

STATE EMPLOYMENT
RELATIONS BOARD

2003 MAY 19 A 11:09

IN THE MATTER OF FACT-FINDING

BETWEEN

CWA LOCAL 4546

AND

SUMMIT COUNTY CHILDREN'S SERVICES BOARD

BEFORE: Robert G. Stein

SERB CASE NO. 02 MED 12 1257

PRINCIPAL ADVOCATE FOR THE UNION:

Larry Vuillemin, Esq.
Robin Schenault, President Local 4546
264 South Arlington Street
Akron OH 44306

and

PRINCIPAL ADVOCATE FOR THE EMPLOYER:

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INTRODUCTION

Prior to declaring impasse the parties were unable to reach agreement on ground rules and never proceeded with formal collective bargaining. This Fact-finder is well aware that the parties have had a contentious relationship for many years. During the prior six (6) years of bargaining that covered the period of the last two (2) contracts, the undersigned served as Fact-finder/Mediator.

During the last round of negotiations leading to the current agreement, the parties attempted to bargain using an interest-based format. This approach at first appeared to have promise but then failed when the Employer rejected a tentative agreement. Fact-finding followed and the Union then rejected the Fact-finding report. An extended period of disagreement followed until the County Executive's office became involved in these negotiations. It was instrumental in forging the current agreement. It is noted that the County Executive's involvement was encouraged by the Union. The history of the last round of bargaining is significant in the current impasse because of a new and comprehensive approach Summit County has taken to negotiations. The bargaining approach taken by the County Executive in all of its negotiations was underscored by an effort to bring a measure of uniformity to the conduct of negotiations, the content of the language, and the level of wages/benefits in each of the agencies' contracts.

As a practical matter, it is reasonable and economically sound for a county to take a uniform approach to bargaining, especially with regard to wages, health benefits, and administrative contract language. Bargaining units in each county agency often use settlements for purposes of internal comparability, and a county's labor relations' climate is well served by employees who have comparable benefits and are treated in a similar fashion. This is also a common approach taken by counties in Ohio. Contiguous counties such as Cuyahoga and Medina counties take a similar uniform approach, particularly in terms of wages, benefits, and "boiler plate language" in bargaining with their various units of employees. This Neutral has served as a Fact-finder in several of the negotiations that have been held in these counties. The state of Ohio and its unions have taken this same approach to bargaining for several years.

The County Executive office and at least eight (8) of its unions in Summit County successfully negotiated new contracts during the past year and they have agreed to establishing common language and benefits where and whenever possible. The undersigned Fact-finder, under the direction of the State Employment Relations Board, served as the Fact-finder in four (4) of the negotiations. One of the negotiations involved the Job and Family Services Agency, which oversees the work of Children Services ("Employer").

After the parties were unable to initiate bargaining, the County Executive office once again became directly involved in the negotiations process, picking up where it had left off in the last round of bargaining. In the instant matter the undersigned Fact-finder, having been aware of the parties' failure to agree on ground rules and exchange proposals, held a mediation session with the Union and with the Employer. During this session this Neutral informed the parties of the enormous burden that is placed upon a neutral to render fact-finding recommendations on issues that have never been bargained or even proposed in the bargaining process.

After assessing the situation, the undersigned Fact-finder took a practical approach to this problem and strongly urged the parties to forgo the now seemingly less important formality of ground rule making now that negotiations would be supervised by a third party neutral under the auspices of SERB. The Employer agreed to forgo ground rules, exchange proposals, and begin negotiations under a mediated format. After caucusing, the Union refused to exchange proposals or to negotiate until ground rules were agreed upon. I respect the Union's right to its decision. However, had the Union agreed to forgo the ground rules, exchange proposals and negotiate over the issues, this Fact-finder would have had the benefit of addressing differences between the parties that could be refined and sharpened by the bargaining process.

When raw issues are given to the Fact-finder and each of the parties sees them for the first time in a fact-finding, it is difficult to discern the real emphasis or importance of an issue with respect to all of the other issues proposed. The Fact-finder is deprived of the sorting out process that helps the parties to focus on what is important versus what is simply a desired change. However, the County Executive's office comes into these negotiations at the fact-finding stage with a consistent approach to bargaining and the momentum and success of negotiating eight (8) contracts that bring about the uniform approach to contract administration previously cited. Patterned bargaining in the county is a factor that must be considered in this matter due to the fact that both parties invited the County Executive's office to help resolve the prior negotiations.

Although by statute this Fact-finder must proceed to formal fact-finding, it must be stated for the record that fact-finding is not a substitute for bargaining and is not designed to relieve the parties of their obligation to negotiate. The parties have a history of three (3) year agreements. However, those have come about after the parties have actually bargained. The extraordinary circumstance of fashioning the terms of a collective bargaining agreement absent bargaining makes it extremely difficult for a neutral to recommend terms of a new agreement that would extend over a lengthy period of time.

The Bargaining Unit is a wall-to-wall unit and includes child welfare caseworkers that investigate referrals of child abuse/neglect, offer necessary protective services to children in their own homes, and place, monitor, and provide services to children who have been removed from their families. Social service aides assist caseworkers in providing direct services to children and families. Clerical workers within the unit process the necessary paperwork, perform record keeping responsibilities, and type correspondence and dictation. Childcare workers supervise and interact with children within the residential units. Service workers maintain the agency's 14-acre complex of offices, residential units, and campus. Nurses provide nursing care to children in the residential units and children in foster care at the on-site clinic. There are approximately 364 employees in the Bargaining Unit, of which approximately 310 are full-time and 54 are part-time or intermittent employees.

In order to expedite the issuance of this report, the Fact-finder shall not restate the actual text of each party's proposal on each issue but instead will reference their Position Statements. The Union's Position Statement shall be referred to as UPS and the Employer's Position Statement shall be referred to as EPS. Any recommended changes in a SECTION of the CBA will be identified in **bolded language** and the remainder of the language will be reprinted in normal

typeface. If there are no changes in any part of a Section the words **current language** will be used.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

ISSUE 1 Articles 101 to 109

Union's position

SEE UPS

Employer's position

SEE EPS

Discussion

In the main, what the Union is proposing in terms of proposed changes to Articles 102.1 and 103 are within the sole jurisdiction of SERB and are not an appropriate subject for a fact-finder to rule upon. However, during the fact-finding hearing the Employer agreed to some minor modifications in language that may be incorporated because there is mutual agreement for these changes.

