

STATE EMPLOYMENT RELATIONS BOARD OF OHIO

STATE EMPLOYMENT  
RELATIONS BOARD

2003 SEP 18 A 10:25

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In the Matter of  
**AFSCME, OHIO COUNCIL 8, LOCAL 3759**  
(The Exclusive Representative)  
and  
**MAHONING COUNTY**  
**DISTRICT BOARD OF HEALTH**  
(The Public Employer)  
Case No. 03-MED-03-0307  
Date: September 16, 2003  
.....

**FINDINGS OF FACT/  
RECOMMENDATION**

**JURISDICTION AND BACKGROUND**

Ohio Council 8, American Federation of State County and Municipal Employees (Union or AFSCME), for Local 3759 and the District Board of Health of Mahoning County (Employer), are located in SERB's East Central Region. This certified unit consists principally of Sanatarians and Public Health Nurses but also contains a number of other job classifications. The Unit has approximately 38 full-time and 12 part time employees. Hereafter, the Employee Organization or the Public Employer may be referred to as a "Party" or the both, as "the Parties."

The Initial Notice to Negotiate was issued March 18, 2003. The Parties are negotiating their sixth (6<sup>th</sup>) Agreement. At the beginning of negotiations numerous items were at issue. The Parties negotiated for a number of months with a substantial degree of success. The Parties reached

tentative agreement on 28 Items (as well as several difficult issues imbedded in agreed to language (the details of which remain as impasse items). **However, as to these 28 Items, tentatively agreed to by the Parties, each is hereby adopted by the Fact Finder as his own.** When the Parties declared impasse, only six (6) issues remained in dispute.

On May 1, 2003, the undersigned was selected as the Fact Finder. The period for fact finding was extended from time to time, with notice to the Bureau of Mediation pursuant to Ohio Administrative Code Rule 4117-9-05(G). These extensions were not meant and did not establish a Mutually Agreed upon Dispute (MAD) settlement procedure arising under O.A.C Rule 4117-9-03(F).

When the undersigned was advised of the impasse he asked the Parties to prepare a number of its for the purpose of allowing him to be more useful to the Parties, either in mediation or in Fact Finding. He was provided with appropriate materials under O.A.C. Rule 4117-9-05(F). Prior to the hearing, the Parties presented Pre-Hearing Statements to the Fact Finder and to the other Party. The Parties' written presentations regarding the issues at impasse provided a firm basis for the Mediator/Fact Finder to make fuller use of the time set aside for working on the impasse items.

As part of the process, the undersigned met with the Parties on August 20, 2003, in Youngstown, OH. It must be noted that the Parties have a mature relationship. They, like so many Unions and Employers, are looking at the differences of wage and health care costs as two of the most difficult long term issues that they have ever had to work out. Consistent with O.R.C. 4117.14(C)(3)(f), the Fact Finder met with the Parties together, then privately in an attempt to mediate their differences. The

Fact Finder requested the Parties to again discuss with each other the possibility of settlement without his presence in hopes of resolving some of the remaining issues and/or continuing to reduce the distance between them. They did meet and made a serious effort to reduce their differences.

Unfortunately, the Fact Finder was advised that they could not close the gap, although each agreed that they wished they could have. Based on the experience of the representatives and their respective committees and support persons, the Fact Finder determined that even though the Parties would have liked to resolve their differences, a Fact Finder's Report would be required.

The Parties submitted six (6) issues to the Fact Finder for his Findings of Fact and Recommendation. These issues were:

Article 11, Section 1 Seniority;

Article 19, Section 1, Pay for Health Benefits;

Article 19, New Section 5, Health Coverage for Part Timers;

Article 23, Section 1, Mileage Allowance;

Article 20, Section 2, Wages; and

Article 29, Section 1, Contracting Out.

Throughout the period since the undersigned Fact Finder was selected, the Union was represented by Staff Representative Jaladah Aslam and the Health District by Jon Russell Steen, Esquire.

