

FACT-FINDING REPORT AND RECOMMENDATIONS

PARTIES: Hamilton County, Ohio
Department of Jobs and Family Services
-and-
Ohio Council 8, American Federation of
State, County and Municipal Employees,
AFL-CIO, Local 1768.

FACT-FINDER: Lawrence I. Donnelly

03-MED-02-0115

2003 JUL 24 A 11:45

STATE EMPLOYMENT
RELATIONS BOARD

BACKGROUND

In compliance with ORC 4117.14 (C)3, the Ohio State Employment Relations Board (hereafter referred to as SERB) appointed Lawrence I. Donnelly as Fact-Finder to a case effective April 10, 2003. The Parties in the case are the Hamilton County, Ohio Department of Jobs and Family Services (hereafter referred to as Employer) and Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, Local 1768 (hereafter referred to as the Union). They had been Parties to a labor-management Agreement, effective May 10, 2000 and in effect for three years (entered by both Parties in their pre-hearing reports). The Parties were negotiating the terms of this Agreement, but had not reached agreement by April 10, 2003; hence the appointment of a Fact-finder.

The Fact-finder contacted both Parties in mid-April and was advised by them that they were proceeding with their negotiations. Accordingly, the Parties filed letters of extension with SERB and the Fact-finder remained in the background. In late May, the Parties notified the Fact-finder of their desire to set up fact-finding because they judged

that they had reached impasse on many topics. Hence, a hearing was set for June 20, 2003 at the offices of the Employer on Central Parkway in Cincinnati. According to the provisions of ORC 4117.14 (C) (3) (a), the Parties submitted pre-hearing reports to the Fact-finder in a timely fashion. As scheduled, a hearing was opened by the Fact-finder at 10:00 AM in the Employer's office. Representing the Employer was Mr. David E. Helm, Labor Relations Manager-Human Resources; also present and offering testimony for the Employer were Mr. Mark T. Lucas, Labor Consultant, and Ms. Kim Serra, Labor/Employee Relations Manager-Bocc. Representing the Union was Mr. Walter J. Edwards, Staff Representative. Also present as Committee Members and testifying for the Union were Ms. Alfreda B. James, Local President and Eligibility Technician, Ms. Chelcia Colbert, Accountant, Mr. William E. Lee, Employment Coach, Mr. Scott Rade, Location Analyst, and Mr. Derek Rowles, Machine Operator. The Parties first accepted several ground rules, proposed by the Fact-finder. No oaths would be administered; we would rely on the truthfulness of all who testified. The Fact-finder's notes would become the record; he would use audio-tape as a back-up. Other preliminaries were covered. The Employer characterized the mission of the Department as administering public assistance and mandated services to citizens of Hamilton County. The Parties acknowledged the scope of the bargaining unit in the ninety-seven or so classifications listed over 12 Pay Ranges at the rear of their Agreement. Some one thousand employees work in these classifications; some four hundred of them are members of the Union. [F-f note: coincidentally, some forty new employees were beginning orientation that day.] The Parties estimated that they had met some seven times in bargaining sessions between

April 15 and May 15, although they did not have a calendar of exact dates handy.

Although SERB had appointed a Mediator, the Parties had not met with this person.

The Parties agree that they have tentatively agreed to twenty-two Articles in their negotiations; Some fifteen Articles were still open. [F-f note: all Articles of the former Agreement had been open for re-negotiation.] The Fact-finder reviewed and verified with the Parties the listing and substance of these fifteen open Articles, as listed in their pre-hearing reports. At this point, the Fact-finder asked the Parties if some mediated efforts might be in order. In particular, he asked both Parties if they thought it would help for both Parties to caucus among themselves to see if some movement would be possible on the issues. The Parties agreed to such caucuses, and the Fact-finder stayed available. As a result of these efforts of the Parties, six Articles were tentatively agreed to.

These are:

- ARTICLE 6 – GRIEVANCE PROCEDURE
- ARTICLE 17 – INSURANCE
- ARTICLE 25 – TRAINING AND EDUCATION
- ARTICLE 30 – TUITION REIMBURSEMENT
- ARTICLE 33 – DURATION
- APPENDIX A – CLASSIFICATIONS AND PAY RANGES

Nine issues still remained at impasse.

These are:

- PREAMBLE
- ARTICLE 2 – UNION SECURITY
- ARTICLE 9 – PROBATIONARY PERIOD
- ARTICLE 13 – PERFORMANCE EVALUATION
- ARTICLE 16 – WAGES
- ARTICLE 19 – VACATION
- ARTICLE 21 – EARNED PERSONAL DAYS OFF
- ARTICLE 34 (NEW) – BENEVOLENT LEAVE
- APPENDIX B – PAY SCALE

The hearing proceeded, then, on an issue-by-issue basis. The Party who was proposing change to the current provisions made its presentation for modification; the other Party then had the opportunity to present its positions. Then, each Party had the opportunity to add further comments. The Employer requested without opposition from the Union that Ms. Moira Weir, Section Chief for Children's Service, be permitted to testify relative to Article 9; the Employer also requested without opposition from the Union that Mr. Mike Hyles, Fiscal Section Chief, be permitted to testify on the financial position of the Department. The hearing then moved serially through each of the nine unresolved issues.