Recommendation

Section 101.01 This Agreement is made and entered into this 1st day of April, 2003, by and between Summit County Children Services, an agency of Summit County, Akron, Ohio, established in accordance with the Ohio Revised Code, and all of its branches, and its Director, Managers and Supervisors, which shall hereinafter be referred to collectively as the EMPLOYER, and the Communications Workers of America (CWA), an affiliate of the AFL-CIO, hereinafter called the UNION, for and on behalf of the employees in the Bargaining Unit. The term employee or employees where used herein refers to all employees in the Bargaining Unit, and both the Employer and the Union recognize that the benefits and responsibilities of employment, including those provided in this Agreement, shall be shared and assumed equally and uniformly by all employees. The purpose of this Agreement is to provide a fair and responsible method of enabling employees covered by this Agreement to participate, through Union representation, in the establishment of wages, terms, and conditions of their employment and to establish a peaceful procedure for the resolution of all differences between the parties.

The Employer and the Union each represent that the ultimate intent and purpose of this Agreement is for the benefit of the citizens of Summit County; to promote cooperation and harmony in employment relations; to recognize mutual interests; to reduce the number of causes of employment relations disputes by providing for employee participation in the formulation, implementation, and continuation of employment relations, policies and procedures by means of this Agreement, and hereafter will govern the working conditions for employees in the Bargaining Unit and the relationship between the parties, but only to the extent provided for by this Agreement. The parties hereto agree to devote every effort to assure that the Employer and the Union Members and Officers will comply with the provisions of this Agreement.

Section 101.02

Current language

Section 101.03- 101.05

Current language.

ARTICLE 102

RECOGNITION

Section 102.01 The Employer recognizes and acknowledges the Union as the certified exclusive bargaining representative of the probationary and non-probationary full-time, part-time, intermittent, absentee replacement, temporary, special project, and grant-funded employees in the following classifications, which shall comprise the Bargaining Unit, except certain positions excluded under Section 103.01:

Account Clerk I
Account Clerk II
Account Automation Specialist
Accounts Payable Clerk
Account Specialist I
Account Specialist II
Adoption Subsidy Specialist
Auto Mechanic/Maintenance Worker II
Billing Analyst
Carpenter I
Carpenter II
Child Care Worker II
Child Support Specialist
Child Welfare Caseworker I
Child Welfare Caseworker I-A
Child Welfare Caseworker I-B
Child Welfare Caseworker I-C
Child Welfare Caseworker II-A
Child Welfare Caseworker II-B
Child Welfare Caseworker II-C
Child Welfare Caseworker III-A
Child Welfare Caseworker III-B
Child Welfare Caseworker III-C
Clerical Specialist
Clerical Specialist/Branch Office
Clerical Specialist-Front Desk
Clerical Specialist/Front Desk Evenings/Weekends
Clerical Specialist FCA Records/Adoption Resource Unit
Clerical Specialist Kinship Care
Clerk I
Clerk II
Community Relations Specialist
Computer Operator
Computer Programmer
Computer Programmer Analyst
Computer Programmer Assistant
Cook I
Cook II
Coordinator of Eligibility Determination

Section 102.01 (Cont'd)

Data Entry Operator I
Data Processing Assistant
Database Administrator
Day Care Worker
Dental Assistant
Dental Secretary
Family Team Meeting Coordinator (Caseworker)
Food Service Worker I
Forms Specialist
Foster Care/Adoption Recruitment Specialist
Groundskeeper I
Groundskeeper II
Help Desk Coordinator
Help Desk Operator
Homefinding Recruiter
Information Referral Specialist
Kids 2100 Training Coordinator
Legal Support Specialist I
Legal Support Specialist II
Librarian
Maintenance Repair Worker II
Medical Payments Clerk
Medical Support Specialist
Medical Secretary
Network Support Coordinator
Nurse I
Painter I
Painter II
Paralegal
PC Network Technician
PC Training Instructor
Processor of Eligibility Determination
Quality Assurance Review Scheduler
Quality Review Specialist
Records Audit Specialist
Records Audit Specialist-Transfer Records
Records Clerk
Records Specialist - Closed Records
Records Specialists
Records Specialist - Open Records
Recreation Aide
Recreation Coordinator
Research Analyst
Research Support
Senior Day Care Worker
Shipping & Receiving Worker
Social Service Aide II
Stenographer I
Stenographer II
Storekeeper I
Tutor

Section 102.01 (Cont'd)

Typist II
Visitation Scheduler/Receptionist
Volunteer Services Specialist

Section 102.02-03.
Current language

ARTICLE 103

DEFINITIONS

Section 103.01
Current language

ARTICLE 104

DUES CHECKOFF

Section 104.01-08
Current language.

ARTICLE 105

FAIR SHARE FEE

Section 105.01 **The parties agree that sixty (60) days following the beginning of employment, whichever is later, employees in the Bargaining Unit who are not members of the Union shall be required, as a condition of continued employment, to pay a Fair Share Fee to the Union. The Fair Share Fee shall be deducted during the same pay period as the Union dues, and remitted to the Union in the same manner as the Union dues. The deduction of the Fair Share Fee and its payment to the Union is automatic and does not require the written authorization of the employee. The Union shall inform the Employer of the amounts to be deducted under this Section. This arrangement does not require any employee to become a member of the Union, nor shall Fair Share Fees exceed the amount of Union membership dues currently paid by members of the Union who are in the same Bargaining Unit.**

Section 105.02-05

Current language

Section 105.06 No employee shall be required to become a member of the Union as a condition for securing or retaining employment.

Employees who opt not to become members of the Union and to instead remit a **Fair Share Fee** may request a reduction in their fee based on their objection to certain kinds of Union expenditures in accordance with internal Union procedures and timelines. Those opting for the Agency Fee are entitled to disclosure of the Union's chargeable and non-chargeable expenses upon request.

The calculation and administration of the Union's Fair Share Fee shall comply with Ohio Revised Code Section 4117.09(C) and all Constitutional requirements as defined by the Courts and the State Employment Relations Board (SERB).

