

COLLECTIVE BARGAINING AGREEMENT MEDIATIONS



UNFAIR LABOR PRACTICE CHARGES AND REPRESENTATION MATTERS MEDIATED

14
Cases
Mediated



18
Mediation
Meetings



8
Settlements





INVESTIGATIONS

REPRESENTATION

The Representation (REP) 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 Labor Relations Specialists, who are highly trained and skilled investigators, review and process petitions for representation and decertification elections, requests for recognition, and petitions for amendment or clarification of existing bargaining units.

The Labor Relations Specialists assist parties engaged in union elections to reach a consent agreement. This generally involves assisting in reaching an agreement on the description of the bargaining unit, proposed dates, times, location, polling period of the election, and employee eligibility dates. The Labor Relations 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 2022, 38 elections were held. Out of 1,780 eligible voters, 1,016 members (57.1%) voted in an election.

38

REPRESENTATION ELECTIONS HELD

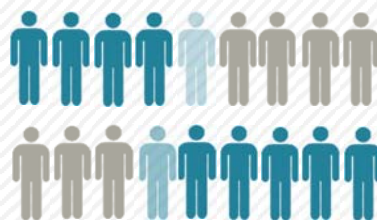
ELECTION VOTER TURNOUT

VOTE CAST

57%

NO VOTE CAST

43%



UNFAIR LABOR PRACTICES

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

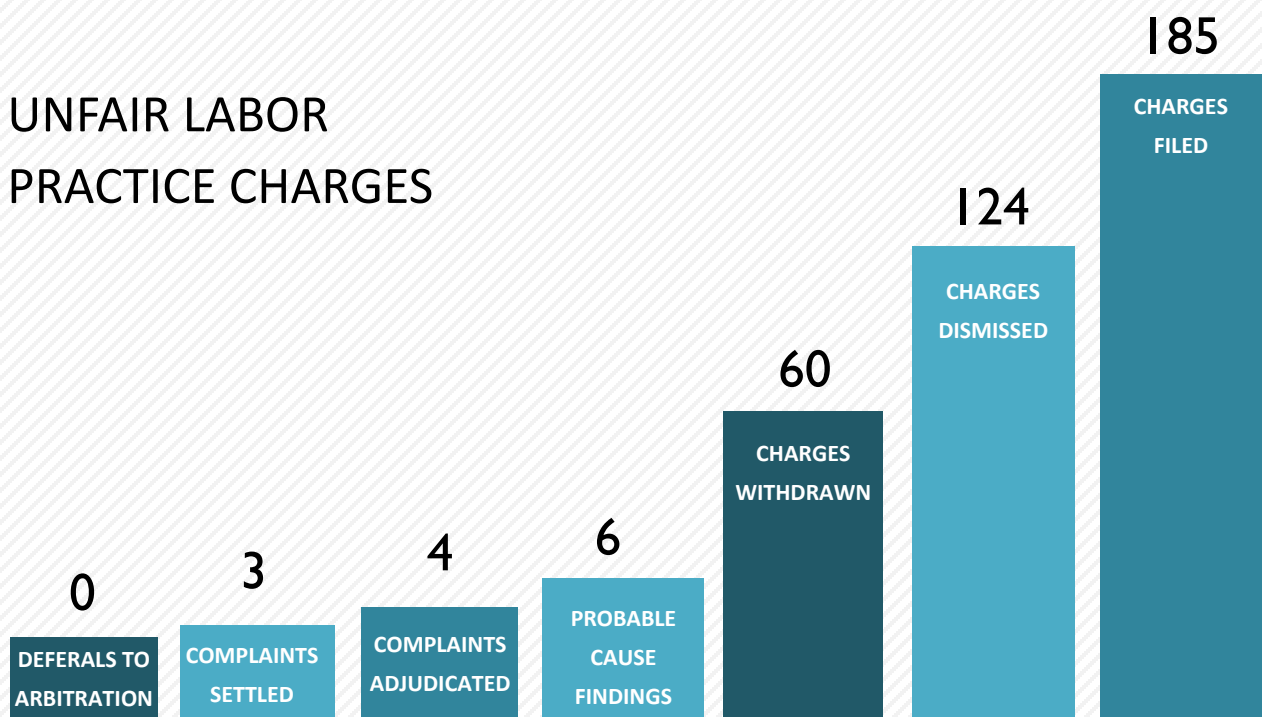
Investigations are conducted by Labor Relations Specialists, who are highly trained and skilled investigators. The Labor Relations Specialists review the parties' position statements and any supporting documentation. They may request additional information from the parties if necessary. After a thorough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

In FY 2022, 185 ULP cases alleging violations of O.R.C. § 4117.11 were filed with SERB. From the total ULP cases, 137 cases alleged violations against public employers and 48 cases alleged violations against employee organizations.

ALLEGATIONS OF O.R.C 4117.11 VIOLATIONS



UNFAIR LABOR PRACTICE CHARGES





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 O.R.C. 4117.

In addition, the Hearings Section supports the State Personnel Board of Review (SPBR) to develop the record and hear cases pertaining to exempt employees in the classified service, non-unionized employees in the classified service, and non-exempt employees whose collective bargaining agreements allow an appeal to SPBR.

All cases are heard by an Administrative Law Judge who submits recommended findings of fact and conclusions of law to the State Employment Relations Board or a Report and Recommendation to the State Personnel Board of Review.

In FY 2022, our Administrative Law Judges presided over 61 days of hearing activity and issued 135 Reports and Recommendations. A total of 203 cases were resolved.

HEARINGS & RECOMMENDATIONS (SERB & SPBR)





State Employment Relations Board
65 East State Street, 12th Floor
Columbus, OH 43215-4213
(614) 644-8573 (614) 466-3074 (FAX)
<https://serb.ohio.gov>