

STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2004 SEP 10 A 10:54

IN RE:

SERB CASE NO: 04-MED-04-0383

Lucas Co. Brd. of Mental Retardation &
Developmental Disabilities (MRDD)
Employer

and

AFSCME OHIO COUNCIL 8
Employee Organization

FACT-FINDER
DONALD R. BURKHOLDER

FACT FINDER'S REPORT AND RECOMMENDATION

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

William F. Fogle, Staff Representative

FOR THE LUCAS COUNTY MRDD

Mary Ann Burns, Employer Representative

STATE EMPLOYMENT RELATIONS BOARD [SERB]-(Ohio)

SCOPE OF DUTIES OF THE FACT-FINDING PANEL in accord with
Section 4117 of the Administrative Code

- A. The fact-finding panel shall attempt to mediate the disputes of the parties prior to conducting a fact-finding hearing.
- B. When mediation efforts do not resolve all issues at impasse, the fact-finding panel shall hold an evidential hearing except that the parties may stipulate facts and waive a hearing. For purposes of hearing, the fact-finding panel shall have the power to regulate the time, place, course, and conduct of the hearing, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and request the Board to issue subpoenae to compel attendance of witnesses and the production of books, papers, and records relating to any matter before the fact-finding panel. The fact-finding panel may not choose a hearing location at a cost to the parties unless the parties fail to agree to an alternate cost-free location. Fact-finding hearings are to be held in private.
- C. The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.
- D. The fact-finding panel, in making recommendations, shall take into consideration the following:
 - (1) Past collectively bargained agreements, if any, between the parties.
 - (2) Comparison of unresolved issues relative to the employees in the bargaining unit with the issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
 - (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
 - (4) The lawful authority of the public employer;
 - (5) Any stipulations of the parties; and,
 - (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

Executive Summary of Fact-Finder Recommendations

1. Art. 6, Discipline
Employer Position
2. Art. 8, Job Posting and Bidding.
Employer Position.
3. Art. 10, Job Descriptions
Union Position, Modified.
4. Art. 24, Subcontracting
Employer Position
5. Art. 25, Union Stewards
Fact-Finder Language, Modified Employer Position
6. Art. 35, Hours of Work
Union Position
7. Art. 36, Overtime Pay
Present Contract
8. Art. 41, Sick Leave
Employer Position
9. Art. 46, Return to Work After Prolonged Leave of Absence
Employer Position
10. Art. 54, Transportation Employees
Agreed Language, with addition of Sections O and P regarding
employee time and MUI and related investigations.
11. Art. 61, Hospital, Medical, Prescription Drugs, and Dental Benefits
Employer Position

12. Art. 70, Wages

Three Per Cent each for each of the three years.

An added section on restructuring wage and salary rates into one system.

13. Art. 73, Term of Agreement

July 1, 2004 - June 30, 2007

Introduction

The parties to the proceeding are the Lucas County Board of Mental Retardation and Develomental Disabilities, a public employer, and AFSCME Council 8, Local 379, The bargaining unit consists of approximately 383 members and includes numerous positions which provide service to the agency's clients, directly and indirectly,service, clerical, maintenance and technical employees who care for and supervise the mentally disabled, both in workshop environments and community activies.

The Employer asserts it experienced a significant loss of state funding as the demand for its services has grown; although state funding has continued to decrease, local tax levies have remained flat. The MRDD Board's budget is subject to review.approval by the Lucas County Commissioners, the legislative body which must ultimately approve the funds necessary to implement a collective bargaining agreement.

Fact-Finding Hearings were conducted on Tuesday and Wednesday, July 27 and 28, 2004, at the MRDD facility in Toledo. These hearings followed thirteen negotiating sessions. With the assistance of the Fact-Finder, the parties moved toward agreement on several issues through the mediation process. The issues were discussed in a wide ranging dialogue over the course of the two days of hearing, in which the advocates and witnesses presented testimony and briefs and exhibits were provided. Substantial information on the issues was provided, along with helpful explanations when the Fact Finder sought clarification. The advocates and the parties were very courteous and professional, characteristics greatly appreciated by the Fact-Finder.

