

STATE OF OHIO

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STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	Case No. 00-MED-11-1310
	*	Case No. 00-MED-11-1311
Fact-finding between:	*	
	*	
Lucas County Commissioners	*	Fact-finder:
(Job and Family Services Department)	*	
	*	Martin R. Fitts
and	*	
	*	
AFSCME Ohio Council 8	*	April 30, 2001
Local 544	*	
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the Lucas County Commissioners (the Employer):

Steven Spirn, Labor Relations Counsel

For AFSCME Ohio Council 8 (the Union):

Cheryl Tyler-Folsom, Staff Representative

PRELIMINARY COMMENTS

The bargaining units consist of all employees of the department in all classifications at pay range 31 and below. There are approximately 550 employees in the bargaining unit. The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute on December 20, 2000. The parties began contract negotiations on November 17, 2000 and held 12 additional sessions. On March 7, 2001 the parties met with Federal Mediator John Wines. The fact-finding hearing was held on April 9, April 10 and April 13, 2001 at 911 Lucas County Emergency Services Building. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. A number of issues at impasse were mediated at the hearing, with the parties reaching tentative agreements. There were 13 issues at impasse which were submitted for Fact-finding: Article 1 – Recognition (pay range covered in bargaining unit); Article 7 – Filling of Permanent Vacancies; Article 8 – Hours of Work and Overtime; Article 10 – Assignment of Duties and Classification; Article 16 – Annual/Vacation Leave; Article 17 – Sick Leave; Article 20 – Compensation and Employee Benefits; Article 21 – Educational and Career Opportunities; Article 23 – Job Security and Maintenance of Standards; Article 24 – Supervisory Employees; Definitions; Drug Policy Addendum; and Transfer Issue.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

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 adjustments on the 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 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.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as stated at the hearing on April 9, April 10, and April 13, 2001.

The Fact-finder wishes to note that this is a difficult time for the agency and its employees, with new laws and regulations under which it must operate, as well as a changing organizational structure and distribution of work. I wish to personally commend the parties for their ability to reach agreement on a number of issues during the hearing, and for engaging in healthy, constructive debate that proved helpful in the crafting of this report.

ISSUES AND RECOMMENDATIONS

Issue: Article 1 – Recognition

Positions of the Parties

The present agreement calls for the bargaining unit to consist of all employees in all classifications at pay range 31 and below. This includes supervisors, who were grandfathered into the bargaining unit when it was approved by SERB. Pay range 31 is the highest pay range for supervisors. The Union proposed expanding the pay ranges available to bargaining unit employees by changing Section 1.3 to read that the bargaining unit would consist of all employees at pay range 35 and below. At the present time many supervisors are “stepped out” and cannot advance. The Union argued that there is no career ladder for these supervisors. The next tier of management above these supervisors currently begin at pay range 36.

The Employer argued that the supervisors benefited from a 7-step wage program in addition to benefiting when wage increases are granted across the board. It argued that the Union’s proposal would create wage increases benefiting only one portion of the bargaining unit. Further, it said that its plans include reducing the responsibilities of the supervisors, further lessening any rationale for increasing their pay in this manner.

Findings and Recommendation

The Union’s proposal is not founded on the basis of increased job duties for those members who are in pay range 31. In fact, the Employer is proposing to reduce the job duties of the supervisors, not increase them. While there may be supervisors who are stepped out, those supervisors still benefit as every other bargaining unit member does, from across the board wage increases as negotiated in the collective bargaining process. Further, the argument that there is no career ladder holds no merit, as there are jobs in management above them. The reality is, as you go further up the career ladder, there are fewer rungs above you. But in this case, there still are rungs, although not in the bargaining unit. This is not a situation that is unique to this bargaining unit; it exists in

virtually every unionized workplace. At some point the only career ladder left is outside the bargaining unit.

For these reasons, the Fact-finder recommends the Employer's position to retain current contract language in Article 1 relative to the bargaining unit including all employees in all classifications at pay range 31 and below.

At the hearing the Parties reached a tentative agreement language for Section 1.3 B 1. The Fact-finder recommends the agreed-upon language for this section.

Issue: Article 7 – Filling of Permanent Vacancies

Positions of the Parties

In Section 7.5 A 2 the Employer proposed to include "lateral" as well as promotional bids. The Union argued that the Employer has never brought this up to the Union as a problem, and wants to retain current language.

In Section 7.5 A 5 the Employer proposed an addition that would require an employee who accepts a voluntary demotion and who receives an exit evaluation of less than "meets requirements" to demonstrate that they "meet requirements" in the areas previously deficient on all evaluations on file for the previous 18 months in order to bid on promotions. The Union stated its belief that current language addresses this, and also expressed a concern that evaluations may not always be performed in a timely manner.

