

# STATE EMPLOYMENT RELATIONS BOARD

## FACT-FINDING GUIDEBOOK

### Purpose

This guidebook has been developed as an information source of statutory provisions, rules, and current administrative practices that outline the structure for the fact-finding dispute settlement process administered by the Ohio State Employment Relations Board (SERB). The policies in the guidebook are subject to change and are not binding upon the State Employment Relations Board in its subsequent determination of procedural or substantive issues of law.

These guidelines are not comprehensive. The parties and neutrals continue to be responsible for knowing all statutory and rule provisions governing the fact-finding dispute settlement procedure. Parties or neutrals are to contact the Bureau of Mediation with any questions regarding this statutory dispute settlement process.

### Panel Membership

Qualified individuals seeking to be listed on the SERB Roster of Neutrals must complete and submit an application form that may be obtained from the Bureau of Mediation. Candidates must submit three writing samples and provide at least three references including one management representative, one union representative, and one neutral. SERB will send a questionnaire to all listed references. Upon receipt of the form and requested information, the Bureau of Mediation will review the application, assure that it is complete, make such inquiries as are necessary, apply eligibility and qualifications criteria, and forward the file with recommendations to the Board. Subsequently, the Board will conduct a review of all applications and make the final decision as to whether applicants may be listed on the roster.

To be eligible for the SERB Roster of Neutrals, a candidate must be either a resident of Ohio or a resident of a state adjoining Ohio. Roster members who are not residents of Ohio must provide an Ohio business (mailing) address. They may serve as fact finders, but they are ineligible to serve as conciliators [Ohio Revised Code (O.R.C.) Section 4117.14(G)(13)]. All other roster members must be available and willing to accept appointments for fact finding or conciliation. Advocates and elected office holders are ineligible to serve on the SERB Roster of Neutrals.

Roster qualifications relate to:

- 1) Labor relations experience;
- 2) Knowledge of labor law and public finance;
- 3) Compliance with the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes;
- 4) Ability to communicate, to conduct an orderly hearing, and to produce a timely and well-written report;
- 5) Impartiality; and
- 6) Acceptability to the parties.

Eligibility and qualification standards are to be maintained during service on the roster. The Board reserves the right to require attendance at training seminars for continued listing on the roster.

## **Panel Distribution**

Within five days of the receipt of a written request by a party and following the appointment of a mediator, a panel of five names is sent to the parties for selection of a fact finder. [O.R.C. Section 4117.14(C)(3)]. Names are distributed on a regional basis. For example, Cleveland neutrals are most likely to have their names distributed in the northern half of the state and less likely in the southern half of the state. For Cincinnati neutrals, the opposite would be true. There are no permanent panels. Panels are compiled on a case-by-case basis.

It is essential for neutrals to notify SERB in writing when periods of unavailability arise. It is unfair to the parties to include a neutral's name on a panel for possible selection when the neutral is aware of his or her unavailability to accept any cases in the near future. When it is possible to accept cases again, the neutral must submit written notice of availability before SERB will resume distribution of his or her name for panels.

## **Panel Selection**

The parties are provided seven days from mailing of the panel to make their selection(s). Parties must convey their mutual selections in writing to SERB by the date indicated in the panel letter. [Ohio Administrative Code (O.A.C.) Rule 4117-9-05(B)]. In order to expedite the appointment process, SERB requests that the parties also call the Bureau of Mediation with their selections. If necessary, the parties may contact the Bureau of Mediation and request an additional one or two day(s) for making a selection. Requests are usually accommodated as long as the original time line for the appointment can be met. The parties are encouraged to indicate a second choice or a third choice from the panel or from the SERB Roster of Neutrals to be considered if their first choice is not available for appointment. If the parties have not provided other choices and their initial selection is unavailable for appointment, a fact finder will be appointed at SERB's discretion. SERB will not consider the selection made by one party when the other party has been unresponsive. SERB will make a discretionary appointment in this circumstance.

The parties may make an alternate selection whereby the parties choose a member of the SERB Roster of Neutrals whose name does not appear among the five names of the panel. [O.A.C. Rule 4117-9-05(C)]. Alternate selections do not constitute a mutually agreed dispute settlement procedure unless the individual selected is not a member of the SERB Roster of Neutrals.