The business of the hearing was completed at about 5:45 p.m. Before the hearing was closed, each Party acknowledged that it had the opportunity to present whatever it wished in support of its positions on each Issue. Further, each Party acknowledged that it had the opportunity to examine whatever was presented by the other Party. Because of future scheduling problems, the Parties agreed with the Fact-finder that his Report would be due on July 23, 2003. Further, he will issue the official copies to the Parties by overnight mail on July 23. For convenience of the parties, he also agreed to FAX copies to the Parties on that date. With these arrangements, the hearing was closed.

ANALYSIS AND RECOMMENDATIONS

As an introductory note to this section, the Fact-finder explicitly acknowledges that he has given consideration to the criteria listed in ORC 4117.14 (G) (7) (a) through (f). He first considers ARTICLES 19, 21, and 34; then, he considers the impasses about the PREAMBLE and ARTICLES 2 AND 9; lastly, he considers the impasses about

ARTICLES 13 and 16, and APPENDIX B. In these, he first identifies the positions of the Parties in each Issue; then, he analyzes these with the criteria recognizing the testimony, evidence, and exhibits presented by the Parties; finally, he offers his recommendations for each issue as derived from his analysis.

Part I: ARTICLES 19, 21, AND 34

ARTICLE 19: VACATION

Positions of the Parties: The Union proposes a modified calendar of vacation benefits to be inserted within the rest of the current Agreement. The Employer proposes to retain the calendar and other provisions in the prior Agreement.

Analysis:

The Union points out (without dissent by the Employer) that the current vacation schedule has been in place at least ten years. So, individuals with over twenty-five years of service have not received an improvement in their vacations, and, under the current schedule, they will not. The Union is seeking an improvement of benefits at each of the existing four steps as well as an addition of a fifth step for employees with thirty or more years of service.

The Employer opposes this proposal on several grounds. First, this proposal would add some \$1,500,000 in payroll costs over 3 years with the current labor force. The Employer offers demographic data to support its claim; the Union does not dispute this financial data. In addition, these improvements would likely increase case loads of the staff because other employees would have to carry on with the reduced annual working hours for employees with improved vacations. The Employer also has administrative opposition to the revised schedule because this would throw the Agency

out of comparability with other County services. Although the different County services are separately administered, the Employer does try to maintain reasonable comparability with other major divisions under the overall jurisdiction of the County Commissioners.

The Union counters that improved vacations could reduce turnover, especially among longer service employees. It offered no empirical support for this. The Employer's data would suggest some fifty-five current members have over twenty-five years of service. The data also indicates that employees across the service scale would benefit from improvements over the existing four steps into the proposed five steps. Hence, the increased payroll costs.

Neither Party is claiming hardship. The current schedule does provide a "decent" vacation schedule as an employment benefit over and above basic wages. The schedule provides for improvement in vacation time with an employee's length of service. This is a feature common to vacation programs. The Union offers no specific reason for the internal improvements in the schedule, except for the speculated reduction in turnover. \$1,500,000 is a visible added burden in payroll costs, although the Employer does not plead inability to pay. Rather, it advances the grounds that the Employer should act as a prudent administrator. And, the employer does not see adequate grounds to accept this added financial burden.

The Fact-finder is persuaded by the Employer's case. With a basic payroll of some \$27,000,000, the added costs would still run up payroll expenses by \$1,500,000, an appreciable amount. The Union really offers no sound justification beyond the obvious point that it would be nice. The Union offers no compelling reason why vacation

schedules should “get out of whack” with other jurisdictions of the County. Hence, the Fact-finder recommends against the proposal.

Recommendation: ARTICLE 19: VACATION

THE FACT-FINDER RECOMMENDS THAT
THE PARTIES RETAIN ARTICLE 19,
VACATION, AS IT IS.

ARTICLE 21: EARNED PERSONAL DAYS OFF

Positions of the Parties:

The proposals of the Parties on this Article offer a stark contrast. The Employer proposes to eliminate Article 21 entirely. The Union proposes that the parties carry Article 21 over into the new Agreement without substantive modification; only dates in Section 21.1, D would be adjusted.

Analysis:

In proposing the deletion of this Article, the Employer contends that the benefit provided to the workers adds a cost without benefits to the Employer and to the public served by the Agency. With data for all employees from 2002, this benefit cost the Employer close to \$150,000; some \$79,000 went to cover personal days used and some \$71,000 went to cover the payout for days not used. The payout for days not used is integral to the current plan because the benefit cannot be carried over from year to year. The Employer is concerned that an employee can continue to accumulate such a benefit while the employee is on unpaid leave under FMLA. This benefit was introduced to control use of sick leave. Statistics introduced by the Employer would show that it is not working. In the last two years, sick leave usage has been at or above levels of 1996 and

1997. In the mind of the Employer, this benefit has outlived its usefulness in the relationship.

The Union proposes that elimination of this benefit would treat non-users unfairly. The Employer's own data shows that many (some 400+) employees got payouts in 2002. The Fact-finder notes that the payout for non-use about equals the payment for personal days. To drop the benefit penalizes the non-users without justification.

The Fact-finder notes that the Employer's own figures (estimates) show that this benefit is not sizeable, some \$150,000 on a payroll base of \$27,000,000. Like the Union, the Fact-finder wonders if the Employer is simply trying to conserve an amount here (a pittance at that) to use to cover some other expense in the Agency. The Fact-finder is not impressed by the Employer's suggestion that the current plan creates adverse morale results because an employee on FMLA continues to accumulate hours here while on FMLA. For instance, if an employee were on FMLA for 120 days, the employee would accumulate eight hours of personal benefit to cash out. The Fact-finder notes that the Employer did not offer any statistics to suggest the frequency of occurrence of this.

