

EXHIBIT A

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

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

Employee Organization,

and

Ohio University,

Employer.

Case Number: 2024-REP-03-0035

BOARD ORDER

Before Chair Zimpher, Vice Chair Collins, and Board Member Walter: May 7, 2025.

On March 8, 2024, United Academics of Ohio University, affiliated with AAUP/AFT ("Union") filed a Petition for Representation Election to become the exclusive representative of all faculty, clinical faculty and instructors employed by Ohio University ("OU"). On May 9, 2024, OU objected to the composition of the Union's proposed bargaining unit and filed its own Petition for Representation Election.

On September 19, 2024, the State Employment Relations Board ("SERB") directed the parties to Inquiry. Prior to Inquiry, the parties reached a mediated agreement regarding the bargaining unit composition and entered into a Consent Election Agreement seeking a mail-ballot election for the polling period of February 18, 2025, through March 4, 2025. On February 6, 2025, SERB directed the matter to election pursuant to the Consent Election Agreement.

Pursuant to R.C. 4117.07(C), SERB conducted a mail-ballot election during the polling period for employees of OU in this appropriate unit:

Included: At all campuses of Ohio University, all full-time Tenured or Tenure-Track Faculty (Professor, Associate Professor, and Assistant Professor), all full-time Non-Tenure Track Instructional Faculty (Professor of Instruction, Associate Professor of Instruction, and Assistant Professor of Instruction), and all full-time Non-Tenure Track Clinical Faculty (Clinical Professor, Associate Clinical Professor, and Assistant Clinical Professor), not otherwise excluded.

Excluded: All faculty in the Heritage College of Osteopathic Medicine, all faculty

in the College of Health Sciences and Professions (except for full-time faculty in the Department of Social Work, Department of Social and Public Health, and Department of Interdisciplinary Health Studies), all part-time faculty, all visiting faculty, all instructors, all special appointments, all adjuncts, all librarians, and all faculty participating in an early retirement program; all supervisors, confidential employees, and management level employees; all ranks of presidents, all ranks of provosts, all ranks of deans, all school-level directors, all department chairs, all Administrators, and heads of schools; all faculty holding multiple appointments where one appointment is also in an excluded category; and all other employees.

The ballot tally was conducted on March 24, 2025. The results of the election were: six hundred and forty-two (642) valid ballots were cast; four hundred and fifty-three (453) votes were for United Academics of Ohio University, affiliated with AAUP/AFT; one hundred and eighty-nine (189) votes were for "No Representative"; there was one (1) void ballot; and there were eight (8) challenged ballots. United Academics of Ohio University, affiliated with AAUP/AFT received a majority of the ballots cast.

On April 3, 2025, OU filed Post-Election Objections along with supporting evidence alleging that the Union engaged in impermissible conduct during the organizational process in violation of Ohio Adm.Code 4117-5-06(E). OU also complained about delivery of ballots via the U.S. Postal Service. The Union responded to the Post-Election Objections and included their own evidence in that response.

As required by Ohio Adm.Code 4117-5-10(B), SERB issued a Directive to the General Counsel to take any actions deemed necessary to investigate the allegations in the Post-Election Objections. Accordingly, General Counsel referred the matter to an Administrative Law Judge to conduct an investigation. The Administrative Law Judge issued a Report of Investigation with his findings attached hereto and incorporated by reference.

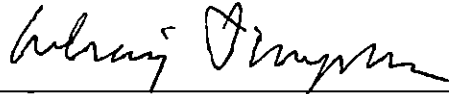
ADOPTION OF REPORT OF INVESTIGATION

After reviewing the record in its entirety, SERB adopts the Administrative Law Judge's Report of Investigation and finds insufficient evidence warranting a set-aside of the mail-ballot election in this matter. SERB hereby dismisses OU's Post-Election Objections and certifies United Academics of Ohio University, affiliated with AAUP/AFT as the exclusive representative of all employees in the unit. SERB further finds the Union's constitutional arguments moot.

ORDER
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IT IS SO ORDERED.

ZIMPHER, Chair; COLLINS, Vice Chair; and WALTER, Board Member, concur.



W. CRAIG ZIMPER, CHAIR

TIME AND METHOD TO PERFECT AN APPEAL

Any party desiring to appeal shall file a Notice of Appeal with the State Employment Relations Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, setting forth the order appealed from and the grounds of the party's appeal. A copy of such Notice of Appeal shall also be filed with the Court of Common Pleas of Franklin County, Ohio or as otherwise specified in R.C. 119.12 of the Ohio Revised Code. Such Notices of Appeal shall be filed within fifteen (15) days after the service of the State Employment Relations Board's order as provided in R.C. 119.12 of the Ohio Revised Code.