A party or the parties may request a second panel from SERB when good cause is shown and the time lines for appointment can be met [O.A.C. Rule 4117-9-05(A)]. Good cause includes conflicts of interest. Because of strict time lines, the parties should make an alternate selection from the SERB Roster of Neutrals if they are not satisfied with the panel provided rather than requesting a second panel. General dissatisfaction does not constitute good cause. When a conflict of interest is cited relating to one of the five names listed on the panel, SERB may issue a substitute name for consideration of the parties in lieu of an entirely new panel.

When the parties have agreed to multi-unit negotiations, the parties will receive one panel letter and are to select one fact finder for the negotiations of the bargaining units. Typically, this arrangement involves a single hearing and report.

Requests for a three-member fact-finding panel are rare. This option exists for the parties under the statutory procedure. [O.R.C. Section 4117.14(C)(3)]. Where the parties choose to use a three-member panel, all selected fact finders must be members of the SERB Roster of Neutrals. One of the three will be designated as the chairperson of the panel to coordinate scheduling, the hearing, and issuance of the report. If the parties cannot agree to a one-member or three-member panel, SERB will appoint one fact finder.

## **Panel Selection Extensions**

The parties may mutually agree to extend the timelines of the statutory fact-finding procedure. [O.A.C. Rule 4117-9-05(G)].

## **Appointments**

Fact-finding appointments are made within 15 days of receipt of the written request for fact finding and following the appointment of a mediator. [O.R.C. Section 4117.14(C)(3)].

Most appointments are made in accordance with the selection of the parties. When parties indicate a 1st choice, 2nd choice, etc., SERB will contact the 1st choice for availability to accept the appointment and then proceed through the list of choices as necessary. If the parties provide one or more alternate choices, SERB will proceed through the list provided by the parties. Because of the limited amount of time to make a fact-finding appointment, it is necessary for roster members to return telephone calls made by SERB staff within 24 hours. Otherwise, when time is of the essence, the staff member may presume a neutral's unavailability and offer the assignment to an alternate candidate.

Multi-unit appointments are made when the parties agree to the use of one fact finder for two or more units in negotiations. [O.A.C. Rule 4117- 9-02(C)]. Typically, this arrangement involves a single hearing and report.

## **Discretionary Appointments**

Discretionary appointments are made by SERB when the parties' selections are unavailable to accept the assignment or when the parties have not complied with the rule requirements. [O.A.C. Rule 4117-9-05(D) and (E)]. If the parties make only one selection and that selection declines the assignment, a discretionary appointment will be made. Under the statute, there is insufficient time to contact the parties to request a second selection. If only one party communicates its selection, SERB cannot consider the proposed selection because it is not a mutual selection of the parties as required by the rules. When neither party has communicated a selection, the statutory procedure is not abated because of their lack of response. A discretionary appointment will be made. For discretionary appointments, SERB will appoint from its roster a neutral whose name did not appear on the panel provided.

## **Fact-finding Appointment, Hearing, or Report Extensions**

Most extensions of the fact-finding time limits are executed by the parties at the time of selecting a fact finder. An extension is frequently sought to allow additional time for negotiations or mediation prior to fact-finding. In other instances, the parties agree to an extension to better ensure the availability of their selected fact finder for consideration in accepting the appointment.

Extensions to delay a hearing date or issuance of a fact-finding report must be in writing and specific as to duration. A time element must be stated (e.g., two weeks, one month, or a specific date for issuance of the report). Extensions may be renewed as necessary, provided they are in writing and are specific as to duration. [O.A.C. Rule 4117-9-05(G)].

The fact finder is without authority to impose, or grant at the request of one party, an extension of the fact-finding period. [O.A.C. Rule 4117-9-05(G)]. The fact finder may request from the parties an extension when additional time is necessary for scheduling the hearing or for review of documents or writing the report. If the parties do not mutually agree to the extension request, the fact finder must meet all obligations within the originally prescribed time period or resign from the assignment.

### **Fact-finding Extension Expires**

If an extension expires or if the parties failed to execute a written extension, the parties are not in compliance with the administrative rules. When an extension has not existed or has expired, the parties are encouraged to establish or renew the extension for a mutually agreed duration.

If the parties cannot agree upon the extension, either party can insist upon the scheduling of a fact-finding hearing. The initiating party is required to send written notice to the fact finder and to the other party if it is requesting an immediate fact-finding hearing. The fact finder is obligated to schedule a hearing within 14 days of receipt of the written notice. If the fact finder cannot meet this time line, the fact finder must acquire a mutually agreed extension of the parties or resign from the case.