ARTICLE 106

NO-STRIKE PLEDGE

Current language

ARTICLE 107

NO LOCK-OUT PLEDGE

Current language

ARTICLE 108

NON-DISCRIMINATION

Current language

ARTICLE 109

MANAGEMENT RIGHTS

Current language

ISSUES 2 Article 201 to 207

Union's position

See UPS

Employer's position

See EPS

Discussion

201.01 The Employer proposes to clarify that minutes of the executive session are not to be provided to the Union. The Union wishes to maintain current language. It is not clear whether the executive session minutes are currently provided to the Union. However, the purpose of the executive session is to discuss matters of a sensitive nature such as personnel issues or collective bargaining strategy. As a routine matter, it is not appropriate or commonplace for a Union to be provided such minutes. Likewise, the Employer is not entitled to the Union's bargaining strategy minutes or a record of its stratagem over a contractual dispute.

201.05 The Union wishes to expand the amount of time available to the Union president to perform Union business due in large part to the amount of time needed to respond to the Employer's actions or inactions. The Employer wishes to control the time to a specific part of the day and to reduce it to a total of twenty (20) hours per month rather than the current forty (40). The Employer argues that the size of the bargaining unit (some 350) does not warrant forty (40) hours of time off per month when compared to the amount of time available to other Summit counties units (e.g. JFS union president gets six (6) hours off per week.) The JFS bargaining unit is approximately the same size as the CSB bargaining unit, and from the experience of this Neutral, both Union Presidents have complex bargaining units that require considerable servicing. However, they have different histories and it is recognized that in CSB there have been more prolonged disputes.

It is also important to consider the fact that the Union has had a full Fair Share provision in place since the year 2000. The undersigned Fact-finder is familiar with this provision in as much as it was part of the Fact-finding recommendations issued by this Neutral six (6) years ago. It is not uncommon for a Union with this type of steady income stream to fund in large part its own activities (e.g. Akron Education Association). It is also important from a standpoint of independence of action that a local union funds its own activity.

The data does not support the Employer's position to reduce the amount of the Union President release time. In fact, I find the evidence presented by the Union regarding past ULPs, grievance arbitrations, and litigation justifies an expanded amount of release time for the foreseeable future. (Ux 6). However, any expansion of time should be done in such a manner that the Employer is assured the work of the Agency is getting done and weans the Union off the dependency upon taxpayer funding. With a full Fair Share dues provision, the Union can well afford to pay a substantial portion of the release time it argues is necessary to represent its members.

201.06 I also do not find sufficient justification to change the room arrangements for the Union or to eliminate any guarantees it has won through the bargaining process. This Fact-finder is well aware of the bargaining that occurred six (6) years ago to secure the present space.

206.02, 05, 06. I find insufficient evidence to make a change at this time.

New: Child Protection: The size of caseloads is a serious issue for both parties. CSB is an agency that is constantly under public scrutiny based upon every case it handles. The Union's citing of the deaths of eleven (11) children in Summit County is certainly an issue that raises public concern. However, any suggestion that there is a relationship between these tragic events and the caseloads in the Agency is anecdotal at best, and it does not take into consideration many other factors, such as the extensive use of sick time among some employees (Employer Ex 6,7). Whether there is understaffing in the Department that needs to be scrutinized is a matter that requires more sophisticated measurement and complex analysis. It is also an analysis that must be made within the context of what already exists. Later on in this report, the Employer argues that contractual restrictions on scheduling and taking corrective action with employees has hampered its efforts to be responsive to the needs of the community. At this stage in the bargaining process and without the advantage of the parties having any negotiations dialogue over this issue, it is impossible for a Fact-finder to make a judgment in this matter.

Recommendation

Section 201.01 The Employer agrees to furnish the Union President a monthly list of personnel transactions, which involves additions to, changes or deletions from the Bargaining Unit. The Employer will include in the list the newly hired employees and their classification and status, employees completing their probationary period and employees promoted or transferred into or out of the Bargaining Unit. Deletions from the Bargaining Unit shall be explained, i.e., resignation, termination, retirement, layoff, etc. The list will also include those Bargaining Unit employees whose classification is being changed and the reason for the change. The list will also show the names and the effective dates of the transactions.

The monthly list shall be submitted to the Union President no later than ten (10) days following the Board approval of the transactions.

The Employer will provide a list of all Bargaining Unit Intermittent or Part-Time employees, who are placed on temporary full-time status or temporary part-time status, including the beginning and ending dates of the individual assignments. This list will be provided on a monthly basis and will identify all such assignments reported to the Department of Human Resources during the preceding month.

With the exception of minutes from executive session and minutes from meetings that are not subject to public disclosure, the Employer shall provide to the Union President the minutes of the monthly meetings of the Summit County Children Services Board, minutes of all Summit County Children Services Board committee meetings, and copies of all Board resolutions in a timely manner.

The Employer shall provide the Union with the **Employer's** current Table of Organization. Also, the Employer will notify the Union of any changes to the **Employer's** Table of Organization in a timely manner.

The Employer shall provide the Union with address changes for Bargaining Unit employees on a monthly basis.

The Employer shall notify the Union of all students who have an academic assignment with the **Employer**. Said notification shall include the student's name, the name of the person overseeing the

student, the unit they are assigned to, and the beginning and ending dates of the assignment. For the purposes of this section, student is defined as any person who has an academic assignment with the Employer whether an employee or a non-employee.

Section 201.02-04
Current language

Section 201.05 The Union President or his/her designee shall be released from normal work for time for twenty (20) hours per week in the form of four (4) consecutive hours per day in order to perform the responsibilities of the Union President function. The arrangement of hours (a.m. or p.m.) shall be determined by the Employer in order to accommodate the possible employment of a part-time employee(s) who can maintain the productivity of the release time hours. The Employer shall pay all costs associated with five (5) hours per week, and the Union shall reimburse the Employer on a monthly basis for all costs (i.e. all roll-up costs, including retirement) associated with the remaining fifteen (15) hours per week. Duties performed by the Union President or his/her designee shall be performed in the Union office, whenever feasible. For purposes of auditing accountability and propriety, the Union President shall account for all hours he/she is on release time and shall submit to the Human Resources Department a form listing his/her activity. The information of the form shall be in compliance with ORC 4117.

Section 201.06-08
Current language.

NON-EMPLOYEE VISITATIONS

Current language

ARTICLE 203

INFORMING EMPLOYEES

Current language

ARTICLE 204

BULLETIN BOARDS

Current language

ARTICLE 205

UNION MEETINGS

Current language

ARTICLE 206

MISCELLANEOUS

Current language

ARTICLE 207
BRANCH OFFICES

Current language

ISSUE 3 Article 301 to 305

Union's positions

See UPS

Employer's position

See EPS.

