

STATE EMPLOYMENT  
RELATIONS BOARD  
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**IN THE MATTER OF FACT-FINDING  
BETWEEN**

<b>PARMA CITY SCHOOL DISTRICT</b>	)	<b>CASE NO. 01-MED-12-1142</b>
<b>BOARD OF EDUCATION</b>	)	
	)	
	)	<b><u>FINDINGS</u></b>
<b>AND</b>	)	<b>AND</b>
	)	<b><u>RECOMMENDATIONS</u></b>
	)	
<b>OHIO ASSOCIATION OF PUBLIC</b>	)	
<b>SCHOOL EMPLOYEES, LOCAL 165</b>	)	

**JAMES M. MANCINI, FACT-FINDER**

**APPEARANCES:**

**FOR THE BOARD**

**Gary C. Johnson**  
**Attorney at Law**

**FOR THE UNION**

**Ken Saltz**  
**Regional Director OAPSE**

## **SUBMISSION**

This matter concerns fact-finding proceedings between the Parma City School District Board of Education (hereinafter referred to as the Board or Employer) and the Ohio Association of Public School Employees, Local 165 (hereinafter referred to as the Union). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The fact-finding proceedings were held on August 20, September 17 and October 19, 2002.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceedings, this fact-finder attempted mediation of the issues at impasse. The issues remaining for this fact-finder's consideration are more fully set forth in this report. The bargaining unit involved in this matter are daycare workers employed in the Children's Services Division of the Parma City School District. There are approximately seventy-three employees in the bargaining unit.

This fact-finder in rendering the following findings of fact and the recommendations on the issues at impasse, has taken into consideration the criteria set forth in Ohio Revised Code Section 4117-14(G)(6)(7). Further, this fact-finder has taken into consideration all reliable evidence presented relevant to the outstanding issues before him.

## **1. WAGES**

The Employer proposes first year pay increases which range from 6% to 12% retroactive to August 1, 2002. The Employer's proposal would include reducing the number of current steps in the salary schedule from ten to five steps and also providing for step increases of \$.50 across the board. The Employer also proposes to increase the step rates by \$.10 in each of the last two years of the Agreement. Finally, the Employer proposes a longevity schedule that would provide a \$.25 per hour increase at ten years of service in the second year of the Contract and another \$.25 per hour increase at fifteen years in the third year of the Agreement.

The Union proposes to add \$.10 per hour per step to the Board's proposal in the first year of the Agreement with wages being made retroactive to February 1, 2002. In the second and third year of the Agreement, the Union proposes wage increases of 3.25% and 4%, respectfully. The Union also proposes that longevity pay of \$.25 per hour be provided in the first year Agreement for those with ten years of service. In the second year, there would be an additional \$.25 per hour longevity step added at year fifteen. In the last year of the Agreement, another longevity step would be added at \$.25 per hour at year twenty. The Union also proposes that all bargaining unit members receive a bonus day's pay at the beginning of each year of the Agreement.

The Employer contends that it does not have the ability to fund any wage increases beyond that which it has proposed. It points out that the Children's Service

Division in its operation of the child day care and latchkey program was created to be financially self-sustaining. It is funded solely by the weekly fees paid by parents of children who attend the program. During the past year, the program lost \$80,000. According to the Employer, any further increase in wages or benefits is going to accelerate losses and perhaps hasten the demise of Children Services. The Employer submits that its wage proposal is more than reasonable in that it provides general wage increases which range from 6% to 12% in the first year of the Agreement. Over the term of the Agreement, the Employer's proposal would provide an average increase of between 20% and 26%. The Employer requests that no further increases be provided considering the rather generous wage increases proposed and the deficits which Children Services is currently incurring.

The Union argues that the Employer's wage proposal is not as generous as it claims. The Union points out certain inequities in the proposal especially for those at the top step of the wage scale. Moreover, the Union contends that the Employer here has the ability to fund additional increases beyond which it has proposed. According to the Union, the Children's Services Division had a significant year end surplus and will be receiving more grant money than it has indicated. The Union does not believe that the Agency is facing any serious financial difficulties. The Union also submits that it has proposed a more reasonable increase in longevity to address the wage inequities found in the Employer's proposal.

ANALYSIS – This fact-finder recommends that wages be increased in the first year of the Agreement in accordance with the wage schedule submitted by the Employer. It would be reasonable to provide that first year wages be retroactive to August 1, 2002. For the second and third years of the Agreement, this fact-finder recommends that an additional \$.10 per hour be added onto the above referred to wage schedule. With respect to longevity, this fact-finder finds that it would be appropriate to add a longevity step of an additional \$.25 per hour at year ten in the first year of the Agreement. In the second and third years, additional longevity steps of \$.25 per hour are to be added at fifteen years and twenty years of service, respectfully.

The evidence before this fact-finder clearly demonstrates that the Employer does not have the ability to fund any basic wage increase beyond that which it has recommended. According to the financial reports submitted by the Employer, its funds have declined dramatically during the past year. It was shown that the Agency began the year with a balance for all funds of approximately \$456,000. However at the end of the fiscal year, it only had a fund balance of about \$371,000. In effect during the past school year, the Children's Services Division lost about \$80,000. It should be noted that the Agency will not be receiving any substantial grant money in the current year as claimed by the Union. A report filed by the school district's Budget Director clarified the fact that operating grants pertaining to the preschool operation had previously been included in the Agency's budget. However, that is no longer the case with the preschool ceasing operations about two years ago. Therefore other than tuition income, the Children's

Services Division will not be receiving any other financial assistance in the form of state grants, or for that matter from the District itself from its General Fund. It should also be noted that for the current school year there has been a further decline in enrollment and as a result a decrease in tuition income.

