

**FACT FINDING TRIBUNAL
STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO**

**STATE EMPLOYMENT
RELATIONS BOARD**

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IN THE MATTER OF FACT FINDING :

BETWEEN :

**FRANKLIN COUNTY CHILD
SUPPORT ENFORCEMENT AGENCY :**

-AND- :

**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 284 :**

REPORT OF THE FACT FINDER

SERB CASE NUMBER : 02-MED-09-0805

BARGAINING UNIT: Non supervisory Employees including Clerk, Secretary I, Client Information Specialist, Cashier, Support Payment Processor, Account Clerk I, Legal Secretary I, Secretary II, Legal Secretary II, Balancing Clerk, Software Specialist, Investigator, Paralegal and Support Officer I.

**FACT FINDING
PROCEEDING:** March 19, 2003; Columbus, Ohio

FACT FINDER: David W. Stanton, Esq.

APPEARANCES

FOR THE PUBLIC EMPLOYER

Robert D. Weisman, Principal Representative
Aaron L. Granger, Attorney
Anthony R. Bond, Executive Director
Jerry W. Mapes, Director, Human Resources
Christy Saxton, Director OMB

FOR THE EMPLOYEE ASSOCIATION

Susan D. Jansen, Attorney, Principal
Representative
Stephen Grismer, Attorney
Don Mann, Business Agent
Angela Moore, Enf. Support Officer
Norma Barnes, Est. Support Officer
Janette Fraley, Disbursements Officer
Twila Hampton-Brown, Support Officer/
Establishment

ADMINISTRATION

By correspondence dated November 29, 2002, from the State Employment Relations Board, Columbus, Ohio, the undersigned was notified of his mutual selection to serve as Fact Finder to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-9-05(j); in an effort to facilitate resolution of those issues that remain at impasse between these Parties. The impasse resulted after various attempts to negotiate a successor Collective Bargaining Agreement, proved unsuccessful. Through the course of the Administrative aspects of scheduling this matter, the Fact Finder discussed with the Parties the overall collective-bargaining atmosphere relative to negotiation efforts engaged in by and between them and learned that, overall, these Parties currently enjoy, and have enjoyed, what can be characterized as a somewhat “amicable” collective-bargaining relationship with respect to the day-to-day relationships experienced through their collective efforts.

On March 19, 2003, a Fact Finding proceeding was conducted where, prior to commencement of the presentation of evidence and supporting arguments, the Parties were offered Mediation with the Fact Finder concerning those issues that remained at impasse. Through the informal discussions that followed, the Parties were able to agree that the utilization of Mediation, with the Fact Finder, would not be beneficial. It is important to note that the Parties engaged in settlement efforts prior to, and without the assistance of, the Fact Finder at the Fact Finding proceeding, however those “last-minute” efforts also proved unsuccessful.

During the course of the Fact Finding proceeding, it became apparent, with respect to Article XXX, titled, “Overtime and Compensatory Time,” that the Parties were in agreement in principal with respect to this language and via facsimile, the Fact Finder received documentation dated April 23, 2003 concerning the Parties’ tentative Agreement reached relative to Article XXX. As it was indicated to these Parties, the evidentiary record of this proceeding remained opened until such time that the Fact Finder received, either the tentative Agreement reached or indication jointly by the Parties that efforts to resolve Article XXX were not beneficial. It was not until that time frame that the evidentiary record in this proceeding was in fact closed as articulated by the Fact Finder through the course of the evidentiary proceeding.

At the conclusion of the efforts engaged in by these Parties, exclusive of Article XXX,

which came later in the proceeding, the Parties ultimately indicated their desire to commence forthright with the Fact Finding proceeding which was recognized and complied with by the undersigned. During the course of the Fact Finding proceeding, each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced, as articulated by the principal representatives and supported by corroborating testimony from those who appeared and testified at the Fact Finding proceeding.

The evidentiary record of this proceeding was subsequently closed upon the Fact Finder's receipt of the April 23, 2003 facsimile indicating the Parties' tentative Agreement reached on Article XXX. Consequently, those issues that remain at impasse are the subject matter for the issuance of this Fact Finding Report hereunder.

I. STATUTORY CRITERIA

The following findings and recommendations are hereby offered for consideration by these Parties; were arrived at based upon their mutual interests and concerns; and, are made in accordance with the statutorily mandated guidelines as set forth in Ohio Administrative Code Rule 4117-9-05(k) which recognizes certain criteria for consideration in the Fact Finding process as follows:

1. Past collectively-bargained Agreements, if any, between the Parties;
2. Comparison of unresolved issues relative to the Employees in the Bargaining Unit with those issues related to other public and private Employees doing comparable work, giving consideration to factors peculiar to the area and classifications 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 affect of the adjustment on a normal standard of public service;
4. The lawful authority of the Public Employer;
5. Any stipulations of the Parties; and
6. Such other factors not confined in those listed above which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in Public Service and private employment.

II. BACKGROUND

The Fact Finding arises out of negotiations between the Franklin County Child Support Enforcement Agency, hereinafter referred to as the "Employer," and the International Brotherhood of Teamsters, Local 284, hereinafter referred to as the "Employee Association" and/or the "Union" concerning the successor Collective Bargaining Agreement addressing this Bargaining Unit. As set forth in the Collective Bargaining Agreement, the Bargaining Unit is recognized and composed of non-supervisory Employees including Clerk, Secretary I, Client Information Specialist, Cashier, Support Payment Processor, Account Clerk I, Legal Secretary I, Secretary II, Legal Secretary II, Balancing Clerk, Software Specialist, Investigator, Paralegal, and Support Officer I.

As the record demonstrates, there is either 210 or 213 Employees within the Bargaining Unit and by way of service they, establish and enforce legal obligations regarding the payment of child support within the Franklin County area. Such comprises the City of Columbus and other smaller cities and townships within Central Ohio. The Agency establishes and enforces support orders and provided modifications to existing orders, as well as, locating and relocating absent parents responsible for such support, the establishment of paternity for children born out of wedlock, the establishment and enforcement of orders for medical insurance coverage and the enforcement of existing court ordered support obligations.