Consistent with O.A.C. 4117-9-04(L) the Parties mutually extended the time for issuing the Fact Finder's Report with written notice to SERB. The Fact Finder's Report was issued within the extension period.

During the Fact Finding process, which was held at a site which did not involve any cost and was not open to the public, each Party had a full and complete opportunity to present evidence (and where deemed

appropriate to raise questions concerning the other Party's evidence). Seeing that there were no further proofs to be offered, the Fact Finder declared the Hearing and Record closed on August 20, 2003.

The argument of the Union can be summed up by saying that it believes that it has demonstrated, through the Association of Ohio Health Commissioners (AOHC) Salary Survey 2002 (which the Union adjusted upward by three percent (3%) cost of living increase to reflect a 2003 average) that the bargaining unit members should receive a substantial wage increase, especially if the Fact Finder responds favorably to the Health District's demand for Medical Co-Share. In addition, the mileage reimbursement rate has been a "bone of contention" for a number of years, for the many bargaining unit members who must use their personal cars to perform their duties. The Union argues that there is no real evidence that the Health District cannot afford the Union's demands. In addition, all changes it proposed and objections to the Health District's proposals are amply supported by the evidence.

The argument of the Health District, based upon an anecdotal survey of other Health Districts and a review of local and national information, can be summed up by saying that the District has offered a fair and reasonable wage increase considering the increased cost of health care. What it is insisting upon, however, is a Co-Share of seven and one-half percent (7 1/2%) of the medical health care cost that each employee incurs each year. It notes that many other Health Districts have Co-Share. Furthermore, as to its other demands and responses to the Union's demands, it believes that it has amply demonstrated either the need for more flexibility or the reasons why it believes that the Union's proposals are not necessary.

The following Findings of Fact and Recommendations are made after carefully considering the discussions, the supporting documentation and arguments offered by the Parties as well as the factors set forth in O.R.C. 4117-14(C)(4)(e). (See also O.A.C. 4117-9-05(J) and (K) and (K)(1) through (6).)

## **Findings of Fact and Recommendations of the Fact Finder**

### **1. Article 11, Section 1 Seniority (for layoff purposes only)**

Position of the Employee Organization: The order of layoff is an important concern for the Union. Students and part-time employees (temporary, casual, intermittent and seasonal) should be laid off before full-time employees, especially when full-time employees are the ones who teach the students. The Employer's alleged need for flexibility is simply an attempt to erode full-time bargaining unit positions.

Position of the Public Employer: The order of layoff is an important issue for the Employer, too. Many of the part-time employees are the most senior and most experienced in the Health District who have elected part time status. There continues to be cutbacks in programs such that positions cannot be combined. Experienced employees may end up working lesser hours. The Union's proposal makes no operational sense.

### **Recommendation of the Fact Finder:**

Article 11, Section 1 shall be modified as follows: The existing paragraph shall be identified in the new CBA as (a). A new paragraph shall be identified as (b), and shall contain the following language:

"Beginning January 1, 2004, for layoff purposes only, seniority for each bargaining unit employee shall be calculated on a full time equivalent of 1950 hours which shall be used as the denominator and the employee's compensated hours as the numerator. For 2004, the numerator shall be the hours compensated in 2003; for 2005, the numerator shall be the hours compensated in 2004, etc. However, for any year shall an employee has been compensated for more than 1950 hours, only 1950 hours shall be used in the numerator - thus an employee shall not earn more seniority than one year's seniority (1950 hours) in any base year."

**Rationale:** The completion of the various missions performed by Health District employees must be a primary goal. Within that goal, the concerns of the Union are also important. The above recommendation regarding seniority of layoff purposes respects both the Union's and the Health District's announced goals and is readily applicable to funding vagaries.

