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In the Matter of Factfinding

Between

OCSEA/AFSCME Local 11

and

The State of Ohio

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Before: Harry Graham

APPEARANCES: The Chief Presenters for the Parties:

For OCSEA/AFSCME Local 11:

Irwin Scharfeld

For The State of Ohio:

Gary C. Johnson, Esq.
Chief Spokesperson

Steven Loeffler, Deputy Director
Office of Collective Bargaining

BACKGROUND: Pursuant to the procedures of the parties many days of mediation were conducted in Westerville, OH. prior to proceeding to formal hearing. At those sessions both parties made extraordinary efforts to compose their differences. A great deal of progress was made in reducing the number of issues outstanding between them. At the end of mediation the parties agreed that a written Factfinding report was required to provide assistance in resolving those issues that remained.

STATUTORY CRITERIA: The recommendations in this report are made with the statutory criteria in mind. These criteria are:

1. The past collective bargaining agreements between the parties.

2. A comparison of the issues presented to final offer settlement relative to the employees in the Bargaining Unit(s) involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.

3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.

4. The lawful authority of the public employer.

5. The stipulations of the parties.

6. Such other factors not confined to those listed which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, Fact Finding or other impasse resolution procedures in the public service or in private employment.

ISSUES: The following issues are in dispute between the parties:

1. Article 20, Benefits
2. Article 24, Discipline, Sections 24.02 and 24.08
3. Article 32, Travel
4. Article 36, Wages
5. Article 37, Work Force Development

ISSUE 1, ARTICLE 20, BENEFITS

POSITION OF THE UNION: Presently the State and employees share the premium for health insurance. The current division is ninety percent (90%) paid by the State and ten percent (10%) paid by employees. The Union desires that premium cost sharing remain unchanged for the duration of the forthcoming Agreement. In support of that position the Union points out that during mediation various changes to the current health insurance plan(s) were made. Generally involving co-payments made by employees and their families in such areas as doctor visits and prescription drug purchase, they were increased for insureds. This will have the effect of reducing the expected increase in the amount the State will be expected to pay towards health insurance premiums during the life of the forthcoming Agreement. It also represents increased out-of-pocket expenditure for employees.

There is in existence a Joint Health Care Committee (JHCC) in State service. Made up of representatives of the various unions with which the State has agreements as well as representatives of the State, the JHCC has urged that wellness programs be instituted for State employees. Such programs have a record of improving employee health. (Un. Ex. H) Only with the forthcoming Agreement has the State agreed to take tentative steps to improving employee wellness.

The parties have traditionally looked to a group of Great Lakes States, (Illinois, Indiana, Michigan, Minnesota, New York, Pennsylvania and Wisconsin) as comparison States. Ohio and New York require the greatest premium cost sharing by single employees, ten percent (10%). Three states, Minnesota, Pennsylvania and Wisconsin, require no payments by employees. Pennsylvania and Wisconsin also do not require premium payments by employees for family health insurance coverage either. Illinois and New York require employees to pay approximately eighteen percent (18%) of the family health insurance premium. No state requires the twenty percent (20%) being sought by Ohio. In a time when wage increases are likely to be minimal at best, the Union contends the proposal of the State is extraordinarily unfair to employees. Thus, it urges the present division of health insurance premiums remain unchanged.

POSITION OF THE EMPLOYER: The State proposes that the proportion of the health insurance premium paid by bargaining unit members increase from ten percent (10%) to twenty percent (20%) effective with the start of the forthcoming Agreement. History bears upon this proposal. Prior to 1994 the employee share of the premium was fifteen percent (15%). When the parties agreed to reduce the payment made by employees to ten percent (10%) the State secured alterations in the health insurance plan as well as the formula used to calculate its premium payments. Consequently, while it paid a higher proportion of the health insurance premium, its actual expenditures declined. That happy situation has changed. In the past five years the State health care premium expenditure has doubled. In the past year alone it paid $71,000,000 more for health insurance than in the year prior. Expenditure increases at that rate cannot continue to be borne by the State.

The State points out that many public jurisdictions in Ohio have negotiated the 80/20 premium formula. It has become the norm. Additionally, employees of the Federal government are at a 70/30 formula. Thus, the proposal of the State represents the mainstream or better it asserts.

