

**BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

United Academics of Ohio University, affiliated with AAUP/AFT,

Employee Organization,

and

Ohio University,

Employer.

Case No. 2024-REP-03-0035

**POST-ELECTION OBJECTIONS OF OHIO UNIVERSITY**

**A. *The University objects to the Union's conduct during the organizational process and the campaign.***

Ohio University (the "University") hereby objects to the election in Case No. 2024-REP-03-0035 delineating the United Academics of Ohio University ("Union") as the collective bargaining representative for a unit consisting of University faculty. The University objects to the Union's unlawful "closed" organizational and campaign meetings. The University's position from day one of the organizational process has been that all eligible employees deserve to have their voice heard – but "closed" or "members only" meetings stifle that objective. The University believes that the Union's conduct is a *per se* violation of the Ohio Administrative Code (OAC) and therefore the election was not conducted under the "free and untrammelled" conditions mandated by statute, allowing all employees to have their voice heard.

There is documentation in support of these allegations, as confirmed by the attached Affidavit and as set forth below. An investigation is necessary on these allegations because it is not fair to the University or the eligible employees to begin a bargaining relationship when there

are facts supporting improper conduct during an organization campaign. If it is found that the Union did nothing improper during the organizational campaign and election process, after a thorough investigation, then the parties and *all eligible employees* can move forward with their bargaining relationship with confidence after “clearing the air.” If the Union did engage in improper conduct, however, then an appropriate remedy must be fashioned so that the bargaining relationship will not be the result of an election process conducted absent the required “laboratory environment.”

**B. *The Union’s conduct during the organizational process and the campaign was impermissible.***

The OAC’s representation guidelines could not be clearer. The OAC states that the University or the Union “may hold meetings to discuss representation or election issues.” O.A.C. 4117-5-06(E). However, the OAC requires that attendance at these meetings must be “available to all employees in the proposed or determined unit.” *Id.* SERB decisions have made clear that if either party believes that these rules have been violated, it may file post-election objections.

There are important reasons why these rules exist, and for the organizational process and the campaign to be fair, **both** the Union and the University must follow the rules. For one, if the parties could conduct “closed” or “members only” meetings, then they could avoid the influence and input of employees with opposing views. Not all voices would be heard. This would improve their chances of persuading those key employees who are “on the fence.” This would also eliminate any element of an employee “watch dog” making sure that inducements or threats were not wrongfully made to sway votes. Such “closed” or “members only” meetings are also explicitly contrary to free speech and freedom of expression interests that are unique to Ohio’s public sector.

For example, when the University conducted a meeting that was attended by presumably various pro-Union employees, these employees sometimes attempted to refute the University's position and make contrasting arguments through questions heard by their fellow employees in attendance. Excluding these employees would have given the University an advantage – it would have prevented employees with opposing viewpoints from hearing what the University had to say and offering their own contrary opinions. But the University was required and wanted to follow SERB's rules and give all bargaining-unit employees the opportunity to attend its meeting. Inviting all employees also “kept the process honest” and allowed their voice to be heard.

The Union did not follow the same rules. Instead of inviting all bargaining-unit employees to its meetings, the Union got to “pick and choose” which employees to include **by holding “members only” meetings during the campaign.** This gave the Union an unfair advantage. By making Union membership a requirement to attend a campaign meeting and explicitly noting that “Membership will be verified at the door,” the Union excluded bargaining-unit employees who may have expressed opposing viewpoints. This also allowed the Union to provide a one-sided position on representation and campaign issues to any employees who were “on the fence.” Thus, while the University's meeting was inclusive of employees of all viewpoints and opinions in the bargaining unit (as required by OAC and SERB rules), the Union's multiple meetings excluded opposing opinions and presented a one-sided “members only” setting.

Also, if an eligible voter was not comfortable signing up as a “member in good standing of the UAOU” to attend a campaign meeting, then employees who were either a “No Representative” or undecided voter would have been left wondering just what may have been

promised to influence votes. Or worse yet, wondering if they must “go along to get along” with their peers. Holding this type of meeting amongst co-workers is not so subtly coercive and is not consistent with the OAC.

When conditions like these occur, the Union has “preclude[d] holding of a free and untrammelled election.” *In re Hamilton County Welfare Dept*, SERB 86-019 (5-12-86). When a free and untrammelled election is not possible, the results of any election held in such an environment are invariably tainted and invalid. *Id.*; *In re Noble County Engineer*, SERB 85-030 (6-20-85); *In re Belmont County Engineer*, SERB 85-049 (9-26-85). SERB notes that “it is important to preserve the appearance as well as the fact of free representation elections...” *See, In re Hamilton County Welfare Dept*, p. 6. Importantly, in similar situations when evaluating the related issue of open access and captive meetings, SERB has found that the mere existence of this type of conduct is a *per se* violation of rules, **and the margin of victory in a vote tally is not the controlling factor in fashioning a remedy such as a re-run election.** *See, Id.*

- C. *The University meets its burden for this objection because it is supported by the OAC and by Affidavit setting forth documentation establishing that a per se violation has occurred, and at the very least, there are issues of fact that must be resolved by investigation.*

The OAC establishes unequivocally that it is improper for either party to conduct meetings concerning representation or campaign issues without opening them to all employees in the proposed or determined unit, and “closed” or “members only” meetings are on their face not “available” to all employees. O.A.C. 4117-5-06(E). Further, the University has attached an Affidavit setting forth the documentation that supports its objections and establishes that the Union engaged in prohibited conduct during the organizational process and the campaign.