As the record demonstrates, attorneys and contract providers prosecute non-custodial parents who fail to provide such monetary support for their children. The administrative process insures that payments are made through withholding orders and clears cases without the necessity of court intervention in many regards. During calendar year 2001, the Agency collected approximately 177 million dollars in spousal and child support payments which represented a 4% increase over the 2000 calendar year collections.

According to the Parties, they have met on numerous occasions engaging in mediation efforts which have resolved many of the Articles contained in the predecessor Collective Bargaining Agreement; however, those that were unresolved are subject for consideration in this Report herein. The prior Collective Bargaining Agreement had an effective date of July 19, 2000 and expired on December 31, 2002. The Parties, through stipulation, have indicated that

economic increases, will be retroactive to January 1, 2003. In that regard, any consideration for retroactivity have been previously agreed to by and between the Parties.

During the course of the Parties negotiation efforts, the following Articles have been tentatively agreed to and as such have been recommended for inclusion in the successor Collective Bargaining Agreement as follows:

Article I	Absences
Article II	Accident and Injury Reporting
Article III	Alcohol an Drug Policy
Article IV	Americans With Disabilities Act of 1990 (ADA) Grievance Procedure
Article VI	Court Leave
Article VII	Disciplinary System
Article VIII	Equal Employment Opportunity Policy
Article IX	Equipment
Article X	Family & Medical Leave of Absence
Article XI	Gender and Definition of Employees
Article XII	Grievance and Arbitration Procedure
Article XIII	Health and Safety
Article XVI	Hours of Work
Article XVIII	Job Posting and Bidding
Article XIX	Labor Management Committee
Article XX	Layoff and Recall
Article XXI	Lost and Found - Parties agree to the deletion thereof
Article XXII	Lunch Periods - Parties agree to deletion of entire Article as referenced in Article XVI
Article XXIV	Management Rights
Article XXV	Maternity Leave
Article XXVI	Military Leave
Article XXVII	Miscellaneous
Article XXVIII	No Strike/No Lock Out
Article XXIX	Outside Employment
Article XXXI	Pay Day
Article XXXIII	Probationary Period
Article XXXIV	Provision Contrary to Law
Article XXXV	Recognition
Article XXXVI	Record Keeping
Article XXXVII	Seniority
Article XXXVIII	Sexual Harassment
Article XXXIX	Sick Leave Usage and Wellness Incentive

Article XL	Subcontracting
Article XLI	Tuition Reimbursement
Article XLII	Union Bulletin Board
Article XLIII	Vacation Leave and Conversion of Accumulated Unused Vacation Leave Credit to Cash

As set forth and agreed to by the respective Parties, the following unresolved issues remain at impasse following the Parties' efforts to reach resolution during the course of the negotiation sessions previously identified. Those unresolved issues/articles are set forth as follows:

Article V	Dues Check Off and Fair Share
Article XXIII	Maintenance of Dues or Fees Deduction
Article XIV	Health Insurance Benefits
Article XV	Holidays
Article XVII	Job Classifications
Article XXX	Overtime and Compensatory Time
Article XXXII	Personnel Files
Article XLIV	Wages
Article XLV	Duration

The Collective Bargaining Agreement between the Franklin County Child Support Enforcement Agency and the International Brotherhood of Teamsters, Local 284 expired on December 31, 2002 thus triggering application of the statutory process relative to negotiating a successor thereto recognized under Chapter 4117 of the Ohio Revised Code, otherwise known as the "Ohio Collective Bargaining Law."

The Employer would have the Fact Finder conclude that these Bargaining Unit members are fairly compensated in relation to other large county child support agencies and are provided very rich health insurance benefits at a level comparable or better than any other county and municipal jurisdictions. These Employees receive, what the Employer characterizes, a generous amount of sick leave, vacation and comp time and receive other generous benefits including 100% contribution by the Employer to the Public Employee's Retirement System, a benefit that is not received by other Employees working in other Franklin County agencies directly under the auspices of the County Commissioners. As the record demonstrates, the Franklin County Board of Commissioners are party to Collective Bargaining Agreements with AFSCME Ohio Council 8,

Local 2049 representing all Employees in the Franklin County Board of Commissioners including the Commissioner's office, Fleet Management, Purchasing Department, Department of Animal Control, Department of Development, Public Facilities Management and the Office on Aging. This Collective Bargaining Agreement has an effective date of January 1, 2002 through and including December 31, 2003. Additionally, the Commissioners are party to Collective Bargaining Agreement for the Franklin County Department of Job and Family Services Agency and Ohio Civil Service Employees Association OCSEA, AFSCME Local 11 representing all full and part-time Employees of the Department of Job and Family Services. That Collective Bargaining Agreement has an effective date of April 1, 2002 through March 31, 2005.

Moreover, the County Commissioners are party to a Collective Bargaining Agreement involving Franklin County Department of Public Facilities Management and Communication Workers of America, Local 4310 representing full and part-time Court Security Officers. That Collective Bargaining Agreement has an effective date of December 5, 2002 with an expiration of December 31, 2004.

As the evidentiary record demonstrates, Franklin County has experienced a stable financial status avoiding mass layoffs while remaining economically stable. According to the Employer, it has been able to do so by adopting sound economic policies even though the economic future is difficult to predict and uncertainty exists regarding reduced tax revenues, the potential for war and a possible 4 billion state-wide budget deficit. The Union on the other hand indicates that both internal and external comparables demonstrate that indeed Franklin County is financially viable and the overall economic enhancements it is seeking would not unduly jeopardize the County's ability to financially support and finance that which it is seeking.

