

ADMINISTRATION

By correspondence dated March 30, 2000, from the State Employment Relations Board, Columbus, Ohio, the Undersigned was notified of his mutual selection to serve as Fact Finder to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-9-05(j); and, (k), in an effort to facilitate resolution of those issues that remain at impasse between these Parties. The impasse resulted after various attempts to negotiate an initial Collective Bargaining Agreement between these Parties proved unsuccessful.

The following Findings and Recommendations with supporting rationale are hereby offered for consideration by these Parties; were arrived at based on the Parties' mutual interests and concerns; and, are made in accordance with the Statutorily Mandated Guidelines set forth in Ohio Administrative Code Section 4117-9 which recognizes certain criteria for consideration in the Fact Finding Process as follows:

1. Past collectively-bargained Agreements, if any, between the Parties;
2. Comparison of 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 and the ability of the public employer to finance and administer the issues proposed and the effect of the adjustment on a normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the Parties; and,
6. Such other factors not confined in 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 public service or in private employment.

THE BARGAINING UNIT DEFINED; ITS DUTIES AND RESPONSIBILITIES TO THE COMMUNITY; AND, GENERAL BACKGROUND CONSIDERATIONS

As previously stated, the Parties involved in this matter are the Green County Public Library, hereinafter referred to as the "Employer" and the Service Employees International Union and its District 925 representing the Green County Public Library Employees, hereinafter referred

to as the "Union". The record demonstrates that the initial "vote" represented approximately 52% of the Employees on election day and based on the information provided by the Union, that has risen to 78% membership at the time of the Fact Finding Proceeding. It is clear that a large portion of employees have recognized the Union's existence, as well as, involvement, not only by this process, but that which will continue following the execution of this initial Collective Bargaining Agreement. The Principle Representatives identified in this proceedings are: Deborah Schneider, President of SEIU, District 925, located in Cincinnati, Ohio and Dolores F. Torriero, of the firm Downs & Hurst located in Columbus, Ohio.

As the named and designation of the Employer suggests, the Green County Public Library located in Xenia, Ohio, provides library related services to members of the Community. It is located in the center most part of Green County, and is contiguous to the Counties of Clark, Montgomery, Madison, Warren, Clinton, and Fayette. During the course of the Fact Finding Proceeding, it was made apparent to the Fact Finder that these Parties have engaged in good faith Bargaining throughout the course of the Proceedings culminating in this Fact Finding and the relationship has, for lack of a better characterization, started on firm foundation. Obviously, the Parties were not able to reach agreement on all the issues presented, but prior to the Fact Finding Hearing commencing, the Parties engaged in Mediation with the Fact Finder. Even though agreement was not reached, the Parties were able to recognize the benefits attendant with reaching settlement of the Collective Bargaining Agreement without intervention by a Fact Finder in the final stage of the Statutory Process.

The record also demonstrates that there is no arguments raised by the Employer concerning any inability to pay. Simply, that it wants to remain fiscally prudent and not place itself in a position that would ultimately affect the level of services it provides to the members of this Community.

As previously discussed, the Parties have reached agreement on numerous issues that have been put forward during the course of bargaining which will be contained in the initial Collective Bargaining Agreement between them as follows:

Article 1 - Parties to the Agreement

Article 3 - Non Discrimination

Article 4 - Union Representation
Article 6 - Labor Management Committee
Article 7 - Classification System/Job Descriptions
Article 8 - Seniority
Article 11 - Probationary Period
Article 12 - Performance Evaluations
Article 13 - Personnel Files
Article 14 - Reduction in Force
Article 15 - Hours of Work
Article 16 - Disciplinary Procedure
Article 17 - Grievance Procedure
Article 18 - Sick Leave
Article 19 - Bereavement Leave
Article 20 - Calamity Days
Article 21 - Military Leave (Withdrawn)
Article 22 - Jury and Witness Duty
Article 23 - Family and Medical Leave
Article 24 - Leaves of Absence without Pay
Article 25 - Professional Development
Article 26 - Health and Safety
Article 27 - Holidays
Article 28 - Vacations
Article 29 - Personal Leave
Article 31 - Retirement
Article 35 - Mileage/Parking
Article 36 - Staff Privileges
Article 37 - No Strike/Lockout
Article 39 - Work Rules