The Employer proposed language for a new section, which would be Section 7.5 A 6. Its proposal was for language that would read, "An employee who does not have satisfactory attendance will not be eligible to bid." The Employer pointed to a number of collective bargaining agreements to which ACFSCME is a party that include such language. The Union countered that there were already enough restrictions in the agreement prohibiting employees from bidding on jobs. It also argued that management already factors in attendance. The Union expressed concern that an employee could have mitigating circumstances that cause absences, and that could be the sole determining factor in whether or not someone could bid. The Union did acknowledge that the Employer has considered attendance in past instances, and did not argue that it was not a legitimate factor.

Findings and Recommendation

Regarding Section 7.5 A 2 the Fact-finder finds no compelling evidence or testimony that supports the proposed change in the language. Therefore, the Fact-finder recommends the current language of Section 7.5 A 2.

Regarding Section 7.5 A 5 the Fact-finder finds the Employer's proposal reasonable, and therefore recommends it.

Regarding the proposed new Section 7.5 A 6, the Fact-finder agrees with the intent of the Employer; that is to make the point to employees that attendance is an important factor when considering bids. During the discussion on this issue, the Employer offered alternative language, which the Fact-finder believes, is more appropriate. Therefore, the Fact-finder recommends that a new Section 7.5 A 6 be added to the collective bargaining agreement to read as follows:

Section 7.5 A 6. Attendance will be a factor considered by the Employer when evaluating bids.

Issue: Article 8 – Hours of Work and Overtime

Positions of the Parties

The Employer proposed a revised Article 8 that would allow it to implement changes in the hours of operation for the agency. It demonstrated through evidence that all Job and Family Services agencies will be required to service working clients outside of the normal 8:00 AM to 5:00 PM hours. The Union did not directly dispute the need to service working clients outside of the normal 8:00 AM to 5:00 PM hours, but questioned the extend to which the Employer must officially set 7:00 AM to 6:00 PM as the hours of operation. It contended that employees now see clients between 7:00 AM to 8:00 AM and 5:00 PM to 6:00 PM on an "as needed" basis, and that that by simply removing the "quiet time" reference from the existing language the agency could satisfy the requirements. At the core of the disagreement in this article is the Union's desire to retain flex time, and the Employer's desire to expand its hours.

The Union proposed a change to Section 8.1 B 7 that would add the language "Any unit with two (2) or more employees out on leave and/or positions vacant shall be eligible for overtime." The Union argued that when a unit is short, some work is left undone. This can occur even if the shortage is employees in different classifications, for instance a caseworker answering telephone calls for an absent clerical person ends up behind in their own work. The Employer countered that currently the director approves overtime when necessary. Further, it noted that most supervisors are members of the bargaining unit, thus the Employer would be ceding the authority of making overtime decisions to members of the bargaining unit. The Employer did not see this as appropriate.

Findings and Recommendation

Regarding the hours of operation and flex time issues, the Fact-finder concurs with the Employer that changes to allow working clients to be seen outside of what is now the normal hours of operation are necessary. It is possible to modify language in the existing Section 8.1 B 1 and Section 8.1 B 4 to protect both flex time and allow the Employer the ability to schedule the expanded hours.

Therefore, the Fact-finder recommends that Section 8.1 B 1 be changed to read as follows:

Section 8.1 B 1. Employees may choose their time of arrival (subject to the limitations stated below) between the hours of 7:00 A.M. and 9:00 A.M., unless scheduled by the Employer. The Employer may schedule employees in order to assure reasonable coverage. The Employer agrees to meet and discuss with the Union its basis for determining what reasonable coverage is. The Agency will be open from 7:00 A.M. and 6:00 P.M.

The Fact-finder also recommends that Section 8.1 B 4 be changed to read as follows:

Section 8.1 B 4. Core-time will be from 9:00 A.M. until 4:00 P.M. During this time all employees must be present. Coverage must be maintained during the hours of 7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 6:00 P.M. as well.

Regarding Section 8.1 B 7, the Fact-finder agrees with the Employer that the determination of whether work should be done on regular time or overtime appropriately belongs to management. Therefore, the Fact-finder does not recommend the Union's proposal for this section, but rather recommends the retention of current language.

Issue: Article 10 – Assignment of Duties and Classification

Positions of the Parties

All references to the Employer's position in Article 10 are to its proposal as presented in Employer Exhibit – 20 and as amended at the hearing. This proposal was made after considerable discussion between the parties, and reflected a considerable narrowing of their initial positions. The amendments made at the hearing represented an even further narrowing of the gap between the parties. The Employer's final proposal included changes in Section 10.1 that the Union agreed at the hearing.

