



Ohio Administrative Code Rule 4117-9-05 Fact-finding.

Effective: August 6, 2015

When the statutory procedures of divisions (C)(2) to (C)(6) of section 4117.14 of the Revised Code apply, fact-finding shall be conducted in accordance with these terms:

(A) Subsequent to receipt of a request via electronic mail from either party for fact-finding and to the appointment of a mediator, the board shall send to the parties a list of five fact finders from the board's roster of neutrals. Other than a joint request by the parties, a request via electronic mail for fact-finding must be filed with the board, served upon the other party, and include proof of service pursuant to rule 4117-1-02 of the Administrative Code. A second list shall be issued only pursuant to a statement showing good cause.

(B) Not later than seven days after the date that the board sent to the parties a list of fact finders, the parties shall submit to the board via electronic mail a mutually selected fact-finding panel of one or three members. The names of mutually selected alternates to the preferred panel also shall be submitted to the board via electronic mail at this time. Such selections shall be made by alternate striking of the names, unless the parties mutually agree to another means of selection. If the parties do not select a fact-finder or cannot agree to the number of members on the panel, the board shall appoint a one-member panel.

(C) The parties may mutually select any fact finder from the board's roster of neutrals instead of selecting from the list provided by the board, or the parties may select a fact finder not listed on the board's roster of neutrals. The parties selection of a fact finder not listed on the board's roster of neutrals does not constitute a mutually agreed-upon dispute settlement procedure under rule 4117-9-03 of the Administrative Code unless the parties have complied with the requirements set forth in rule 4117-9-03 of the Administrative Code.

(D) Upon receipt of notice of the fact-finding panel selected by the parties, the board shall appoint a fact-finding panel no later than fifteen days after receipt of the request for fact-finding or the appointment of a mediator, whichever occurs later. If the parties have not submitted a selected fact-



finding panel to the board within the time designated in these rules, the board shall, in its sole discretion, appoint a fact-finding panel consisting of one member.

(E) In those cases where selected fact finders are unavailable, the parties may select another fact finder from the same list and notify the board via electronic mail within three days. If no selection is made, the board shall appoint a fact finder at its discretion.

(F) Pursuant to division (C)(3)(a) of section 4117.14 of the Revised Code, upon notice of appointment of the fact-finding panel and no later than five p.m. on the last business day prior to the hearing, each party shall submit via electronic mail to the fact-finding panel and the other party a position statement. A failure to submit via electronic mail such a position statement to the fact finder and the other party no later than five p.m. on the last business day prior to the hearing, shall cause the fact-finding panel to take evidence only in support of matters raised in the written statement that was submitted prior to the hearing. The statement shall include:

- (1) The name of the party and the name, mailing address, email 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 statement defining all unresolved issues and summarizing the position of the party with regard to each unresolved issue.

(G) The parties may mutually agree to an extension of the statutory fact-finding timelines at any time subsequent to the appointment of the fact-finding panel. An extension must be specific as to duration, agreed to by both parties, and submitted to the panel and filed with the board via electronic mail within five days of its execution. An extension may be continued, provided the original extension procedures are followed. The factfinding panel has no authority to extend the statutory timelines absent mutual agreement of the parties.

(H) The fact-finding panel must hold an evidentiary hearing except that the parties may stipulate



facts and waive hearing. For purposes of hearing, the fact-finding panel shall have the power to regulate the time, place, course, and conduct of the hearing, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and request the board to issue subpoenas to compel attendance of witnesses and the production of books, papers, and records relating to any matter before the fact-finding panel. The fact-finding panel may not choose a hearing location at a cost to the parties unless the parties fail to agree to an alternate cost-free location. Costs associated with a meeting room shall be the obligation of the parties.

(I) Fact-finding hearings are to be held in private.

(J) The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

(K) 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 interest 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 issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.