**2. Article 19, Section 1, Co-Share/Pay for Health Benefits**

Position of the Employee Organization: In Mahoning County, there are 20 Union contracts: Two (2) are not covered under the Medical Mutual of Ohio; six (6) have no co-pay; eleven (11) have a \$6.00 co-pay; and one has a 10% co-pay per month. These co-pays are for the life of the negotiated agreement and cannot be increased. While the Health District may have aspirations to have some sort of a employee co-pay, it has not, and cannot

demonstrate a need for any co-pay, much less seven and one-half percent (7 1/2%) per year. The aspirations would not be present but for its perception that there is pressure from the public.

Position of the Public Employer: In these times, (a) with health care increasing each year, year over year, and sometimes at a rate of more than ten percent (10%); (b) with other units in the County having a co-pay; and (c) with many taxpayers having to pay a co-pay at their place of work, the time has come for the Health District to also have a co-share. Paying seven and one-half percent (7 1/2%) per year, is a modest contribution toward the quality health care bargaining unit employees may enjoy.

**Recommendation of the Fact Finder:**

The Parties have tentatively agreed to modify Article 19, Section 1. The only issues remaining are co-share/pay or not and if so, how much. The language proposed by the Employer relative to Section 1 shall be modified in that the second sentence shall read "**Such coverage will be subject to a premium co-share of five percent (5%) of the total cost of the medical coverage but shall not, for the duration of this Agreement, exceed the dollar amount of the five percent (5%) for the first year.**"

**Rationale:** The Fact Finder notes that most of the contracts in Mahoning County have some type of co-pay/share. The Fact Finder is persuaded that the Health District is neither immune from the ever increasing costs to provide quality health care nor immune from the expressed concerns of the taxpayers. The bargaining unit has enjoyed many years without a co-pay/share. As the Fact Finder understands the tentatively proposed language, while the Health District may select the

health insurance company, it must continue to provide benefits comparable to the current level. It is in the interest of the Health District to attempt to keep its costs within reasonable bounds, one of the ways is to have a co-pay/share. The above co-pay/share recognizes the expressed concern of the Employer while capping (as other Mahoning County contracts have done) the co-pay/share at five percent (5%) of the first years premium, for the duration of the Agreement.

**3. Article 19, New Section 5, Health Coverage for Part Timers**

Position of the Employee Organization: The part timers, who are an important group in the bargaining unit, should be covered for vision. dental and life insurance, like the others.

Position of the Public Employer: In these times the Health District is not about to add to its cost structure, especially where it was not the Board's idea to have part time positions in the first place. Of the nine (9) Board of Health contracts surveyed only one has insurance for part time employees.

**Recommendation of the Fact Finder:**

**No modification** to the existing language.

**Rationale:**

Even though the Union had the initial burden of persuasion, neither Party's evidence was sufficient to persuade the Fact Finder that a modification to the current Collective Bargaining Agreement was appropriate at this time.

**4. Article 23, Section 1, Paragraph A, Mileage Allowance**

Position of the Employee Organization: Language set forth in

Employer's presentation at Tab 5 is acceptable providing the mileage allowance is increased to \$.33 for 2003; \$.34 for 2004; and \$.35 for 2005. The costs of operating a personal vehicle have been escalating - especially gas. Tying reimbursement to the state rate, especially when the I.R.S. allowance is already \$.36, is causing the employees to pay substantial sums of money out of pocket which is not reimbursed.

Position of the Public Employer: See Tab 5 of the Employer's presentation for negotiated language which but for the mileage allowance was tentatively agreed to. The Health District recognizes that the cost for gas has risen over the years but it cannot afford to depart from the state approved rate by any substantial amount. The Health District is willing to raise the mileage allowance reimbursement rate to \$.33 per mile for the duration of the Agreement.