The State also proposes that it pay seventy-five percent (75%) of the health insurance premium for those employees who work between 60 and 80 hours in a bi-weekly pay period.

DISCUSSION: Both parties acknowledge that health insurance premiums have become an intractable problem in negotiations. The State is correct to point out that such cost-savings as it negotiated in 1994 have been negated by the inexorable rise in health insurance premiums. The Union is also correct when it notes that an increase in the proportion of the premium to be paid by its members represents a burden and a hardship on them. The proposal of the State is weakened by its proposal in Article 36, Wages. As will be set forth more fully below, the State is proposing no wage increase occur over the three-year term of the Agreement. Given that proposal, its proposal on this issue is unrealistic. There can be no bona-fide expectation that employees would forgo wage increases in any year of the Agreement, let alone for its duration, and at the same time assume double the proportion of the health insurance premium that they bear today. That proposition is simply untenable.

That observation must be offset with the conclusion that the State is correct: it cannot continue to assume health insurance premium increases of the magnitude currently being experienced. That is particularly true in the current economic environment. (A fuller discussion of the economic situation of the State is found below). There is a variation amongst the Great Lake states composing the comparison group with respect to the proportion of the premium paid by employees. It ranges from zero (0) to over eighteen percent (18%). (Family plan) Ohio is currently neither the best nor the worst on this issue. Thus, the comparability data is mixed. It fully supports neither party in these negotiations.

The State is correct when it points out that 90/10 plans have become unusual. The Union is also correct when it indicates that it made very difficult choices in the current round of negotiations and that its agreement to certain changes in co-pays will save money for the State. The difficulty is in the out years of the Agreement. It should not be anticipated that health insurance premium costs will cease their upward trend. On the other hand, as pointed out above, the State cannot have a realistic expectation that its employees will shoulder a greater share of premium co-pays in a year in which they receive no or little increase in their compensation. It is recommended that the current 90/10 premium cost sharing arrangement remain unchanged for the first two years of the Agreement. It is further recommended that on July 1, 2005 the premium cost sharing arrangement change to 85/15. The proposal of the State with respect to premium payments on behalf of part-time employees is not recommended.

ISSUE 2, ARTICLE 24, DISCIPLINE, SECTIONS 24.02 AND 24.08

POSITION OF THE UNION: Article 24, Section 24.02 is concerned with progressive discipline. Included in the forms of discipline available to the State are fines in various amounts. The amounts of the fine are related to a number of working days. The Union has consistently been opposed to the concept of fines. It proposes language that would have the effect of delaying imposition of fines unless an employee fails to file a grievance within fourteen (14) days of notice of receipt of the fine, or, having filed a grievance, the employee neglects to pursue it or, the matter is adjudicated by an arbitrator. The proposal of the Union is taken verbatim from language contained in the Agreement between the CSEA and

New York State.

As the system of fines has operated a majority of them are reduced in the appeal procedure. This results in an employee having pay withheld for some months, only to receive some portion of it if and when a fine is reduced. This is unfair in the opinion of the Union. Further, in this round of negotiations the parties have agreed to expedite resolution of disputes involving fines. Thus, the proposal of the Union must be considered as being reasonable and should be recommended according to the Union.

Article 24, Section 24.08 deals with drug testing of employees. As set forth below, the State seeks to add various classifications to those that are currently tested. The Union is opposed to this proposal. As the Union sees it, the classifications proposed by the State, the Industrial Safety Consultant 3, the Industrial Safety Hygienists and the Industrial Safety Consultant Specialists are not safety sensitive. The States used as comparisons do not drug test similarly situated employees. Ohio should not either according to the Union.

POSITION OF THE EMPLOYER: The State opposes the proposal of the Union with respect to Section 24.02. In its view, the proposal will treat fines differently than all other forms of discipline. Further, adoption of the proposal of the Union will merely prompt additional grievances as employees grieve to delay imposition of the fine. That is inappropriate according to the State.

The Employer is seeking to add three classifications to those currently being drug tested. (Itemized above). It points out that all the classifications work at the Bureau of Workers' Compensation. They deal with employers whose employees are subject to drug testing. In good conscience and to promote uniformity the various classifications proposed for testing should be tested as well in the State's opinion. Logic and good business sense require that if a State employee is dealing with an employer whose employee's must be drug tested, that employee should be tested as well according to the State.