The differences of the parties in Section 10.2 reflected the Union's desire to have job descriptions made available to employees "upon their request," while the Employer's proposal simply states that these job descriptions shall be provided. Also, the Employer desires job descriptions to be reviewed and updated "as required" while the Union seeks the language "as requested." The final difference was the Employer's final proposal that Position Description Reviews/Job Audits be completed in 60 calendar days while the Union desires completion in 30 calendar days.

Differences in the parties' respective positions on Section 10.3 were narrowed considerably at the hearing.

Findings and Recommendation

Regarding Section 10.1, the Fact-finder recommends the Employer's final proposal for this section, to which the Union expressed agreement at the hearing.

Regarding Section 10.2, the Fact-finder believes that if the Employer, as it proposed, shall provide employees with accurate job descriptions, then adding the words "as requested" would not seem to be a burden for the Employer. In actuality, in its proposal the Employer states that this *shall* be done anyway, so the fact that the Union proposes that it be done *at the request of the employees* may actually lessen the burden on the Employer. Therefore the Fact-finder believes that the Union's amendment makes sense. The Union wanted to amend the final Employer proposal to require the Employer to review and update job descriptions *as requested*, while the Employer preferred *as required*. The Employer is obviously concerned with becoming overburdened by such requests, especially with the time limits on satisfying these requests. The Fact-finder is sympathetic to this argument, and proposes language below that holds the employer to the standard of not unreasonably denying such requests. This would allow the Employer the ability to deny requests should they become burdensome, or appear without merit. While the interpretation of what is reasonable may vary between the two parties, and in fact may even vary among whatever outside party may ultimately be asked to resolve a grievance in this regard, the parties are well aware of arbitral standards of reasonableness, and this would, in the Fact-finder's opinion, temper any abuse of this language by either party. Lastly, the Employer has proposed a 60-day limit for the completion of position description reviews/job audits, while the Union has proposed 30-days. The Employer's proposal of a 60-day limit appears reasonable to the Fact-finder. This ensures that the review will be done in a time frame that is still short enough to protect an employee whose job has significantly changed, while giving the Employer the flexibility to perform this work within the constraints of completing its other work as well.

Therefore, the Fact-finder recommends that Section 10.2 read as follows:

10.2 All employees shall be provided with an accurate description of their job upon their request. Job descriptions shall be reviewed and updated as required. The Employer shall not unreasonably deny a request by the Union for a job

description review. Questions of the Position Description Review/Job Audit shall be resolved under this Article. Position Description Review/Job Audit requests cannot be made to any external agency. No position description will be reviewed more than once in any 12-month period. Position Description Reviews/Job Audits shall be completed shall be completed sixty (60) calendar days from the date of their request.

Regarding Section 10.3, the Union agreed to the Employer's final, amended proposal. The final amendment by the Employer was that the last sentence of the first paragraph read: "*The Union may grieve this decision starting at the County Commissioners level as to the reasonableness of the position description.*" The Fact-finder recommends the Employer's final proposal for Section 10.3, as amended.

Issue: Article 16 – Annual/Vacation Leave

Positions of the Parties

The Union proposes to speed up attainment of vacation, and to increase the total amount of vacation that senior employees could earn, by amending Section 16.1 A. It presented as comparables several labor agreements with vacation attainment schedules similar to its proposal. The Employer countered with comparables of collective bargaining agreements between AFSCME and the Lucas County Commissioners, as well as from other urban Job and Family Services agencies. It argued that even the local agreements that the Union presented as comparables were from bargaining units outside of the purview of the Lucas County Commissioners. It argued that to grant the Union proposal would start a ripple affect throughout all the 25 bargaining units under the commissioners.

The Union also proposed a change in Section 16.2 C which would allow for more than 50% of a unit to be granted annual leave upon the approval of the supervisor. In the present agreement this is possible upon the approval of the agency director or his designee. The Employer objected to the proposal on the grounds that the supervisors are part of the bargaining unit, saying that it did not wish to turn this management power over to members of the bargaining unit.

Findings and Recommendation

Regarding Section 16.1 A the Fact-finder agrees with the Employer that the most meaningful comparables are those from the other bargaining agreements under the Lucas County Commissioners and those from other urban county Job and Family Services agencies. And those are similar to the current agreement of these parties. The Union

presented no compelling evidence that bargaining unit employees are receiving less vacation benefit than others in the same geographic area or other urban JFS agencies. Therefore, the Fact-finder recommends the current language of Section 16.1 A.

Regarding Section 16.2 C, the Fact-finder is sympathetic to the Employer's concern over ceding this authority to members of the bargaining unit. However, there is no question that the supervisors are in a position to know if the circumstances exist where having more than 50% of a unit's employees on annual leave would be acceptable. Therefore, the Fact-finder recommends the following language for Section 16.2 C:

Section 16.2 C. Not more than 50% of a unit shall be granted annual leave for the same days, except under special circumstances as approved by the agency director or his designee. The agency director or his designee shall consider the recommendation of the unit's supervisor when making their decision. If it is necessary to deny vacation to comply with this requirement, it shall be done by inverse seniority; however, no employee who has scheduled his vacation in accordance with Section B may be bumped by a more senior employee.