PROOF OF SERVICE

I certify that a copy of this document was served upon each party by certified e-mail, return receipt requested, this 07th day of May, 2025.



ERIN E. CONN, ADMINISTRATIVE OFFICER

EXHIBIT B

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

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

Employee Organization,

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Case Number: 2024-REP-03-0035

REPORT OF INVESTIGATION ON POST ELECTION OBJECTIONS

This Report of Investigation arises from the post-election objections filed by Ohio University, Employer ("OU") and the response of Petitioner United Academics of Ohio University, affiliated with AAUP/AFT, Employee Organization ("Union") and is made pursuant to Ohio Adm.Code 4117-5-10(B). The original Petition for Representation Election was filed by the Union on March 8, 2024.

SUMMARY

The post-election objections and reply thereto introduce documents and affidavits which were reviewed as part of this investigation. In addition, the pertinent SERB authority cited in the parties' written arguments was also reviewed. There are no issues of material fact requiring resolution after investigation. The evidence shows that, between the time of the filing of the Petition for Representation Election and the election, the Union held two meetings complained of by OU. Union membership was required to attend these two meetings, but any proposed member of the bargaining unit could sign up as a member at the door to attend.

OU complains that these two meetings, held by the Union during the time between the Petition for Representation Election and the election, violated Adm.Code 4117-5-06(E) and that such violation requires the election to be set-aside. However, based on a thorough investigation of the evidence presented by the parties, the objecting party has not met its burden to set aside and re-run the election. It is recommended that SERB dismiss the objections and certify the election.

**UNION MEMBER-ONLY MEETINGS HELD DURING ELECTION CAMPAIGN ARE A RIGHT
GUARANTEED UNDER R.C. 4117.03(A)(1) AND (A)(2)**

Ohio Adm.Code 4117-5-06(E) requires that during *organizational or campaign activity* the Union may hold meetings to discuss representation or election issues, but attendance must be voluntary and available to all employees in the proposed unit.

OU introduced a copy of the Union's announcement of a "First Membership Meeting – November 20th" in 2024. The meeting description states, "This will be an opportunity for members

to get an update on where we are at in our campaign to win our union..."

OU also introduced a copy of the Union's online posting of a "February 5th" meeting in 2025 "discussing plans for the vote!" which was "open to all members in good standing".

A third posting offered by OU references the same February 5th meeting and states, "We are holding an important general membership meeting ahead of our historic election..." "We'll be discussing plans and final preparation for our election, as well as preparing for negotiating our first contract."

All the documents go on to explain, "membership will be verified at the door, although there will be an opportunity to sign up on site prior to the meeting."

The Union did not dispute the authenticity of any of the postings in its reply to objections. They are deemed authenticated. The Union presented various affidavits from Union members who attended the two meetings:

Affiant Cassidy Brauner ("Brauner") avers speaking at the November 20th meeting which was focused on explaining the proposed unit description and possible changes to it arising from negotiations with OU. Brauner avers speaking at the February 5th meeting too and told the attendees that the meeting was not for purposes of general persuasion, but for people engaged in organizing. Affiant Daniel Karney ("Karney") states he attended the Feb 5th meeting. Karney avers that the meeting was divided into a membership portion and an election portion. Anyone could attend the election portion.

The postings and the affidavits taken together show that the subject matter of the meetings related to "representation or election issues." The evidence shows that any member of the proposed bargaining unit could attend, if they were either already a union member, or signed up for union membership "at the door."

OU argues for and encourages SERB to read Adm.Code 4117-5-06(E) in isolation, speculating that attendance was unavailable to employees who did not want to sign up for union membership at the door. However, that interpretation of the rule, without context, would likely prohibit union members and employers from meeting exclusively during the period from the petition for representation through the election at all.

Instead, administrative rules must be read *in pari materia* and also must not be read to conflict with the Revised Code provision they amplify. R.C. 4117.03(A)(2) guarantees public employees the right to engage in concerted activities for mutual aid and protection. This includes the right to "assist" in formation of a union. R.C. 4117.03(A)(1) There is nothing in these sections of the Revised Code purporting to take away the right to engage in concerted protected activity or assist in the formation of a union during any particular period.

A more fair reading of the rule requires the union to make such meetings "available" to any member of the proposed bargaining unit with the caveat of providing opportunity for instant membership at the door, which the Union did. Mere Union membership does not require an employee's "yes" vote during the election. The rules regarding secret elections to support true free choice are therefore not impaired.