The County's population and location within central Ohio has provided a sound financial base, both for retention of current businesses and while attracting new businesses to the area. Given its location within central Ohio, the County has remained financially viable and sound. While articulating financial prudence, the Employer insists that past trends relative to the County's financial status and stability must be treaded upon lightly given the uncertainty with respect to global, as well as, local economic concerns. The evidentiary record does not demonstrate any indication of economic hardship and there were no "inability to pay and/or finance" arguments

raised by this Employer. Simply, the Employer wishes to continue to exercise fiscal prudence, while not placing it in an economic hardship, given the uncertainty both globally and locally relative to the economics involved. The Union seeks economic enhancements it views as necessary while also emphasizing the “soft” economy and the impact such has on this Unit given the fact, that many, as it contends, receive subsidies to “make ends meet.”

The Fact Finder is statutorily required to consider comparable employee units with regard to their overall makeup and services provided to the members of the respective community. As is typical, and is required by statute, both Parties, in their respective Pre-hearing Statements filed in accordance with procedural guidelines of the statutory process; and, the supporting documentation provided at the Fact Finding proceeding, have relied upon comparable jurisdictions and/or municipalities representing what they deem “comparable work” provided by this Bargaining Unit. As is typically apparent, there are no “on point” comparisons relative to those Bargaining Units concerning the statutory criteria as will be addressed further by the Fact Finder based thereon.

It is, and has been, the position of this Fact Finder that the Party proposing any addition, deletion, or modification of either current contractual language; or, a *status quo* practice in cases of initial Collective Bargaining Agreements, bears the burden of proof and persuasion to compel the deletion, deviation or modification, as proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo* whether that be the previous collective bargaining language or a practice previously engaged in by the Parties.

It is important to note that based on the statutory criteria, the public Employer has not raised any inability to pay or finance arguments relative to its overall economic status. Simply, that it continues to strive for fiscal prudence. The Fact Finder is indeed mindful of the apparent need of this, or any other, City/County/Township to engage in prudent financial endeavors including the funding for any economic enhancements arising under a successor Collective Bargaining Agreement. As is the case with any public Employer, its accountability to the community concerning fiscal prudence and the ability to finance economic enhancements that may be recommended herein under this Collective Bargaining Agreement are indeed tantamount to the extent that they do not jeopardize the level of service currently provided to the members of this

community.

The Union is seeking what is commonly characterized as “necessary” contractual enhancements to assist with its ability to provide a fair and equitable collective bargaining status for the Bargaining Unit members in comparison to those jurisdictions and municipalities relied upon in the presentation of comparable data. The Union emphasizes that there are no inability to pay and/or finance arguments raised relative to those enhancements; however, it is also mindful of its ability to negotiate a Collective Bargaining Agreement that will enable these Bargaining Unit Employees to remain competitive within the market in which it exists.

It is against this backdrop that this Report with supporting rationale is offered for consideration by the Parties.

III. UNRESOLVED ISSUES

1 & 2. Article V, Dues Check Off and Fair Share; and, Article XXIII, Maintenance of Dues or Fees Deduction

As the record demonstrates, each Party is seeking modifications to the existing language concerning these respective Articles concerning membership within the Bargaining Unit.

UNION POSITION

The Union seeks language which would require Employees who are not members to pay a proportionate amount of the dues representing those activities that are chargeable to non-member Employees. That language would include providing annual copies of the Fair Share Rebate Procedure which differs from the current language containing a Maintenance of Membership provision. The Union emphasizes that that is the only Contract within Franklin County that does not have a Fair Share Fee provision. It insists that this is a matter of fairness since Employees who derive benefits from the Collective Bargaining Agreement should shoulder their share of the financial burden to administer that Contract - a financial burden for the remaining Union membership and for the Union to continue to represent a group of this number if the Employees do not contribute to the cost of the Contract administration attendant therewith.

It insists that it has more than 50% membership (which is disputed by the Employer) is pertinent because the Employer’s argument is it cannot justify forcing Employees to accept a monthly deduction from their paychecks when the Union represents only slightly more than half of

the Employees within the Bargaining Unit. It insists that it is legally required to represent all Employees within the Bargaining Unit and has done so for a number of years. Employees who do not pay Union dues enjoy the same benefits of the Collective Bargaining Agreement and Union representation without paying any portion thereof. This inflicts a grave injustice upon the majority of the Bargaining Unit Employees who are in fact paying Union dues.

COUNTY POSITION

The Employer seeks what it characterizes as minor modifications to Article V as it relates to Dues Checkoff. It proposes to delete the fourth full paragraph which it claims is redundant, since that language is also contained in Article XXIII, titled, "Maintenance of Dues or Fees Deduction." It also proposes the addition of language terminating the Employer's obligation to make deductions from the Employee's pay check when that Employee has been laid off from work or is on an unpaid leave of absence. It claims that such is a clarification of how the Employer interprets Article V currently and not a change to the current policy. It is also proposes in adding language in the fifth full paragraph requesting the Union to completely indemnify and hold the Employer harmless against any claim made by an Employee arising from the deductions made under Article V. Such, it claims, is mirrored in other Franklin County Agency Contracts and is reasonable as an additional protection.

The Employer also proposes to create Section 2 under Article V allowing the Union to assess a Fair Share Fee from Bargaining Unit members who are not dues paying members; however, it must secure 85% membership of the Bargaining Unit in order to implement such language. The Union would be required to supply the Employer with written notification of individuals for whom a Fair Share Fee should be collected.

With respect to Article XXIII, titled, "Maintenance of Dues or Fees Deduction," the Employer proposes to retain the current contract language with a modification in the first sentence listing Article V as "Dues Check Off and Fair Share," rather than merely "Check Off" as currently listed. The Employer insists that this language should be maintained in this Article because of the specific conditions in which a Bargaining Unit member may withdraw from the Union, should be available to the member in the Agreement. Similar language was deleted in Article V in both the Employer and Union proposals therefore it would not otherwise exist in any

Article of the Agreement.