Issue: Article 17 – Sick Leave

Positions of the Parties

The parties proposed a number of changes to this article. The first was the Employer's desire to modify Section 17.2 C 1 by adding to the examples of sick leave abuse. The Employer desires to add these specific examples in order to make the employees in the bargaining unit aware up front of what the Employer is looking for. It noted that this would not affect most of the members of the bargaining. The Union stated its belief that there were enough examples already in the contract, and that the Employer has not previously indicated to the Union need for such a change.

The next was a proposal by the Union to change Section 17.3 C – Funeral Leave. The Union proposed adding an additional two days of leave when the employee must travel more than 150 miles to attend a funeral for a family member covered under this section. The Employer countered by offering a number of comparable contracts between the Lucas County Commissioners and AFSCME which only provide the three days.

The next issue was a proposal by the Employer to modify Section 17.4 by adding language requiring any employee who has used more than 56 hours of sick leave in a calendar year to provide medical verification immediately upon returning to work. The Employer's intent is to crack down on the small percentage of sick leave abusers, not to punish the rest of the bargaining unit. The Union objected to this proposal, claiming that there is enough in the current agreement that allows the Employer to address the sick

leave abuser. It contended that the Employer's proposal would be a burden to an employee who may have been out a lengthy period with a severe illness who, upon returning, may have the flu and be required to get a doctor's slip before returning to work. The Union pointed out that this might actually require the employee to take even more sick leave, in order to see a physician before returning to work.

The Employer proposed amending Section 17.8 A by changing the language from "combined undocumented sick leave and undocumented leave of absence" to "non-FMLA sick leave and leave of absence." The Union objected to this proposal, stating again that only a very small number of employees have been charged with sick leave abuse. Further, it expressed concern that employees have generally not been made aware of the proper use of FMLA leave.

The Employer proposed the deletion of Section 17.10 A of the agreement, while the Union proposed its retention.

The Union proposed a change in Section 17.12 – Bonus Hours which would give the employees the option of taking bonus hours for good attendance as currently allowed in the collective bargaining agreement, or converting those hours to cash. It argued that employees who have good attendance and want to be at work should be rewarded with cash; they don't want the time off. It cited the Child Support and Enforcement Agency contract with the Lucas County Commissioners as an example of this. Including here is the Union's proposal to amend Section 17.12 E to allow for payment of unused bonus hours upon retirement from the agency. The Employer's position was to retain current language.

Findings and Recommendation

Regarding Section 17.2 C 1, the Fact-finder finds that the modification proposed by the Employer is reasonable. The proposed list provides reasonable examples of sick leave abuse that would hold up to the scrutiny of arbitration. The Fact-finder agrees with the Employer that this will forewarn the bargaining unit members of what the Employer considers to be abuse of sick leave. Therefore, the Fact-finder recommends the Employer's proposal for changes in Section 17.2 C 1.

Regarding Section 17.3 C – Funeral Leave, the Fact-finder admits that this is purely an emotional issue. The Union did not provide a single example of a bargaining unit member who has suffered under the current provisions. However, given the tight restrictions on which family members are included in this section, it would not appear to the Fact-finder that the Union's proposal would pose a burden to the Employer. For that reason, the Fact-finder recommends that the following sentence be added to the end of Section 17.3 C – Funeral Leave:

If the burial of a family member covered in this section occurs in a city more than 150 miles from Toledo, the agency shall grant an additional two (2) days of leave,

provided that the employee produce evidence of travel along with a signed statement indicating such.

Regarding Section 17.4, the Fact-finder believes that with the additional language recommended by the Fact-finder in Section 17.2 C 1, the Employer will have a strong enough position in the collective bargaining to go address sick leave abuse without this proposal. The Fact-finder agrees with the Union that this could create a scenario where an employee who has properly used sick leave for an extended medical condition could be forced to use even more sick time due to needing visits to the doctor for documentation of even minor illnesses later in the calendar year. Therefore the Fact-finder recommends retaining current language in Section 17.4.

Regarding Section 17.8 A, the Fact-finder does not find that the Employer has presented any compelling reason for its proposed change. Again, with the recommended language for Section 17.2 C 1 the Employer should have the ability to address sick leave abuse, which even it admitted is a small percentage of the workforce. Further, once again the Fact-finder is concerned that this proposal could negatively impact an employee with a normally fine attendance record who suffers one major illness and then would be unable to fit the satisfactory attendance standard, which could negatively impact their ability to bid on promotions. For this reason, the Fact-finder recommends retaining the current language of Section 17.8 A.