**Recommendation of the Fact Finder:**

The Parties agreed to modify Section 1 with the only issue remaining being the reimbursement rate for using a personal car in pursuit of the Health District's mission. The disputed language in paragraph A shall be modified so that: **the mileage allowance shall be increased to thirty-three cents (\$.33) per mile for 2003: However, this increase shall not take effect until the above insurance co-pays take effect. (See Tentative Agreement #28 for Timing of the implementation of change); the mileage allowance for 2004 shall be increased to \$.34; and for 2005, to \$.35.**

**Rationale:** Costs of operating a personal vehicle have increased, especially gasoline. Personal vehicles are used as a necessary adjunct to the mission of the District in the performance of one's work. The above recommendation will go a fair distance to resolving the concerns expressed

by members of the bargaining unit through their Union leadership for the last several years but without substantially diminishing the mission of the Employer.

**5. Article 20, Section 2, Wages**

Position of the Employee Organization: 6% in each of three (3) years. While it should be clear to the Fact Finder that the Union does not want any co-share/pay, if, as a result of the Employer insistence, the Fact Finder would recommend a co-share/pay, then the members of the bargaining unit must be compensated with a substantial increase in pay over the life of Agreement to have the funds to pay for this co-share/pay. It appears to be unfair that the Health Commissioner continues to be awarded six percent (6%) year after year.

Position of the Public Employer: 3% in each of three (3) years. The Health District's data demonstrate that increases in the 3% range is the norm for Board's of Health, as well as local and national agreements. The Health District reminds the Fact Finder that there is a clear relationship between wages and costs, which by the way, are both costs to the Employer and the taxpayers. The Union must recognize the realities of the increasing costs of providing medical care to the members of the bargaining unit. Nevertheless, the Health District makes a sincere and fair offer of 3% in each of three (3) years of the Agreement.

**Recommendation of the Fact Finder:**

**Wages shall be increased by four percent (4%) in each of the next three (3) years (July 1, 2003 - June 30, 2004, etc.).** The increases shall be incorporated into Wage Schedules, replacing

those schedules at pages 32-34 of the current CBA. These replacement Wage Schedules are attached to this Report as Exhibit A1-A3. For Timing of the implementation of changes, see Tentative Agreement #28.

**Rationale:**

The Fact Finder, as have the Parties, acknowledges that there is a relationship between costs to the Employer and benefits for the members of the bargaining unit. Items 2 and 5, and perhaps 4 as well, while not connected in any direct way, recognize costs that individuals and the Employer must pay. The Fact Finder's effort will assist each Party to accomplish its objectives. Because the Fact Finder was persuaded by the Health District's argument that it was now time for a co-share/pay, the concerns of the Union that employees, if faced with a co-share/pay, must have their wages increased in part to reflect a reduction in take home pay even recognizing that the reduction will be going directly to maintain medical care coverage at the level previously enjoyed.

In addition, the Fact Finder notes that, (1) Youngstown City School employees received at least the same percentage wages increases; (2) Mahoning County Children's Services bargaining unit employees received slightly less; and (3) Mahoning County Engineer's Office received at between an 11.5% to 14.1% increase over the life of the contract. In any event, the recommendation in this report continues to recognize the goals of each Party.

**6. Article 29, Section 1, Contracting Out**

Position of the Employee Organization: The Union is against contracting out in principal. Any contracting out erodes bargaining unit work over time. As the Employer has been informed, its proposal is overly

broad.

Position of the Public Employer: The issue here is covering leaves of absences for clerical positions. The Employer proposes to add a sentence to the end of Section 1 of Article 29, which would read "The Employer may contract out work to provide coverage during a leave of absence for clerical positions." It justifies its position by referring to other Health Districts to have permissible contracting out language in their agreements.

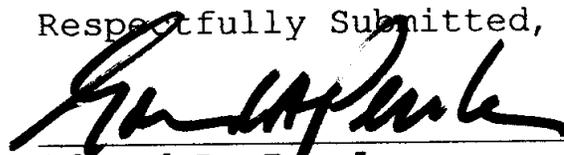
**Recommendation of the Fact Finder:**

**No modification** to the existing language.

**Rationale:**

Even though the Union had the initial burden of persuasion, neither Party's evidence was sufficient to persuade the Fact Finder that a modification to the current Collective Bargaining Agreement was appropriate at this time. If there should arise a particular situation where a critical job must be done when a clerical employee is unexpectedly off work for a significant period of time, the Employer should continue to discuss staffing that position with the Union and an attempt to work out a way for the critical elements of the work to be performed.