As previously indicated, these Parties and the Fact Finder engaged in mediation efforts that commenced at approximately 8:30 a.m. and concluded at approximately 2:30 p.m. The Fact Finding Proceeding commenced forthright thereafter and it concluded at approximately 4:00 p.m. Each Party submitted their Pre-hearing Statement indicating the unresolved issues and meeting with the Statutory requirements of the Pre-hearing Statement and the timing element as to when it was to be exchanged and presented to the Fact Finder. The Parties have indicated that they have reached tentative agreement to add the Assistant Community Information Officer title to the Bargaining Unit. The Parties have also submitted their written statements, have defined all unresolved issues and summarized their positions on each. With regard to those issues that remain at impasse, each Party has indicated that the following Articles remain unresolved and are at impasse between them as follows:

Article 2 - Contracting Out

Article 4 - Fair Share Fee

Article 4 - COPE Deduction

Article 9 - Internal Promotion

Article 10 - Involuntary Transfers

Article 30 - Health Insurance; Employer Caps

Article 30 - Dental Insurance for Part-time Employees

Article 30 - Conferring with Union regarding Health Care Provider Change and Negotiating over any mid contract benefit level change.

Article 32 - Wages

Article 34 & 38 - Management Rights and Duration

As is typical, each Party has relied upon comparable data and supporting evidentiary considerations that the Fact Finder is required to consider with regard to the overall make-up and services provided to the members of this Community as it pertains to the library services supplied by the Green County Public Library.

As is typical, there are no “on-point” comparisons relative to other Bargaining Units concerning wages and other benefits that remain at impasse; however, whatever similarities that

may exist must be taken into consideration by the Fact Finder based upon the above-noted statutory criteria. It is the position of this Fact Finder that the Party proposing, as this case demonstrates, inclusion into the initial Collective Bargaining Agreement, bears the burden of proof and persuasion to compel the inclusion of the language proposed. Failure to meet that burden will result in a recommendation that the Parties not include, in their initial Collective Bargaining Agreement, a particular proposal raised by the respective Party.

Therefore, the following recommendations are based on the data provided; the positions taken by each respective Party; and, those factors peculiar to library personnel and supporting classifications while recognizing the unique duties associated therewith and based thereon, the Fact Finder recommends the following relative to each of the unresolved issues subject to this Proceeding.

ISSUE NO. 1

ARTICLE II - UNION RECOGNITION

As the evidentiary record demonstrates, the Library proposed the use of the student interns to supplement its workforce. While guaranteeing that the use of these interns, nor the contracting out of any work currently performed by any Bargaining Union member would result in a lay off of any Bargaining Unit Employees. The Union takes the position that it prohibits the library from using the student interns and further prohibits the Library from using contractors to perform any Bargaining Union work.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties adopt the Union's proposal dated August 21, 2000 identified as section 5 titled, Contracting Out; however, only paragraphs B and C are recommended for inclusion into the initial Collective Bargaining Agreement between these Parties. Having a "blanket" prohibition on any contracting work in any regard would stifle the Employer's ability to have certain operational-type jobs performed. It was mentioned that outside employees perform office cleaning, as well as, the changing of lights, the painting of rooms, etc., all those types of related activities that do not fall under the definition of performing library related services by this Bargaining Unit. Apparently, the Employer was approached by several local Universities regarding the use of students on "work study" programs to supplement

the workforce as needed.

Obviously, any library becomes busier during the school year when projects are assigned and research is performed by students. And it would seem that the use of "casual or seasonal" staff to augment the workforce as proposed by the Union would satisfy the Employer's concerns during these busy times. It is clear that the Library has made full disclosure to the Union and it has discussed its intentions relative to the use of outside contractors and under the circumstances which they would be utilized. It is important to note that the Employer has not had a reduction in force since its inception which represents a valid argument to allow it to utilize certain casual and seasonal employees to augment the workforce during the times deemed necessary by the library.

ISSUE NO. 2

ARTICLE 2 - UNION RECOGNITION, FAIR SHARE FEE, DUES DEDUCTIONS

The Union proposes an additional provision requiring Employees who choose not to join the Union to pay a fair share fee and require the Library to collect said fee and remit it to the Union. The Library has proposed language the would, in effect, provide for the automatic deduction of dues from employees who authorize the Library to make such a deduction and provide for a method of resolving discrepancies while indemnifying the Library from any liability in conjunction with dues and deductions.