Fact-Finder Appointment

The Fact-Finder was notified of his appointment a June 24, 2004 letter from Bill Fogle, the Union advocate, copied to Mary Ann Burns, the Employer Advocate. Subsequent official notification came from SERB.

Fact-Finding Report Due Date

The parties agreed that the Fact-Finder Report would be placed in the

overnight mail (U. S. Postal Service Express Mail) on or by Wednesday, September 8, 2004. A separate mailing will go simultaneously to SERB.

Format

1. The text of the current language will be apparent in that it will not be underlined or given any special marking. Requested language will be identified with the party requesting it clearly noted. Language a party wants to *drop* will be identified with boldface type, enclosed in boldface parentheses, i.e., [] and asingle underline, and language a party wants to *add* is identified with boldface and double underline.

2. Where a party requests no change, such a request will be clearly noted as Present Contract; the language will not be repeated unless it is deemed necessary to an understanding of the recommendation.

3. The use of asterisks, i.e. * * *, indicates no requested changes in the following sections in the same Article. The existing language in present contract will not be repeated.

4. A section labeled Recommended Language will indicate the Fact-Finder's decision.

5. A section labeled Analysis provides the Fact-Finder's rationale.

6. Some degree of variation in this pattern will be found in the portions on Article 25, Subcontracting; and Article 35, Hours of Work; and Article 54, Transportation, where it was deemed appropriate to include or copy part of the Present Contract language in order to clarify the analysis.

1. Article 8, Job Posting and Bidding

Union Position: Present Contract.

Employer Position: See below.

Section A

When a vacancy occurs or a new position is created within the bargaining unit, a written notice shall be posted at each work location. The notice of vacancy shall be on a form agreed to by both parties. The Local president shall receive a copy of each vacancy notice.

Section B

Vacancies, which the Employer intends to fill, shall be posted within ten (10) working days of the determination of the vacancy. Employees shall be allowed five (5) working days to file an application to fill the vacancies. Vacancies shall be posted in an expeditious manner.

An employee may apply for a position by submitting a bid to the Human Resources Department within the specified time limits. Bid forms will be publicly available in each facility and copies may be made by the employee. Every reasonable effort shall be made to fill vacancies within the bargaining unit within twenty-one (21) days.

Section J- Transportation Department and [Larc Lane School] Internal Bid Procedure

The following establishes an internal bid procedure prior to posting:

1. When a position becomes vacant in the Transportation Department [or Larc Lane School] and the Employer intends to post it, the Facility Manager [Principal] will post a notice on the bulletin board for five (5) working days. An employee may sign the sheet to indicate his intent to fill the vacancy.

x x x x x

3. The posting will indicate position classification, who last held the position, [location within the facility,] type of route, route number, and any additional relevant information. Every attempt will be made to coincide these internal postings with weekly personnel postings.

6. The Facility Manager [/Principal] may consult with the internal bidders individually to explain the duties of the positions and valid concerns concerning acceptance of the position.

X X X X

7. An internal move will count as one of the two lateral bids allowed in this Article. [Any school employee who accepts an internal move will not be allowed to make another internal move until the following school year.]

8. Larc Lane School and Satellites will utilize the internal bid procedure between bid day to October 1 of each year.

Section K - Adult Services Internal Bid Procedure

1. When a vacancy occurs or a new position is created in the Habilitation Technician or Workshop Specialist I classification, excluding enclaves within the Adult Services Centers (Hill, Holland, or Telegraph) which the Employer intends to fill, the following procedure is established:

2. A notice shall be posted internally within the facility where the Habilitation Technician or Workshop Specialist vacancy exists.

3. The notice will be posted for three full working days within the facility. The Employee shall submit a bid to the Department of Human Resources.