### **Resignation of Fact Finder**

Should a fact finder resign from the case, a new fact finder will be appointed. At the time of resignation, SERB will consider any alternate selection of the parties, will appoint a fact finder at its discretion, or will issue, when feasible, a new panel for the parties' selection. If SERB issues a new panel, failure of the parties to make a mutual selection or failure to select an available fact finder will result in SERB appointing at its discretion a fact finder known to be available. The fact finder will be required to conduct a hearing and complete a report within 14 days of the new date of appointment.

### **Hearing Date, Time, and Location**

The fact finder is granted the authority to establish the hearing date, time, and location. [O.A.C. Rule 4117-9-05(H)]. When the fact finder contacts the parties to arrange a mutually agreed date and time of hearing, the fact finder may find it impossible to arrange a time of hearing desirable to all participants. If one party refuses to participate in the hearing under any circumstances because of pending litigation or if the parties cannot agree to an extension or to a date or time of hearing, the fact finder is to set a date and time of hearing that allows for a timely issuance of the subsequent fact-finding report. The fact finder is not limited to consideration of weekdays if it is more practical to select a weekend date for the hearing. A hearing must be conducted even if it is held in the absence of one of the other parties.

The location of the hearing is to be determined by the fact finder. The selected location should take into consideration convenience of the parties, if possible. With the cooperation of the parties, the fact finder is to select a site that does not require rental expense, unless the parties agree to assume the cost of rental expenses or fail to agree to an alternate cost-free location. [O.A.C. Rule 4117-9-05(H)].

## **Postponement or Cancellation of Hearing**

The parties, by mutual agreement, may postpone or cancel a scheduled fact-finding hearing. The parties must contact the fact finder immediately upon knowing of the need to postpone or cancel a hearing. The initial contact should be made by telephone and then confirmed in writing. The neutral may impose reasonable cancellation fees up to and including the new maximum rate by informing the parties of his/her cancellation policy in the rate sheet provided to the parties by the board. In instances where the parties have failed to communicate the postponement or cancellation of the hearing, the parties are to assume the costs of travel expenses and travel time of the fact finder.

## **Settlement Agreement**

When the parties reach a settlement agreement on all remaining issues at impasse and send written notice to SERB, the statutory procedure is automatically stayed by operation of O.A.C. Rule 4117-9-02(F)(3) in order to allow time for ratification of the proposed settlement. This circumstance applies regardless of whether the parties reached the settlement agreement with the assistance of the mediator or the fact finder, or on their own accord. Upon notification by one party of rejection of the settlement agreement, the statutory procedure is reactivated at the same point where it was interrupted.

## **Alternate Dispute Settlement Procedure**

If the parties want to forgo fact-finding or want to change the statutory structure of fact-finding, the parties may devise an alternate dispute settlement procedure at any time. [O.A.C. Rule 4117-9-03(A)]. A written alternate procedure must be executed by both parties and then filed with SERB within five days of execution. [O.A.C. Rule 4117-9-03(B)]. When applicable, the fact finder must cease efforts upon notification by the parties of the execution of an alternate procedure. The fact finder may submit an invoice to the parties for partial services rendered under the statutory fact-finding procedure.

When the parties pursue fact-finding, but modify or otherwise deviate from fact-finding procedure requirements, this action constitutes an alternate dispute settlement procedure regardless of whether the result was intended or not by the parties. [O.A.C. Rule 4117-9-03(F)].

Some parties have established an alternate procedure at the beginning of their negotiations. Their alternate procedure may provide for an impasse panel or another form of fact finding. In these instances, SERB will submit, upon written request of the parties, a list of five neutrals for their consideration. SERB's per diem and expense reimbursement restrictions do not apply to services provided under an alternate procedure. Under alternate procedures, fact finders may charge all applicable fees in accordance with their fee schedules (including cancellation fees) provided that the fact-finder disclosed the fee schedule in advance to the parties.

If the parties want to abandon their alternate dispute settlement procedure in order to access the statutory dispute settlement procedure, the parties may file a joint motion with SERB. The motion must contain a commitment by the parties to complete the statutory procedure without deviation and without re-institution of an alternate dispute settlement procedure. [O.A.C. Rule 4117-9-03(G)].