RECOMMENDATION AND RATIONALE

It is recommended that the Parties adopt the Union's proposal dated August 21, 2000 as contained in Appendix B of its Fact Finding Hearing materials titled, "Payroll Deductions," with the addition of the Library's counter-proposal of April 17, 2000 which represents an "Indemnification Clause" holding it harmless for its involvement in making such a deduction. The record demonstrates that each representative provided an extensive argument relative to the current status of a fair share fee provision. In circumstances where there is a fair amount of non-union members within the Bargaining Unit, it is indeed important, for various reasons, including the morale of all employees to effectuate the underlying premise upon which fair share fee language exists, i.e., that of fairness to all employees regardless if they elect Union membership or not.

Ohio Revised Code, Section 4117-.09(C) acknowledges that a public employer and an

exclusive Bargaining Representative may enter into a Collective Bargaining Agreement that may require as a condition of employment, employees who are not members of the Employee Organization; nonetheless, pay to the Employee Organization a fair share fee once the probationary period of employment has expired. Section 4117.09(C) states in pertinent part:

...Employees in the Union who are not members of the Employee Organization, pay to the Employee Organization a fair share fee. The arrangement does not require any Employee to become a member of the Employee Organization nor shall fair share fees exceed dues paid by members...

The deduction of a fair share fee by the public employer from the payroll check of the Employee is automatic and does not require the written authorization of the Employee. ...

There is a series of U.S. Supreme Court cases that addresses the issue involving “free riders.” Those are individuals who do not choose to become a member of the Exclusive Collective Bargaining Agent, but nonetheless reap the benefits of that Union’s involvement at their place of employment. The law in Ohio indeed provides Employees a choice on whether to join the Union. However, it also requires the Union represent all Employees, Members, and Non-members alike, equally and without prejudice. This obligation is deemed fair, and has been deemed fair by the United States Supreme Court to charge a non-member a fee that does not exceed the amount charged for union dues to Members. Such a fair share fee is designed to defray the cost of representation efforts engaged in by the Exclusive Representative.

It has been stated numerous times in the case law handed down by the United States Supreme Court that this is an issue of fairness; whereby, all Bargaining Unit Members reap the benefits of a negotiated contract, the benefits of day to day representation, that are recognized by the Courts and the various legislatures throughout the Country. The payment of a fair share fee has been deemed by the United States Supreme Court not to impinge upon the First Amendment Rights of Non-members relative to free association. With the proper indemnification language, the implementation of a fair share fee process allows for the equitable collection of Union Service Fees that obviously benefit the labor organization and do not prove to harm the Employer.

The data provided by the Union as set forth in Exhibits 3 and 4, respectively, indicate that of the Library Contracts in Ohio, only Fairfield County, Lima, and Stark County, do not contain a fair share fee provision. Moreover, of the Collective Bargaining Agreements, wherein this Union is the exclusive Representative, only one, Stark County Public Library of 21 referenced, does not have a fair share fee provision. It is clear that both State law and that handed down by the United States Supreme Court provides compelling evidence to recommend the inclusion of the fair share fee proposal made by the Union that includes a sufficient indemnification and hold harmless language as proposed by the Library.

At the time this Union was recognized, it had approximately 52% membership and that has grown to 78%. Twenty-two Percent (22%) of the Employees are not members, but they continue to reap the benefits of a Collective Bargaining Agent. The inclusion of this type of language has no bearing whatsoever on any type of position or philosophical view that this Library or any other employee may have, relative to, Union Membership. This is simply an additional step in the dues deduction process that enables the Union to collect an equitable fee for the services it provides to non-members. That is both sanctioned by the Ohio Legislature in 4117, as well as, confirmed by the United States Supreme Court in a series of cases on this issue.

Finally, the fair share fee process proposed by this Union has survived legal scrutiny and its procedural aspects were affirmed in a case involving the Right to Work Committee that occurred in 1992. Based thereon, it is clear that the compelling weight of evidence supports the inclusion of the fair share fee process as proposed by the Union with the requested and deemed accepted indemnification/hold harmless language as proposed by the Employer.

ISSUE NO. 3

ARTICLE 4 - COPE DEDUCTION

In addition to the fair share provision of this Article, the Union seeks language which would require the Employer to make voluntary political fund deductions, identified as SEIU COPE for its Committee for Political Education via payroll deduction. The Union notes that the Employer currently provides such voluntary deductions for other organizations such as the United Way, etc. Such would not be any new system cost to the Employer and would provide a mechanism for the staff who want to contribute to this fund. This does not suggest that the

Library endorses the expenditures of the fund or that it shares the views of the use that is performed with this money.