RECOMMENDATION AND RATIONALE

It is hereby recommended that the Parties adopt for inclusion of the successor Collective Bargaining Agreement language proposed by the Union concerning the Fair Share Fee policy with indemnification language to further protect the Employer against any claims raised by any of those individuals affected thereby. It has long been characterized that the implementation and application of a Fair Share Fee provision is to offset the "free-rider" implications when non-dues paying members reap the same benefits of those paying Union dues. Such is deemed to be determined based on a pro-rata portion of the total dues amount as sanctioned by various United State Supreme Court cases relative to this aspect of Federal Labor Law. In light of the compelling evidence with respect to the U. S. Supreme Court decisions relative thereto, it is recommended that the Parties adopt language providing for Fair Share Fee within this Bargaining Unit. Additionally, it is recommended that the Parties adopt the indemnification language sought by the Employer, consistent with the statutory mandates of the Ohio Revised Code regarding deductions and rebate procedures, in light of the implementation of this Fair Share Fee language which is new to the Collective Bargaining Agreement.

The internal comparables indicate that indeed other Bargaining Units within the County under the auspices of the County Commissioners do indeed provide for Fair Share Fee. It is recommended that the Parties utilize that language contained in those Contracts as a reference tool to implement a similar type program for this Bargaining Unit member based on consistency considerations for the Employer.

The Bexley City School District is the only comparable provided by the Employer and does not override the internal comparables provided warranting the inclusion of Fair Share without limitation. As such, it is not recommended that there be any type of percentage membership component to this language simply that it shall be implemented within this Bargaining Unit.

With respect to Article XXIII, it is hereby recommended that that language be recommended consistent with the language contained in the Union's proposal.

No other recommendations are either warranted or compelled based on the evidentiary record as provided. In that regard, only those set forth in the Union's proposal relative to Articles V and XXIII, respectively, are hereby recommended taking into consideration and mirroring those obligations of the rebate requirements under the Ohio Revised Code as previously addressed.

3. Article XIV, Health Insurance

COUNTY POSITION

The County seeks to modify the current language by deleting the second sentence of the first paragraph which states:

“The Employees will not be required to make a monthly Co-payment during the course of this Agreement unless required by local, State or Federal laws or rules promulgated thereunder.”

While it indicates that it is not currently seeking to require Bargaining Unit members to pay a co-payment for health insurance premiums, except for the certain optional plans with a higher benefit level than the plan employees currently receive, the current trend of medical and health insurance may necessitate the removal of that co-pay language in order to maintain the type of benefits these Employees currently enjoy.

It insists that these employees are provided a very generous health care plan while also providing “enriched” plans requiring a premium co-pay. The first plan does not require Bargaining Unit members to pay any portion of health care premiums. That plan covers medical care, dental care, vision care and prescriptions at a very favorable rate. This “basic” plan would pay medical benefits at 80%/20% proportioned to the insurer and the insured with inpatient hospital co-pay of \$100, emergency room co-pay of \$50 and physician office visit at \$20. The plan also has a Network Alternative Medicine Provider, a Lasik discount at 20%, and other discounts on supplements, vitamins and health club memberships.

The “enriched” plan does require a premium co-pay and it covers 100% of medical benefits and eliminates co-pay amounts except for physician office visits at \$5. It has enhanced benefits for dental care, vision care and hearing aid discounts. Bargaining Unit members have the opportunity to choose the regular plan or the enriched plan, but the enriched plan carries a shared

payment of the health care premium.

Removal of the language the Employer is seeking conforms with the current practice of requiring payments “specifically” for the enriched plan. It also provides flexibility in amending plans should escalating health care costs continue.

While it has advised the Bargaining Unit during negotiations, there is no program in effect requiring a co-payment of health insurance premiums for the basic health care plan, the possibility exists that the Employer may be forced to explore that as an option in the future as health care costs continue to escalate. It emphasizes that no other Collective Bargaining Agreements within the County place any limitations on health care premium employee contributions.

Moreover, it opposes the establishment of a Healthcare Committee since, as it believes, such would limit the Employer’s ability to continue to negotiate the best healthcare plan for all Employees. It recognizes and acknowledges it would be willing to receive timely input and suggestions from the Union regarding this benefit; however, the Union’s proposal would unnecessarily delay and hinder the ability of the Employer to manage their rising health care costs effectively.

UNION POSITION

The Union emphasizes that the current language provides the Union “agrees to accept the County’s medical benefit plans provided to other County Employees during the term of the Agreement. The Employees will not be required to make a monthly co-payment during the course of this Agreement unless required by local, State or Federal laws or rules promulgated thereunder,” and no compelling evidence exists to delete it. The Union proposes to add dental insurance and vision insurance to the Contract language as it currently exists. It emphasizes that the Employer provides three(3) health care plans currently and the predominant plan does not require health care premium co-pays. It is basically an 80/20 plan with a copay of \$100 for inpatient hospital, \$50 for emergency room and \$20 for doctor’s office visits.

The second health care plan does require a premium contribution, but provides for 100% of medical benefits without any co-pay by the Employee except for physician office visit at \$5. This plan also provides better benefits for dental care and vision care.

The Union proposes to create a Healthcare Committee to include Union members to

review and study the choices in health care plans and prepare advice to the County Commissioners regarding these plans.

While the Union recognizes the benefit of having 100% fully paid health insurance for the Employees, the Employer's proposal will potentially completely eradicate that benefit. The Employer does not propose a percentage of premium sharing, but rather proposes the removal of the language which provides that Bargaining Unit members will not be required to make a monthly premium co-payment. The Bargaining Unit does not intend to abrogate Bargaining Unit rights over this very important issue to other County Employees including non-Union Employees who have the statutorily recognized right to bargain their health insurance benefits. The Employer's proposal would accomplish that result simply because they have not ruled out the possibility that may require premium sharing by the Employees. Without contractual language, the Employer would be in a stronger position to require premium contributions during the term of the Contract without limitation on the amount.