DISCUSSION: While the system of fines causes great distress to the Union it must be realized that they affect a very, very small number of employees. Redress is available in the grievance procedure. Were the proposal of the Union to be recommended fines would indeed be treated differently than other forms of discipline. No reason why this should be so is apparent to this Factfinder. No change in current language in Section 24. 02 is recommended to be continued unchanged.

The proposal of the Employer to add various classifications to those currently being drug tested is based on public relations concerns, not safety. At the hearing it was established that the jobs the Employer seeks to test are not safety related. No bona-fide reason exists to schedule them for testing. The current language in Section 24.08 should remain unchanged.

ISSUE 3, ARTICLE 32, TRAVEL

POSITION OF THE UNION: Article 32 deals with reimbursement for travel expenses. The Union is seeking increases. At Section 32.04 the Agreement provides for motel and meal reimbursement up to certain limits. Section 32.03 provides a mileage payment to people who use their personal vehicles. The mileage reimbursement rate is below that currently permitted by the Internal Revenue Service. The motel and meal allowance is becoming substandard in the opinion of the Union. It seeks the IRS rate for personal vehicle usage and some sort of increase for motel and meal allowances.

POSITION OF THE EMPLOYER: The State asserts that its present fiscal situation makes an increase in travel reimbursement impossible to consider at the present time. The Office of Budget and Management has set travel reimbursement rates. If and when OBM increases them in the Agreement such a change will be applied to members of the bargaining units. No other change should occur according to the State.

DISCUSSION: No change is recommended in Article 32. At mediation and at the hearing it was indicated that should OBM change the travel reimbursement rates during the life of the forthcoming Agreement such a change would be applied to bargaining unit members. Accepting that to be the case, no change in the present text of Article 32 is recommended.

ISSUE 4, ARTICLE 36, WAGES, SECTIONS 36.01, 36.02, 36.03, 36.06, 36.07, 36.08

POSITION OF THE UNION: Sections 36.01 and 36.08 reference shift differential pay generally (36.01) and specifically (36.08). The State proposes to eliminate shift differential pay entirely. The Union quite naturally is opposed to this proposal. Shift differential has been in the Agreement from its inception. It is a well recognized feature of payment systems in the nation. It benefits the Employer as it helps attract employees to work second and third shifts. No change in shift differential is justified in the opinion of the Union.

Section 36.02 is concerned with the "General Wage Increase." The Union proposes that there be three general wage increases. These would be three and one-half percent or 48 cents, whichever is greater, three and one-half percent or 48 cents, whichever is greater, and four percent or 58 cents, whichever is greater. They would occur on July 1, 2003, July 1, 2004 and July 1, 2005 respectively. Extensive testimony and documentation was received from the Union expressing its opinion that the economy of the State and nation is poised for economic recovery and growth. A great deal of documentation was put into the record by the Union in support of its view that the proverbial "rosy scenario" lies ahead for the economy. The Union acknowledges that the State is facing a revenue shortfall as negotiations transpire. Given the better economic times that lie ahead its members should not be penalized by temporary hard times the Union contends.

When the State comes to allocate its resources spending on Medicaid, primary, secondary and higher education consume 73% of General Fund expenditures. These expenditures represent transfers from the State to various other entities. They do not represent payments to State employees. In fact, State employee headcount has been reduced substantially. Excluding the Department of Rehabilitation and Correction (DRC) the headcount of State employees has dropped about 6500 employees from 1991-2002. From December 2000 through December 2002 the total number of bargaining unit employees in the State droped by 2,781. The various bargaining units represented by OCSEA/AFSCME Local 11 shed 1,881 people in the same period. Additionally, Ohio has the third lowest number of full-time employees per 1000 population of any State in the nation, 5.9. Only Wisconsin with 5.6 and Indiana with 5.7

have fewer employees per 1000 people. Employees of the State are doing more with less.

Section 36.03 deals with step movement. It provides a form of regular wage increments based upon service. As noted above, the State proposes to eliminate this section of the Agreement, thus deleting an integral feature of the pay plan. The Union is strenuously opposed to this proposal. Step pay increases have been made in the State for many, many years. The current economic situation of the State does not serve to eliminate it the Union insists.