Regarding Section 17.10 A, the Fact-finder finds no compelling reason for the deletion of this section as proposed by the Employer. Therefore, the Fact-finder recommends the retention of the current language for Section 17.10 A.

Regarding Section 17.12 – Bonus Hours, the Fact-finder, mindful of the Employer’s arguments throughout the hearing that it desires having the employees at work, believes the Union’s proposal provides an incentive to accomplish this. Therefore, the Fact-finder recommends the Union’s proposal to modify Section 17.12 – Bonus Hours, including the ability to cash out up to the cap of 40 hours of bonus time upon retirement from the agency.

Issue: Article 20 – Compensation and Employee Benefits

Positions of the Parties

The final position of the Union regarding hourly compensation is for an across the board increase of 5% the first year, 5% the second year, and 5% the third year, with a signing bonus of \$2,500. The Employer’s final proposal was for increases of 3% the first year, 3% the second, and 3% the third, with no signing bonus. Both parties presented considerable testimony and to support their respective positions. While the Employer did

not claim an inability to pay, it did project that the agency would be running at a deficit before the expiration of a new three-year agreement. There was also considerable discussion around the availability and use of incentive money.

The Union proposed an amendment to Section 20.3 – Sick Leave Conversion that would change this provision from enabling an employee to convert *a portion* of unused sick leave to a cash payment upon retirement to enabling an employee to convert *all* unused sick leave to a cash payment upon retirement. It argued that sick leave is an earned benefit, and that some employees have large amounts of unused sick leave. This would reward them for attending work. The Employer argued that the trend in the public sector is to get away from cashing out unused sick leave. It noted that the other AFSCME bargaining agreements under the Lucas County Commissioners contain provisions similar to this one. It also noted that the Union did not present any comparable agreements to support its position.

The Union proposed a new section to this article that would create a sick leave donation program. It proposed that the parties agree in concept, with the details to be worked out in labor-management committee. The Employer indicated a willingness to consider this proposal on the condition that improvements in Article 17 were made.

Findings and Recommendation

There is no question that this is a time of considerable change within this agency. The Employer has proposed many significant changes in the agreement due to these changes, and presented many compelling arguments to support its position. The Fact-finder in this report has recommended many of these proposals. In most instances, the bargaining unit has been asked to accept these changes without receiving anything in return. It is in this article that the Union can receive something in return. The Fact-finder has no doubts about the Employer's projected deficit, and thus does not believe it prudent to recommend a larger increase to the pay rates than proposed by the Employer. However, it is in the signing bonus that there exists an opportunity for the Employer to compensate the bargaining unit in for accepting the sweeping changes contained in this Fact-finding report, changes that include removing members from the bargaining unit, changing the title and job duties for a number of its members, and changing the hours of the agency's operation.

Therefore, the Fact-finder recommends that there be an across the board increase in the Hourly Step Rates in Section 20.1 A of the agreement of 3% the first year, 3% the second year, and 3% the third year. Further, the Fact-finder recommends a signing bonus of \$1,500 for the employees in the bargaining unit.

At the hearing the Parties reached agreement on Section 20.1 B 2 b and Section 20.2.12. The agreement reached in each of these sections is also recommended by the Fact-finder.

Regarding Section 20.3, the Fact-finder does not believe that the Union presents a compelling reason to amend the current language. Therefore, the Fact-finder recommends the retention of the current language.

Regarding the Union's proposal for the creation of a sick leave bank, the Fact-finder believes that the Employer's concerns for improvements in Article 17 are satisfied by the recommendations contained herein. Therefore, the Fact-finder recommends the creation of such a sick leave bank, with the new Section 20.7 to read as follows:

Section 20.7 – Sick Leave Bank. The Union and the Employer agree to create a Sick Leave Bank, and further agree to work out the details of this in labor-management committee.

Issue: Article 21 – Educational and Career Opportunities

Positions of the Parties

There were a number of sections of this article that had proposed changes. During the hearing there was considerable discussion over the words “job related” (preferred by the Employer) and “agency related” (preferred by the Union.) The phrase “job related” appears in several parts of the current collective bargaining agreement. The Union argued that “agency related” would allow an employee to take courses or training that were relevant to the Job and Family Services mission, although not specific to that employee's job. This helps create a career ladder for employees of the agency, as they can better prepare for positions that they may bid on in the future. The Employer offered testimony that it has been very liberal in its interpretation of “job related” in the past. The Union countered that the problem has been for requests for training, not actual course work. No specific examples of denials were offered by the Union to support its claim.

The Employer proposed a complete replacement of Section 21.2 regarding banking of time, release time and tuition reimbursement.