The Fact-finder does not know why the use of sick leave has been higher in the last two years than in the previous three. But, in his judgment, it stretches the imagination to blame this benefit for such increases in sick leave without any supporting particulars beyond aggregates. Further, he notes that the Employer fails to indicate whether or to what extent its proposal would throw this Agency "out of whack" with other County jurisdictions. In the Fact-finder's judgment, the Employer has not established its case for such an extreme step as simply dropping an existing benefit

without offering substitute benefits or without clearly establishing merits of the case. So, he recommends against the Employer's proposal and that the Parties retain Article 21. As the union notes, the Parties would modify the dates to reflect the duration of the new Agreement.

Recommendation: ARTICLE 21: EARNED PERSONAL DAYS OFF

THE FACT-FINDER RECOMMENDS
THAT THE PARTIES RETAIN
ARTICLE 21, EARNED PERSONAL
DAYS OFF, WITH THE INCLUSION
OF UPDATED YEARS.

ARTICLE 34: BENEVOLENT LEAVE (NEW)

Positions of the Parties

The Union proposes that the Parties establish a Benevolent Association Plan to provide sustenance to staff who experience changing life circumstances, times and special needs, catastrophic illness or other emergent situations. Funding will come from forfeited vacation time and directed donations of sick time. The Employer accepts the validity of such a plan but opposes the establishment of this plan by the Parties as unnecessary because the staff are already included in such a County-wide plan.

Analysis:

The Union submitted a four page document to describe highlights of such a plan at Northern Kentucky University. The Employer introduced a copy of Section 4.8 from the Policy and Procedures for the County; this describes such a plan for county employees.

Both Parties agree to the desirability of such a plan. But, the Union really offers no substantive reasons for the Parties to establish their own plan in preference to the County plan. They offer no evidence on how the County plan might fall short. To the

Fact-finder, a separate plan would involve a great deal of duplication and overlap between the County plan and the new Agency plan. Further, it would seem quite inefficient administratively to set up a separate plan when one already exists. The Union accepts the logic of a County-wide insurance system as they have tentatively agreed to this in Article 17. Further, the Employer raises valid concerns about funding under the Union's proposals. Even in the NKU plan, there are numerous outside sources of funds contemplated. The County-wide plan provides for funding from donated vacation or comp time. True, the Union plan proposed to allow unused sick leave. But, this one addition certainly does not warrant establishing a separate plan with its administrative burdens and with its smaller scope of potential sources for funding. Hence, the Fact-finder recommends against the union's plan.

Recommendation: ARTICLE 34: BENEVOLENT LEAVE

THE FACT-FINDER RECOMMENDS
AGAINST ADOPTING ARTICLE 34,
WITH ITS DUPLICATION OF AN
EXISTING COUNTY PLAN.

PART II: ARTICLES 2 AND 6 AND THE PREAMBLE

PREAMBLE

Positions of the Parties: The Employer proposes the addition of a third paragraph to the current two paragraphs in the Preamble. The Union opposes this addition and proposes that the Preamble be carried over without change.

Analysis: The Union raises valid questions about the addition. After all, the Agreement has historically had the language of the current Preamble and this provision only adds confusion. It specifies many Sections of the Ohio Revised Code; these require changes in the language of the Agreement.

As the Fact-finder understands the situation, this paragraph proposed by the Employer would address a new need and would further clarify the existing preeminence of the Agreement over areas of Ohio law due to ORC 4117. Mr. Lucas recounted how the concern for this language arose after a State Supreme Court case in 2000 (offered as an Exhibit) which addressed the relationship between a collective bargaining Agreement and particular State Codes covering benefits for employees who are not covered under bargaining relationships. As the Union suggests, this paragraph principally benefits the Employer by serving as a type of zipper provision. In the Court case, the Court addressed layoff protections which occur under an Ohio Code but which were not explicitly mentioned in the Agreement involved. The proposed paragraph attempts to cover such situations by explicitly stating that provisions of the Agreement supercede those provisions in the Ohio Revised Code which cover the same subject matter. In the Employer's mind this gives fulfillment to the meaning of the second paragraph of the Preamble "to set forth in entirety, the full and complete understandings and agreements between the parties governing wages, hours, terms, and other conditions of employment for those employees in the bargaining unit as described herein."

The Employer proposes this provision as a strength to the Agreement. It allows the Parties to insulate themselves from potential future court cases wherein the previously understood priority of the Agreement over general State codes after the enactment of ORC 4117 is challenged. The Employer does not claim that it has experienced any problems from inside the relationship; rather, the paragraph would insulate the relationship from external shocks. As in the Court case referred to, the external shock does first show up as a restriction of management rights under the Agreement. From his

observation, the Fact-finder judges that the Parties show forth a sound, accommodative relationship (as seems to be envisioned as desirable in Article 5, Section 5.5). In light of fostering such a relationship, the Fact-finder sees the rationale in incorporating a provision that adds management security from outside the relationship without any diminution of the Union's ability to advance the members' interests within the bargaining relationship with the Employer. The listing of statutory provisions in the paragraph does not diminish the bargaining between the parties. Rather it provides an illustrative list of specific codes affected by ORC 417.