It was also established that the recommended wage increase herein will cost the Agency an additional \$60,000 in the first year of the Agreement. Over the term of the Agreement, it is apparent that due to the increase in the cost for salaries, the Children's Services Division will incur even greater deficits than it has had in the past. Considering the increased cost in salaries which the Agency will incur over the next three years and the expected further decline in tuition income, it is evident that the Agency could be facing severe losses by the end of the three year Agreement. As a result, this fact-finder does not believe that any further basic wage increases beyond those recommended herein can be justified due to the economic hardships facing the Children's Service Division.

However, this fact-finder has taken into consideration the Union's concern about certain inequities under the Employer's wage proposal. This appears to be especially true for those who will be placed at the top step under the new wage scale. In order to address those concerns, this fact-finder has determined that it would be reasonable to provide in the first year that there be a longevity step of an additional \$.25 per hour at ten years of service. In the second year of the Agreement, another longevity step is to be provided of

additional \$.25 per hour at fifteen years of service. In the third year, add another longevity step of \$.25 per hour at twenty years of service.

This fact-finder has determined that the recommended wage increases herein will serve to provide bargaining unit members with a significant pay increase especially in the first year of the Agreement. It was shown that first year pay increases will range from 6% to 12% with an average increase of about 10%. Over the term of the Agreement, it was shown that the average pay increase will be between 20% and 26%. It should be noted that the proposed step increases of \$.50 per step will represent an additional increase in wages of about 6% for each step taken. It is apparent therefore that the wage increases which will be provided to the bargaining unit here will be substantially greater than those generally received by other public sector employees during the past year. This fact-finder recognizes that bargaining unit employees have not received a wage increase since the 2000-01 school year. However, the wage increases recommended herein will more than make up for the loss of any pay increase during the past year.

This fact-finder also finds that it would be appropriate to provide that first year wage increases be made retroactive to August 1, 2002. This would coincide with the beginning of the school year which is when bargaining unit members begin to perform their duties for Children's Services. Any further retroactive increase as suggested by the Union back to February 2002 would only further exasperate the current financial difficulties facing Children's Services. Again, the financial data submitted clearly shows

that the Agency does not have the ability to fund any increases beyond that which have been recommended herein.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that the following Wage and Longevity Pay Schedule be adopted by the parties:

**WAGE & LONGEVITY PAY SCHEDULE – See Attachment.  
Note – for clarification purposes, attachment includes where employees will be placed on new wage schedule.**

## WAGE & LONGEVITY PAY SCHEDULE

EFFECTIVE on August 1, 2002, the bargaining unit members shall be compensated as follows:

### DAYCARE TEACHER

There is only one (1) Lead or Daycare Teacher. This employee was paid at Step 9 of the current Lead Teacher scale. The Employer proposes placing the Lead Teacher at Step 1 of a newly created wage scale. The hourly rate would increase from \$10.13 to \$11.00. This is a raise of \$0.87 per hour, and a first year increase of about 8.5%. The new Daycare Teacher Scale would be as follows:

STEP 1	\$11.00 per hour
STEP 2	\$11.50 per hour
STEP 3	\$12.00 per hour
STEP 4	\$12.50 per hour
STEP 5	\$13.00 per hour

### LEAD CHILD CARE PROVIDER

There are four (4) Lead Child Care Providers paid at the former Step 1 rate of \$8.53 or KDG rates of \$8.22 at Step 5 or \$8.52 at Step 7. These four (4) employees will be moved to the newly created Step 1 at \$9.25 per hour. A first year increase between 8.5% and 12.5%.

STEP 1	\$9.25 per hour
STEP 2	\$9.75 per hour
STEP 3	\$10.25 per hour
STEP 4	\$10.75 per hour
STEP 5	\$11.25 per hour

### SENIOR CHILD CARE PROVIDER

There are two (2) Senior Child Care Providers whose rates will be increased from the former top rate of \$8.97 per hour to \$10.00. This is a first year increase of about 12.5%. The pay scale would be as follows:

STEP 1	\$8.00 per hour
STEP 2	\$8.50 per hour
STEP 3	\$9.00 per hour
STEP 4	\$9.50 per hour
STEP 5	\$10.00 per hour

### DAYCARE RECORDKEEPER/CENTER ASSISTANT

There are five (5) employees at former Steps 1 and 2 that will be moved to the newly created Step 1 with increases in compensation of between eight percent (8%) and eleven percent (11%).

One (1) person currently earning the former Step 7 rate of \$7.61 per hour will be moved to the new Step 2, and receive a raise to \$8.50, an increase of just under twelve percent (12%).

One (1) person will move from former Step 5 at \$8.15 per hour to the new Step 3 at \$9.00 per hour, an increase of about eleven percent (11%).

Five (5) employees will move from the top of the former scale to newly created Step 5 receiving a wage increase of about 12.5%.

The new pay scale for this classification will read as follows:

STEP 1	\$8.00 per hour
STEP 2	\$8.50 per hour
STEP 3	\$9.00 per hour
STEP 4	\$9.50 per hour
STEP 5	\$10.00 per hour

## DAYCARE AND EDC CHILD CARE PROVIDER

There are six (6) employees currently paid at Steps 1 and 2 that will move to newly created Step 1 at \$7.25 per hour or with increases of about eight percent (8%) and twelve percent (12%).

There are twenty (20) employees at former Steps 3 and 4 that will be moved to newly created Step 2 at \$7.75 per hour, or with first year increases of 7.5% and 11%.

There are seventeen (17) employees at former Steps 5, 6 and 7 that will move to newly created Step 3, at \$8.25 per hour, or with first year increases of between six percent (6%) and ten percent (10%).