Respectfully Submitted,



**Edward A. Pereles**  
Fact Finder

Service Date: September 16, 2003, at Youngstown, Ohio  
(Sent by overnight courier from Philadelphia, PA)

Section 2. - Effective - 6/01/03 - 05/31/04

(YEAR 1 OF CONTRACT)

GRADE	CLASSIFICATIONS	ENTRY	1YR	2YR	3YR	4YR	5YR	6YR
1.	- VAN DRIVER - ACTIVITIES COORDINATOR	9.04	9.31	9.59	9.88	10.20	10.50	10.82
2.	- CLERK - DATA ENTRY OPERATOR - SECRETARY - ACCOUNT CLERK I	10.05	10.34	10.65	10.97	11.30	11.65	12.00
3.	- T.B. REGISTRAR - PUBLIC HEALTH MED.TECH. - ACCOUNT CLERK 2 - LABORATORY ASSISTANT	12.17	12.52	12.90	13.28	13.68	14.08	14.51
4.	- SANITARIAN-IN-TRAINING	12.82	12.82	12.82	12.82	12.82	12.82	12.82
5.	- SANITARIAN - PLUMBING INSPECTOR - LAB TECHNICIAN - T.B. NURSE - ADULT DAY CARE NURSE - OUTREACH EDUCATOR - COMM. HEALTH ED. SPECIALIST - PEDIATRIC COORDINATOR - PUBLIC HEALTH NURSE	15.43	15.89	16.37	16.87	17.38	17.90	18.44
6.	- NURSE PRACTITIONER	16.60	17.10	17.61	18.15	18.69	19.25	19.83

Section 2. - Effective - 6/01/04- 05/31/05

(YEAR 2 OF CONTRACT)

GRADE	CLASSIFICATIONS	ENTRY	1YR	2YR	3YR	4YR	5YR	6YR
1.	- VAN DRIVER - ACTIVITIES COORDINATOR	9.40	9.68	9.97	10.28	10.61	10.92	11.25
2.	- CLERK - DATA ENTRY OPERATOR - SECRETARY - ACCOUNT CLERK I	10.45	10.75	11.08	11.41	11.75	12.12	12.48
3.	- T.B. REGISTRAR - PUBLIC HEALTH MED.TECH. - ACCOUNT CLERK 2 - LABORATORY ASSISTANT	12.66	13.02	13.42	13.81	14.23	14.64	15.09
4.	- SANITARIAN-IN-TRAINING	13.33	13.33	13.33	13.33	13.33	13.33	13.33
5.	- SANITARIAN - PLUMBING INSPECTOR - LAB TECHNICIAN - T.B. NURSE - ADULT DAY CARE NURSE - OUTREACH EDUCATOR - COMM. HEALTH ED. SPECIALIST - PEDIATRIC COORDINATOR - PUBLIC HEALTH NURSE	16.05	16.53	17.02	17.54	18.08	18.62	19.18
6.	- NURSE PRACTITIONER	17.26	17.78	18.31	18.88	19.44	20.02	20.62

Section 2. - Effective - 6/01/05- 05/31/06

(YEAR 3 OF CONTRACT)