Recommendation: PREAMBLE

THE FACT-FINDER RECOMMENDS THAT
THE PARTIES ADD THE EMPLOYER'S
PROPOSAL AS A THIRD PARAGRAPH TO
THE PREAMBLE.

[F-f: note: he includes this language of the proposal. The provisions (including procedures) of this agreement supercede those provisions (including procedures) in the Revised Code covering the same subject matter, and in particular, but not limited to R.C. 124.27 and 124.323 governing probationary employees and probationary periods, R.C. 124.321 through 134.328 governing layoffs and job abolishments, R.C. 325.19 governing vacations and holidays, and R.C. 124.38 and 124.39 governing sick leave and and sick leave conversion, except that employees will continue to receive the prior service credit to which they are entitled under R.C. 944 and will be permitted to carry sick leave balances from the employer to other public employers as permitted by the Revised Code.]

ARTICLE 2: UNION SECURITY

Positions of the Parties:

The Union proposes the addition of a "Fair-share Fee" clause Article 2, Section 2.1. In addition to detailing the "Fair-share" arrangement, this proposed clause contains

indemnity provision for the Employer. The Employer opposes the addition of such provisions.

Analysis:

Before analyzing the cases presented by the Parties, the Fact-finder deems it meritorious to offer a few preliminary, germane observations. As he noted above with the PREAMBLE, the Parties already look favorably upon “the development of a labor management cooperative model” in Article 5, Section 5.5. To the Fact-finder as an observer, the Parties have certainly moved far beyond the arena of industrial warfare. The Parties show that they realize that each Party can advance and protect the specific interests of its constituents without constant hostility. They show that they realize the value from a win-win or cooperative relationship in addressing their differences. Preliminary to such a relationship is acceptance of basic security by both Parties of the other’s existence and ability to function in the relationship. With this in mind, the Fact-finder has already recommended adopting the Employer’s proposal on the Preamble. With the same frame of mind, he approaches this proposal by the Union.

The Union describes how it judges that Fair-share provisions accord basic security to the Union to function as bargaining agent for all members in the unit, be they union members or not. The Union is obligated to bargain, both in contract negotiation and in contract administration, for all workers in the unit. All benefits in the Agreement are applicable to all such members. The Grievance Procedure and Arbitration are for use by all workers in the unit. The Union referred to arbitration cases pursued on behalf of non-union members. Union dues are currently the basic, even exclusive, funding source for these services. The Union seeks Fair-share to expand the financing of benefits to all

who derive advantage from the bargaining services of the Union. The Union contends that it is only fair to all if all who derive benefits from union representation also help to cover and defray expenses for such services. The Union emphasizes that people are still free to join the union; but, by law, they are not free to pursue their own bargain with the Employer.

The Employer opposes this provision on several grounds. First, the Employer wants to protect its employees' ability to choose. It does not want to require the employees to pay such charges. Also, no other non-conciliatory labor contract in the county has Fair-share language. The Employer, further, has accepted many provisions of Union Security in Article 2. Foremost, the Agreement does provide for check-off; currently, over \$140,500 is annually processed to the Union through this measure. In addition, the Employer allows a full-time Chief Steward under the Agreement. The Employer does not think it is fair to all its employees in the bargaining unit to pay such a Fair-share fee.

The Fact-finder notes that none of the Employer's opposition is directed towards the indemnity provisions; so, he does not address these. He also notes that the Employer offers no opposition to the particular amount of the fee; so, he does not address this. Rather, the disagreement is a classic Shakespearean one: to be or not to be.

Among the criteria listed in ORC4117, the one most supportive of the Employer's position is comparison with other units. The Employer notes that "no other non-conciliatory labor contract in the County" has such a provision. As noted above especially with vacations, the Fact-finder pays great respect to the criterion of comparability. For it to be overridden, some important grounds should be present. And,

here, the Fact-finder judges he sees such important grounds: namely, the Parties' desire for a cooperative bargaining model. Of all kinds of employers, the public employer is most acutely aware of the need for members of a community to step up to their financial responsibilities. The Fair-share fee is the correspondent to this public practice of paying taxes within a labor-management relationship. Under fair-share, employees in the bargaining unit are not forced to join the Union. Like employees covered under Article 2.10, employees can choose membership without vacating their responsibilities to contribute for services rendered. The Parties already accept that the Employer covers time for a Chief Steward; but, there are obviously many other expenses associated with bargaining for some 1,000 people.

The Fact-finder hears and respects the statement by the Employer's representative that "the Department and the Commissioners are not inclined to change" their views on fair-share at this time. Still, he has hope that "the Department and the Commissioners" can reconsider their views in light of the high quality of this relationship and the relationship's respect for a cooperative model of bargaining about their differences. Of all divisions under the jurisdiction of the Commissioners, Jobs and Family Services could be in the forefront accepting basic, major securities of the Parties. After all, as described by the Employer's representative, the mission of the Department is people-oriented; namely, to administer public assistance and mandated services to citizens of Hamilton County. So, when a softening of opposition to Fair-share would occur with County Administrators, it is appropriate for it to occur in such a people-oriented Department. To the Fact-finder, there is no better time than now for this.

Recommendation: ARTICLE 2: UNION SECURITY

THE FACT-FINDER RECOMMENDS THAT THE PARTIES ADD TO SECTION 2.1 THE PROPOSAL OF THE UNION.