There are nine (9) employees at former Steps 8, 9 and 10 that will be moved to newly created Step 4, at \$8.75 per hour, or with increases of between six percent (6%) and ten percent (10%). The new scale will read as follows:

STEP 1	\$7.25 per hour
STEP 2	\$7.75 per hour
STEP 3	\$8.25 per hour
STEP 4	\$8.75 per hour
STEP 5	\$9.00 per hour

EFFECTIVE 8/01/03 – Increase the compensation of each step by ten cents (\$.10) per hour

EFFECTIVE 8/01/04 – Increase the compensation of each step by ten cents (\$.10) per hour.

## LONGEVITY PAY

EFFECTIVE 8/01/02 – An additional twenty-five cents (\$.25) per hour after ten years of service.

EFFECTIVE 8/01/03 – An additional twenty-five cents (\$.25) per hour after fifteen years of service.

EFFECTIVE 8/01/04 – An additional twenty-five cents (\$.25) per hour after twenty years of service.

## **2. DUE PROCESS**

The Union proposes that disciplinary action be subject to the grievance procedure. The Employer opposes subjecting discipline of any kind to the grievance procedure. It should be noted that the parties basically agreed to apply the principals of progressive discipline, except when the offense committed warrants a more severe form of disciplinary action which is to be at the sole discretion of the Employer. However, there is a disagreement as to whether or not the Employer's decision regarding the disciplinary action can be grieved through the grievance procedure.

The Union contends that due process should be accorded to all non-probationary employees regardless of the hours that they work. It points to the due process procedure set forth in its other bargaining agreements with the Board which cover five other local unions. Those contracts permit the employee to grieve or arbitrate due process issues. The Union submits that employees here should be allowed to arbitrate any unreasonable disciplinary action taken by the Employer.

The Employer contends that it is unable to fund a disciplinary procedure. It points out that only eight members of the bargaining unit are full-time employees with some working as little as one and one-half hours per day. It would simply be too costly to allow all disciplinary actions to be processed through the grievance procedure.

**ANALYSIS** – This fact-finder finds that it would be appropriate to recommend that all full-time employees as well as those working five hours or more per day be allowed to appeal any termination or suspension of more than three working days through

the grievance procedure up to and including final and binding arbitration as set forth in the Agreement. The suspension of three working days or less would be processed as a grievance to the Superintendent of Schools or his/her designee. All other employees in the unit would be able to grieve any disciplinary action to the Superintendent which would be the final step of the process.

In making the above recommendation, this fact-finder has taken into consideration several factors which are peculiar to this bargaining unit. First, it should be noted that with the exception of eight full-time employees, all of the other employees in the unit work on a part-time basis. There are approximately thirty-six employees who work between five and eight hours per day. Others in the unit work from two to three hours per day. There appears to be a basis established for allowing full-time employees and those working five or more hours per day to have a greater right of appeal of disciplinary matters under the grievance process. These particular employees have more of a vested interest in their job with Children's Services than the other part-time members of the unit who only work from two to three hours per day. The latter under this recommendation would still have the right to appeal any disciplinary matter to the Superintendent's level and may be able to appeal further if deemed appropriate to the Civil Service Commission. This fact-finder by his decision herein is not making any determination as to whether or not these other part-time employees would have Civil Service coverage.

Another important factor involved is that there is a clear distinction to be made between the bargaining unit here and the others in the district represented by the Union. The program here is self-sustaining and relies solely on tuition received from the parents of the children who attend the program. The Board provides no financial assistance for the programs operated by the Children's Services Division. Moreover as previously discussed, it was established that the Children's Services Division is experiencing serious financial difficulties at the current time. As a result, there appears to be some validity to the argument that it would be cost prohibitive to allow employees who work as little as two to three hours per day the right to appeal disciplinary matters to binding arbitration. For such employees, the cost associated with processing any termination could exceed one-half of the employee's annual salary. For such part-time employees, it would appear to be more reasonable to allow them to appeal disciplinary matters to the Superintendent's level which would be the final step of the process.

On the other hand, this arbitrator finds merit in the Union's argument that employees should have the right to appeal severe disciplinary actions imposed to binding arbitration. At least with respect to full-time employees and those working five or more hours per day, this fact-finder would agree that an appropriate due process procedure should be established to serve as a check and balance for any arbitrary action taken by the Employer. Therefore considering the various factors presented, this fact-finder has determined that it would be fair and reasonable to provide that full-time employees and those working five or more hours per day have the right to appeal terminations and

suspensions of more than three days through the grievance procedure and up to binding arbitration.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that the following Due Process Provision be included in the parties' Agreement:

#### **DUE PROCESS**

6.11 The Employer agrees to follow the principals of "progressive discipline," except in those instances when the offense committed by the employee warrants a more severe form of disciplinary action as determined at the sole discretion of the Employer. All full-time employees and those working five or more hours per day shall have the right to appeal any termination or suspension of more than three working days through the Grievance Procedure to final and binding arbitration. The suspension of three days or less may be processed as a grievance to the Superintendent of Schools or his/her designee. All other employees in the bargaining unit may grieve any disciplinary action to the Superintendent which shall be the final step of the process.

### **3. FAIR SHARE FEE**

The Union proposes that there be a Fair Share Fee Provision when membership reaches 70% of eligible employees. The Employer is opposed to any Fair Share Fee Provision.

The Union contends that since it is required by law to represent all members of the bargaining unit, it should be permitted to collect a fair share fee for services rendered. The Union submits that it has over 70% voluntary membership now and that it would be only reasonable to use that percentage for Fair Share Fee Provision purposes.