A well-established feature of pay in the State is found at Section 36.06, roll call pay. This is pay to Correction Officers and Psychiatric Attendants in DRC. The State seeks to delete this pay as well. The Union is adamant that such pay remain. It has existed for many years. It compensates employees for work performed prior to shift change. No possible reason exists to eliminate this payment according to the Union.

There is in the Agreement longevity pay. At Section 36.07 it provides for wage increases when employees reach specified years of service with the State. The State seeks to eliminate this form of pay. As is the case with shift differential and roll call payments, the Union points out that longevity pay has existed for many, many, years. It is an integral feature of the Agreement. They should not be taken away in the name of financial exigency according to the Union.

POSITION OF THE EMPLOYER: With respect to Sections 36.01 and 36.08 the State proposes eliminating shift differential payments. It proposes no (0) wage increases for the duration of the Agreement. (Section 36.03) In Article 36.05 B "High Performance Work Systems" the State proposes what it terms to be a clarification of the Committee membership dealing with that issue. The State proposes elimination of roll call pay and a freeze in longevity payments. (Sections 36.06 and 36.07). The State also has a proposal relating to Section 36.10. It seeks to nullify any increases that occurred in agency specific negotiations.

The rationale provided by the State in support of its proposals is simple: it is broke. Data from the Ohio Office of Budget and Management (OBM) shows that to the end of the current fiscal year there is a shortfall of $720 million. At the date of the factfinding hearing the Governor had proposed various tax increases to both deal with the problem in the current fiscal year as well as potential revenue shortfalls in the next biennium. The State has been mindful of its developing fiscal difficulties for the past several years and has responded. From November, 2000 to January, 2003 repeated expenditure reductions have occurred. These have totaled

$1.015 billion. Across State service approximately 3,000 employees have been laid off. Institutions (eg. Orient Correctional) have closed. More are slated for closing. (eg. Lima Correctional). If the legislature does not adopt proposed tax increases further cuts in expenditures planned for the current fiscal year must occur. The contingency plan of the State calls for reductions in aid to the Education Foundation, the Board of Regents and other expenditures. (Source: OBM). At best, the State expects stability in the General Revenue Fund for Fiscal 2004 and 2005. Under these circumstances the State cannot contemplate a general wage increase. It must eliminate the various other pays, eg. shift differential, roll call, longevity, in the Agreement in order to cope with its dreadful financial condition. As that is the case, the State contends its proposal should be recommended in its entirety.

As is customary during negotiations between these parties there occur what are termed "agency specific" negotiations. These are to deal with issues specific to a particular agency in State government, eg. DRC, ODOT, DYS. The State (Office of Collective Bargaining) coordinates these negotiations. It is concerned that there might have occurred in the agency specific negotiations something of which it was unaware at the date of the Factfinding. Thus, it proposes that any additional supplements, eg in tool allowances or other pays, be voided by this Factfinder. All existing supplements reached in prior rounds of agency specific negotiations would remain unchanged.

DISCUSSION: As these parties well remember, I was the Factfinder for the expiring Agreement. In my report I concluded that "the State of Ohio is in extraordinarily excellent financial condition. It can meet any reasonable wage increase without difficulty." (Graham, pp. 26-17). The present situation is a complete reversal of that three years ago. The fiscal condition of the State is dreadful. Close examination of the data submitted by the State, from its Office of Budget and Management, indicates the State is experiencing continuing revenue shortfalls from its estimates. As noted by Richard Levin, the Union expert on these matters:

> The main reason the state budget fell out of balance is that the state's economic forecasts and its related revenue forecasts were too optimistic. The economy has not performed as predicted two years ago by Ohio's Office of Budget and Management. Of course, OBM is not alone in this error. Economists and financial experts from Wall Street and the nation's major corporations, banks and universities were also wrong in their economic predictions. (Article 36, Un. Ex. B, p. 1).

Mr. Levin continued:

> Although it may appear so, I do not show you these figures for the purpose of criticizing Ohio's OBM. Budget offices in virtually every other state made similar, if

> not greater, forecasting errors. Moreover, if OBM two years ago had forecasted such low growth (in revenues) for the current biennium, no one would have put credence in the estimates. They simply would not have been believed. (Article 36, Un. Ex. B, p. 3).