[F-f: note: he includes the language of the proposal. Effective June 1, 2003 all employees in the bargaining unit who are not members in good standing of the Union shall pay a fair share fee to the Union. All employees hired after June 1, 2003 who do not become members in good standing of the Union shall pay a fair share fee to the Union effective the employee's date of hire. The Treasurer of the Local Union shall certify the bi-weekly fair share amount to the County. The deduction of the fair share fee from the earnings of the employee shall be automatic and does not require a written authorization for payroll deduction. The fair share fee shall not exceed the amount of dues paid by union members in any pay period.

In consideration of the agreement of the county to deduct Union membership dues, the Union hereby agrees to keep the County safe and harmless from any liability, judgments, actions, demands, causes of action arising out of, or connected with, such agreement by the County to deduct Union membership dues.]

ARTICLE 9: PROBATIONARY PERIOD

Positions of the Parties:

The Employer proposes that the probationary period be extended to 300 calendar days for four classifications, namely Child Support Technician, Eligibility Technician, Social Service Worker 3 and Children's Service Worker. The Union opposes any change from the current level of 180 calendar days.

Analysis:

In support of its proposal, the Employer invited Ms. Moira Weir, Section Chief for Children's Service Division, to testify in support of its position. As with other issues at impasse, members of the Union Committee developed its case at the hearing.

Quite essentially, the Employer views this proposal as integral to its Management functions of directing employees, of maintaining the efficiency of operations, and of effectively managing the work force. In Section 9.6, the Parties already agree to two levels of probationary periods; namely, 120 calendar days for employees promoted to a classification in pay range 5 or below and 180 calendar days for those promoted to a classification in pay range 6 or above. Ms. Weir testified that the 180 days does not allow adequate training time in the four designated classifications. As a manager in charge of such classification, she testified that these classifications have increased in complexity and technical requirements; the Union does not contest this. The added 120 calendar days would help with coaching time so that employees could develop their basic skills for the classification. This does not presume that the probationary employee would gain full knowledge of the job with another 120 days; this would still take a couple of years.

The Union contends the current period of 180 days is adequate for employees promoted into any classification in the pay range 6 or above. The Union expressed concern over disciplinary implications and case-load implications from such changes. However, these points were not developed.

The Fact-finder sees this issue as a management rights issue, just as he saw the Preamble issue. In this relationship, where the Parties are reaching for cooperative dealings, the Fact-finder has already recommended two issues which were seen as

important by a Party for it to function within the relationship. In his judgment, the Union did not indicate how the proposed change would adversely affect its members. On the other hand, the Employer went to some lengths to show how its effectiveness in overseeing performance of employees in their services to the citizens of Hamilton County would be enhanced. Different members of the Union committee did complain about case load management. It would seem that expanded training in the probationary period could assist case load management. So, the Fact-finder recommends in favor of the Employer's proposal. He notes that the proposal entails a change within Section 9.6 B and the addition of Section 9.6 C.

Recommendation: ARTICLE 9: PROBATIONARY PERIODS

THE FACT-FINDER RECOMMENDS THAT THE PARTIES ADOPT THE EMPLOYER'S PROPOSAL FOR SECTION 9.6.

[F-f note: he includes new language for 9.6.

B. All bargaining unit employees promoted to a classification in pay range 6 or above not designated in Section 9.6 C: 180 calendar days.

C. All bargaining unit employees promoted to the classifications Child Support Technician, Children's Service Worker, Eligibility Technician or Social Service Worker 3: 300 calendar days.

PART III: ARTICLES 13 AND 16 AND APPENDIX B

In this Part, the Fact-finder addresses three separate but interrelated issues of performance and pay for members of the bargaining unit.

ARTICLE 13: PERFORMANCE EVALUATION

Positions of the Parties:

The Union proposes the addition of a second paragraph in Article 13, Section 13.1. Under this, a joint committee shall be established to determine appropriate

workload standards and to address issues of performance related disciplinary action and merit pay review. The Employer opposes the addition of these provisions.

Analysis:

Quite understandably, this issue attracted much attention from both Parties. Several members of the Union's committee expressed concern, dissatisfaction, and even dismay at the current system in place. They expressed the need to have some kind of objective system for establishing work load standards. They spoke of quite visible unevenness in work load; they argued that these subjective work load requirements have contributed to turnover. This phenomenon has then created further problems in workload management. The system originally envisioned the input of workers into their workload management; now, this has been lost. The union expressed dismay over possible deterioration in the quality of work due to problems in the evaluation system. This could lead to disciplinary repercussions. The Union also pointed out how Ms. Weir has acknowledged the growing complexity of jobs.

The Employer pointed out ways in which the workers are involved in setting objectives and in signing off on these. Periodically, reviews occur to allow for changes in standards. Management tries to meet turnover matters, as witnessed by the 40 or so new recruits just hired. Also, there are procedures in place for review.

The Fact-finder hears both Parties in their cases. He would have to be hearing impaired not to hear the level of concerns by the workers over the system in place. He notes the several documents submitted by the Employer. Scores from evaluations for July 2002 and January 2003 show the array of evaluation scores for members of the unit. The Employer also submitted current forms for requests for revision, current forms for

standards, and current forms for performance evaluations. There is no doubt the Parties have an elaborate system in place. And, it also is obvious that glitches are showing up. To questions from the Fact-finder, the Parties acknowledged the presence of an envisioned Joint-Labor-Management Committee set-up in Article 5. Yet, they mentioned it had been tried and set aside.