## **Stays**

SERB can issue a stay of the fact-finding process when the public employer has a valid, good faith doubt whether the exclusive representative maintains majority support among the members of the unit in negotiations. This good-faith doubt has been tied by previous court and SERB decisions to a pending representation petition filed with SERB by a rival union or by members of the unit requesting decertification of the exclusive representative. This doubt also may apply to the filing of a disclaimer of interest by the incumbent union. If the employer submits a motion, the fact-finding process may be stayed pending the disposition of the representation petition. The stay does not take effect until SERB grants the motion during a public meeting. SERB, as it deems appropriate, may issue stays of fact finding for other causes. [O.A.C. Rule 4117-9-02(F)(2)].

The courts have, on occasion, issued stays, temporary restraining orders, or permanent injunctions in relation to the fact-finding process. If the fact finder has invested much time in the proceedings prior to the stay and a lengthy delay is anticipated, the fact finder may submit an invoice for consideration of partial payment based upon services rendered.

## **Position Statements**

Prior to the day of the hearing, the parties must provide the following information to the fact finder and to the other party:

- 1) The name of the party and the name, address, and telephone number of the principal representative of the party;
- 2) A description of the bargaining unit including the approximate number of employees;
- 3) A copy of the current collective bargaining agreement, if any; and
- 4) A written statement defining all unresolved issues and summarizing the position of the party with regard to each unresolved issue. (Positions are to be written in contract language form and indicate the proposed effective date of the provisions).

Failure to provide timely this information to the other party and to the fact finder shall cause the fact finder to take evidence only in support of matters raised in the written statement provided prior to the day of the hearing. [O.A.C. Rule 4117-9-05(F)]. The fact finder is responsible for enforcing this rule requirement.

On occasion, the parties will stipulate to a waiver of the rule requirement regarding the filing of position statements. The parties exercise such an option at their own risk. No precedent exists to support or oppose the ability of the parties to stipulate to such a waiver.

## **Revised Position Statements**

A party may revise its position statement subject to providing it to the other party and to the fact finder prior to the day of the hearing. A party may revise its position statement at hearing upon mutual agreement of the parties.

## **Subpoena Requests**

Any party to the fact-finding hearing may request a subpoena of an individual or a necessary document. The following procedures apply [O.A.C. Rule 4117-9-05(H)]:

- 1) A subpoena request must be written and presented to the fact finder.
- 2) Upon receipt of the request, the fact finder must determine the appropriateness of the subpoena. For valid requests, the fact finder is to call SERB and convey the necessary information for the issuance of the subpoena by SERB. This information includes:
  - Name and complete address of party requesting subpoena
  - Name, title (if applicable), and complete address of party being subpoenaed
  - Documents or records to be produced at the hearing
  - Date, time, and location of the hearing
  - Relevant SERB case number.
- 3) SERB will promptly prepare the subpoena and send it to the requesting party, who in turn will have the responsibility of proper service, unless the fact finder instructs otherwise. The fact finder will be sent a copy of the subpoena that is issued.

## **Mediation by the Fact Finder**

The fact finder is expected to recognize the role of mediation and its relationship to the process of fact finding. Prior to initiating hearing procedures, the fact finder is encouraged to attempt mediation to resolve issues at impasse. [O.R.C. Section 4117.14(C)(3)(f)]. Even if a tentative agreement cannot be reached on all disputed issues, a reduction in the number of issues to be addressed by fact finding may result.

In the course of a fact-finding assignment, the fact finder may be asked to suggest contract language during mediation efforts. Such suggested language does not substitute for a fact-finding recommendation and has no status under the statutory procedure.

Prior to the appointment of the fact finder, a state (SERB) or federal (FMCS) mediator is assigned to the case. [O.A.C. Rule 4117-9-04(B)]. If the mediator has scheduled a meeting with the parties, the fact finder should not schedule a hearing or mediation session in conflict with the arrangements made by the mediator. When a conflict cannot be avoided, the fact finder is obligated to contact the mediator to resolve the conflict. If the parties reject the fact-finding report, the state or federal mediator will continue efforts to resolve the impasse until settlement is reached. [O.A.C. Rule 4117-9-04(C)].