Whether or not the budgetary estimates presented by the State are accurate to the penny is immaterial. It absolutely must be accepted that the State has a very serious fiscal problem. This problem has been developing for the past two years and shows no signs of abating. If (a big if as this is being written) the proposals of the Governor or some version thereof regarding tax increases are adopted, the budget of the State will at best be precariously in balance.

At the hearing both the State and the Union presented a great deal of testimony and data concerning their outlook for the economic landscape over the lifetime of the forthcoming Agreement. In fact, their views are similar. Experts from both parties expect a grudging recovery from the current economic malaise. Acceptance of that proposition calls for the conclusion that the wage proposal of the State is unacceptable. It is simply too draconian even in the present difficult circumstances. It should be obvious to even the most casual reader that the wage proposal of the Union is also unacceptable. The State cannot meet the proposal of the Union under any possible scenario. It is stressed that as this report is written the revenue position of the State is very, very uncertain. What is certain is that great effort will be required to balance the State's accounts at the end of the fiscal year and into the forthcoming biennium. This calls for a wage recommendation that embraces neither the proposal of the Union nor that of the State. I recommend the following:

No (0) wage increase for the year starting July 1, 2003.

No (0) wage increase for the year starting July 1, 2004.

There should be made a one-time two percent (2.0%) lump sum ratification payment to bargaining unit members in the first pay check of December, 2004. This payment should be made to all employees on the active payroll of the Employer as of March 6, 2003 and December 1, 2004. This two percent payment should be based on the top step rate of the pay range in which the employee is in on December 1, 2004. It should not be included in the wage base. The recommendation concerning when this payment should be made takes into consideration the present condition of State finances. Payments of this nature occur frequently when parties are desirous of providing an increase in compensation while keeping the financial impact on the employer to a minimum. It is this consideration that prompts the recommendation for the two percent (2.0%) lump sum payment.

A four percent (4.0%) wage increase be made for the year starting July 1, 2005. (Section 36.02)

I recommend further that there be no step movement from July 1, 2003 through June 30, 2005. Step movement should resume on July 1, 2005. No retroactive movement should occur for the two years that have been skipped. (Section 36.03) No change should be made in roll call pay. The current method of making roll call pay in DRC should continue unchanged. (Section 36.06). Longevity pay should be suspended from July 1, 2003 through June 30, 2005. It should be resumed on July 1, 2005. No retroactive payments should be made for the two years that have been skipped. That is, no credit is to be given for time spent in state service during the hiatus in steps (Section 36.08). No change should be made in shift differential pay (Section 36.08).

The position of the State with respect to agency specific agreements has a great deal to commend it. Should it be the case that in those negotiations some sort of increase was agreed to in these difficult times it would be the case that only employees of a specific department (eg, ODOT, DRC etc.) would receive it. That is manifestly unfair and inequitable. It is recommended that the following language be incorporated into the Agreement at a new section at the end of Article 36:

> Any agency specific agreement reached during the present round of negotiations that provides for any increase in the form of salaries, bonuses or supplements etc. is null

and void as to the amount of the increase.

All present supplements in agency specific agreements should continue unchanged for the duration of the forthcoming Agreement.

At Section 36.05, B the State proposed that the concept of "parties" be clarified to "the Union and the Office of Collective Bargaining." That change is recommended to the parties.

ISSUE 5, WORKFORCE DEVELOPMENT

POSITION OF THE UNION: The concept of Workforce Development came into the Agreement with the 1997 Agreement. Recently difficulties have arisen with its administration. Bills from vendors to the program have gone unpaid for many months. This notwithstanding that the program is solvent due to continuing infusions of funds. As a result vendors and employees alike are dissatisfied. The Union has a multifaceted proposal regarding workforce development. There exists a controversy between the parties concerning the adequacy of the workforce development fund. To deal with it, the Union proposes that the accounts of the fund be examined by a third party auditor and a report be made utilizing Generally Accepted Accounting Principles. (GAAP). Integral with that proposal is the position of the Union that the present funding levels expressed in cents per hour and the current division of payments to the fund by the Employer and employees remain unchanged. As noted above, the Union is very concerned with complaints it has received from its members and vendors alike. Literally thousands of such complaints have been received. The administrative difficulties of the fund are legion. To remedy that, the Union proposes that day-to-day administration of the fund be given over to a Third Party Administrator. (TPA). Firms specializing in daily administration of entities such as the workforce development fund exist. Given the well-documented administrative difficulties of the fund. (Un. Ex. F). the Union reluctantly and grudgingly urges an outside entity be engaged to administer its day-to-day functions.