The Employer maintains that because this is the parties' first contract, it should not be obligated to provide for a Fair Share Fee Provision. It is strongly opposed to any fair share fee arrangement but agrees to collect union dues from any member who voluntarily signs the appropriate authorization.

**ANALYSIS** – This arbitrator has determined that there should be a Fair Share Fee Provision included in the parties Agreement once voluntary membership reaches 75% of eligible employees. A Fair Share Fee Provision would be appropriate considering that the Union is required by law to represent all members of the bargaining unit and therefore should be permitted to collect a fair share fee for services rendered. Under the recommendation herein, the Fair Share Fee Provision would become effective after voluntary membership reaches 75% of eligible employees. It would also be appropriate to provide that any current employee who has not signed a membership card would be exempted unless of course they choose to sign a card.

## **RECOMMENDATION**

It is the recommendation of this fact-finder that there be a Fair Share Fee

Provision included in the parties' Agreement as follows:

### **FAIR SHARE FEE**

**Fair Share Service Fee shall be collected from employees after voluntary membership reaches seventy-five percent (75%) of eligible employees. Current employees who have not signed a membership card will be exempted unless they decide to sign a membership card.**

#### **4. GRIEVANCE PROCEDURE**

The Union proposes that a grievance can be filed over any disciplinary action taken by the Employer. The Union also proposes the use of the American Arbitration Association for selection of arbitrators. The Employer proposes a grievance procedure that eliminates the right to grieve disciplinary actions except up to the Superintendent's level. In addition, the Employer proposes that a permanent panel of arbitrators be used instead of the American Arbitration Association for selection of an arbitrator.

The Union takes the position that a third party neutral should decide all due process issues. The Union opposes the appointment of a permanent panel of arbitrators as suggested by the Employer. The Union points to the other contracts which it has with the Board which has utilized the American Arbitration Association for the selection of an arbitrator.

The Employer maintains that disciplinary actions should be excluded from the grievance procedure because of the cost involved. Likewise, the use of the American Arbitration Association over a permanent panel is also more costly. A panel of local arbitrators to resolve disputes would save the parties the costs associated with going through AAA.

ANALYSIS – This fact-finder finds that it would be appropriate to allow full-time employees as well as those working five hours or more per day to be able to grieve more serious disciplinary actions through the grievance procedure to binding arbitration. As more thoroughly discussed under the due process issue, the recommendation is that

such employees would be able to appeal any termination or suspension of more than three working days to arbitration. The suspension of three working days or less could be processed as a grievance to the Superintendent of Schools. All other part-time employees in the unit would be able to appeal any disciplinary action to the Superintendent. This recommendation again as more fully discussed under the due process issue has taken into consideration both the Union's concern that bargaining unit members have the ability to appeal more serious disciplinary matters before a neutral party and also the Employer's argument that it is simply too costly for the Children's Services Division to allow all disciplinary actions to be appealed up to arbitration.

This fact-finder would also recommend that the parties establish and use a permanent panel of arbitrators to resolve their disputes. The use of a permanent panel would eliminate the cost involved of a selection of an arbitrator through the American Arbitration Association. In addition, a permanent panel of arbitrators would be more familiar with the parties' Agreement than an outside arbitrator selected through AAA. It should be noted that such permanent arbitration panels are commonly used in public sector contracts in the region.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that the following provisions be included in the Grievance Procedure Provision of the parties' Agreement.

## **GRIEVANCE PROCEDURE**

**All full-time employees and those working five or more hours per day shall be entitled to appeal any termination or suspension of more than three (3) working days pursuant to the Grievance Procedure up to and including arbitration. The suspension of three (3) days or less may be processed as a grievance to the Superintendent of Schools or his/her designee. All other employees in the bargaining unit may grieve any disciplinary action to the Superintendent's level which will be the final step of the process.**

**The parties shall select and use a permanent panel of arbitrators under this provision.**

## **5. CONDITIONS OF EMPLOYMENT**

The Union proposes that employees have the right to grieve the return of a trial promotion to their previous position. The Union also proposes language limiting temporary appointments to a maximum of forty-five days. Finally, the Union proposes language that would give the employee the right to grieve any disciplinary action through the grievance procedure.

The Employer proposes that an employee should not have the right to grieve the return to their previous position following a trial promotion. The Employer also takes the position that temporary appointments should be of unlimited duration. The Employer proposes the inclusion of any language referring to a disciplinary procedure for bargaining unit members.

The Union maintains that employees must have the ability to challenge disputes regarding possible arbitrary decisions by management. The Union also feels strongly that there needs to be some period for finalizing the filling of a permanent opening once posted. It has proposed that permanent positions that have been posted will not be filled by a temporary employee in excess of forty-five calendar days unless mutually agreed upon by the parties. Again, the Union takes the position that an employee should be allowed to grieve any disciplinary action through the grievance procedure.

The Employer argues that it would be unreasonable to allow an employee to grieve a return to their prior position following a trial promotion. Such employees should be treated the same as those who are promoted and given a probationary period.

Moreover because of the nature of child care and the fact that ninety percent of the employees are part-time, it is imperative temporary appointments be of unlimited duration. The Employer once again takes the position that disciplinary actions should not be permitted to be processed through the grievance procedure to arbitration.

ANALYSIS – This fact-finder recommends that with respect to trial promotions, an employee should not have any right to appeal a return to their former position. The concept of a trial promotion is similar to that where an employee is promoted and given a probationary period. An employee promoted on probationary status has no right to appeal a demotion within the probationary period. Likewise, an employee with a trial promotion should be treated the same here.