Discussion

The Fact-finder reviewed all the data supplied by the parties in support of the proposed changes. After this review, it is concluded that the nature of the changes sought by both parties involve the inner workings of CSB in such matters as work schedules, overtime, agency hours, flex time, compensatory time, paid lunch, and call-in pay. The one issue that stands out among all the issues contained in these provisions is Section 302.12, Scheduling.

The Union has levied criticism of CSB's inability to respond to the needs of children in the community and has related the Agency's shortcomings to caseloads and staffing. The Agency argues that it needs flexibility in scheduling in order to better serve its client base. Section 302.12 requires adherence to the business hours of 8:30 a.m. to 4:30 p.m. and it further restricts the scope of supervisory approval to "*standard agency business.*" The welfare of the public is not well served if the Employer is so overly restricted by the contract that it cannot schedule staff to meet the needs of the children of the community. The flexibility the Employer is asking for is not unreasonable given the difficult mission of the organization. A basic tenet of quality improvement requires that a service be "customer driven" and not process or procedure driven. 302.05 I find the Employer's desire to eliminate paid lunch, although consistent with the other county bargaining units, is a benefit that needs to be negotiated between the parties.

303.01 The Union's desire to create more compensatory time runs contrary to its criticism of CSB as being understaffed and unresponsive to client needs. If more employees are absent due to compensatory time off, CSB can only be less responsive to client needs. 303.02 The Employer raises some practical arguments regarding the need to reform compensatory time. However, this issue should be negotiated between the parties in the future. 303.03-04: The changes being sought by the Employer in these sections

have some practical basis; however, these are also matters that require dialogue and exchange due to the fact they involve the esoteric operations of individual operational units. 303.05: Changes being sought by the Employer in this section again go to the heart of client service. The Employer must have some reasonable way to secure proper staffing when there is a need to serve clients. In the main I find the changes being sought by the Employer in this specific section to be reasonable and to comport with overtime procedures common in collective bargaining agreements. The idea that an employee can simply refuse to work any overtime that may include emergency based overtime appears contrary to the very mission of the organization. Furthermore, the importance of the Employer gaining more flexibility concerning overtime may be partially relieved if it is able to have more flexibility in scheduling under Section 302.12.

Recommendation

ARTICLE 301

WORK RULES

Current language

ARTICLE 302

WORK SCHEDULES

Section 302.01-11

Current language

Section 302.12 Full-time employees may elect their hours of service, subject to operational needs as determined by the supervisor from among the following:

Monday through Friday:

7:00 a.m. - 3:00 p.m.

7:30 a.m. - 3:30 p.m.

8:00 a.m. - 4:00 p.m.

8:30 a.m. - 4:30 p.m.

9:00 a.m. - 5:00 p.m.

10:00 a.m. - 6:00 p.m.

11:00 a.m. - 7:00 p.m.

12:00 p.m. - 8:00 p.m.

Monday through Thursday or

Tuesday through Friday:

7:00 a.m. - 5:00 p.m.

7:30 a.m. - 5:30 p.m.

8:00 a.m. - 6:00 p.m.

8:30 a.m. - 6:30 p.m.

Employees in the following areas are not eligible to participate in the above Flex Time Plan: Receiving Unit, Clinic, Front Desk, Food Service, Callboard, Respite Center.

Supervisors can permit daily variations from the schedule to meet client demand at the sole

discretion of the supervisor. However, the schedules desired by the employee will be granted if operationally feasible. If scheduling conflicts arise, as many employees as possible shall be granted their desired schedule based upon Employer seniority.

For purposes of this Section, **Employer** seniority is defined as total length of service with the **Employer** calculated from date of hire, regardless of leaves of absences.

Section 302.13-15
Current language

Section 303.01-02
Current language
Section 303.03-04

Current language

Section 303.05 Operational requirements of the Employer will require the use of part-time and intermittent employees for proper staffing. The total hours per week worked for such employees shall not exceed twenty-four (24) hours. In the event that no available part-time and intermittent employees have worked less than twenty-four (24) hours in a given week, the overtime shall first be offered to full-time employees unless they have indicated that they do not want to be asked to work overtime. Full-time employees may **decline non-mandatory** overtime in accordance with the provisions of Section 303.03; however, overtime offered but refused or not worked shall be credited as if worked.

If all full-time employees in the residential unit where coverage is needed **decline to work non-mandatory** overtime, it will become necessary to go to another residential unit to request employees who normally perform the duties to work overtime. **In the event not enough qualified employees volunteer for the overtime work, the Employer will assign the overtime to the qualified employee with the least amount of accumulated hours on the overtime roster.**

Full-time Child Care employees who refuse to work overtime in a different residential unit than the one they are presently working in shall not be charged with overtime hours offered but refused or not worked in accordance with Section 303.03. Full-time Child Care employees, who accept overtime hours in a different residential unit than the one they are presently working in, shall be charged with overtime on their present unit roster in accordance with Section 303.03. It is recognized by the Employer and the Union that imbalances in the overtime rosters may unavoidably occur.

Section 303.06
Current language

ARTICLE 304

REPORT AND/OR CALL-IN PAY

Current language

ARTICLE 305

SICK LEAVE

Current language

ISSUE 4 Article 401 to 405

Employer's position

See EPS

Union's position

SEE UPS.

Discussion

During Fact-finding the parties agreed upon the Union's change to Section 404.06. In 404.01 I find the Employer is doing two things: making the language conform with more standard contractual terminology and incorporating "just cause" in place of "good cause." Just cause is a standard that is very common in collective bargaining contexts, and it provides a far clearer picture of the obligations imposed upon management regarding corrective action. It is also noted that the parties have already introduced the term in 404.06D. It implies two central principles: due process and progressive discipline. The term "good cause" is far less specific in its connotation. Even in the absence of the term "just cause", arbitrators generally apply a "just cause" standard to employers' actions. The changes in language in 404.01 being sought by the Employer is consistent with already existing language in 401.01 regarding the right of the Employer to remove probationary employees.

404.03: The Union is seeking to add language that indicates an employee's signature on corrective action is not an acknowledgement of wrongdoing. I find this to be reasonable and consistent with common practice. I also find the Union's request to receive a copy of discipline to be reasonable, and it is consistent with the requirements contained in the Job and Family Services agreement.