The Library contends that the Union's proposal for the COPE deductions violates Section 3599.031(h) of the Ohio Revised Code which states:

No public Employer shall deduct from the wages and salaries of its Employees any amount for the support of any candidate separate, segregated fund, political action committee, legislative campaign fund, political party or ballot issue.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties do not incorporate into their initial Collective Bargaining Agreement, the language proposed by the Union concerning the COPE deduction. Based on the citation provided by the Employer, contrary to the Union's assertions as it being perfectly legal, the Ohio Revised Code Section cited seems to suggest that the Employer not engage in such a deduction. Inasmuch as the legal status of this language has not been thoroughly tested, the Fact Finder is of the position that until such guidance is provided, the Parties should not be placed in a position of placing language into any Collective Bargaining Agreement that could quite possibly be illegal. In this regard, it is not recommended for inclusion herein. Moreover, any Member can contribute to this cause if he/she chooses and can do so without language contained in the Agreement.

ISSUE NO. 4

MANAGEMENT RIGHTS (ARTICLES 34 & 38)

It is apparent that the Employer has proposed two aspects to what, in many cases, appears under a Management Rights clause. Its proposal clearly states the Rights and Responsibilities retained by the Employer with a proposed Zipper Clause which, as it contends, can be placed in either this Article or the Conflict and Amendment Article. The Union indicates that it made its proposal in an attempt to reach agreement on a total package which sets forth a long and detailed Rights Article. The Employer's Waiver of Negotiations Clause in which the Union essentially relinquishes bargaining rights guaranteed under 4117 is too far reaching. It cites the Ohio Supreme Court case of Loraine City School District, Board of Education.

RECOMMENDATION AND RATIONALE

The Ohio Revised Code does recognize many Rights afforded to Management that often times end up in a Collective Bargaining Agreement. Based on the positions taken by the Parties, it is recommended that the Parties incorporate into their initial Collective Bargaining Agreement the Management's proposal with the Zipper Clause which seemingly addresses that contained in the Union's proposal of August 21 without Section 2. In this regard, it is recommended that the Parties adopt that contained in the Management Proposal relative to the Management Rights Article that contains the Zipper Clause to be included in the initial Collective Bargaining Agreement. It would seem, however, that placement of the Zipper Clause would be more appropriate in the Conflict and Amendment Article as proposed by the Employer.

It is apparent that a generic statement would in many ways be insufficient. It is important to place Employees new to the Collective Bargaining arena, in a position to completely understand specific Rights and Obligations of the Parties contained in such an Agreement. It is important to convey these Rights and Responsibilities clearly and with great detail so that no one is under any mis-guided conclusions relative to their status. Similar language exists recognizing these extensive Rights and Responsibilities of Management with this Union in various Contracts with other Libraries throughout the State.

The inclusion of the Zipper Clause places the Parties on an understanding that all subjects of concern between them were fully discussed and resolved during the court of the negotiations culminating in the Collective Bargaining Agreement's execution. The Zipper Clause allows this Collective Bargaining relationship to continue and proceed without interruption if mid-term issues arise. It is often times a scenario that an initial Collective Bargaining Agreement takes many months with exhausted Collective Bargaining efforts to reach an acceptable Agreement to both Parties. Given these abilities, it would certainly assist the Parties in focusing on their Rights and Responsibilities under their new Collective Bargaining relationship without the fear of interruption where such a Zipper Clause does not exist.

ISSUE NO. 5

ARTICLE 9 - PROMOTION AND VACANCIES

The Library has proposed language that it contends codifies the current practice and policy whereby it retains the freedom to solicit outside candidates for vacant positions and to hire

the best qualified candidate for each position. It notes that it has a long history of promoting from within and sees no reason to deviate from that practice.