The Fact-finder questions the prudence of setting up another committee as in the Union's proposal. And, from the Union's proposal, this could create several problems for management's ability to manage. Rather than set up a new system, the Fact-finder strongly encourages the Parties to resurrect their Article 5 meetings. Because one of the agreed to purposes of such meetings is to "discuss work loads," the Parties already have their own answer. So, he recommends that they reactivate their Article 5 meetings to discuss problems such as the Union raised.

Recommendations: ARTICLE 13: PERFORMANCE EVALUATIONS

THE FACT-FINDER RECOMMENDS AGAINST ADOPTING THE UNION'S PROPOSAL FOR ARTICLE 13. INSTEAD HE RECOMMENDS THAT THEY REACTIVATE ARTICLE 5 MEETINGS TO ADDRESS SUCH CONCERNS AS IN THE UNION'S PROPOSAL.

ARTICLE 16: WAGES

This Article ties in directly with Appendix B of the Agreement. In fact, the Parties state in Section 16.1 that "Pay ranges and effective dates as they apply to bargaining unit classifications are contained in Appendix B of this Agreement." This Article treats special situations which involve placements or assignments within the pay ranges.

Positions of the Parties: The union proposes a modification in the language in Section 16.2 A, another modification in the language in Section 16.2 B, a third modification in the language in Section 16.2 C, and an addition of Section 16.6. The Employer opposes all of these changes and proposes to keep Article 16 as it is.

Analysis: As a first point of analysis, the Fact-finder heard the uncontested claim by the Employer that the new language proposed for Section 16.6 had not been presented by the Union to the Employer before the hearing. This fact becomes a kind of compelling reason for the Fact-finder's recommendation not to include this. After all, fact-finding is intended by law to follow after negotiations, and not to precede negotiations.

As to the Union's proposal for Section 16.2 A, the Fact-finder does not see logic for dropping the adverb normally from the sentence. As the Employer explained, the function of this word in practice under the prior Agreement, Section 16.2 A describes common practice for new hires to be hired at the minimum of the pay range for their classification (whatever this might be). To drop the word "normally" would effectively set one rate and void Sections 16.2 B and C which treat special or certain circumstances in hiring for a classification. The Union offers no reason for this, so the Fact-finder does not recommend this modification.

In Section 16.2 B, the Union does not oppose the ability to hire at a starting rate above the minimum of the pay range for the classification so designated "in times of serious labor market shortages." The Employer explained that this has allowed the Agency to hire into certain classifications (e.g. Eligibility Technician, Child Support Technician, Social Service Worker 3) when they might be in short supply. When this happens, all employees in this classification receive an increase in rate up to the rate of

the new hire. The Union proposes that under such a circumstance the entire scale in Appendix B for all unit members should be increased by the amount of the increase for the new hire. As the Fact-finder sees the matter (and a point of concern to the Employer), this would lead to periodic, unpredictable, and sizeable wage increases across the board during the term of the Agreement. Because the union offered no independent rationale for their proposal, the Fact-finder sees no merit in recommending the possibility of such financial shocks.

Finally, the union seeks language of clarification to the practice in Article 16.2 C. The Union did not give explicit or express support for such clarification except for reference to concern over “tiering”. They did not provide particulars. They did mention that they had tried to discuss these concern in Article 5 meetings some time ago; but, then the Parties dropped it. The Fact-finder does not see how he serves the interests of the Parties to recommend a change in the Agreement without strong support for it especially when the Parties’ own practice indicates a recognition of the alternative approach of using Article 5 meetings for it.

Recommendations: ARTICLE 16: WAGES

THE FACT-FINDER RECOMMENDS THAT
THE PARTIES CARRY ARTICLE 16 FORWARD
INTO THE NEW AGREEMENT WITHOUT
CHANGE.

APPENDIX B: PAY SCALE

Positions of the Parties:

The proposals of the Parties are somewhat complex because of complexities within the current wage system. So the Fact-finder lists these proposals according to Sections within Appendix B. In Section B.1, the union proposes a new scale which

a) has higher minimum rates and maximum rates at each of the twelve (12) grades, b) has a new two-year service level between the minimum and the maximum at each grade, c) has a schedule for educational incentives to reflect levels of “certification” and years of service, and d) drops the BU 70 Section within the prior Agreement. For its part, the Employer also proposes to drop the BU 70 Section from the prior Agreement and to carry over the remainder of the scale detailed in Section B1. As to Section B2, both Parties propose to keep a merit/bonus system; but, the Employer proposes language changes to reflect mainly the time period of the new Agreement. The Union proposes to modify Section B3 by removing the effect of merit caps; the Employer proposes retention of Section B3. In Section B4, the Union has no proposal for change (F-f: note: the years in the Section would have to be modified); the Employer proposes the removal of Section B4. The Parties do not disagree about retaining Section B5, except the Employer proposes to drop the last sentence and the Union has no such proposal. In Section B6, the years would have to be updated; but, neither Party objects to the provision for the Hamilton County Board of County Commissioners to instituting market adjustments to the scale and to adjusting to such action if it is taken.