The language change the Employer is seeking in 404.05 addresses the current contract language that places time requirements on investigations, the completion of an investigation, and the imposition of discipline. I find that this language does not comport with the comparable language contained in other county agreements (Employer Ex 8) with respect to a time limit on investigations. In addition, the time restrictions on initiation and conduct of an investigation contained in this section are not reasonably related to the nature and complexity of many investigations. For example, consider an employee who is suspected of embezzlement. In such cases employees often take specific measures to remain undetected. It may take an employer weeks or even months

to gather bank records, accounting records, and other transaction data in order to complete a proper investigation. Another example is an investigation of an employee who is suspected of sexual harassment. Victims are often reluctant to come forward with complaints in this area and an employer may have to spend more than twenty-four (24) hours to begin an investigation of this nature. Moreover, in order to uncover a pattern of sexual harassment with other victims, it make take an employer more than twenty (20) days to conduct a thorough investigation that covers the scope of the allegedly improper conduct. Investigations involving discrimination have the potential of doing great damage to the reputation of employees; therefore they need to be conducted in a humane and sensitive manner that often entails considerable time. 404.06 Section D is not a provision that is consistent with other bargaining units in Summit County.

Recommendation

Sections 401 – 403
Current language

Section 404.01 No non-initial hire probationary period employee shall have any form of corrective action taken against them except for just cause.

Section 404.02
Current language

Section 404.03 The Employer shall administer all corrective actions in a progressive manner. Corrective actions must be based on **just cause**, be uniformly applied, and be consistent with the Employer's Table of Discipline governing such actions. Except that the Employer may apply a Lesser penalty from the recommended standard penalties. The Employer will give a copy any corrective action to the affected employee and **the Union** immediately upon execution. **The employee's signature on any corrective action shall not be construed as an employee's agreement with the Employer's action or an admission of violation of the cited work rule.**

Section 404.04
Current language

Section 404.05 An investigation shall precede any corrective action. When an employee is questioned as part of an investigation process and/or issued a Corrective Action Order, the employee is entitled to have a representative present. **Disciplinary action shall be taken against employee no later than twenty (20) working days following the day the investigation is determined by the Employer to be concluded.**

Section 404.06
Sections A. B. E. current language.

The words "**the employee's representative**" shall be inserted as follows:

- C. A written explanation of the Neutral Administrator's recommendation **as to whether the corrective action is appropriate** and the reasons for it shall be issued to the employee, **the employee's representative**, and the Executive Director within fourteen (14) days of said hearing.

Delete Section D.

Section 405

Current language

ISSUE 5

Article 501-505

Employer's position

See EPS.

Union's position

See UPS.

Discussion

The sound mechanics of a grievance procedure are commonly understood in labor relations. A dispute resolution system should be designed to handle a problem efficiently and effectively. The system itself should aid and not interfere with the problem that needs to be addressed. In other words, the grievance procedure should not be so cumbersome or convoluted that it creates another set of hurdles in resolving the substance of the dispute at hand.

The Employer's proposal that group grievances should identify the members of the group is not unreasonable from the standpoint of fairly determining who is impacted by the actions of the Employer. Furthermore, in order to effectively resolve a grievance it will be necessary to describe how the individuals of the group are being affected. However, I find that the current language contains sufficient language that requires the Union to identify all members of a group grievance by name. A change is not supported by the data at this time.

The suggestion of replacing FMCS with a permanent panel is a more cost efficient approach to dispute resolution. With increasing fees on the part of administrative agencies and the uncertainty regarding who is on lists, employers and unions frequently complain about the inadequacy of lists for which they are paying. By definition panel members are a select group who have a track record with the parties and in the profession. They often will make scheduling accommodations that do not get bogged down in the bureaucracy of administrative agencies. For example, the parties often insist upon a panel made up of only members of the National Academy of Arbitrators. Furthermore, experienced arbitrators who become familiar with the Agency and its work have the capacity to be responsive to the nuances of the business, which make them more effective.

505 The Employer proposed the replacement of the current drug policy with the Summit County substance abuse policy. There was no evidence presented to suggest there is a current problem with drug abuse in the Agency. While it makes sense to have a countywide policy for purposes of economies of scale, such a policy needs to be the result of negotiations between the parties.

Recommendation

ARTICLE 501

LABOR/MANAGEMENT MEETINGS

Current language

ARTICLE 502
HEALTH AND SAFETY

Current language

ARTICLE 503
GRIEVANCE REPRESENTATIVES

Current language

ARTICLE 504
GRIEVANCE PROCEDURE

Section 504.01 It is mutually agreed that the prompt adjustment of grievances is desirable in the interest of sound relations between the employees and the Employer. The prompt and fair disposition of grievances involves important and equal obligations and responsibilities, both joint and independent, on the part of the representatives of each party to protect and preserve the Grievance Procedure as an orderly means of resolving grievances.

Section 504.02 The term "grievance" shall mean an allegation that there has been a breach, misinterpretation, or improper application of this Agreement.

Section 504.03 A grievance may be brought by any member of the Bargaining Unit. Where a group of Bargaining Unit members decides to file a grievance involving a situation, breach, misinterpretation, or improper application of this Agreement affecting each member in the same manner, one (1) Bargaining Unit member shall process the grievance for the benefit of all affected members. Such grievance shall be defined as a group grievance. The names of each member, in behalf of which the grievance is filed, shall be made available at the first hearing. Group grievances shall be presented in the first instance to the Supervisor common to all employees in the group. The Grievance Procedure outlined in Section 504.07 shall be used throughout.

Section 504.04 If a Bargaining Unit employee who is a Union member has filed a grievance and ceases to be a Bargaining Unit employee before said grievance is resolved, and the Union determines that said grievance not being processed further may result in a detriment to the Union, the Union may continue processing the grievance as the Grievant throughout the Grievance Procedure.

Section 504.05 If the Employer fails to (a) meet with the Grievant within the timelines qualified in Section 504.07, or (b) to provide the Grievant with a response within the timelines specified in Section 504.07, then the Grievant may appeal to the next Step within seven (7) days. Any grievance not advanced from one Step to the next Step by the employee within the time limits of the Step shall be considered dropped by the employee at that Step. If, at any Step of the Procedure, the aggrieved employee, his/her representative, or the appropriate Employer representative should not be able to be present because of approved leave, time limits must be waived to allow the above parties to be present.