The Union proposed new language that would be Section 21.2 E regarding release time of up to 20 hours of work, with pay, for employees performing unpaid internships as part of a requirement for coursework at a school. It argued that this would help the agency ultimately benefit from the employees having greater knowledge, and the employees need to finish this coursework to position themselves to advance at Job and Family Services. The Employer noted that current contract language allows the employees to bank time to acquire the time off needed.

The Union proposed a change in Section 21.4 A that would delete the word “clerical” and replace it with “all” so that all staff, not just clerical, would have in-house training and education available to them as part of a career ladder. It argued that this change would allow all employees to get such training and have it put in your record for consideration when bidding on other positions in the agency. The Employer countered that the change was not necessary, as the Union implied that there had been denials of such training opportunities, but no evidence was offered to substantiate it.

The Employer proposed deleting Section 21.7 that specifically refers to release time to be granted to employees possessing licenses as counselors or social workers. The Employer argued that this is already covered under Section 21.1 A 6, to which the Union agreed at the hearing. The Union argued that this provision must remain as a protection to those licensed employees who are required to take 30 hours of training in a two-year time period. The Union argued that Section 21.1 A 6 limits to fifteen hours per year the training that may be taken, yet due to course offerings the training needed by a licensed employee may not be offered at precisely fifteen hour per year intervals within those two years.

The Employer proposed to delete Section 21.8 of the agreement, claiming that it is already covered under Section 20.4. The Union favors retention because it speaks specifically to “training” travel expenses.

Findings and Recommendation

At the hearing the Union agreed to the Employers proposal for Section 21.1 A 6 and also the Employer’s proposal for addition language that would be Section 21.6 A. The Fact-finder recommends these.

The Fact-finder is not convinced that the Employer should be obligated to prepare its employees for possible career advancement beyond what it has previously agreed to do. For that reason, the Fact-finder believes that the phrase “job related” is adequate in the current language as well as in the proposals considered within this report. The Fact-finder finds reasonable and therefore recommends the Employer’s proposal for Section 21.1 B 3 a, and also the Employer’s proposal for Section 21.1 B 3 b.

Regarding the Union’s proposal for a new Section 21.2 E, the Fact-finder can find no compelling reason to add this language to the agreement. As the Employer already offers tuition reimbursement and time banking, the employees are already receiving a significant benefit from the Employer in this regard. Lacking any compelling argument to support its inclusion, the Fact-finder does not recommend the addition of the Union’s proposed Section 21.2.E.

Regarding Section 21.4 A, the Fact-finder concludes that if, as the Employer contends, no employees have been denied such training, then there is no harm in making the change

desired by the Union. Therefore, the Fact-finder recommends the Union proposal to change Section 21.4 A.

Regarding Section 21.7, the Fact-finder is persuaded by the Union's argument in favor of retaining this existing section of the agreement. The specificity of the language does give licensed counselors and social workers some protection in gaining release time to maintain their licenses. The Employer provided no compelling reason to delete this language. Thus the Fact-finder recommends the retention of the existing Section 21.7 in the agreement.

Regarding Section 21.8, the Fact-finder agrees with the Employer that reimbursement for expenses incurred while traveling for approved training is covered under Section 20.4. There was no evidence that the Employer's desire to delete this Section was anything other than an attempt to clean up contract language, certainly none implied that this was an attempt by the Employer to deny reimbursement for travel related costs of travel. Therefore, the Fact-finder recommends that Section 21.8 of the current agreement be deleted.

Issue: Article 23 – Job Security and Maintenance of Standards

Positions of the Parties

Each of the parties had proposals to amend Section 23.1. After much discussion, the parties reached an agreement, which is reflected below in the Fact-finder's recommendations.

The Employer's final proposal at the hearing was to revise Section 23.2 by changing the first sentence by deleting the words "unless mandated to do so by State or Federal authority" and replacing it with the words "unless required to by State, Federal, or County authority".

The Employer's final proposal for Section 23.3 A 1 was to insert the words "attempt to insure" in place of "will insure." It argued that as the agency has employees working outside of its own building, it cannot always control the physical environment around those employees. The Union argued against including "attempt" in the contract language. It stated that it is concerned that the bargaining unit employees have things like phones, desks, etc. for their use when located out of the agency's building. The Union noted that it has not arbitrarily grieved this and is not being unreasonable.

Findings and Recommendation

The Fact-finder recommends the following language for Section 23.1, which was agreed to by the parties at the hearing:

SECTION 23.1 – JOB SECURITY – It is the intention of the parties that every agency employee shall enjoy full job security. The Employer retains the right to implement all Federal, State, and County requirements. The Employer shall not sub-contract if any such subcontracting shall directly result in the lay-off of any Bargaining Unit Employee, unless the Employer is required to contract out per Federal or State mandate. The Employer will do all that is reasonable to avoid lay-offs under this situation. If the Employer considers contracting out a function or service as a result of implementing a Federal, State, or County requirement which would result in the lay-off of Bargaining Unit Employees, the Employer shall provide not less than 60 days advance written notice to the Union. Upon request the Employer shall meet and discuss the reasons for the contracting out proposal and provide the Union an opportunity to present alternatives.