Analysis:

The Fact-finder first notes that the Employer made its presentation in two segments. The Union had no objection and it was accorded the opportunity to make its own proposals and to offer its own comments at each segment. In the first segment, Mr. Mike Hyles, Fiscal Section Chief, testified on general economic concerns and conditions which underlie the economics in the negotiations. The Union Committee Members did question him extensively during his presentation. The Fact-finder notes that his

presentation was basically oral. Statistics were delivered through oral presentations instead of through exhibits, financial reports, and the like. Mr. Helms led the Employer's presentation in the second segment, supplemented with comments by Ms. Serra and presentations by Mr. Lucas. As earlier, Mr. Edwards led the union's presentation with frequent discussions from Ms. James as Local President and from the other members according to their areas of competency and representation. In particular, Mr. Rade presented concerns over the allocative judgments of the Employer in its fiscal decisions.

It makes sense to the Fact-finder to begin his analysis along the contours of the Union's proposals. The Union proposes major revisions of Section B1 through across the board increases of minimum rates in the 12 pay grades as well as through across the board increases of the maximum rates in these grades. Further, the Union proposes a new part of the B1 schedule to reward employees who have achieved certifications (i.e. associate degrees, bachelor degrees, or master degrees) with three step increments based on length of service above eight years. Members of the Union Committee all expressed concern about how far the unit has fallen behind comparable units. But, the Union did not provide concrete documentation. They did challenge the underlying logic of freezing minimum and maximum rates (as included in the Employer's proposals). This is addressed below.

Mr. Lucas offered testimony and an exhibit to indicate that rates in the unit have kept par with or are ahead of rates for other groups of County employees since 2000. The numbers in the exhibit portray averages; particular workers' rates vary because of actual merit and bonus amounts. The Employer provided exhibits to portray how merit rates varied between 0% and 20% on merit and between 0% and 15% to 20% on bonuses; the

0% people (about twenty percent of the unit) reflect employee's probationary status, as new employees or newly promoted employees, and employees on different leave status. The payouts over the three years clearly indicate how the system certainly does differentiate pay based on ground other than length of service (These Exhibits also help to reinforce the concerns by the Union committee members about performance evaluation, as noted above).

The rate figures presented by the Employer do point up two problems in the operation of the merit/bonus system over the three years of the Agreement. Concern exists at the bottom with the minimum rates at each grade as well as the maximum rates at each grade. The Employer acknowledges that C.P.I. has grown by an estimated 1.3% in 2002; no estimates were given for 2000 and 2001, but a similar phenomenon occurred in those years. Because all individual adjustments in workers' rates are based on merit and bonuses, the minimums do not reflect any accommodation for the erosion of purchasing power of workers' wages over the life of the Agreement. In each of the years this affects some forty percent (40%) of the workers. Some type of catch-up in the minimum appears in order for a sizeable number of workers who, through no "failure" of their own, have had their wages frozen without merit or bonus and thus their real income decreased over all of or a part of the life of the Agreement.

At the other end, is a problem which tends to vitiate the whole concept of merit. This is in the form of a CAP. Without documentation but also without rebuttal by the Employer, the Union contends some 75 employees are at current CAPS. True, if an employee receives a merit adjustment beyond the maximum rate or the CAP for their particular grade, the amount "capped out" is distributed as part of the bonus. But, this

does not go into the base rate which is used to calculate some benefits such as holidays and to calculate base rates for future merit adjustments. On the average, the merit adjusted rates have grown some nine percent over the last three years. True, in each grade there is a posted range. For instance, in Grade 7 (with over forty percent of the members in the unit), the range under the prior Agreement was \$11.57 to \$15.27. Neither Party offered demographics of how individual employees are arrayed across this range (or the ranges for other Grades). In Grade 9, (where close to 25% of unit members are employed), the range goes from \$13.64 to \$18.00. Arguably, these two Grades contain the backbone of the workforce, some two-thirds of the members. They also contain more skilled members of the unit, wherein performance can be affected by incentives (as the logic of pay for performance urges). Educational achievements can be addressed with higher CAPS instead of a new structure. Hence, the dynamics of the system argue for a catch-up of 2% or so at the minimum rates and 9% or so at the maximum. In Section B6, the Parties agree that the scale in Section B1 can be properly adjusted due to competitive conditions by action of Commissioners. At the hearing, the Union has made a solid case that the top of the scale should also be adjusted upwards because of economic dynamics of the last three years.

The Fact-finder agrees with the Employer that the upward revisions for the entire proposal scale of the Union are not warranted. The Union's proposal arrays new absolute minimum rates and absolute maximum rates at each pay grade; they also give absolute adjustments at each pay grade after two years in grade as a new column of rates. The Union also proposes a separate add-on scale for educational achievement where in further percentage adjustments occur with receipt of degrees and with levels of service.

The Employer estimates that adjustments by the Union would run over \$3,600,000 a year at a minimum and could reach over \$5,500,000. These increases would go on top of current payroll levels of \$27,000,000. Unfortunately, neither Party offered demographic data on payrolls. But, certainly the Union's proposals would place a very excessive burden on the fiscal state of the Employer.