Section 504.06 The written grievance shall state the specific Article(s) and Paragraph(s) of this Agreement alleged to have been violated, a brief set of facts, and the relief requested.

Section 504.07 Each grievance shall be processed in the following manner:

Informal Step:

- A. Employee orally notifies immediate Supervisor of grievance within ten (10) days from the date he/she could reasonably have expected to know of the occurrence. No grievance will be considered later than ten (10) days after the occurrence giving rise to the grievance nor later than ten (10) days from the date he/she could reasonably have expected to know of the occurrence. However, an employee on approved leave on a date of such occurrence may file a grievance within ten (10) days after he/she returns to work.
- B. The Supervisor may meet with the employee, and if the employee chooses, a Union Steward, to conduct discussion of the grievance immediately, if possible, but not later than five (5) days after oral notification.
- C. The Supervisor must give an oral decision to the employee on the grievance as soon as possible, but not later than five (5) days after the oral discussion.
- D. If the employee does not accept the decision of the Supervisor, and wishes to pursue the matter, the employee must file a formal written grievance on the form contained in Appendix "C", and attached to this Agreement, no later than ten (10) days after the oral decision with the Supervisor provided for in Paragraph C of this Section.

Formal Steps:

Step 1:

An employee having a grievance shall submit the grievance in writing, on the form contained in Appendix C and attached to this Agreement, to the employee's Supervisor and his/her Supervisor. The grievance shall be signed by the employee and Steward, and the Supervisor shall sign the grievance upon receipt. The supervisor and his/her Supervisor shall meet with the employee and Steward within five (5) days after the grievance is submitted in an attempt to resolve the grievance. The Supervisor's Supervisor shall submit an answer, in writing, to the employee and Steward within five (5) days after such meeting. A Union Steward having an individual grievance may ask any Steward or Union Officer to assist in adjusting the grievance with his/her Supervisor. No formal written grievance will be considered later than ten (10) days after the oral decision of the Supervisor. The Union shall provide the Director of Human Resources with one (1) courtesy copy of each formal grievance filed.

Step 2:

If the grievance is not satisfactorily settled at Step 1, the employee may file the grievance within seven (7) days after receipt by the employee of the Step 1 answer with the appropriate next level of supervision. The grievance shall be signed by the employee, Union Steward, and the next level of supervision upon receipt. The next level of supervision shall meet with the employee and Steward together with the employee's Supervisor and his/her Supervisor to review and attempt to settle the grievance within seven (7) days after the grievance has been filed. The next level of supervision and/or the Deputy Director shall provide a written answer to the employee, the Steward, and the Director of Human Resources within seven (7) days after the Step 2 Meeting. If the next level of supervision is the Executive Director, Step 2 shall be omitted and the grievance shall be filed at Step 3.

Step 3:

If the grievance is not satisfactorily settled at Step 2, the Union may appeal to the Director of Human Resources in writing within seven (7) days after receipt of the Step 2 answer. Where Section 404.07 is used, the employee may file the grievance at Step 3 within ten (10) days after the last effective date of suspension, or in the case of dismissal, within ten (10) days of receipt of the Corrective Action Order. The Director of Human Resources and the Executive Director or designee shall, within fourteen (14) days of receipt of the appeal, meet with the aggrieved employee, Steward, and any witnesses necessary to arrive at a resolution. The Executive Director shall render his/her decision in writing within fourteen (14) days subsequent to such meeting. In addition to the employee-grievant and the Steward, the employee-grievant may choose a non-employee representative of the Union or the Chief Steward to attend this meeting under Step 3.

Step 4:

If the grievance is not satisfactorily resolved at Step 3, it may be submitted to Arbitration upon request of the Union or the Employer in accordance with Section 504.08 of this Article.

Section 504.08 The Employer or the Union, based on the facts presented, have the right to decide whether to arbitrate or appeal any grievance. The Employer's agent for authorizing arbitration is the Executive Director, and the Union's agent is the President or his/her designee. The right of either party to demand arbitration over an unadjusted grievance is limited to a period of twenty-one (21) days from the final action taken on such grievance under Step 3 in the Grievance Procedure, and any grievance not submitted within such a period shall be considered dropped at that Step.

- A. Upon receipt of a notice to arbitrate, the parties shall attempt to agree upon an arbitrator within ten (10) working days after receipt of the notice to arbitrate, and in the event the parties are unable to agree upon an arbitrator within a ten (10) day period, **an arbitrator shall be selected from the panel of arbitrators herein contained.**

- B. The arbitrator shall render his decision within thirty (30) days of the close of the hearing. In rendering his decision, the arbitrator shall limit his/her decision strictly to the interpretation, application or enforcement of the specific Articles and Sections of this Agreement. The arbitrator shall be without power or authority to make any decision: (1) contrary to or inconsistent with or modifying or varying in any way the terms of this Agreement or any applicable law; (2) limiting or interfering in any way with the powers, duties, or responsibilities of the Employer under applicable law or its rule-making powers not inconsistent with this Agreement; (3) implying any restriction or condition upon the Employer's "management rights", it being understood that the exercise of those rights is not inconsistent with this Agreement, except those restrictions as set forth specifically within this Agreement or are fairly inferable from the express language of any Article or Section herein; (4) which is based upon any collective bargaining agreement other than the one in effect at the time the grievance originated.

- C. The written decision of the arbitrator resulting from any arbitration or grievances hereunder shall be final and binding on the Employer, the Union, and the employee. The award, if in favor of the grievant, will be promptly implemented by the Employer.
- D. The cost of the services of the arbitrator, the cost of any proofs produced at the direction of the arbitrator, the fee of the arbitrator, and rent, if any, for the hearing room, and the cost to obtain the panel of arbitrators shall be borne by the losing party. Where the arbitrator's award is not consistent with the total relief sought by either party, the cost shall be borne equally by both parties. The expenses of any non-employee witnesses shall be borne, if at all, by the party calling them. The fees of the Court Reporter shall be paid by the party asking for one; such fee shall be split equally if both parties desire a reporter, or request a copy of any transcript.
- E. Any Bargaining Unit member, whose attendance is required for such hearing, shall not lose pay or benefits to the extent such hearing hours are during his/her normally scheduled working hours on the day of the hearing.