This fact-finder would also recommend that temporary appointments be of unlimited duration. There was insufficient basis established by the Union's proposal for limiting temporary appointments to only forty-five calendar days. Considering the type of work performed by the bargaining unit with respect to providing daycare services, this arbitrator finds that it would only be reasonable to allow the Employer to have some flexibility with respect to temporary appointments. As a result, this fact-finder finds that it would be appropriate to permit temporary appointments to be of unlimited duration.

Finally with respect to what has been designated as Section 6.11, this fact-finder has previously recommended that full-time employees as well as those working five hours or more per day should have the right to appeal any termination or suspension of more than three days to binding arbitration. Other part-time employees in the unit would

have the right to grieve any disciplinary action up to the Superintendent's level. Considering the nature of the unit here as well as the fact it is quite distinguishable from the others represented by the Union, it would appear that the disciplinary procedure recommended would be appropriate here.

### **RECOMMENDATION**

This fact-finder recommends with respect to Conditions of Employment that the following provisions be included within this section of the Agreement.

### **CONDITIONS OF EMPLOYMENT**

**6.3.4 – If an employee in a trial period fails to meet the requirements for the position, is laid-off, or he/she chooses to return to his/her previous position up to the last day his/her previous position is posted, he/she will be returned to their previous position held prior to the promotion (same total hours, same job classification and wage schedule placement) if such position still exists. Such employee shall have no right to appeal such layoff or return through the grievance procedure.**

**The employee being displaced by such trial period employee will be returned to his/her previous position. Such displacement shall occur (domino effect) until all employees that are displaced due to the return of the trial period employee are returned to their previous positions.**

**Bargaining unit employees will not perform progress reports (evaluations). However, evaluation information can be gathered from other employees deemed appropriate by the immediate supervisor.**

**6.5 – There is to be no time restriction placed upon temporary appointments to vacant positions.**

**6.11 – Full-time employees as well as those working five or more hours per day may appeal any termination or suspension of more than three (3) working days pursuant to the terms of the Grievance Procedure up to and including binding arbitration. Any suspension of three (3) working days or less may be appealed to the Superintendent. All other employees in the unit may appeal any disciplinary matter to the Superintendent or his/her designee which shall be the final step of the process.**

## **6. SICK LEAVE**

The Union proposes that bargaining unit employees continue to be provided with fifteen days of sick leave per calendar year. The Employer opposes such a provision and proposes that employees be provided with 4.6 hours of sick leave for every eighty hours worked. The Union further requests that the sick leave language set forth in its other contracts with the Board be included herein for this bargaining unit. The Employer takes the position that there should be certain restrictions placed upon the use of sick leave.

The Union maintains that it is only reasonable that the Employer provide the same sick leave benefits to the bargaining unit here as it does for other employees in the district who are covered by other agreements. The Union argues that it would be unreasonable to reduce the amount of sick leave accrual for the bargaining unit.

The Employer contends that it is only reasonable to provide sick time based upon the hours actually worked by the employees. According to the Employer, the Union's proposal of fifteen days per calendar year is excessive and cost prohibitive.

**ANALYSIS** – This fact-finder has determined that the same sick leave formula set forth in the other Union contracts should be applied to the bargaining unit here. That is, employees should be entitled to accumulate sick leave at the rate of fifteen (15) days per year of service, computed at one and one-quarter (1.25) days per month. It would be reasonable and internally consistent to use the same sick leave accumulation formula which is applied to other employees in the district. It should be noted that under this

recommendation, bargaining unit employees would essentially receive the number of sick leave days per year as currently provided by the Division of Children's Services.

With respect to the other sections which are to be included in the Sick Leave Provision, this fact-finder has determined from the evidence presented that the Employer's' proposal should be adopted with one exception. The only exception which this fact-finder would make would be to add an employee's parents to the definition of immediate family. There was an indication that the Children's Services Division has experienced during recent years an unacceptably high rate of absenteeism which has negatively affected its program operation. As indicated, the division was created to be financially self-sustaining and to operate a child daycare program. When employees are absent, it obviously creates difficulties for management to find substitutes or to make other appropriate arrangements to fulfill its obligations for the care of children enrolled in the program. The various provisions which are set forth in the Employer's proposal for the use of sick leave appears therefore to be reasonable considering the absentee problem which exists for this particular bargaining unit.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that the following Sick Leave Provision be included in the parties' Agreement.

## **SICK LEAVE**

**9.01** Sick leave shall be defined as an absence with pay necessitated by: 1) illness or injury to the employee; 2) exposure by the employee to a contagious disease communicable to other employees; and/or 3) serious illness, injury or death in the employee's immediate family.

**9.02** Each employee shall be entitled to sick leave accumulated at the rate of fifteen (15) days per year of service, computed to one and one-quarter (1.25) days per month and prorated to his/her scheduled workday. All sick leave will be paid at the rate of loss incurred while absent.

**9.03** An employee who is to be absent on sick leave shall notify the Employer of such absence and the reason therefor at least one (1) hour before the start of his work shift each day he is to be absent.

**9.04** Sick leave may be used in segments of not less than one (1) hour.

**9.05** Before an absence may be charged against accumulated sick leave, the Department Head may require proof of illness, injury or death, or may require the employee to be examined by a physician designated by the Department Head and paid by the Employer. In any event, an employee absent for more than three (3) days must supply a physician's report to be eligible for paid sick leave.

**9.06** If an employee fails to submit adequate proof of illness, injury or death upon request, or in the event that upon such proof as is submitted or upon the report of medical examination, the Department Head, at his discretion, finds there is not satisfactory evidence of illness, injury or death sufficient to justify the employee's absence, such leave may, at the Department Head's discretion, be considered an unauthorized leave and shall be without pay.