RECOMMENDATION AND RATIONALE

Indeed, there are growing concerns regarding the instability of the health care industry concerning escalating costs for premiums while maintaining that level of coverage enjoyed by Employees throughout not only this region, but nationally. Quite frankly, it is the exception rather than the rule to see Employees receiving 100% premium payment by Employers in this day and age of unstable and soft economies and the rising cost of health care as it exists. Nonetheless, the current situation with these Employees within this Bargaining Unit provide a premium paid by the Employer at the 100% level for what is characterized as the "basic" plan and other so-called "enriched" plans carry with it some premium sharing. It is recommended that the Parties maintain the *status quo* relative to the basic plan and continue to retain that language not requiring the Employees to make a monthly premium co-payment during the course of the successor Agreement, primarily based on the overall financial package these employees receive. Such is recommended for the basic plan only, since it is clear the practice of the Parties indicates that there is premium cost sharing for the so-called enriched plans.

It is recommended that the Parties adopt modified language in the Agreement recognizing the co-pay contribution for these enhanced plans. That would be at the level currently in place

relative to those enhanced plans allowing the Employer to modify those amounts as it deems necessary. Given the uncertainty in the economy and the impact that health insurance has in relation thereto, it is important to provide at least some avenue for correction. This may occur, this may not occur, but to implement something which the evidentiary record does not compel *at this time* would not provide at least an opportunity for the health insurance market to make whatever corrections that are necessary and hopefully inevitable. Moreover, given the other modest economic enhancements recommended herein, requiring these employees to share now, or some other time within the duration of the successor Agreement, a portion of Health Insurance Premiums, would greatly undermine the recommended increases to base wages. Such, simply is unwarranted at this time.

With respect to the creation of a Healthcare Committee, while it is a noteworthy proposition, however, one that is also unwarranted *at this time*. While the undersigned believes that input is indeed helpful and provides both entities to the Collective Bargaining Agreement, the opportunity to provide its position relative to these types of issues, that which is being proposed by the Union, is not, in the opinion of the Fact Finder, warranted at this juncture. There does not seem to be any basis or instances where whatever efforts that have been endeavored by the Union have been ignored or refused by the County and communication avenues apparently remain open. It is important to also recognize from the Union's standpoint that Employers such as this County or any other County with a large geographical area, can obtain more cost-effective premium rates by compiling and including all members or Employees within the County. The County's overall ability to obtain the best possible premium can be achieved in this uncertain market by compiling larger numbers of employees while also recognizing the Union's ability to bargain the particulars regarding coverage.

In this regard, the creation of a Healthcare Committee, while a noteworthy proposition, is simply unwarranted at this juncture.

4. Article XV, Holidays

UNION POSITION

The Union proposes to add to the current 11 holidays that Employees receive 5 personal days effective January 1, of each year to be taken in increments of no less than 2 hours. During

the course of the fact finding proceeding, the Union indicated that Bargaining Unit Employees must use vacation time in order to take off for personal reasons. Employees cannot use sick leave for personal absences unless the Employee has been able to convert a limited number of sick leave hours to personal leave. In order to take vacation leave, the Employee must have at least completed one(1) year of service and must receive prior approval in order to do so. To convert sick leave hours, the Employee must minimize sick leave usage. A great number of Bargaining Unit Employees have child care responsibilities which may require a need for time off on relatively short notice. Based thereon, the Union's proposal for personal leave days would accommodate that need under those circumstances.

COUNTY POSITION

The County proposes to retain the current Contract language arguing there is no compelling reasons to deviate therefrom. It insists that it already provides a generous amount of holiday, vacation, personal days and sick leave, including a bonus for good attendance. The Union's proposal would have a negative economic impact on the Employer's finances. Moreover, the holiday schedule contained in the current contract is consistent with other contracts administered under the direct auspices of the County Commissioners.

RECOMMENDATION AND RATIONALE

During the course of the fact finding proceeding, the Fact Finder received evidence indicating that many of these Employees have children requiring the need for personal time off to address whatever needs that may arise. Indeed the holiday section of the current Collective Bargaining Agreement is very generous in light of the comparables. The listing of holidays to full and part-time Employees recognizes those generally seen in Collective Bargaining Agreements. While holidays are recognized as just that, Employees generally do not work on those days when possibly child care issues or those issues of a personal nature, would normally arise. It is those days that are not included within the holiday section that may pose a problem for child care or other personal issues. In this regard, it is hereby recommended that the Parties adopt the Union's proposal for the addition of "personal days," but not at the level of five(5) days effective January 1 as the proposed, but 12 hours paid personal leave effective and becoming available on January 1 of every year of the successor. Such may be taken in increments of no less than two(2) hours

with the approval of the Employer. Such shall be granted with a “general” explanation to the Employer to ensure certain privacy concerns that may exist.

Apparently proposals have been modified for presentation to the Fact Finder. That not contained in the Pre-hearing Statements cannot, without mutual agreement, be addressed herein. The Employer references Columbus Day in its Pre-hearing Brief, indicating the Union’s proposal to remove Columbus Day as one of the official holidays and replace it with the Employee’s birthday as a recognized paid holiday. That is not consistent with the Pre-hearing Statement of the Union. While there is mention of Job and Family Services recognizing an Employee’s birthday, such is not mentioned as a proposal within the Pre-hearing statement. As such, any references concerning one’s birthday or Columbus Day are not recommended.

Moreover, the day after Thanksgiving is not referenced in the Union’s Pre-hearing statement and as such there is no recommendation contained herein recommending its inclusion in the successor.

Based thereon, the only change to the current collective bargaining language would that be recognizing 12 hours of personal leave effective or becoming available on January 1 of each year to be taken in increments of no less than 2 hours. If Employees do not take them, they will not carry over to successor years.