Section 504.09 A grievance regarding issue(s) affecting the entire Bargaining Unit may, with the consent of the parties, be commenced at Step 3 of the Grievance Procedure.

A special conference will be held prior to the grievance being filed; said conference will be arranged between the Union President and the Director of Human Resources to review the issue(s) and processing of the grievance at the Third Step of the Grievance Procedure.

Section 504.10 A member of the Bargaining Unit may present a grievance and have it adjusted without the intervention of the Union as long as such adjustment is not inconsistent with the terms of the Agreement. The Employer will provide notice to the Union of meetings to adjust the grievance (i.e., all grievance hearings). The Union shall have the right to attend the meetings as an observer.

Section 504.11 There is hereby created a panel of arbitrators for the selection of an arbitrator pursuant to this procedure. Such panel consists of _____.

ARTICLE 505

SUBSTANCE ABUSE POLICY

Current language

Letters of Understanding

Recommendation

It is impossible to make a determination as to which Letters of Understanding (“LOU”) should be continued from the information provided by the parties. It is recommended that the parties maintain current Letters of Understanding in the new Agreement until such time they can meet and agree to a current list of LOUs.

ISSUE 6 Article 601

Union's position

See UPS

Employer's position

See EPS

Discussion

601.02: The Union is seeking an increase in longevity that it argues has not been increased in ten (10) years. It argues that prior to 1997 increases in longevity were routinely negotiated, but it was willing to freeze longevity in favor of maintaining lower healthcare increases. Now that it is paying increasing premium costs for health care, the Union is seeking to add to longevity. The Employer argues that due to limited resources it cannot revert to longevity increases. However, as a partial offset to the change in healthcare plans and considering the length of time that longevity has not been increased, it seems logical to make a reasonable cost of living adjustment to each level of longevity.

601.04: the Union is seeking a housekeeping change that the Employer agreed upon during fact-finding.

601.06: The Union is seeking fully paid health insurance. The Employer is seeking uniformity in healthcare coverage for all county employees.

The Employer's argument is persuasive from two perspectives; the overall state of health care and internal comparable data. Employers and unions are struggling to maintain sound health care coverage and are jointly taking dramatic steps to control its spiraling costs. There does not appear to be any relief on the horizon and the national dialogue on this issue, with the exception of occasional rhetoric regarding Medicare, has been practically non-existent since the last serious discussion took place during the first Clinton administration.

During the most recent rounds of bargaining with the various bargaining units in Summit County its unions agreed upon a uniform approach to balancing coverage and costs. The Union's argument that CSB has always had its own health care plan separate from the county would be more persuasive in a more predictable economic climate. However, the era of a small employer being able to provide affordable health care coverage is rapidly coming to a close. Sustained increases in health care costs require the implementation of a substantially different paradigm. Affordable healthcare coverage is a major problem that can no longer be handled routinely.

A paradigm that controls costs more favorably is consistent with the public's welfare and its long-standing support of levies. The economies of scale in having a larger pool of covered lives allow the County to have more negotiating power with carriers, something every employer seeks. For example, Cuyahoga County, with which this Neutral is very familiar, has the same sets of healthcare plans for all county employees and has been able to leverage the power of having 7,000 plus employees in negotiating more favorable rates and terms. Cuyahoga County is able to shop different plans and to create competitive bidding between carriers. A uniform Summit County health care plan covering thousands of lives can have the same advantages.

The CSB plan covering hundreds of lives does not have the same economic leverage as a county plan that covers thousands of lives. Health care premiums are expected to rise an average of twelve percent (12%) per year over the several years. Imagine the price of a new \$25,000 car going up at the same rate. In six (6) short years the price of the same car would be \$50,000. Health care now represents a substantial portion of an employee's overall compensation. The Union argues that CSB can afford to pay for a better plan and can provide higher levels of coverage. However, adopting the County's comprehensive approach to health care will likely cause the expenditure of tax or levy dollars to go further, allowing more levy money to be spent providing services to children and on maintaining competitive salaries that retain and recruit quality staff. The County plan is also a plan that provides options and continues to provide comprehensive coverage (Employer Ex. 13). From the testimony during the fact-finding hearing, it is assumed that all employees of CSB, including management, will be placed under the Summit County health care plan. It is understood that the bargaining unit as well as all CSB employees will have to adjust to a new health plan. However, in the long run being part of a larger pool of employees will help to contain cost increases that will eventually be paid by employees (10%) and employer (90%) alike.

I do not find reason to eliminate the \$50.00 per month opt out payment in light of the recommended change to the Summit County health care plan.

Recommendation

Section 601.02 All part-time and full-time Bargaining Unit employees shall, on the appropriate anniversary date, receive an amount in accordance with the following schedule:

- A. Completion of 5 years of continuous service at Summit County Children Services Board-**\$250**
- B. Completion of 10 years of continuous service at Summit County Children Services Board-**\$500**
- C. Completion of 15 years of continuous service at Summit County Children Services Board-**\$750**
- D. Completion of 20 years of continuous service at Summit County Children Services Board-**\$1000**
- E. Completion of 25 years of continuous service at Summit County Children Services Board-**\$1250**

Amounts currently in employee's base rates of pay shall remain in the base rates of pay.

Section 601.04 Delete the first sentence, and “effective the first month following ratification” in the second sentence. The remainder of the language is current.

Section 601.06 -- Health Insurance and Prescription Card

The Employer shall provide a Group Health Insurance Plan and Prescription Card coverage, Dental Insurance and Optical Insurance for all full-time employees. The benefit plan provided by the Employer **shall be the same plan offered other Summit County Executive’s employees.** All Bargaining Unit employees shall contribute ten percent (10%) of the total monthly premium costs for either Single or Family coverage for the remainder of the term of the Collective Bargaining Agreement. Insurance coverage shall take effect ninety (90) days after initial hire date for a permanent full-time position. For the purposes of this Section, full-time employee means an employee who works a scheduled work week of at least thirty-two (32) hours.

The Employer shall compensate Bargaining Unit employees, who choose to opt out of the health care plan, fifty dollars (\$50.00) per month.

All other provisions of Section 601 shall remain as current language.

ISSUE 9 Article 602

Employer’s position

SEE EPS.

Union’s position

SEE UPS.