**9.07** Any abuse or patterned use of sick leave shall be just and sufficient cause for disciplinary action.

**9.08** The Department Head may require an employee who has been absent due to personal illness or injury, prior to and as a condition of his return to duty, to be examined by a physician designated and paid by the Employer, to establish that he is not disabled from the performance of his duties and that his return to duty will not jeopardize the health and safety of other employees.

**9.09** When the use of sick leave is due to illness or injury in the immediate family, "immediate family" shall be defined to only include the employee's spouse, children, parents or person actually residing with the employee. When the use of sick leave is due to death in the immediate family, "immediate family" shall be defined to only include the employee's parents, grandparents, spouse, spouse's parents, child, brother, sister, or person in loco parentis.

## **7. HOLIDAYS**

The Union proposes that bargaining unit employees be provided with eight paid holidays. The Employer proposes that there be additional holidays but that they be phased in over the term of the contract. The parties were in agreement that in order to qualify for holiday pay an employee would have to work the scheduled day before and after the holiday.

The Union contends that the Employer has failed in the past to provide paid holidays for bargaining unit employees. They should be entitled to the same number of holidays as that provided to the other nine and ten-month employees employed by the Board in the other bargaining units.

The Employer takes the position that it would be too costly to provide all of the holidays requested to the bargaining unit in the first year of their Agreement. If the holidays are phased in, the Employer would have the opportunity to properly prepare its future budgets for such expenditures.

ANALYSIS – This fact-finder has determined that it would be reasonable to phase in the number of paid holidays provided to the bargaining unit. It was shown that the budget for the current year has been established without any cost included for paid holidays. As previously discussed, the Children's Services Division is facing financial difficulties and as a result any additional costs associated with providing all of the paid holidays requested by the Union could have serious implications. It was estimated that each additional holiday would cost approximately \$4,000 for this bargaining unit.

Therefore, this fact-finder has determined that it would be unreasonable to provide for eight additional holidays as requested by the Union during the first year of the Agreement which would cost the Employer approximately an additional \$32,000.

This fact-finder has also taken into consideration the Union's contention that the bargaining unit here should have the same number of paid holidays as that provided to other Board employees. It was established that all other employees receive eight paid holidays.

Therefore considering the cost factor involved as well as the justification established for providing the employees with additional paid holidays, this fact-finder would recommend that in the first year of the Agreement employees be granted paid holidays for Thanksgiving Day, Day after Thanksgiving, Christmas Day, and New Years Day. In the second year of the Agreement, employees are to be provided with the additional paid holidays of Memorial Day and Labor Day. In the third year of the Agreement, the paid holidays of Martin Luther King Day and President's Day are to be granted to the employees. Such a phase in of paid holidays over the term of the contract appears to be reasonable considering all the circumstances involved. It should be noted that the parties were in basic agreement that additional language is to be included in the Holiday Provision which would require employees to work the scheduled day before and after the holiday in order to be entitled to holiday pay.

## **RECOMMENDATION**

It is the recommendation of this fact-finder that the following Holiday Provision be included in the parties' Agreement.

### **HOLIDAYS**

**First Year of Contract** – Paid holidays of Thanksgiving Day, Day after Thanksgiving, Christmas Day and New Years Day are to be provided.

**Second Year of Contract** – Paid holidays for Memorial Day and Labor Day are to be added.

**Third Year of Contract** – Paid holidays for Martin Luther King Day and President's Day are to be added.

**In order to qualify for holiday pay, an employee must work the scheduled day before and after the holiday.**

## **8. SEVERANCE PAY**

The Union proposes a Severance Day Provision which would be the same as that provided to other employees in the five other locals covered by separate agreements between the parties. The Board opposes any Severance Pay Provision.

The Union argues that it is only reasonable to allow employees to utilize a percentage of their unused sick leave days for their severance pay when they retire. The bargaining unit employees here should receive the same formula for severance pay as that provided to other employees in the school district.

The Board maintains that it would be too costly to provide a severance package for the daycare workers. It points out that the Union's proposal is taking from other contracts which the Board funds directly from tax dollars. Children's Services funds are wholly derived from tuition paid by parents of students.

ANALYSIS – This fact-finder has determined that there should be a Severance Pay Provision included in the parties' Agreement. As the Union maintained, it is only reasonable to allow employees to utilize a percentage of their unused sick leave days for severance pay when they retire. This fact-finder recognizes that any Severance Pay Provision would represent a cost factor for the Children's Services Division. However, it appears that at least during the term of the Agreement, there will be few, if any, employees retiring.

Considering the various factors involved, this fact-finder finds that it would be reasonable to recommend the same Severance Pay Provision which is found in the other

contracts. This would be the fairest means for making this particular benefit available to the bargaining unit here. It would be appropriate to provide that the new Severance Pay Provision become effective upon the date of the execution of the Agreement.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that a Severance Pay Provision be included in the parties' Agreement as set forth in the attached article.

## RETIREMENT/SEVERANCE PAY

### 13.1 Provisions

Employees who retire from active service in the Parma City Schools may elect to be paid in cash for sick leave accumulated and unused at the time of retirement on the following basis:

13.1.1 Effective February 1, 2001, the following will be used to determine payment for sick leave accumulated and unused at the time of retirement.

Upon written application to the Treasurer, those employees with accumulated and unused sick leave at the time of retirement will be paid a sum equal to the value of the percentage set forth below.

0-50 days at 22%	=	+11.0 days maximum
51-100 days at 27%	=	+ 13.5 days maximum
101-146 days at 35%	=	+ 16.0 days maximum
147-197 days at 40%	=	+ 20.0 days maximum
198-242 days at 50%	=	+ <u>22.0</u> days maximum
	=	TOTAL
		<u>82.5</u> days maximum

13.1.2 Such payment shall be based on the employee's daily rate of pay at the time of retirement. Payment of sick leave on this basis shall be considered to eliminate all sick leave credit accrued to the employee. Such payment shall be made only once to any employee.