The Union seeks language that would provide preference to internal applicants over outside applicants and does not propose a strict seniority criteria for the hiring; or that the Library be required to promote unqualified candidates. The Library would have full discretion in establishing qualifications for positions and continue to be able to select the most qualified of the internal candidates based on highly subjective judgment.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties adopt the Union's language as set forth in its August 21, 2000 proposal except that the first sentence in Section A, beginning: "If an opening occurs within the Bargaining Unit," be deleted; and, that paragraph begin with: "The Employer shall post and circulate...." Additionally, the provision containing, "...before advertising the position publicly." be deleted as well. Moreover Section B thereof should read as:

B. Selection All qualified internal applicants must be offered an interview for the vacancy. If two(2) internal candidate's qualifications are roughly equal, the candidate with the most seniority shall be selected. The selection of most qualified shall be based solely on job-related criteria, including experience, knowledge, skill, training, tenure at Green County Public Library and past performance. All actions in filling vacant positions in the bargaining unit will be taken in accordance with the Library's Affirmative Action Plan and the American's with Disabilities Act of 1990.

Section C shall remain as set forth in the Union's August 21, 2000 proposal.

It is clear that this language, in many ways, addresses the mutual interests and concerns of both Parties whereby Employees receive notice of the vacancy and it is undisputed about the amount of time before its advertised publically. The various aspects of the position are identified therein and the Employee can make written notification of its application and response to the posting. All internal applicants will be afforded an interview for the vacancy and the Library can hire from outside if there are no qualified internal applicants. The Library can select the most qualified Bargaining Unit candidate and where qualifications are roughly equal, seniority shall be the determining factor.

Clearly, this language affords both Parties the ability to successfully and fairly address

vacancies and promotions that may exist at this facility. It has incorporated therein several safeguards relative to equitable and fair considerations of internal applicants that is being sought by the Union and there is no evidence that was presented that Management has in any way abused its discretion with respect to promoting from within. Clearly, in most situations, those candidates internally know the inner-most workings of the types of services provided by the Employer and in many instances would provide the Employer a “head start” with regard to training and knowledge of the position to which he or she may apply. In this regard it is clear that there are several beneficial aspects of this language that addresses both Parties concern to this Article.

ISSUE NO. 6

ARTICLE 10 - TRANSFERS

The Union is seeking language that would essentially ban all involuntary transfers and/or transfers for disciplinary reasons. The Library rejects any proposal which would eliminate or restrict its ability and right to transfer Employees as operational needs dictate.

RECOMMENDATION AND RATIONALE

There were two scenarios that were discussed by the Parties relative to transfers: obviously, voluntary vs. involuntary, and permanent vs. temporary, transfers. The Disciplinary Article that the Parties have agreed to governs discipline. And as the Library has indicated, it would not designate or consider any position to be a punishment or, otherwise, undesirable. In this regard, it has indicated its acquiescence that no transfer would be considered for disciplinary purposes. It also recognizes that there are no instances raised by the Union where this has occurred against the will of an Employee. The Union has proposed, as acceptable language relative thereto, that would address its concerns and prohibit involuntary transfers for disciplinary reasons, as set forth in the Exhibits submitted in its Fact Finding package.

It is hereby recommended that the Parties adopt, for Permanent Transfers, the language contained in the Cleveland Public Library Contract as set forth in Exhibit 6 contained in the Union’s Fact Finding package. Specifically, it is recommended that the Parties adopt Section G, titled “Transfers” from the Cleveland Public Library Contract, paragraphs G1; G2; G6; and , G7.

With respect to Temporary Transfers, it is recommended that the Parties adopt the

language contained in the Medina County District Library and SEIU District 925 as set forth in Section 8. It is apparent, that given the two scenarios that could potentially arise, it is necessary that the Parties include language that obviously would contemplate a situation of a permanent or temporary nature relative to a transfer of an Employee. Given the language contained in these two Agreements, i.e., Cleveland and Medina, both contain sufficient safeguards and do not stifle the Employer's ability to address operational needs as they arise. As such, it is recommended that the Parties adopt this language.

ISSUE NO'S. 7;8;& 9

ARTICLE 30 - HEALTH INSURANCE & DENTAL INSURANCE;
and, MID-TERM PROVIDER CHANGES

The Library has proposed to pay 100% premium for Single person dental coverage for full-time employees and a pro-rated portion for part-time employees. In exchange, it will guarantee a similar health benefit for the life of the Agreement and seeks a cap on its contribution to its health insurance premiums. The Union opposes the proposal of the Employer concerning caps and asserts that the current practice as set forth in Exhibit 8 of its Fact Finding package and the Employer's initial proposal as set forth in Exhibit 7 provide that the Employer contribute 80% of the cost of Health insurance coverage for full-time Employees. It proposes that the Employer pay 100% of the total premium for a Single Dental plan for all Employees working 20 hours per week or more; and, offer Dental coverage on a pro-rated basis to all employees working less than 20 hours. It seeks a guarantee of levels of coverages throughout the life of the Agreement and discussion with it if the Employer contemplates changing providers. And, it seeks language that would allow the Labor-Management Committee to explore options for offering Health Insurance to Part-time Employees.