Discussion

The pattern settlement for all of the bargaining units in the county is 3% per year. Pattern settlements are powerful benchmarks used by unions and employers that are vital to the stability of workforce relations. When the United Auto Workers Union bargains with the “Big Three” automakers, it historically has picked one employer to establish the pattern by which negotiations with Ford and Diabler-Chrysler will be framed. Employers use the same concept to maintain stability among bargaining units. However, the 3% pattern established with the eight (8) bargaining units in Summit County also included adjustments for inequity increases. The 3% increase pattern also included 3% lump sum payments if an employee was at the top of his/her salary schedule.

Equity is also measured by similar pay for like jobs. In the case of CSB, employees in Schedule C have a far less competitive market wage position than those employees who are listed in Schedule D. The relative market position of employees in Schedule D, particularly clerical employees, is strong when compared to like positions in the County (Employer Ex. 14). One indicator of the need to upgrade the salary of Schedule D employees is the vacancy rate for Case Workers (Employer Ex 18). The Union is seeking a 5.5% across the board increase for all employees. This increase exceeds the average increase for Summit County and is well above the average increase for bargaining units throughout the state of Ohio (See SERB's most recent quarterly data). In addition, it is noted that the State of Ohio and AFSCME/OCSEA (the largest bargaining unit in the state) recently settled a three (3) year agreement that includes a 1st year 0% salary increase, a 2nd year 0% salary increase, with a 2% bonus, and a 4% salary increase in the 3rd year. In addition, employees were required to pick up another 5% of their health care premiums, increasing their share from 10% to 15%.

The Employer proposed a 3% increase for employees in Schedule D and a 3.5% (includes a .5% market adjustment) for employees in Schedule C. It is recognized that these are difficult economic times. However, I find there is justification to increase the market adjustment portion to Schedule C by 1%, which will help move these positions towards a more competitive salary. Such an adjustment is consistent with the philosophy of making market or inequity adjustments in other county bargaining unit salary schedules. Of course, the realities of the economy require a conservative approach to achieving equity.

In 602.10 the Employer is offering an incentive for reliability. The Union voiced no objection to this proposal. The Union is seeking an increase in the shift differential. I find the current differential remains competitive with or exceeds the shift differential in other bargaining units (Employer Exhibit 14). The Employer proposed a new scale (Employer Ex. 15) for MIS positions based upon a University of Akron study. The Union proposes a flat \$10,000 inequity adjustment based upon information from Internet sources and an April 2000 county salary survey (See Union Exs. 31, 32). It is difficult for this Fact-finder to discern the relative value of any of these studies. The parties simply need to have more discussions regarding this important area. However, during the next brief contract period the Employer's academic based proposal will be recommended.

Two major differences between the other bargaining units that have settled and CSB is the fact that CSB has a levy on the ballot this November, and the parties were unable to engage in traditional bargaining during this round of negotiations. It is both difficult and somewhat improper for a fact-finder to be recommending wage increases and contract language changes that extend beyond one year under these particular circumstances. It also sends the wrong message. The parties need to have dialogue across the bargaining table and need to address the myriad of issues that can be best resolved by the people who do the work. Simply stated they need to negotiate.

Recommendation

Section 602.01

One (1) year agreement: 4% increase for employees in Schedule C (3% + 1% market adjustment).

3% increase for employees in Schedule D**

NEW MIS SCHEDULE ***

*** Schedule C shall be increased by 4%. Any employee who exceeds the maximum of the range will be paid a lump sum in lieu of a regular pay increase.**

**** Schedule D shall remain as is and any employee who exceeds the maximum of the salary schedule will be paid a lump sum in lieu of a regular pay increase**

*****New Schedule E for MIS, see Employer Exhibit 15**

****** All salary increases retroactive to April 1, 2003.**

Section 602.10 Each employee who completed one (1) year of service without missing a day Absent will receive one hundred (\$100.00) dollars.

Sections 602.02 to 09

Current language

ISSUE 10 NEW LANGUAGE

OBLIGATION TO NEGOTIATE TOTAL AGREEMENT, SEVERABILITY

Employer's position

SEE EPS.

Union's position

SEE UPS.

Discussion

The language proposed by the Employer represents language common to collective bargaining agreements both in the public and private sectors. The current agreement already contains language that is very similar in intent to what is being proposed under the title Obligation to Negotiate, Total Agreement, and Severability. It is

contained in Section 101. However, the Employer's proposed language distinguishes each area, is more comprehensive, and it specifically addresses each parties' obligation to negotiate in definitive terms. One example of this is how it addresses provisions of the contract that may be declared illegal. 101.02 of current agreement simply states "*Invalidation of any provision...shall not invalidate the remaining provisions thereof.*" The Employer's severability clause asserts the same wording and requires the parties to "...*negotiate a legal alternative...*" It is always preferable to replace less clear language with language that more effectively conveys the legal and good faith obligations of each party. If the parties had engaged in bargaining, it is reasonable to presume they would have negotiated one set of provisions to replace or modified provisions in 101.

Recommendation

Add: New Sections on Obligation to Negotiate, Total Agreement, and Severability as proposed in Employer's Position Statement. Section 101.02, 101.03, and 101.05 were not proposed to be deleted by the Employer. However, they become redundant with the addition of these recommended provisions. They should be eliminated in favor of more efficacious language.

ISSUE 11 DURATION

Employer's position

SEE EPS.

Union's position

SEE UPS.

Discussion/Recommendation

Current Section 603.01 (to be renumbered) A one (1) year agreement expiring March 31, 2004 is recommended given the parties explicit contractual obligation to negotiate as articulated in Article 101.01, and the fact that CSB will be placing a critical operating levy on the ballot in November of 2003.

TENTATIVE AGREEMENTS

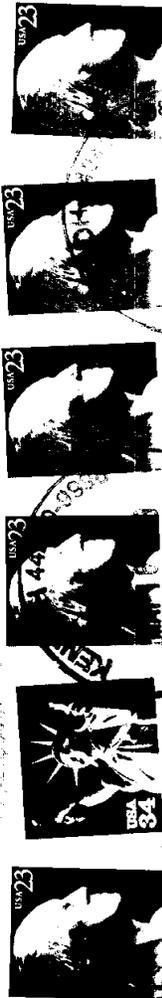
During fact-finding the parties reached tentative agreement on a few issues. These tentative agreements are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 16th day of May 2003 in Portage County, Ohio.



Robert G. Stein, Fact-finder

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