13.1.3 Any employee who severs employment with the district other than retirement and has at least fourteen (14) years of service at no less than three (3) hours per day may elect to receive a lump cash payment as outlined in 13.1.1. Payment of sick leave on this basis shall be considered to eliminate all sick leave credit accrued to the employee. Such payment shall be made only once to any employee.

13.1.4 The beneficiary of any employee who dies prior to retirement shall be eligible to receive the benefits as outlined in 13.1.1.

13.1.5 Any employee who severs employment in the district shall be notified in writing by the Treasurer of the eligibility for and the right to receive the commuted sick leave benefits.

## **9. HEALTH INSURANCE**

The Union proposes that the ten most senior employees receive paid health insurance. The Employer's position is that health insurance should not be made available to employees of Children's Services.

The Union proposes that the ten most senior employees be eligible for paid single plan health insurance. The Union cites the health insurance provided to other employees employed by the Board. The Union points out that it modified its initial proposal so that the Employer's exposure to increased costs for medical insurance would be limited to a small number of those eligible who could have some coverage.

The Employer argues that it would be much too costly to provide health insurance to anyone in the bargaining unit. It notes that the Union's proposal would require it to provide health insurance to one full-time employee and nine part-time employees, one of whom works only one and one-half hours per day.

ANALYSIS – This fact-finder has determined that there should be no health insurance provision included in the parties' Agreement at the current time. It simply would be too costly for the Children's Services Division to provide health insurance to the ten most senior employees in the unit. It was estimated that the cost for single coverage for those ten employees would be approximately \$30,000. Such a significant expenditure would severely impact the Children's Services budget. As previously discussed, the Employer here is facing severe financial difficulties and as a result additional expenditures for health insurance would be cost prohibitive. Any further

increase in the cost of benefits such as for health insurance would further increase the losses being experienced by the Children's Services Division and could possibly lead to the demise of the program itself.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that there be no Health Insurance Benefit Provision provided for in the parties' Agreement.

**HEALTH INSURANCE – Not recommended.**

## **10. LIFE INSURANCE**

The Union proposes that for employees who work more than four but less than six hours per day be provided with \$20,000 paid term life insurance. For those who work more than six hours per day they are to be provided with \$30,000 of life insurance. The Employer opposes the inclusion of life insurance in the contract.

The Union contends that it is only reasonable to have bargaining unit employees here receive the same life insurance benefit as that provided to other bargaining units. The Union points out that life insurance is a relatively low cost item.

The Employer takes the position that it would be too costly to provide life insurance for the bargaining unit here. The Children's Services budget simply cannot absorb any further cost increases.

ANALYSIS – This fact-finder has determined that there should be no life insurance benefit provided to the bargaining unit. As previously discussed, the Children's Service Division is funded solely by the weekly fees paid by parents of the children who attend the programs. Unlike the other bargaining units cited by the Union, the district provides no financial assistance directly to Children's Services. There are clear distinctions to be made between the bargaining unit here and the others covered by separate agreements between the Union and Board. Moreover, Children's Services lost approximately \$80,000 during the past school year. Any further increase in the cost of benefits would further increase those losses and possibly affect the continued operation of

the Children's Services Program. For that reason, this fact-finder would not recommend the life insurance proposal submitted by the Union due to the cost implications involved.

**RECOMMENDATION**

This fact-finder does not recommend that there be any Life Insurance Provision as proposed by the Union.

**LIFE INSURANCE** – Not recommended.

## **11. DUES DEDUCTION**

The Union proposes a Dues Deduction Provision which would be the same as that provided in the agreements covering the other OAPSE locals. The Employer proposes certain modifications to the Dues Deduction Provisions found in the other agreements including the deletion of the language relating to the fair share service fee.

ANALYSIS – This fact-finder would recommend the dues deduction language proposed by the Employer. The main concern raised by the Union was that the provision does not reference the fair share service fee language set forth in the provisions found in the other bargaining agreements. However, this fact-finder previously recommended a separate fair share fee provision which addresses the concern raised by the Union. In all other respects, the dues deduction language which is being recommended basically follows that found in the other bargaining agreements.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that the attached Dues Deduction Provision be included in the parties' Agreement.

**DUES DEDUCTION** – See Attachment.

## DUES DEDUCTION

4.1 The Board agrees to deduct from the pay of an employee, when so authorized in writing by an employee, dues for the Ohio Association of Public School Employees (OAPSE) and for Locals ~~#122 and #160, #165, #404, #695, and #756.~~

4.2 Enrollment for dues deduction shall be made upon the submission of the employees' VOLUNTARILY signed statements of authorization submitted to the Parma Board of Education Treasurer by the Union ~~no later than September 30 for the non fifty-two (52) week employees and no later than July 31 for the fifty-two (52) week employees; or within the first pay period of each working month prorated over the remainder of the work year; or within thirty (30) days of completion of an employee's probationary period.~~

~~Dues deduction authorization may be revoked by employees, in writing, to the Parma Board of Education Treasurer within thirty (30) calendar days of the stated expiration date of the agreement. The local president and local treasurer will be notified when the dues deduction authorization is revoked by the employee.~~

4.3 Union membership dues shall be deducted in equal installments beginning with the second pay in October and ending in June, ~~for non fifty-two (52) week employees. Union membership dues shall be deducted in equal installments beginning with the second pay in October and ending with the first pay in August for fifty-two (52) week employees.~~ However, no employee shall have his/her union dues deducted from the pay immediately following the winter recess period. Therefore, the pay date immediately following the winter recess period will be excluded when calculating the number of pay periods used to determine the amount of dues to be deducted each pay date for that school year.