(L) No later than fourteen days after the appointment of the fact-finding panel, unless the parties mutually agree to an extension, the fact-finding panel, acting by a majority of its members, shall serve on the parties and the board via electronic mail findings of fact, recommendations on the unresolved issues, and a separate summary of each recommendation. Any subsequent change or adjustment by the fact-finding panel in the fact-finding report must be based upon error or omission and must be submitted by the fact-finding panel to the board for consideration and imposition of new time periods. If the fact-finder's report contains an error that needs correction, the parties shall contact the fact finder to raise the concern. If the report contains a substantive error that requires an adjustment to the report, the fact finder shall file a request with the board for authorization to adjust the report. Unless the parties agree to extend the voting period, the parties should conduct a vote upon the report as issued without correction. Once the board grants authorization for the fact finder to adjust the report, new timelines will be established for conducting a new vote to accept or reject the report as adjusted. Obvious typographical errors admitted by the fact finder do not require a board authorized adjustment.

(M) Immediately upon receipt, the exclusive representative shall make available, by posting or by other method reasonably calculated to inform the members of the employee organization in the unit, the findings, recommendations, and summaries of the fact-finding panel together with a notice of the dates, times, and places where the employee organization's members in the unit may vote to approve or reject the recommendations of the fact-finding panel. A secret ballot election shall be conducted by the exclusive representative at the dates, times, and places set forth in the notice. Such election shall be conducted not later than seven days after the findings, recommendations, and summaries of the fact-finding panel are served pursuant to paragraph (C) of rule 4117-1-02 of the Administrative Code. Each member of the employee organization in the unit shall at the time and place of election be issued a ballot containing a choice of "approve" and a choice of "reject" the recommendations of the fact-finding panel. There shall be no voting by proxy. The ballots shall be tallied immediately upon the conclusion of the election. Verification by electronic mail of the date of the election, the vote tally, and the number of members of the employee organization in the unit shall be served upon the board and served upon the employer within twenty-four hours after the tally of ballots, but in no event later than twenty-four hours after the expiration of the seven-day voting period. The verification must contain proof of service upon the employer pursuant to rule 4117-1-02 of the Administrative Code. Failure to serve upon the board and the employer the required voting



information within twenty-four hours of the expiration of the seven-day voting period shall constitute failure to reject the recommendations, and the recommendations shall be deemed accepted as the resolution of issues submitted to fact-finding. Oral notification to the board or the employer shall not constitute timely compliance with this rule.

(N) Immediately upon receipt, the employer's representative shall make available to the appropriate legislative body the findings, recommendations, and summaries of the fact-finding panel. Not later than seven days after the findings, recommendations, and summaries of the fact-finding panel are served pursuant to paragraph (C) of rule 4117-1-02 of the Administrative Code, the legislative body shall meet and vote to accept or reject the recommendations of the fact-finding panel. Verification by electronic email of the date of the vote, the vote tally, and the number of members of the legislative body shall be served upon the board and the exclusive representative within twenty-four hours after the vote count but in no event later than twenty-four hours after the expiration of the seven-day voting period. The verification must contain proof of service upon the employee organization pursuant to rule 4117-1-02 of the Administrative Code.

Failure to serve upon the board and the employee organization the required information within twenty-four hours of the expiration of the seven-day voting period shall constitute failure to reject the recommendations, and the recommendations shall be deemed accepted as the resolution of issues submitted to fact-finding. Oral notification to the board or the employee organization shall not constitute timely compliance with this rule.

(O) If neither party rejects by a three-fifths vote the recommendations of the fact-finding panel, not later than seven days after the recommendations are sent, the recommendations shall be deemed agreed upon as the final resolution of the issues submitted to the fact-finding panel and a collective bargaining agreement shall be executed, including the fact-finding panel's recommendations, except as otherwise modified by the parties by mutual agreement.

(P) If the recommendations of the panel are rejected by a three-fifths vote of either party and the rejection information required by paragraph (M) or (N) of this rule is timely served upon the board and the other party, the board shall post a copy of the fact-finding report and the notice of rejection in its Columbus offices and shall mail copies to the press, with recipients determined at the board's discretion. A board-provided notice of the rejection and a copy of the fact-finding report shall be



posted by the employer and the employee organization in conspicuous locations where employees will be reasonably apprised of the contents. The "date of publication" is the date the board mails the notice and report to the press. A notice of rejection shall remain posted for a period of thirty days or until settlement occurs, whichever is earlier.

(Q) The parties shall share the cost of the fact-finding panel in a manner agreed to by the parties. If the parties cannot agree on how to share the cost of fact-finding, the parties shall each pay one-half of the remaining cost.