5. Article 17 - Job Classifications

UNION POSITION

The Union seeks to increase the percentage increase from 4 to 5% during those times when an Employee is temporarily assigned to perform duties in a higher paid classification. Under the current language, the Employee is paid the minimum pay range of the higher classification or his or her current rate of pay with a 4% increase whichever is greatest for those hours in that work week in which an Employee is assigned to perform duties in the higher paid classification.

COUNTY POSITION

The County proposes to maintain the current contract language insisting there is no compelling reason to deviate from the language of the existing Agreement relative to this Article. The 4% increase is consistent throughout the County and would only provide an additional economic impact upon the Employer.

RECOMMENDATION AND RATIONALE

Employees currently receive a 4% increase in addition to their current rate of pay for work performed in the higher classification, or the rate of the higher paid classification. The additional 1% sought by the Union, while minimal at best, is nonetheless unsupported by the evidence as presented. Based thereon, it is recommended that the parties maintain the current contract language.

6. Article 23 - Maintenance of Dues

See, Issue number one(1).

7. Article 30 - Overtime and Compensatory Time

During the course of the Fact Finding proceeding, the Parties were able to engage in, what proved to be beneficial negotiations, regarding this Article slated for consideration herein. By copy of a facsimile dated April 23, 2003, a copy of which is attached herein as Exhibit - 1, the Parties did in fact reach tentative agreement relative to this Article. As such, the Overtime and Compensatory Time Article shall be incorporated as agreed to by and between the Parties as the language indicates in the attached Exhibit - 1, for inclusion into the successor Collective Bargaining Agreement.

8. Article 32 - Personnel Files

UNION POSITION

The Union seeks languages that would allow an Employee, who has reason to believe inaccuracies exist in the documentation contained in his or her personnel file, to submit the alleged inaccuracy in writing to the attention of the Agency Director. The Union proposal would provide that if in fact the Agency Director concurs with an Employee's contention, the document would either be removed or the written contention would be attached into the file and the Agency Director noting his concurrence therewith. It also provides that no separate personnel file will be maintained by supervision except for the "fact file" used exclusively as an Employee development

file. The Union also proposes that on January 31 of each year, the contents of all fact files for the proceeding year be forwarded to the Agency Director for storage with any other Agency records for the preceding calendar year. It also seeks to allow Employees the opportunity to insure that only well founded supervisory comments are placed in their personnel file and limit the use of supervisory fact files.

COUNTY POSITION

The Employer seeks to include a second and third paragraph to the current language, the second of which would allow an Employee to submit any alleged inaccuracy contained in the personnel file or fact file to the Agency Director in writing. The Agency would then attach the Employee's written contention to the file. The third paragraph, would provide that on January 31st of each of year, the contents of all fact files would be forwarded to the Agency Director for storage. Destruction of the documents would not be permitted as such would violate Ohio public records statute.

RECOMMENDATION AND RATIONALE

It is recommended, in fact it seems that the Parties are in agreement, to provide the Employees an avenue by which they can address inaccuracies in their personnel file. In this regard, it would seem that such would be a reasonable recommendation, and, as such, is set forth as such herein. Moreover, it is indeed reasonable, and the Parties are seemingly in Agreement as well, with the fact that on January 31st of each year, the contents of all of these so-called fact files be forwarded to the Agency Director for storage. It seems that there are legal concerns relative to the destruction of documents which may fall under the auspices of the Ohio Public Records Statute and the destruction thereof may be prohibited and in many ways limited in that regard. The proposal, as both Parties make, would provide the balance being sought by the Union by placing into storage information from the so-called fact files from a previous year during the first month of the following year. In this regard, there is no destruction of documentation which the Employer raises as a concern and potentially a violation of law.

It was noted during the course of the Fact Finding proceeding that the Union was in agreement with the Employer that the so-called fact files contained calendars referencing absenteeism of each Employee. The Union agreed that an exception would be made for the

calendars relative to an Employee's absenteeism.

The Union's proposal adopts the third paragraph of the Employer's proposal and does not in any way modify the first paragraph of the consisting language. Those are hereby recommended in that regard. The second paragraph concerning the events that may be triggered if in fact a contested document is deemed in fact inaccurate would seem in all fairness to the Employee, that that be addressed in some fashion. And, without getting into the legal implications of Ohio Public Records Act, it would seem that an addendum to an inaccurate document be placed in an Employee's personnel file or fact file. In this regard, rather than removing that document, it is recommended that if indeed it is found to be inaccurate, then the Agency Director or his/her designee, once it's brought to his attention, be required to make such notation in written form in that Employee's personnel file. In this regard, it is recommended that indeed that be made part of this recommendation.

Moreover, the Parties agreed during the course of the Fact Finding to submit language addressing the calendar remaining in the fact files. In this regard, that recommendation is hereby memorialized herein.

It is important to also note that if indeed this is an ongoing or recurring problem, the aggrieved Employees can resort to submission of such to the Grievance Procedure. Based on this recommendation, it does not render mandatory the investigation, but triggers application of this language in the event that inaccuracies are brought to the attention of the Agency Director.

9. Article 44 - Wages

UNION POSITION

The Union seeks 4% increases effective January 1 of each year beginning January 1, 2003 through January 1, 2005. It emphasizes that existing contractual language provided retroactivity to January 1, 2000 for Employees to receive the greater of a minimum pay range outlined in Appendix A or a 5% increase. Employees are placed in classification ranges in Appendix A based upon their length of service within the classification. In the second year of the Contract, Employees received a 3.75% increase with a possibility of a .25% pay increase if they achieved a

70% score on their performance evaluation. In the second year, Employees were also eligible for a .75% agency goal pay for performance increases. The third year of the Contract provided that Employees receive a 3.75% increase on the base rate of pay with a possibility of an additional .25% pay for performance with the same eligibility for .75% agency goal pay increase for performance of the agency.

