BEFORE THE STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

OHIO UNIVERSITY, 1 OHIO UNIVERSITY DR. ATHENS, OH 45701 Appellant,	Common Pleas Court Case No.
vs.	
STATE OF OHIO, STATE EMPLOYMENT RELATIONS BOARD, 65 E. STATE ST. #1200 COLUMBUS, OH 43215 Appellee.	Appeal from SERB Case No. 2024-REP-03-0035 Administrative Appeal (Type F)

NOTICE OF APPEAL

Ohio University (the "University") hereby gives notice of appeal under Revised Code Section 119.12 to the Franklin County Court of Common Pleas from the Board Order certifying the United Academics of Ohio University (the "Union") as the exclusive representative of all employees in the relevant bargaining unit, issued by the State Employment Relations Board ("SERB") on May 7, 2025 (Board Order attached as Exhibit A; Report of Investigation on Post Election Objections Adopted by Board Order attached as Exhibit B). SERB's Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law.

I. Relevant Background

The Union sought to organize certain faculty employees of the University. Consistent with SERB's regulations, a campaign and election process was held to determine whether or not a majority of employees supported the Union. After the campaign and election process, the

University raised concerns of campaign misconduct by the Union and other irregularities culminating in the University filing formal post-election objections.

The University's post-election objections set forth, *inter alia*, that the Union violated the Ohio Administrative Code ("O.A.C") Section 4117-5-06(E) by intentionally excluding non-Union members from organizational or campaign meetings. This section of the O.A.C. states:

> During organizational or campaign activity, the [University] or [Union(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.

O.A.C. 4117-5-06(E) (emphasis added). The University provided affidavit and documentary evidence demonstrating that the Union held meetings during the campaign that were open only to "union members in good standing." *See*, Ex. B, pp. 1-2.

The University argued, *inter alia*, that this is a *per se* violation of SERB regulations. By shutting out observers and dissenting opinions from informational meetings during the campaign, the Union deprived faculty of the necessary "laboratory conditions" required for a free and fair election. *Id*., p.3 n.4. The University put forward uncontested evidence of activities that are campaign misconduct based upon a plain reading of the O.A.C. regulations.

The Union responded to the objections, agreeing that it held closed meetings where Union membership was required and also verified "at the door." However, the Union claimed that the meetings were nonetheless permissible since they were "divided into a membership portion and an election portion," and that "[a]nyone could attend the election portion." *Id*., p. 2. However, there was no subsequent hearing or other inquiry into the Union's assertions. Moreover after receiving the Union's position in response to its objections, the University was not given an opportunity to respond. The record reveals a number of discrepancies and unresolved issues of fact that compel reconciliation through the presentation of additional evidence.

II. Overview of Argument

The University appeals SERB's decision where it failed to conduct the necessary investigation into the University's post-election objections. The Tenth District Court of Appeals has had an opportunity to consider the scope and function of the objection "investigation" required under Ohio Admin. Code 4117-5-IO(B), although that term is not defined therein. *Hocking Technical College v. State Employment Relations Bd.*, 70 Ohio App. 3d 18 (Ohio Ct. App., Franklin County 1990). In that instance, the Court of Appeals held that if SERB made a determination "without all the salient information and evidence about the election before it, [***] it did not base its decision upon a complete investigation." *Id*. at 23. SERB is obligated to properly investigate the University's objection in a manner more thorough, consistent with *Hocking*.

Further, the University objects to SERB's failure to apply the plain language of its regulation, choosing instead to modify the regulation outside the required rulemaking process. It is well-established that "an agency's interpretation of its governing statutes or rules must be consistent with the plain language of the applicable statutes or rules." *State ex rel. Kent Elastomer Products, Inc. v. Logue,* 2024-Ohio-5451, ¶ 61 (10th Dist.); *Clark v. State Bd. of Registration for Professional Engineers & Surveyors,* 121 Ohio App.3d 278, 284 (9th Dist. 1997) ("The words and phrases contained in Ohio's statutes and administrative regulations are to be given their plain, ordinary meaning and are to be construed according to the rules of grammar and common usage.") (internal quotations omitted). Where an administrative rule is clear and unambiguous, the court's "task is not to interpret it at all—with our without any consideration of the administrative agency's view of its meaning—but rather to construe and apply it according to its plain language." *Gerritsen v. State Medical Board of Ohio*, 211 N.E.3d 719, 2023-Ohio-943,

¶16. "[I]t is the duty of the court to enforce the statute or administrative rule as written, making neither additions to the statute or administrative rule nor subtraction therefrom." *Averback v. Montrose Ford, Inc.*, 120 N.E.3d 125, ¶ 17 (9th Dist. 2019) (internal modifications and quotations omitted). Put simply, "the interpretation of statutes and administrative rules should follow the principle that neither is to be construed in any way other than as the words demand." *Gerritsen*, 2023-Ohio-943, ¶16. Where agencies like SERB fail to apply the clear, unambiguous language of their own regulations, courts set aside the agency's findings and direct that the agency administer their regulations as written. *State ex rel. Kent Elastomer Products, Inc*., 2024-Ohio-5451, ¶¶ 36, 73; *Athens Cty. Bd. of Commrs.*, 83 Ohio App.3d at 869.

Here, without any further inquiry or evidence, and with no notice, SERB dismissed the University's objections. In its Order, SERB agreed with the parties that the Union held closed meetings. However, ignoring the plain language of its regulations, SERB baldly reasoned that "[t]he evidence showed that any member of the proposed bargaining unit could attend [Union meetings], **if they were either already a union member, or signed up for union membership 'at the door.'**" *Id*., p. 2 (emphasis added). Instead of applying its own rules, SERB instead read into the regulation a new meaning when it concluded 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." Ex. B, p. 3.

SERB then went further, citing for the first time in this context the United States Supreme Court's decision of *Janus v. AFSCME, Council 31*, 138 S.Ct. 2448 (2018) to somehow create another new rule that endorsed an employee *superficially* claiming union membership for purposes of attending a "closed" campaign meeting and then *revoking* their membership at a later

time, so "there is no real danger of coercion". *Id*., pp. 2-3. These new rules set out as the basis for the Order are unreasonable, establish a bad precedent, and are not in accordance with law.

In the alternative, SERB also held that even if the regulation had been violated, there was "no real probable demonstration of harm" because the faculty are "well-educated" and there was no need to "restore free choice." *Id*., p. 3.

SERB's decision fails to follow its own rules as written and instead improperly changes the regulations outside the required rulemaking process. *See*, O.A.C. 4117-25-02; O.R.C. 119. SERB, like all statutorily created agencies, can exercise only those powers conferred upon it by the General Assembly. *State ex rel. Kent Elastomer Products, Inc.*, 2024-Ohio-5451 at ¶ 61. "It must conform its operations to the procedures set out in the statutes or rules adopted pursuant to statutory authority." *Id*. SERB "must follow its rules, as written." SERB "may not give selective effect to provisions to produce a desired result or change its rules without complying with the rulemaking procedures in R.C. Chapter 119." *Id*. That is precisely what SERB has done here.

For the above reasons, as well as those additional reasons that will be set forth in subsequent merit briefing before the Court, it is clear that SERB's Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law.

Respectfully submitted, May 22, 2025:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing original Notice of Appeal was filed with SERB, via electronic mail to REP@serb.ohio.gov, this 22nd day of May 2025, and a copy of said Notice of Appeal was filed with the Franklin County Court of Common Pleas/Clerk of Courts on this same date via the Electronic Filing System; and a true copy was sent to the Employee Organization's Representative via electronic mail:

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