Attachment 1 of the Affidavit shows an example of concerns of eligible voters in this regard. An eligible voter notes, “I have attempted to attend an informational meeting but was

told (at the door) that you have to sign-up and be in good standing to attend the meeting and receive any information. This can be seen on their social media posts (below).” Attachment 2. It continues, “I am merely writing to inform you that it would seem that the UAOU is holding this election in bad faith and is unwilling to disclose or share information publicly.”

Additional documentation showing “closed” or “members only” meetings concerning representation or campaign issues is attached. The documents note the meetings to discuss representation or election issues are not available to all employees in the proposed or determined unit as required by the OAC, but rather: “This is open to all members in good standing. Not a member yet but support the union? You can sign up before or at the door;” and another indicated, “This meeting is open to all members in good standing of the UAOU. Membership will be verified at the door, although there will be an opportunity to sign up on site prior to the meeting;” and another “We will be meeting in-person from 5:30 to 6:30 on the Athens campus in Morton Hall 237. There will be a Zoom link for regional faculty members and on an as needed basis. This meeting is open to all members in good standing of the UAOU. Membership will be verified at the door, although there will be an opportunity to sign up on site prior to the meeting.”

These type of “closed” or “members only” meetings in violation of OAC may reasonably send the message that opposing the Union means a faculty employee could be shut off from Union leadership, or excluded from their own future representative, and not have their voice heard. This is exactly why these rules are in place. This is the type of campaign behavior SERB has addressed in prior related cases regarding access or open meeting issues. Again, applying these uncontested facts to SERB case law, when evaluating the related issue of open access and captive meetings, SERB has found that the mere existence of this type of misconduct is a *per se* violation of rules in place to protect the laboratory conditions required in a campaign. And in

those instances, the vote tally is not the controlling factor in a *per se* violation which has been found to require a re-run election. When conditions like these occur, the Union has “preclude[d] holding of a free and untrammelled election.” *In re Hamilton County Welfare Dept*, SERB 86-019 (5-12-86).

During organizational or campaign activity when the Union holds meetings to discuss representation or election issues, attendance must be available to all employees in the proposed or determined unit. This type of meeting held by the Union is clearly not consistent with the OAC: “Your participation and involvement are vital to strengthening our organization and shaping the future of our union. Whether you're looking to learn more about the election process or contribute to our ongoing efforts, this is your chance to get informed and engaged. This meeting is open to all members in good standing of the UAOU-and includes all full-time faculty, including CHSP and HCOM. Membership will be verified at the door, although there will be an opportunity to sign up on site prior to the meeting.”

SERB’s rules make clear that any meetings to discuss representation or election issues must be available to all employees in the proposed bargaining unit, regardless of why such meetings are conducted. SERB’s own rules do not have an exception that “closed or private meetings” are allowed if also called “Membership Meetings.” Neither party can hold private meetings during organizational or campaign activity.

The “label” or title of the meeting used by the Union is completely, 100% irrelevant under the law. It does not matter whether the Union’s meetings were “general” or “informational” or “membership” meetings when conducted during the campaign, especially on campus. *All meetings to discuss representation or election* issues must be open and available to all the employees in the proposed bargaining unit. The Union’s meetings were not.

Again, the University met its burden for this objection because it is supported by the OAC and by affidavit setting forth documentation establishing that a per se violation has occurred, and at the very least, there are issues that must be resolved by investigation. In a similar case, a court directed a SERB investigation and noted:

“The SERB Public Section Representation Manual itself illustrates that equal access and open meetings fall within the same set of protections. *Id.* At 10. Ohio Adm. Code 411 7-5-06(E) specifies in pertinent part that “[d]uring organizational or campaign activity, the employer or employee organization(s) may hold meetings to discuss representation or election issues, but attendance must be voluntary and available to all employees in the proposed or determined unit.” Consequently, the germane questions for the Board should focus on if meeting attendance was available to all employees in the unit, and whether the Union consciously prevented other dispatchers from hearing opposing, pro-management viewpoints.”

*See Worthington City v. SERB*, Franklin Cty. Ct. of Common Pleas, 11 CV013809.

The Union cannot “pick and choose” whether to include or exclude some bargaining-unit employees for its meetings based on a litmus test of “verifying membership at the door.” Nowhere in the OAC or any cases found by the University does such an “exception” to OAC rules exist. The Union must open its meetings to everyone, without conditions. It failed to do so.