## **Settlement At Hearing**

Should the parties reach a settlement agreement with the assistance of the fact finder, the fact finder upon the request of the parties may submit a mediated settlement report that outlines the terms of the settlement. This report is not a fact-finding report and is not subject to the 3/5's voting standards of the statute. If the settlement agreement is rejected, the fact finder should schedule a hearing and issue a final report. Alternatively, if the parties request that the fact finder issue the mediated settlement as the final report and the fact finder agrees to this request, then the report is a fact-finding report subject to the 3/5's voting standards of the statute.

### **Closed Hearing**

Fact-finding hearings are not open to the public. [O.A.C. Rule 4117-9-05(I)]. They are viewed as part of the negotiation process. Attendance by individuals other than the participants should not be encouraged and must be approved by the parties.

### **Hearing Record**

The fact finder is responsible for the record of the hearing. The taking of notes on the part of the fact finder is considered sufficient. The costs of a stenographer, if one is agreed to by the parties and permitted by the fact finder, are the responsibility of the requesting party or parties. SERB does not consider a stenographic record as an official record of the fact-finding proceedings. If a discrepancy arises between a stenographic record and the fact-finder's notes, it is intended that the fact-finder's notes are to prevail as the official record of the hearing. Should delays result from production of the stenographic records, the parties must agree to the time extension.

### **Posthearing Submissions**

When the fact finder has stated at the hearing the date of closure of the record, additional extensions for posthearing submissions should not be granted except upon the mutual agreement of the parties. Posthearing briefs or other submissions are not encouraged. When deemed necessary by the fact finder, the submissions should be limited to the specific matter needing clarification. All posthearing submissions must provide proof of service to reflect that the other party was served a copy of the submission. Submissions that do not include proof of service must be returned to the sender.

### **Fact-finding Criteria**

The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

[O.A.C. Rule 4117-9-05(K)].

## **Fact-finding Report**

SERB maintains a library of all fact-finding reports since 1991. In order to provide an effective library service, certain standards are suggested to the fact finder in preparing the report. The report is to be typed on 8½" x 11" paper. The date of issuance, the names of the parties, and the related SERB case number are to be listed on the face of the report.

The fact finder must indicate the effective date for recommended changes in agreement provisions or, if applicable, the duration of the change for all recommendations. A summary of recommendations is required by the administrative rules for all reports [O.A.C. Rule 4117-9-05(L)]. The fact finder is obligated to recommend a resolution for each valid issue at impasse. The fact finder may not merely advise the parties to resolve the issue on their own. The fact finder cannot recommend two or more alternatives for resolution of the issue at impasse. Because the parties are to accept or reject the report as a whole, they are not provided a structure under the statute to vote upon alternatives.

Just as the parties are obligated to submit positions in contract language form, the fact finder is required to make recommendations in contract language form. If language of a particular document or position statement is adopted in a recommendation, the language must be repeated verbatim in the fact-finding report or the document must be referenced and attached to the report. The fact finder also is to provide a written rationale for each recommendation except where the parties have stipulated in writing that the fact finder is not required to provide a rationale. In order for the fact-finding process to resolve all potential issues at impasse and not just those of the moment of the hearing, the fact finder should include by reference in the report all tentative agreements of the parties. The report is to acknowledge that the fact finder considered the criteria listed in O.A.C. Rule 4117-9-05(J). Unlike specific restrictions of the statutory conciliation process, the parties may propose and the fact finder may recommend on a retroactive basis compensation and other matters with cost implications.

## **Issuance of Report**

The fact finder must issue the report within 14 days of appointment unless the parties have mutually agreed to an extension of the fact-finding period. [O.A.C. Rule 4117-9-05(L)]. For extensions, the fact finder is obligated to issue the report within the constraints of the extension agreement.

The fact finder should discuss with the parties the eventual arrangements for distribution of the fact-finding report. If the report is to be hand delivered or to be picked up, the individual receiving the report should sign a receipt. The fact finder should keep the receipt. If the parties desire that the report be sent by mail, the fact finder must use an overnight mail carrier. The report must be sent by regular mail to SERB on the same day that it is served on the parties.

If one or both of the parties request(s) that a facsimile copy (fax) of the report be sent by the fact finder, the party or parties making the request must assume the full costs for this expense. If only one party makes a request, the fact finder should offer the service to the other party. In addition, the fact finder still must issue the fact-finding report to the parties via personal service or mail delivery that are the only recognized forms for official service. [O.A.C. Rule 4117-1-03(C)]. The fact finder must use an overnight mail carrier for mail service to the parties and must use regular mail for mail service to SERB.