RECOMMENDATION AND RATIONALE

Prior to the Union's existence, the Employer paid 80% of the premium and the Employee would pay 20% for Health insurance - no caps existed. Employees should not be penalized simply because they choose to exercise their right to organize. However, as has become prevalent in Insurance Industry, Premium levels are generally driven by many coverage providers requiring

a high level of participation in exchange for a guarantee of rates. The higher the rate of participation, the better the premium rate, the level of coverage and the greater likelihood both will remain stable throughout the term of a Collective Bargaining Agreement. In those instances where the number of part-time workers, who generally do not receive such benefits, exceed those of full-time status, that likelihood becomes problematic. As with many part-time employees, generally they do not participate in any type of insurance plans because of their part-time nature. They typically have a spouse or some other individual who "carries" the insurance benefits in their particular situation.

The record demonstrates that approximately 75% of the staff are part-time employees who receive no Health insurance benefits. The Library proposed to address these matters in relation to a dental plan. There are approximately 62 employees who work 20 hours or more per week, but are less than full-time. Union Exhibit 9 represents libraries throughout the State of Ohio that place a cap on insurance premium costs. Of the 24 libraries referenced therein, only 3 have a cap and one has a cap on family and no cap on single coverage.

The amount of cost for insurance is an item of ongoing debate. There have been years whereby a little increase in premiums have occurred and recent trends seemingly suggest larger increases. To place an Employer in a position where they are not "capped out" in this ever-changing insurance market could have a drastic effect on its ability to finance the economic benefits contained in the Collective Bargaining Agreement and the overall level of services to the community it serves.

Indeed, given the large percentage of part-time employees, it would seem that there would be some type of insurance benefit, whether it be dental or health, that could place these employees in a better position than they would otherwise be. Indeed, the part-time workforce at this facility is an integral part of the workforce that must be recognized for their efforts. In this regard, given the ever-changing health insurance market, it is recommended that the Parties adopt the Employer's cap concept; however, not at \$600.00 as proposed, but at \$700.00. It is also recommended that the Union's proposal relative to dental insurance coverage be adopted in addition therewith.

Moreover, it is recommended that the Parties' Agreement remain silent relative to

language that would in effect require the Employer to meet and discuss with the Union any changes in the benefit levels. The use of labor/management committees is beneficial relative to issues such as health insurance wherein both Parties can provide input and discussion relative to what types of plans, benefits and rates that may be available and how any change relative to this economic benefit may impact the Bargaining Unit. It is therefore recommended that the Parties agreement remain silent on that aspect in the Collective Bargaining Agreement.

ISSUE NO. 10

WAGES

Both Parties are seemingly in agreement relative to adopting the “Step concept;” however, the percentages in connection therewith are the differing aspects thereof. Inasmuch as both Parties are seeking, and the Employer has offered as one of two proposals, the step concept that is hereby recommended. With respect of the initial placement on the step scale, both Parties seemingly have the same framework except that the Union seeks a level of 6% increase and Management seeks a level at 4%. Given the other recommendations contained in this report and indications of the Parties relative to proposals, as well as, through mediation, it is recommended that the Parties adopt a step increase for the initial placement on the step scale of 5%.

The amount between those steps is another area of disagreement wherein Management proposes 3% and the Union proposes 4%. It is hereby recommended that the Parties adopt a 3% level percentage amount between the Ten Step Scale as referenced in both Parties’ proposals.

Finally, an “across the board” increase is seemingly recognized by both Parties, however, the amount thereof is in dispute. The Union seeks 4% per year in each of the next three (3) years in the Collective Bargaining Agreement whereas the Employer proposes 2% in each of the next three (3) years. The evidence presented represents that an increase across the board in the neighborhood of 3% is consistent with that recognized throughout the State. This increase would become effective January 1 of each new Collective Bargaining year and the contract would have a duration of three (3) years which will be discussed in greater detail infra.