Too, the Supreme Court of the United States' ruling in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018) and its progeny¹, reaffirm that a member may withdraw from the union at any time. Hence, there is no real danger of coercion shown in this case by requiring membership in

good standing to attend the meeting.

For this reason, the Board should find that for purposes of the Ohio Adm.Code 4117-5-06(E), an election or campaign meeting is deemed "available" to any proposed bargaining unit employee where they may sign up for union membership at the door.²

OU DID NOT DEMONSTRATE THAT THE ISSUES WITH THE DELIVERY OF THE BALLOTS SKEWED THE ELECTION RESULTS REQUIRING A NEW ELECTION

Both parties acknowledge that there were difficulties with the delivery of the ballots. OU claims these frustrations were imputed to it, and, as such, swayed employees to vote for the Union. OU provides little evidence to support such a sweeping argument beyond the bare allegation. OU introduced several faculty emails complaining about the election process. For its part, the Union argues that delivery issues equally negatively affected the Union.

Overall, the emails from OU show frustration with the delivery of the ballots, not with OU, and not with the Union.³ Union affiants collectively support this notion. The post office delivery problems did not negatively affect the election in such a way as to require a re-run election. This investigator recommends SERB find there was no substantial evidence presented that the difficulties with mail-in ballots swayed faculty members to cast their votes in favor of the Union on that basis.

SETTING ASIDE THE ELECTION IS NOT WARRANTED UNDER OHIO ADM.CODE. 4117-5-10 EVEN IF THE UNION VIOLATED THE RULE

Even if the Union violated the rule requiring that it invite all proposed bargaining unit members to its meetings, the employer is estopped from using the violation to win a set-aside of the election. OU attempts to argue that any *per se* violation of a rule should support the setting aside of an election.⁴ This is not the correct standard.

OU makes no real probable demonstration of harm. When examined closely, the reasonable person (including well-educated faculty such as in this case) is not likely to change his or her vote because two union meetings required membership or sign-up at the door. The Board may simply admonish the Union publicly if the Board chooses to interpret its rule strictly without going further and setting aside the election.

Despite the polling difficulties, an 82% supermajority of eligible employees voted. The Union received over twice as many votes (70% of votes cast) when compared to votes for no representative (29%). Even if every non-voter voted against the Union and this was added to votes for no representative, the Union would still be victorious by about 119 votes. Under such circumstances, a re-run election is not a remedy because it is not designed to correct a cognizable disadvantage to OU, even if proven. Set-aside is never intended to be a punishment; it is designed to restore free choice. Here, there is no substantial showing of coercion, only the allegation of the violation of a rule which, even if established, did not credibly limit employee free choice in this case. Also, there is no showing that any issue with the delivery of the ballots gave the Union an advantage over OU. Under these circumstances, setting aside the election is simply not warranted.

¹ There is nothing in the record to suggest that signing up at the door to any meeting would be an affirmative consent to pay dues for a predetermined period of time to a union (which is not yet certified, and therefore not the exclusive representative). See *Little v. Ohio Assn. of Pub. School Employees*, 88 F.4th 1176, 1178 (6th Cir. 2023) (*holding that opt out window for dues governed by contract between member and union does not implicate 1st amendment as state action*)

² It is noted that the Union sets forth constitutional arguments regarding freedom of association and argues that SERB's precedent encourages interpretation of its rules to avoid infringement of 1st Amendment constitutional rights. These arguments by the Union do not require consideration at this time because SERB's own statute supports finding no violation on its own, and a rerun of the election is not warranted in any case.

³ See OU's attachment at p. 20 implying general suspicion as to why the ballots were late or undelivered while other "Columbus" mail is on time; or p. 21 where an avowed anti-union employee writes the OU Labor Relations Manager complaining about the mail problems while ensuring that OU knew he voted. OU's own anecdotal evidence tends to show employees with anti-union views were galvanized in their unhappiness with the delivery of the ballots which made their ostensible "no" vote even more determined, not less.

⁴ OU purports to rely upon *In re County Welfare Dept.*, SERB 86-019 for its proposition that any *per se* violation of SERB rules demands set-aside of the election. This is a substantive misinterpretation of that case. The syllabus reads, "Any presentation to a captive audience is deemed to preclude holding of a 'free and untrammelled' election and justifies the calling of a new election." The instant case does not involve a captive audience at all. SERB's decision was limited to its captive audience rule, where the union lost the election, and did not purport to expand this analysis to any other rule. See *Id.* at section III (3).