The monies so deducted shall be forwarded to the appropriate treasurer, i.e., State union dues shall be forwarded to the State union treasurer and local dues shall be forwarded to appropriate local treasurers. The pertinent local chapter treasurer will be informed when a new employee has successfully completed his/her probationary period and when an employee has been recalled from Reduction In Force.

4.5 The Union agrees to indemnify and hold the Board harmless against any and all claims that may arise out of or are in any way related to the deduction of dues pursuant to this Article and the Ohio Revised Code.

4.7 THE BOARD AGREES TO DEDUCT FROM THE WAGES OF ANY EMPLOYEE WHO IS MEMBER OF THE UNION. A PEOPLE (PUBLIC

EMPLOYEES' ORGANIZATION TO PROMOTE LEGISLATIVE EDUCATION) DEDUCTION AS AUTHORIZED IN WRITING BY THE EMPLOYEE ON A FORM PROVIDED BY THE UNION. SUCH WRITTEN AUTHORIZATION FORM MUST BE SUBMITTED TO THE PARMA SCHOOL TREASURER AND THE APPROPRIATE UNION CHAPTER PRESIDENT. THE BOARD AGREES TO REMIT ANY DEDUCTIONS MADE PURSUANT TO THIS PROVISION TO THE PEOPLE COMMITTEE WITHIN TEN (10) WORKING DAYS TOGETHER WITH AN ITEMIZED STATEMENT SHOWING THE NAME OF EACH EMPLOYEE FORM WHOSE PAY SUCH DEDUCTIONS HAVE BEEN MADE AND THE AMOUNT DEDUCTED. THE MINIMUM AMOUNT TO BE DEDUCTED PER PAY SHALL BE ONE DOLLAR (\$1.00) AND SHALL BE IN DOLLAR INCREMENTS.

## **12. OBLIGATION TO NEGOTIATE AND TOTAL AGREEMENT**

The Union basically agrees with the Employer's proposed language with reference to Obligation to Negotiate and Total Agreement Provisions except that it wishes to add language which would indicate that it does not waive its rights under 4117 to bargain any change during the term of the Agreement that affects wages, hours, and terms and conditions of employment. The Employer takes the position that the language which it has proposed for these two provisions should be adopted.

ANALYSIS – This fact-finder has determined that the Total Agreement and Obligation to Negotiate Provisions proposed by the Employer are fairly standard and found in many other public sector contracts. The Union's proposed additional language that it does not waive any rights under 4117 does not appear to be needed because it is understood that the Union has such statutory rights. Therefore, this fact-finder would recommend the Obligation to Negotiate and Total Agreement proposal submitted by the Employer.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that the attached Obligation to Negotiate and Total Agreement Provisions be included in the parties' Agreement.

### **OBLIGATION TO NEGOTIATE AND TOTAL AGREEMENT**

**See Attachments.**

## OBLIGATION TO NEGOTIATE

.01 The Employer and the Union acknowledge that during negotiations which preceded this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining/negotiations and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

.02 Therefore, for the life of this Agreement, the Employer and the Union each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to negotiate collectively with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated and signed this Agreement.

.03 Only upon mutual agreement of the parties may any provision of this Agreement be renegotiated during its term.

## TOTAL AGREEMENT

.01 This Agreement represents the entire agreement between the Employer and the Union and unless specifically and expressly set forth in the express written provisions of this Agreement, all rules, regulations, benefits and practices previously and presently in effect may be modified or discontinued at the sole discretion of the Employer, without any such modifications or discontinuances being subject to any grievance or appeal procedure herein contained.

### **13. TERM OF CONTRACT**

The Union proposes that the Contract duration be for three years commencing on February 2, 2002. The Employer proposes that there be a three-year contract commencing on August 1, 2002.

The Union argues that the Agreement should take effect on February 1, 2002 because there should be retroactive wage increases granted to that date. The effective date of February 1, 2002 would also be the same as that provided for in the other OAPSE and Board agreements.

The Employer takes the position that the term of the Contract should coincide with the school year. It notes that bargaining unit members only perform their job duties during the school year. As previously discussed, the Employer strongly opposes any retroactive wage increases to February 2, 2002 as requested by the Union.

ANALYSIS – This fact-finder has determined that there should be a three-year Contract commencing on August 1, 2002. Such a Contract Duration Provision would coincide with the school year. As noted, the bargaining unit members perform their childcare duties only during the school year. It would be reasonable therefore to have the parties' Agreement commence on August 1<sup>st</sup> which is when the employees begin their daycare duties.

Moreover, this fact-finder has previously determined that there should be no retroactive wage increase to February 2, 2002 as the Union proposed. Such a significant retroactive wage increase would be too costly for the Children's Services Division.

Again, it should be reiterated that there was a significant loss of revenue experienced by the Children's Services Division in the 2001-02 school year. As a result, it incurred a deficit that year of about \$80,000. A more reasonable approach would be to provide for retroactive wages to August 1, 2002.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that the following Duration Provision be included in the parties' Agreement.

### **DURATION**

**This Agreement shall become effective at 12:01 a.m. on August 1, 2002 and shall continue in full force and effect, along with any amendments made and annexed hereto, until July 31, 2005.**

**CONCLUSION**

In conclusion, this fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for consideration. Further, this fact-finder would recommend that all tentative agreements previously reached by the parties be incorporated into their final Agreement.

**JANUARY 16, 2003**

  
**JAMES M. MANCINI, FACT-FINDER**