Summarily stated, the Union insists that while the County presented evidence for the need for fiscal conservancy, it emphasizes that this County is not in dire financial condition and therefore the proposed increases it seeks are indeed in line and supported by the evidence of record.

COUNTY POSITION

The County proposes a 1.5% increase for the first year of the agreement with a "Reopener" solely on wages in the second year of the Contract. It insists that such is based on current sustained economic downturn and the County's current and projected reduction in revenues. It also proposes that the Contract maintain the pay for performance language for individual performance with the understanding that the pay for performance provision of the Article will not apply in the first year of this Contract. The 1.5% increase would be across the board without the requirement of satisfying any performance criteria in the first year of the Agreement. Additionally, the pay for performance language based on the overall agency performance is being completely removed from the Agreement under the County's proposal.

RECOMMENDATION AND RATIONALE

It is important to reference other Articles in this Fact Finding Report and Recommendation concerning the gains achieved by the Bargaining Unit with respect to other Articles that remained at impasse. The Union received its language relative to the Fair Share Fee provision and "Notification of Newhires" language it was seeking. Moreover, it maintained the Health Insurance at the same contribution rate of, 100% Employer pay, that it was seeking as well. The *status quo* was recommended relative to Holidays with the addition of 12 personal leave hours to address the child care and other issues of a personal nature, that may arise. The Job Classifications language remains *status quo* and the Parties were able to reach tentative agreement regarding Overtime and Compensatory Time as set forth in Exhibit - 1. With respect to Personnel

Files, the Parties seemingly were in agreement relative to paragraphs one and three and it was recommended that the Parties adopt in concept the idea that a written addendum be placed in one's personnel or fact file where inaccuracies may exist to be supplied by the Agency Director. Moreover, this would not result in a destruction of documentation based on the legal implications as recognized concerning the Ohio Public Records Act.

Based on these recommendations, it is indeed important to note that the economy, both regionally and nationally, is, as best characterized, "uncertain." This falls on the heels of the 9-11 tragedy and other courses of action that may or may not take place relative to an overall status within the world. Nonetheless, central Ohio has always been, and will likely continue to be, one of the more stable areas and can be attributed to, in many ways, the financial prudence exercised by elected officials who oversee and maintain the budgetary matters of this County's government. The evidence provided seemingly suggests that the status of the economy has had an adverse affect, not a monumental one, but nonetheless an adverse affect on the financial viability of this County not to the extent that it cannot pay to provide the recommendations contained herein, but recognizing, however, that continued fiscal conservancy must be exercised. Even though the County budgeted 2% increases, it proposed in Fact Finding base wage increase of 1.5% for the first year with a Reopener for the second, while also proposing to delay the effective date of the incentive percentage to the second year and complete removal of the Agency goals incentive language. Revenues are indeed down and certain costs, such as Healthcare are increasing. These facts cannot be ignored.

The record demonstrates that this Bargaining Unit receives a 100% contribution to the Public Employee Retirement System that apparently no other Bargaining Unit within the County receives. It is important to also recognize the retention of the 100% premium pay by the Employer relative to the basic insurance plan being recommended for inclusion in the successor that obviously has a financial impact to the Employer given the rising and escalating costs of health insurance and the premiums in relation thereto.

Based thereon, a recommendation 2.5% is indeed reasonable and affordable under the totality of the evidence presented, the comparable data provided and the internal considerations of other units within Franklin County and what they have received, that being in the 2% range.

The point of emphasis that must be raised is the fact that during the course of testimony, it was revealed that many Employees receive financial subsidies from various governmental agencies because of the wages they receive in their jobs with County and this agency. While I indeed recognize that the cost for providing benefits is on the rise, costs for most consumer goods are increasing and certain cost-of-living adjustments are necessary to maintain a certain level of earning potential.

The war referenced in the Pre-hearing Statement has in fact occurred, and the economy has seen signs of improvement based on a successful endeavor in that regard. However, the overall certainty as to the finality of that conflict remains at bay and we still may not be finished with our task at hand in that area of the world.

From a historical standpoint, this collective bargaining group apparently received somewhere in the neighborhood of 5% in year 2000, 3.25% with certain merit increases for 2001 and the same recognized in 2002. Only the Sheriff's deputies received a 4% increase although in conciliation, nonetheless provides a basis on which a recommendation, higher than proposed by the Employer, is warranted.

Moreover, based on the so-called "inconsistent application" of the merit evaluation program, it is hereby recommended that that language be deleted from the Parties' Agreement, as well as, the pay-for-performance language based upon overall Agency performance contained therein. Such seemingly addresses both Parties' concerns and desires in this regard. This is strictly an across-the-board increase that is slightly higher than that proposed by the Employer, but nonetheless recognizing that indeed the current economic status on regional, state-wide and national levels, driven in many ways by the factors outside the boundaries of this country, cannot be ignored and must be taken into consideration. Such is not significantly lower than the comparables relied upon, particularly emphasizing retention of the Health Insurance benefit at 100% Employer paid.

It is important to note that the individual merit system could provide benefit for Employees based on individual performance, but the necessity for consistent application thereof is critical to the overall application of such a program. The Union made compelling arguments supporting its removal.

Based on the totality of this evidence, the following is recommended for inclusion in the successor Collective Bargaining Agreement. It is recommended that the Parties adopt a 2.5% base wage increase effective January 1, 2003 across the board. With respect to the second year of the three year agreement, it is recommended that the Parties adopt a 3% increase across the board. With respect to the third year of the Collective Bargaining Agreement, it is recommended that the Parties provide language providing for a Reopener to at least afford two(2) years of steadfast numbers relative to increases in base wages while allowing at least a two year time frame for whatever "corrections" of the local, regional and national economies may have upon the overall financial picture of this County. While indeed there is finality that can be argued relative to the avoidance of Reopeners, they nonetheless, under circumstances such as these, may be warranted and beneficial to both Parties without locking a certain Party into a certain financial obligation and affording at least the Bargaining Unit members an ability to seek an enhancement if indeed the overall financial picture improves.