Regarding Section 23.2, the Fact-finder believes that changing the words as suggested in the Employer's final proposal simply brings this section in line with the agreed-upon and recommended language for Section 23.1, and thus recommends the Employer's final proposal.

Regarding Section 23.3 A 1, the Fact-finder recommends the Employer's final proposal that would insert the word "attempt" in the current language.

Issue: Article 24 – Supervisory Employees

Positions of the Parties

The Employer proposed a sweeping change to Article 24, transforming the supervisors into team leaders. The proposed change in title and responsibilities would not reduce the pay for these bargaining unit members; only reduce some of their duties. The Employer's desire is to remove the labor-relations duties (evaluation, hiring, discipline) from the supervisors. The Employer noted that SERB grandfathered the supervisors into this bargaining unit at its certification, and that in most collective bargaining units supervisors are not included. It noted that with reorganization that is underway, the transformation of these supervisors into team leaders makes sense.

The Union objected to this change, concerned that the responsibilities that will be taken away cannot be assumed by management employees, as there simply are not enough of them. It also expressed concern that the career ladder for its members was being reduced.

Findings and Recommendation

The Fact-finder believes that the Employer has produced a compelling argument for the change from supervisors to team leaders at this time. There is an inherent conflict in the present arrangement, with bargaining unit members performing some very traditional management functions. The role of front line supervisors has changed dramatically in many workplaces over the last decade, and the emergence of “team leaders” from members of collective bargaining units has been a common consequence. The unusual aspect in this case is that the new team leaders are already supervisors, and their duties will diminish, not expand. The Employer presented a compelling argument in favor of its proposal. The Fact-finder is satisfied that no employee in the bargaining unit will be harmed economically. Therefore, the Fact-finder recommends the Employer’s proposal for Article 24 with one exception. That exception is found in Section 24.8, where the Fact-finder does not recommend the addition of the words “*for five (5) or more days.*”

Issue: Definitions

Positions of the Parties

The Union proposed a change in the current agreement by adding “*in any given calendar year*” at the end of the definition for “Regular Basis.” This is relative to management employees performing the work of bargaining unit employees. The Union alleged that it has happened where, with a few days break, the 30-day cycle has started over again.

The Employer contended that the Union’s proposal is in response to one particular situation in the maintenance department. It is concerned that to satisfy this one situation, the change in the language may have ramifications well beyond that. The Employer believes that this will actually become a moot issue, as it believes that the maintenance positions will be out of the bargaining unit in the future anyway.

Findings and Recommendation

The Fact-finder agrees that with the Union that the intent of this definition in the agreement is to limit the time a management person can perform bargaining unit work. If, in fact, the Employer is simply waiting a few days, then starting the 30 day cycle over, it is certainly violating the spirit of this provision. However, given the dynamic state of this organization at the present time, it is clear that there may be more need for flexibility until a reorganization of staff and work is accomplished. Adding the one-year time frame may be too limiting on the Employer at the present time, and diminish its ability to

adequately serve the public during this time of transition. The Fact-finder believes this underlies the Employer's position that the ramifications of changing this definition could go well beyond the situation the Union has in mind.

Therefore, the Fact-finder recommends that the definition of "Regular Basis" stay at current language. The parties should, however, consider looking at the pertinent areas of the collective bargaining agreement where this is applied to determine what action should or could be taken jointly to address situations where the spirit of this limiting language may be violated. This would properly be undertaken in labor-management meetings during the life of the new agreement. Assuming that the reorganization of work and staff is completed during the life of the new agreement, the parties will have an opportunity to re-visit this issue in their next negotiations if need be.

Issue: Article Drug Policy

Positions of the Parties

The Employer initially proposed to change the collective bargaining agreement to include a drug policy that would mirror one that the Wood County Job and Family Services Agency and its AFSCME bargaining unit have agreed to. The major change would be that upon "reasonable suspicion" the Employer is empowered to order drug testing. The Employer provided copies of a number of other comparable labor agreements that include similar "reasonable suspicion" clauses. The Employer's final proposal at the hearing was for a side letter identical to the one signed between AFSCME and Lucas County for another bargaining unit. That side letter states that the drug testing work rule would be worked out in a labor-management meeting.

The Union objected to both the Employer's initial and final proposal. It noted that the existing collective bargaining agreement covers drug and alcohol use in the section on discipline. It claimed that this section of the agreement has been utilized in the past, with some employees successfully completing rehabilitation, others receiving discipline up to and including discharge.