## **Late Report**

If a fact finder is late submitting a report, the parties should make a conference call to the fact finder to determine the cause and length of delay. If the parties are unable to reach the fact finder or if either party objects to the fact-finder's proposed completion date, the parties are to contact the Bureau of Mediation for assistance.

## **Voting Period**

The seven-day voting period begins on the day following service of the report. [O.A.C. Rule 4117-9-05(M) and (N)]. If the report is hand delivered, service is the date of delivery. If the report is mailed, service is the date of mailing as evidenced by the postmark. Parties are advised to retain the envelope that contained the fact-finding report in that the envelope provides important evidence of the postmark shown for mail service. Any date listed on the fact-finding report or on separate letter of the fact finder that states the intended service date is subordinate to the actual service date. If the seventh day is a weekend or a legal holiday, the parties have until the next SERB business day to conduct the vote. [O.A.C. Rule 4117-1-03(A)]. The sending of a facsimile copy (fax) of the report does not constitute service and, therefore, does not start the seven-day voting period. The vote must be conducted on or before the seventh day following the date of service, regardless of when the report was actually received unless the parties mutually agree to an extension.

## **Voting-Period Extensions**

It is recognized that the parties by mutual agreement may extend the statutory fact-finding time lines at any time subsequent to the appointment of the fact-finding panel [O.A.C. Rule 4117-9-05(G)], and that this ability to extend would include expanding the seven-day fact-finding voting period. Some parties have needed a longer voting period in order to make arrangements for a proper vote upon the report or to adequately inform their constituencies of the fact-finding recommendations. The extension must be in writing, specific as to duration, signed by both parties, and submitted to the fact finder and SERB within five days of execution.

Based upon mitigating circumstances beyond a party's control, a party can request an extension of the voting period. The request is to be filed as a motion; and the motion must be filed with SERB prior to the expiration of the initial voting period. In the interim, the party making the request is obligated to immediately conduct the vote as soon as possible. Filing of the motion does not ensure approval of the request. After SERB reviews the motion and any related responses, it will determine whether to approve or deny the motion based upon the circumstances presented.

## **Voting Requirements**

An employee organization is required to inform its members of the findings, recommendations, and summaries of the fact-finding panel and provide notice of the dates, times, and places where its members may vote on the fact-finding report. Each member is to be provided a written ballot containing a choice of "approve" and a choice of "reject" the recommendations of the fact-finding panel. A voice vote is not sufficient. The members must vote to accept or reject the fact-finding recommendations (including referenced tentative agreements) as a whole. Proxy voting (including absentee voting) is prohibited. Once voting has begun it is not appropriate to extend or otherwise adjust the published dates and times of the election. The employee organization must tally the votes immediately upon the conclusion of the election. No tallying of ballots is permitted until all votes are cast or until the designated election times as listed by the employee organization on its notice of election have expired.

If the parties have agreed to multi-unit bargaining, usually it is the employee organization's determination whether fact-finding votes are to be separate or combined for the units in question. If the employer prefers that each unit vote separately, it may assure that result by not agreeing to multi-unit bargaining or by agreeing to multi-unit bargaining with the condition that each unit vote separately.

The employer is required to inform the appropriate legislative body of the findings, recommendations and summaries of the fact-finding panel. Proxy voting (including absentee voting) is prohibited. The legislative body must vote to accept or reject the fact-finding recommendations (including referenced tentative agreements) as a whole.

In order for a fact-finding report to be rejected, at least one party must have three-fifths of its eligible voters vote properly and timely to reject the recommendations, and this party must provide proper and timely certification of the fact-finding vote. Any vote of a party that is less than a three-fifths rejection by the eligible voters is a vote of acceptance. Failure by a party to vote or to vote properly and timely, as well as failure to provide proper and timely vote certification will result in the fact-finding recommendations being deemed accepted by the party.

### **Vote Certification**

Each party must properly certify its fact-finding vote to the other party and SERB within 24 hours of the expiration of the voting period. If the certification day falls on a weekend or a legal holiday, the party has until the next SERB business day to postmark or hand deliver its certification-of-vote. A party must provide written verification of the date of the vote, the vote tally, and the number of eligible voters. Failure to comply with all requirements of O.A.C. Rule 4117-9-05(M) and (N), including the requirement of proof of service for vote certification, will result in the fact-finder's recommendations being deemed accepted by the non-complying party. Certified mail receipts or overnight mail receipts do not constitute proof of service as defined by administrative rule. [O.A.C. Rule 4117-1-02(B)]. The parties are provided and are encouraged to utilize fact-finding certification-of-vote forms to assist them in their compliance with the rule requirements including provision of proper proof of service.