Based thereon, these recommendations are applicable to Article 44, titled, "Wages" of the successor Collective Bargaining Agreement.

10. Article 44, Section 4 - Longevity

As set forth in the evidentiary record compiled during the course of the Fact Finding proceeding, the Union agreed to withdraw Section 4 concerning Longevity it was proposing for inclusion in the successor Collective Bargaining Agreement. As such, it is so recommended and set forth herein in this Report.

11. Article 45 - Duration

RECOMMENDATION AND RATIONALE

It is hereby recommended that the successor be of three(3) years duration as both Parties seek, for all Articles, except Wages, Article 44, which shall contain language recognizing the Reopener for year three(3) thereof.

12. All other Articles Tentatively Agreed to

During the course of the Fact Finding proceeding, the Parties entered a joint stipulation indicating their agreement to include in the successor Collective Bargaining Agreement all those Articles that were tentatively agreed to during the course of negotiations that occurred by and between them. As such, it is so recommended for inclusion herein.

IV. CONCLUSION

Hopefully, these recommendations contained herein can be deemed reasonable in light of the data presented, the representations made by the Parties and based on the common interests of both entities recognizing that painstaking efforts at the bargaining table proved unsuccessful. It is hopeful that these Parties can adopt these recommendations so that the successor Collective Bargaining Agreement can be ratified and approved and the Collective Bargaining relationship can continue without further interruption. Moreover, these recommendations are offered based on the comparable data provided; the manifested intent of each Party as reflected during the course of this aspect of the statutory dispute resolution process; based on any stipulations of the Parties; based on the positions indicated to the Fact Finder, via Pre-hearing Statements and during the course of the Fact Finding, as well as, the informal mediation that was conducted; and, based on the mutual interests and concerns of each Party to this successor Agreement.

Moreover, any Article not so referenced herein or those not referenced by the Parties during the course of the evidentiary proceeding will receive a recommendation that the *status quo* be maintained relative thereto.

DAVID W. STANTON, ESQ
Fact Finder

Dated: July ____, 2003
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The Undersigned certifies that a true copy of the foregoing Fact Finding Report and Recommendations has been forwarded by facsimile and overnight U.S. Mail Service to: Robert D. Weisman, Schottenstein, Zox & Dunn LPA, The Huntington Center, 41 S. High Street, Suite 2600, Columbus, Ohio 43215; Susan D. Jansen, Logothetis, Pence & Doll, Suite 1100, 111 West First Street, Dayton, Ohio 45402-1156; and, Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; on this ____ day of July, 2003.

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



SCHOTTENSTEIN ZOY & DUNN
a legal professional association

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Date April 23, 2003

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Message The parties have reached the attached tentative agreement for Article 30.

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Joint Proposal
After fact finding hearing but before the decision of the fact finder.
April 4, 2003

ARTICLE 30

OVERTIME AND COMPENSATORY TIME

Section 1.

If an employee actually works more than forty (40) hours in a workweek, the employee will be paid overtime at a rate of one and one-half (1-1/2) times the employee's regular straight time rate. All overtime must have prior written approval by the Agency Director or the Agency Director's designee. The employee will be required to work overtime when requested by the Employer, unless the Employer determines, in its sole discretion, that the employee's unique circumstances justify the employee's inability to work overtime.

Should the Employer decide to perform any project requiring overtime, the Employer will advise the Union of the project and will meet in an attempt to mutually agree to the allocation of the workload. The selection of the employees working overtime will be by the Agency Director with regard to necessary skills, abilities, seniority, and unit coverage. If feasible, the ratio of supervisors to bargaining unit employees fulfilling the overtime project will be no more than one (1) supervisor for every five (5) employees.

Section 2.

An employee may, at his/her election, take compensatory time in lieu of overtime with prior authorization from the Employer, in compliance with the Fair Labor Standards Act and the rules promulgated thereunder. Compensatory time is calculated at the rate of one and one-half (1-1/2) times the regular hours worked in excess of forty (40) hours in a workweek.

APR. 23. 2003 3:43PM

Section 3.

Vacation, compensatory time-off, personal days, and sick leave shall not be considered as hours worked for computing overtime. ~~When an employee works overtime on a project for which the Employer is reimbursed by State funds under the SETS project, or any other State funded project, or other funds provided to implement the SETS system, or any other State system, the employee is not permitted to elect compensatory time in lieu of overtime pay. When working overtime, if compensatory time is not available, the Employer shall inform the employee prior to the employee agreeing to work overtime.~~

For the Union:
[Signature] 4/22/03

For OTH:
Nedra A. Miller
4/23/03

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Arbitrator - Mediator

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July 12, 2003

VIA FAX AND OVERNIGHT U.S. MAIL

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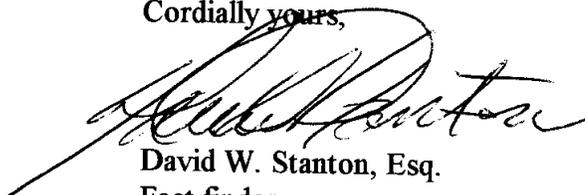
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FRANKLIN COUNTY CHILD SUPPORT ENFORCEMENT AGENCY
-AND-
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FACTFINDING

Ms. Jansen, Mr. Weisman & Mr. Zimmer,

Enclosed herewith please find the Factfinder's Report with supporting Rationale; and, the Statement for Professional Services. Please forward this Statement to your respective Client/Member/State Agency to ensure payment thereof within the time frame noted thereon.

Thanking you in advance for your courtesy, cooperation and for my selection as Factfinder, I remain.....

Cordially yours,



David W. Stanton, Esq.
Fact finder

DWS:sjw.
Encs.

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