Findings and Recommendation

Other than the fact that many other collective bargaining agreements contain the drug policy initially sought by the Employer, no other compelling argument was made that a change or addition to the collective bargaining agreement is needed. A major concern of the Employer's appears to relate to the issue of supervisors being a part of the bargaining unit, which is not reason to add this drug policy to the agreement.

For these reasons, the Fact-finder does not recommend any change in the discipline policy dealing with drug/alcohol abuse or testing. Of course, this does not preclude the parties from entering into a side letter similar to the other county bargaining unit side letter either as part of these negotiations or at a later date.

Issue: Article Transfer Issue

Positions of the Parties

The Employer is proposing to transfer the maintenance and custodial workers from this bargaining unit to another bargaining unit in the county maintenance services department. It noted that this has occurred in other county agencies and departments, and is a result of recommendations of two studies of county operations made by the Corporation for Effective Government, in 1976 and 1992. It argued that the workers would remain county employees with county benefits equal to those they receive now. They will be in an AFSCME-represented bargaining unit, operating under a collective bargaining agreement similar to the one they are in now, but it acknowledged that some differences exist between the two contracts. The Employer pointed to Section 11.1 of the agreement, which gives the Employer the right to abolish jobs, and said that if the transfer does not occur through negotiations, than it will consider exercising its rights under Section 11.1 of the contract.

The Union opposed the transfer of the maintenance and custodial employees out of this unit. It argued that they will go into the new bargaining unit with the lowest amount of bargaining unit seniority, they may be required to work a different shift, and they may be required to work in different buildings.

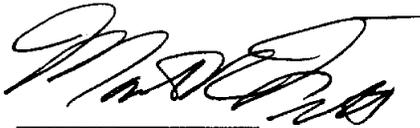
Findings and Recommendation

The Fact-finder is aware of the two studies of county operations performed by CEG, and is aware of the county commissioners commitment to implement these recommendations to more effectively deliver services. The consolidation of custodial and maintenance into a single county department has been underway for a number of years. This provides a compelling reason for the transfer. The argument that this agency is the largest in the county, and thus should be treated differently is not justifiable by facts. Undeniably a transfer of these positions to another bargaining unit will be traumatic to the affected employees. But to have their jobs abolished, with no guarantee of re-employment by the county, would be a far worse scenario. With a transfer to the county's maintenance services department, these employees will maintain uninterrupted employment by the county, uninterrupted county benefits, and uninterrupted representation by AFSCME.

For the reasons outlined above, the Fact-finder recommends the Employer's proposal to transfer the maintenance and custodial employees to the county's maintenance services department and its bargaining unit.

Additional recommendations of the Fact-finder

The Fact-finder has reviewed all the tentative agreements reached by the parties during these negotiations, including those reached prior to and those reached at the Fact-finding hearing. The Fact-finder recommends all of them as well.

A handwritten signature in black ink, appearing to read 'M. R. Fitts', written over a horizontal line.

Martin R. Fitts
Fact-finder
April 30, 2001

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	Case No. 00-MED-11-1310
	*	Case No. 00-MED-11-1311
Fact-finding between:	*	
	*	
Lucas County Commissioners	*	Fact-finder:
(Job and Family Services Department)	*	
	*	Martin R. Fitts
and	*	
	*	
AFSCME Ohio Council 8	*	April 30, 2001
Local 544	*	
	*	

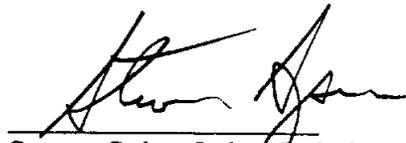
CERTIFICATION OF HAND DELIVERY

CERTIFICATION

The undersigned certify that an exact copy of the Fact-finding Report in the above referenced matter was hand delivered on this day to a duly authorized representative of the Lucas County Commissioners.



Martin R. Fitts
Fact-finder
April 30, 2001



Steven Spirn, Labor Relations Consultant
Lucas County Commissioners
April 30, 2001

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	Case No. 00-MED-11-1310
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Fact-finding between:	*	
	*	
Lucas County Commissioners	*	Fact-finder:
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	*	Martin R. Fitts
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	*	
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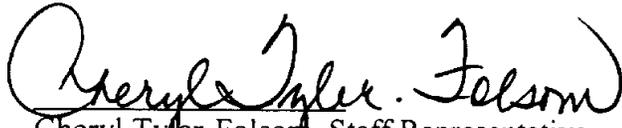
CERTIFICATION OF HAND DELIVERY

CERTIFICATION

The undersigned certify that an exact copy of the Fact-finding Report in the above referenced matter was hand delivered on this day to a duly authorized representative of AFSCME Ohio Council 8.



Martin R. Fitts
Fact-finder
April 30, 2001



Cheryl Tyler-Folsom, Staff Representative
AFSCME Ohio Council 8
April 30, 2001