### **Notice of Voting Results**

Upon receipt of the parties' vote certifications or upon expiration of the fact-finding voting period, SERB in each case will issue a notice of rejection, acceptance, or deemed acceptance. Notices of acceptance or deemed acceptance are sent to the parties as a courtesy. Notices of rejection and a copy of the report are sent to the news media for review and sent to the parties for posting. Also, SERB posts the notice of rejection on its public bulletin board. Notices of rejection are to be posted for 30 days.

### **Correction of Report**

If a fact-finding report contains an error that needs correction, the parties should make a conference call to the fact finder to discuss the concern. Obvious typographical errors admitted by the fact finder do not require adjustment. If the report contains a substantive error that requires written adjustment of the fact-finding report, the fact finder may not submit a correction of the report to the parties on his or her own initiative or at the request of the parties. The fact finder must request authorization from SERB in order to make written adjustments to the fact-finding report based upon error or omission. [O.A.C. Rule 4117-9-05(L)]. In the interim, the parties should conduct a vote upon the report with consideration of the uncorrected error involved. If SERB grants the request to provide a correction to the report, new time lines will be established for the issuance of the correction and for conducting votes on the corrected report. Votes conducted on the initial report will be voided by the action to allow the issuance of a corrected report.

If the parties (prior to conducting a vote) jointly call the fact finder for interpretation of a fact-finding recommendation, the fact finder is not obligated, but may respond to the item in question. If the parties request that the interpretation be made in writing, the fact finder would need to declare an error or omission of the report and seek authorization from SERB prior to issuing the written response.

As an alternative, the parties may, at any time, amend or modify an accepted or deemed-accepted fact-finding report by mutual agreement.

### **Post Fact-finding Clarification**

If the fact finder is asked by both parties to issue a clarification or supplement to the report after it has been accepted, deemed accepted, or rejected by the parties, the fact finder is not under an obligation to provide the requested clarification or supplement. Because the jurisdiction of the fact finder has expired, the costs (if any) associated with a new hearing or with preparation of a clarification to the report are the responsibilities of the parties.

### **Publication of Fact-finder's Report**

Once the fact finder has sent the report to the employer, employee organization, and SERB, the fact finder may not distribute the report to others until after expiration of the voting period. If the report is rejected, SERB sends a notice of rejection with a copy of the report to the news media, which constitutes publication of the report. [O.A.C. Rule 4117-9-05(P)]. In addition, the notice of rejection and an accompanying copy of the fact-finding report are sent to the employer and employee organization for posting.

If the fact finder desires to have the report published as part of a professional journal, a release may not be required because the report is a public record. As a courtesy, the parties involved should be consulted.

### **Fact-finding Costs**

Fact-finding fees may vary. SERB establishes only a maximum per diem, hourly rate, and expense allowance for all services. The neutrals' biography sheets list the designated fees. The fact finder will be paid no more than \$950/day for eight hours of service that includes time for travel, the hearing, research, and writing of the report. Hours greater than or less than eight shall be compensated at no more than \$118.75/hour. The fact finder's per diem is listed on the neutral's biography sheet. The fact finder also will be reimbursed for all actual and necessary receipted expenses not to exceed \$150/day. [O.A.C. Rule 4117-9-01(C)]. The parties shall share the cost of the fact-finding. [O.R.C. Section 4117.14(C)(5)]. The parties, at their discretion, may agree to pay additional charges not authorized by SERB. A party that fails to pay a neutral's fee within sixty days of its billing, may be required to pay a 10% late fee in addition to the initial charges. [O.A.C. Rule 4117-9-01(C)]. Any questions related to the charges by the fact finder should be directed to the fact finder.

### **Fact-finding Service Concerns**

If a party has a concern regarding the conduct of a fact finder, a party may file a written request that SERB evaluate the matter. After investigation, SERB may counsel, direct to training, suspend, or remove roster members from the SERB Roster of Neutrals depending upon the circumstances of the case.