**D. *The vote tally has no determinative effect on whether a violation has occurred – there is no “exception” to campaign misconduct because the election resulted in a majority tally, but rather it is the conduct itself that is impermissible and requires remedy.***

The University’s objection does not stem from any single eligible employee’s concerns nor is the University attempting to “protect” or stand up for any particular group of employees.

The Union's exclusion of employees from its meetings affected the impression of all of the employees in the proposed bargaining unit. Some voices were stifled by pre-requirements to attend meetings. All of the bargaining-unit employees are being persuaded that they are "in" the Union as a member, or they are "on the outside" – this has an impermissible persuasive effect on the entire voting base. The rules are in place in part to keep the laboratory environment and not have anyone feeling if they must "go along to get along" with their peers.

The analysis of this type of violation does not often occur before SERB, but it is akin to a captive audience violation where SERB noted:

**"It is difficult to the point of impossible to assess the effects of a captive audience speech on election results. Therefore, to make certain prophylactic conditions prevail for the representation determination in this case, the election results are set aside and a new canvass ordered. No matter what the outcome, no party can complain of a choice made in a new and sanitary poll."**

*See, In re Noble County Engineer*, SERB 85-030 (6-20-85) (p.2/p.38) (emphasis added.)

The OAC requires that attendance at every meeting conducted by the Union must be available to all employees in the proposed bargaining unit – not just the employees who signed cards or are openly "pro-union." As set forth above, it is not fair for the Union to conduct "closed" meetings where opposing viewpoints are not permitted, while the University must conduct an "open" meeting where pro-Union employees are given an opportunity to voice their opinions. It is not fair to eligible voters or the University that the Union "sends a message" to the voters by excluding those "not on board." How can the University or the eligible employees begin a bargaining relationship when there are facts supporting such conduct during an organization campaign or when employees are afraid not to support the Union? That is why



SERB's campaign rules prohibit what the Union did. See also documentation supporting related and reasonable concerns at Affidavit, Attachment 3.

**E.     *The University also objects to the unique difficulty experienced by eligible voters receiving election ballots.***

The University's position from day one of the organizational process has been that all eligible employees deserve to have their voice heard. The *voting process* in this instant matter made that difficult and had unforeseen implications. The issue here is not that SERB and/or the United States Postal Service ("USPS") failed to timely provide all eligible voters with a ballot, but that eligible voters attributed these procedural issues to University administration. This may have influenced their decision to vote "against" remaining with "No Representative" and instead "for" the Union. This impacted the perception of a "free and untrammelled" election as mandated by statute.

As shown in the Affidavit, Attachment 2, the University's Director of Labor and Employee Relations received numerous complaints from eligible voters about the trouble they had receiving a ballot. Several eligible voters expressed concern about an unfair process caused by the mailing of ballots. *See Affidavit, Attachment 2.* The nature of these complaints is suggestive that eligible voters thought the University was, at least in part, responsible for administrating and/or overseeing the mailing of the ballots.

Further, the documents in Attachment 2 support the belief that where eligible voters perceived flaws in the process of receiving an election ballot, they attributed those flaws in part to lack of oversight or organization by the Administration. One eligible voter blamed the University's "tepid response" in the following correspondence complaining about the difficulty receiving a ballot:

Compounding the problem are the university's tepid response and the state's apparent indifference. I am more than frustrated. This is unacceptable. This is not shared governance. This is not a fair and open election.

Who is going to resolve this?

*See Affidavit, Attachment 2.*

When the University attempted to provide eligible voters with information about receiving and requesting a ballot from SERB, it was at times met with suspicion that the University was trying to confuse and/or influence the vote. Affidavit, Attachment 2. One eligible voter said in response to the University's attempt to add clarity to the mailing delays, "[t]his is another confusing and erroneous attempt by the administration to thwart our right for representation." *Id.* By way of another example, when SERB extended the deadline to submit ballots by two days due to mailing issues, one eligible voter reached out to the University to suggest that the University was providing misinformation about the deadline. Affidavit, Attachment 2. The issues surrounding the timely provision of ballots to all eligible voters left the University with no choice but to try and add clarity and assistance to support its faculty to have its voice heard. However, this effort by the University was seen as a "*mea culpa*" by some, which likely influenced voter decisions about who should represent their interests.

Although the University recognizes that mailing ballots through the USPS is a somewhat flawed process, the objectionable conduct in this election is that any flaws were erroneously attributed to the University. The University believes this may have influenced eligible voters, and otherwise depleted the laboratory conditions "which are essential" for free choice in an election. *In re Marion Cty. Children's Servs. Bd.*, SERB 92-017, at 3 (recognizing that maintaining laboratory conditions are essential so as not to provide one party with an advantage over another). For this additional reason, SERB should investigate whether the mailing issues

experienced by numerous eligible voters unfairly influenced the vote, or if such issues are not remedied unless there is a “new and sanitary poll.”

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of Employer Ohio University’s Objections was and is hereby served upon the Employee Organization’s Representative:

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Via email and made by electronic filing on this 3<sup>rd</sup> day of April, 2025.

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