The Employer does not plead poverty or financial hardship. Rather, it argues the need to act as a responsible fiscal agent. Although the Employer does not claim inability to meet some increase, it does claim limited ability. Although Mr. Hyle did not come armed with accountants' sheets and fiscal tables and graphs, he orally portrayed a picture with two dimensions. First, the budget has been basically balanced in recent years (flat was the term used), although he was concerned that deficits might soon appear. Second, there is a lot of uncertainty about the growth of revenue sources in the near future from the federal government, state government, two main county levies, and the general fund. Obviously, there is squeeze room in the budget because the Employer proposes increases in payroll due to merit and bonus. From the Fact-finder's experience, public Employers are and must be conservative with preliminary revenue estimates. He respects this as part of their fiscal responsibility. But, equally key to fiscal responsibility is the preparation for expenditures needed to maintain systems, such as the merit/bonus system in place within the unit.

Hence, to Section B1, the Fact-finder sees the advisability of increasing the base wages at each Grade by 2%. Then, for maximum rates, he proposes a new schedule which is the same at Grade 1, which is 1% higher at Grade 2, which is 2% higher at Grade 3, which is 3% higher for each of Grade 4 and Grade 5, which is 4% higher for

each of Grade 6 and Grade 7, which is 5% higher at each of Grade 8 and Grade 9, which is 6% higher at each of Grade 10 and Grade 11, and which is 7% higher at Grade 12. These adjustments accommodate for the dynamics of the last three years, as noted above. Then, in Section B2, use the language proposed by the Employer for the operation of the plan in 2003, 2004, and 2005. This also is the heart of the Employer's proposal. Keep Section B3 because the adjusted maximum rates raise the CAPS in the new schedule. If the need recurs at further negotiations, these CAPS can be further adjusted. Further, the Parties have agreed that Article 5 meetings had been held to address CAPS; but the Parties dropped their efforts. Keep Section B4 but update the years to 2004 and 2005. Keep Section B5 as is. In Section B6, update the years to 2003, 2004, and 2005 (as in the Employer's copy). Although the Fact-finder did not receive detailed financial materials, he deems that the above revisions in Appendix B are fiscally responsible. Changes of maximum rates simply raise the CAPS to allow merit raises to be paid; adjustments would still be made according to the Employer's proposal to keep Section B2. Changes in the minimum rates do entail 2% growth in some of the payroll. With an estimated annual payroll of \$27,000,000, the 2% would increase payroll by a maximum of \$540,000. Because only rates for employees at the bottom of any grade are involved, (some estimated 20% of the employees), this would be a small increase. This would be over and above the additions to payroll from the Employer's proposals to carry over the current system in Section B2. All such adjustments seem fiscally responsible.

The Employer claims that the Parties are pioneers in the County and throughout the State and the Country with this system. The Fact-finder hears the desires by both Parties to preserve and improve upon the system. This is only the second time the plan

was renegotiated. Yet, as common practice would argue, pay for performance plans must be attended to because of changing circumstances. At this point, the Fact-find again encourages the Parties to use their own instrument of Article 5 meetings to address problems that surface in the dynamic implementation of their pay for performance system. The Parties can be justifiably proud of the numbers of employees who meet or exceed performance goals and objectives and who receive merit or bonus adjustments for their performances as displayed in Employers' Exhibits. He only wishes the Parties well in the implementation of the Plan in their new Agreement.

Recommendations: APPENDIX B: PAY SCALE

- B1: 1) UPDATE THE EFFECTIVE DATE
- 2) DROP THE SEGMENT BU70
- 3) DO NOT ADD A SEGMENT FOR SEPARATE EDUCATIONAL INCENTIVES
- 4) INCREASE THE MINIMUM RATES AT EACH GRADE BY 2%
- 5) INCREASE THE MAXIMUM RATES
 - AT GRADE 1 BY 0%
 - AT GRADE 2 BY 1%
 - AT GRADE 3 BY 2%
 - AT GRADE 4&5 BY 3%
 - AT GRADE 6&7 BY 4%
 - AT GRADE 8&9 BY 5%
 - AT GRADE 10&11 BY 6%
 - AT GRADE 12 BY 7%

B2: USE EMPLOYER LANGUAGE

[F-f note: This is the language:

SECTION B2: In contract years 2003, 2004, and 2005, bargaining unit employees shall be eligible for the same merit and supplement percentage increases approved by the Hamilton County Board of County Commissioners (HCBCC) for non-bargaining unit employees of the Hamilton County Department of Jobs and Family Services (HCJFS). Such merit and supplemental increases shall be effective on the same dates as non-bargaining unit employees.]

- B3: KEEP AS IS
- B4: CHANGE YEARS TO 2004 AND 2005,
KEEP REST AS IS
- B5: KEEP AS IS
- B6: CHANGE YEARS TO 2004 AND 2005, AND
KEEP REST AS IS

PART IV: GENERAL RECOMMENDATIONS

The Fact-finder has conducted the hearing, taken testimony and exhibits, considered the criteria in ORC4117, and examined materials brought before him in these proceedings. He certainly wants to commend the high professional work performed by Representatives of both Parties. He also is conversant with the twenty-two proposals which the Parties tentatively agreed to before the hearing as well as the six issues which they tentatively agreed to during the mediation stage.

Accordingly, the Fact-finder recommends that the Parties vote to adopt these issues tentatively agreed to. He further recommends that they vote to accept his recommendations to the nine issues at impasse for the hearing. He has listed these nine sets of recommendations above within his report after his analysis of each issue.

Dated July 23, 2003 Signed Lawrence I. Donnelly
July 23, 2003 Lawrence I. Donnelly