GRADE	CLASSIFICATIONS	ENTRY	1YR	2YR	3YR	4YR	5YR	6YR
1.	- VAN DRIVER - ACTIVITIES COORDINATOR	9.78	10.07	10.37	10.69	11.03	11.36	11.70
2.	- CLERK - DATA ENTRY OPERATOR - SECRETARY - ACCOUNT CLERK I	10.87	11.18	11.52	11.87	12.22	12.60	12.98
3.	- T.B. REGISTRAR - PUBLIC HEALTH MED.TECH. - ACCOUNT CLERK 2 - LABORATORY ASSISTANT	13.17	13.54	13.96	14.36	14.80	15.23	15.69
4.	- SANITARIAN-IN-TRAINING	13.86	13.86	13.86	13.86	13.86	13.86	13.86
5.	- SANITARIAN - PLUMBING INSPECTOR - LAB TECHNICIAN - T.B. NURSE - ADULT DAY CARE NURSE - OUTREACH EDUCATOR - COMM. HEALTH ED. SPECIALIST - PEDIATRIC COORDINATOR - PUBLIC HEALTH NURSE	16.69	17.19	17.70	18.24	18.80	19.36	19.95
6.	- NURSE PRACTITIONER	17.95	18.49	19.04	19.64	20.22	20.82	21.44

STATE EMPLOYMENT  
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**Edward A. Pereles**

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STATE EMPLOYMENT  
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Issued September 16, 2003  
Via Overnight Courier & E-Mail

**Jaladah Aslam, Staff Rep.**  
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**Jon Russell Steen, Esq., Employer Rep.**  
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**RE: SERB Case No. 03-MED-03-0307**

**AFSCME Ohio Council 8, Local 3759 (Sanitarians and Public Health Nurses)  
and the Mahoning County District Board of Health**

**Dear Representatives Steen and Aslam:**

1. Enclosed for each of you are two (2) duplicate originals of my Findings of Fact and Recommendations including salary schedules (the Report) regarding the above captioned matter. You also requested that I include an extra copy of the salary schedules with the materials sent via overnight courier as well as providing the Report via email. As I have discussed with Ms. Aslam and Mr. Janik, the Report, without the salary schedules, is being emailed to you as a Word Perfect attachment. It is my understanding that you will complete the Report by adding to my email salary schedules from the overnight courier documents. Upon receipt, as you deem appropriate, you may make copies of the Report for the Members of the Committee and Board.

2. (A) May I take this opportunity to remind you that pursuant to O.R.C. Rules 4117-14(C)(6), certain actions must be taken by the Public Employee Organization and its Members and the Legislative Body, respectively, and not later than seven (7) calendar days after the above Report is sent/issued (that is, in this case, from September 16, 2003), to notify the State Employment Relations Board in writing and each other not later than 24 hours after the vote count is taken (O.A.C. 4117-9-05(N) whether the Report has been accepted or not. The vote taken must either accept or reject the Report as a whole.

(B) It is my understanding that if not notified by a Party as above, SERB will deem the Report accepted by that Party.

(C) If you have any questions regarding appropriate procedures, you may wish to consult with Dave A. Zimmer, Administrator, Bureau of Administration at SERB.

(D) In any event, pursuant to O.A.C. Rule 4117-9-07(A)-(C) within thirty (30) days of execution of a collective bargaining agreement, the Employer must file with SERB an executed copy, including all wage information. The information provided, I understand, will be used in its Library/Clearinghouse database, making your data available to other interested parties throughout Ohio.

Letter to Steen/Aslam dated September 16, 2003, p2 of 2

3. Also enclosed for each of you is an original Invoice for Professional Fees and Expenses incurred since my appointment on May 1, 2003, directly related to this assignment. May I ask that this Invoice be presented for prompt payment.

4. It has been a pleasure to work with each of you in the service of your clients on this important assignment.

Cordially,

**Edward A. Pereles**  
**Fact Finder**

EAP/mtf

enclosures as set forth above

cc: **Dale A. Zimmer**, Administrator, Bureau of Mediation, SERB,  
65 East State Street, 12<sup>th</sup> Floor, Columbus, OH 43215-4213  
(614) 644-8573 w/ Report and Invoice



**Edward J. Janik**, Dir. of Finance and HR, Mahoning County General  
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**Eleanor Cegan**, President, AFSCME, Local 3759, c/o 150 South Four Mile  
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