The Union proposes that the activities of the workforce development program be expanded. Included should be wellness initiatives. Such programs have proven to not only improve the health of employees and their families, they also serve to ameliorate the increase in health insurance premiums. (Article 20, Un. Ex. J). Given the benefits associated with wellness programs the Union contends the workforce development program should expand to cover them.

PROPOSAL OF THE EMPLOYER: As might be expected the Employer opposes many aspects of the proposal of the Union. No new functions should be performed by the workplace development program, eg. wellness, should be assumed the State asserts.

According to the Employer the workforce development fund referenced in Section 37.02 C is overfunded. The Agreement calls for the fund "not to be greater than twelve million (12,000,000) dollars at any time...." The State estimates the balance in the fund approximates eighteen million ($18,000,000) dollars. In order to come into compliance with the current contract language on this issue the State proposes suspending its contributions any time the fund reaches $12,000,000. When the fund balance declines to $9,000,000 it would restart them. Its contributions would also change under its proposal. Currently the State pays .10 per hour into the fund. Given what it asserts to be the overfunded condition of the fund the State seeks to reduce that contribution to .05 per hour.

The State is in agreement with the Union that recently the workforce development program has experienced administrative difficulties. It is desirous of resolving those problems. Like the Union it proposes turning over fund administration over to a third party administrator. The Employer agrees with the Union that GAAP accounting principles should be applied to the fund and that an outside audit firm should be hired to perform an annual audit.

Under present circumstances no expansion of the workforce development program should be entertained according to the State.

DISCUSSION: There is agreement that the parties should utilize the services of an outside auditor to audit the accounts of the workforce development fund. There is also agreement that the auditor should utilize Generally Accepted Accounting Principles. The proposal of the State for additional language in Section 37.01 D regarding the hiring of an outside auditor, performance of timely audits and application of GAAP is mimicked by the proposal of the Union on these matters. The language proposed by the State is recommended as being in the interest of both parties. In order to make the Agreement internally consistent it is necessary to alter the last sentence of Article 37.02 C. The final sentence which reads "The DAS Human Resources Division shall administer the programs developed by the Committee" should be struck. It should be replaced by "No later than December 31, 2003 DAS shall administer such programs through a third party administrator." No change is recommended in the current workforce development funding formula.

ADDENDUM: All tentative agreements are recommended and should be considered as constituting part of this report.

SUMMARY OF RECOMMENDATIONS

ISSUE ONE, HEALTH INSURANCE: No change in premium distribution (90/10) for first two years of the forthcoming Agreement. July 1, 2005 change premium payments to 85/15.

ISSUE TWO, DISCIPLINE No change

ISSUE THREE, TRAVEL: No change

ISSUE FOUR, WAGES: No general wage increase July 1, 2003 or July 1, 2004. Two percent (2.0%) ratification payment to bargaining unit members in first pay of December, 2004. Four percent (4.0%) general wage increase July 1, 2005. No step increases July 1, 2003 through June 30, 2005. Resume step increases July 1, 2005. No change in roll call pay. No longevity pay July 1, 2003 through June 30, 2005. Resume longevity pay July 1, 2005. No retroactive payments for skipped step and longevity payments. No change in shift differential. Adopt proposal of the State regarding agency specific negotiations.

ISSUE FIVE, WORKFORCE DEVELOPMENT: Engage outside auditor. Utilize GAAP for accounting of workforce development fund. Administer fund operations through a third party administrator. No change in present workforce development funding formula.

NOTE: The text is an integral part of these recommendations and must be read in conjunction with this summary.

Signed and dated this 17th day of February, 2003 at Solon, OH.

Harry Graham

Harry Graham
Factfinder