The evidence does not support any “inability to pay” considerations and demonstrates that indeed the Employer is financially strong as set forth in its budget analysis for the past three (3) years.

Given the information provided by the Parties, both via their Fact Finding packages and that articulated during the course of the Fact Finding proceeding, it is recommended as previously stated that the Parties adopt the "Step Concept" whereby the Employees will be initially placed at 5% increases; with a 3% increase between the steps; and, a 3% increase across the board. Those raises will become effective January 1 of each new Collective Bargaining year. The issue as to retroactivity will be discussed in the Duration Article infra.

ISSUE NO. 11

DURATION

The Parties are in agreement as to the duration of the agreement being three (3) years. They differ with respect to the economic aspects thereof being retroactive, obviously, to January 1. Obviously, language issues in many regards cannot be retroactive nor does the Union seek that. What is apparent is that the Union seeks duration effective November 1, 2000 through October 31, 2003; however, wages being retroactive to January 1, 2000. The language issues become effective November 1, 2000 based on the Union's proposal. The Employer seeks an effective date upon ratification and that three (3) year period begin with that particular time frame. It does not take the position that retroactivity be awarded to January 1, 2000.

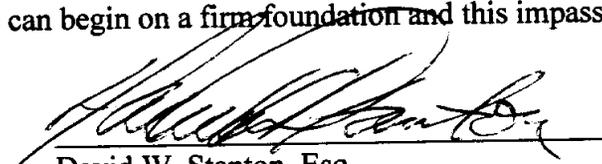
As previously discussed, the Parties are in agreement relative to the three (3) year duration. It is hereby recommended that the Parties' Collective Bargaining Agreement have an effective date of November 1, 2000 and an expiration of October 31, 2003. It is also recommended that the Parties incorporate retroactivity for the percentage increases as recognized relative to the wage scale - effective March 1, 2000. Such takes into consideration the Parties protracted bargaining session which should never serve to be a punishment to either side, but is typically recognized with first Collective Bargaining Agreements. And, more importantly these Employees have foregone any increase for year 2000. In this regard recognizing this retroactivity consideration that is offset by two months both provides benefit to the Bargaining Unit members, as well as, does not completely strap the employer relative to nearly a full year's retroactive award.

After further review, the payment of a "lump sum" retroactivity award does not fairly compensate all Employees with differing levels of working hours. For example, a lump sum

payment of \$800.00 to an Employee who works less than 20 hours, and the same to a full-time Employee, would not adequately compensate the full-timer's commitment to the Employer. As such, the more equitable solution, would be to award retroactivity based on the percentages previously discussed to ensure that each Employee receives whatever percentage increase awarded for retroactivity based on his or her own level of commitment to the Employer - the various levels of Part-time workers and those of a full-time status.

CONCLUSION

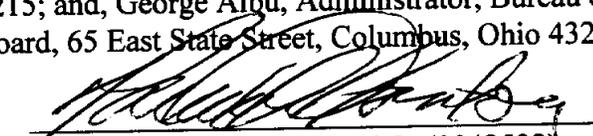
The Recommendations and Rationale contained in this Fact Finding Report were derived based on the considerations and concerns of both Parties. In light of this being an initial Collective Bargaining Agreement between them, this Report recognizes economic improvements relative to Wages and other contractual enhancements, while also recognizing the Employer's ability to remain fiscally prudent in order to maintain the high level of service it provides to members of these communities. In light of the data presented, representations made by the Parties, and the stipulations entered by and between these Parties during the course of Mediation and in Fact Finding and more importantly based on the common interests of both entities, it is hereby recommended that the Parties adopt these recommendations so that this initial Collective Bargaining relationship can begin on a firm foundation and this impasse can be brought to closure.


David W. Stanton, Esq.
Fact Finder

Dated: October 12, 2000
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The Undersigned certifies that a true copy of the foregoing Fact Finding Report with Recommendations and supporting Rationale has been faxed to each Party Representative and sent via overnight mail service to: Deborah Schneider, President SEIU District 925, 1216 East McMillan Street, Suite 300, Cincinnati, Ohio 45206-2211; Dolores F. Torriero, Downs & Hurst, 300 South 2nd Street, Columbus, Ohio 43215; and, George Albu, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, on this 12 day of October, 2000.


DAVID W. STANTON, ESQ. (0042532)
Fact Finder