4. The posting will indicate position classification, who last held the position, and location within the facility.

5. Positions will be awarded by seniority within classification and then other qualified employees.

6. If there are no full time bargaining unit employees within the facility interested in or qualified for a position, the vacancy will be posted program-wide by Human Resources.

7. An internal move will count was one of two lateral bids allowed in this Article.

8. The Facility Manager may consult with the internal bidders individually to explain the duties of the positions and valid concerns regarding acceptance of the position.]

Section [L] K

Successful bidders who decline their work assignment within then (10) days of the start of the new assignment may be subject to reprimand. Any time an employee bids and accepts a position, it is counted as one (1) of two (2) bids per year.

Recommended Language: Employer Position, as noted above.

Analysis: The Fact-Finder is aware of the desirability of a system whereby employees may bid on a position they perceive to be more desirable. Nevertheless, an internal bid process may, and in this case, according to the Employer, does, cause havoc with the Employer's ability to manage in such as way as to carry out its mission effectively. The health, growth, and development of any organization depends on its ability to carry out its mission effectively and within its financial parameters. The Employer's assertion of continuing disruptions in client service is persuasive, especially in view of the Board's need to remain competitive with private sector competition. The domino effect of the disruptions leads to discontinuity of service based on the Employer's inability to move staff internally. Employer states that "...current language requires bidding of each internal opening which creates a domino effect negatively affecting client services." In one example provided, after several rooms at

one facility were reconfigured/combined, "Staff essentially were required to bid on their previous positions. This resulted in unnecessary changes for staff and clients served. Individuals with mr/dd require a consistent delivery of services." The agency mission, quality of service, and potential for continuing growth and development, or continuing viability, must be considered.

X X X X X X

Article 6, Discipline Procedure

Employer Position: Present Contract

Union Position: See following.

Section A

The Employer shall not take disciplinary action against an employee without just cause.

The parties hereto recognize all laws that the parties are required to recognize, and said parties shall not impede, violate, or encroach into the Union's, the Employer's, or anyone's individual rights, nor violate Chapter 4117 of the O.R.C.

Section B

In all cases, where appropriate, principles of progressive and corrective discipline shall be followed, using written warnings and suspensions of appropriate length prior to discharge.

The Employer shall immediately inform the Union and the individual employee when they start an investigation against an employee. Section C.

When an employee is to be disciplined, the charges shall first be reduced to writing and given to the employee. At this time the employee shall also be notified, in writing, of his right to union representation. Charges must be presented to the employee and if not presented within

five (5) working days shall be dismissed. However, if the employee is not working for any reason or if the Employer's investigation is not completed, the time limits shall automatically be extended until the Employee returns to work or the Employer's investigation is completed, provided that the Union shall be given written notice prior to the expiration of the five (5) working days from the date of the offense, or the Employer's knowledge of the offense if the Employer needs additional time to investigate. The Employer will make reasonable attempts to complete the investigation within ten (10) working days.

The Employer shall give all materials, reports, incident reports, MUI reports, and specified charges against an employee to the appropriate Union Representative, no less than five (5) days prior to the agreed upon date for such a hearing.

Section K

All meetings, including any and all investigations, of and for Unusual Incidents; M.U.I. incident(s); predisciplinary hearings, pre-investigative hearings or representational hearings (s), etc., shall be mutually scheduled and agreed upon by the appropriate officer(s), appropriate representatives, or appropriate Stewards and the appropriate Employer Representative.

Recommendation: Employer Language

Analysis: Ohio Revised Code requirements are major factors here, and it appears that the Employer is as forthcoming as possible under the law.

Article 10, Job Descriptions

Employer Position: Present Contract

Union Position - Add the following language.

Section D -

The parties agree that the present bargaining unit job titles/classifications will not be purged or merged together for the life of this Agreement.

Recommended Language: Union Position, Modified.

The parties agree that the present bargaining unit job titles/classifications will not be purged or merged together for the life of this Agreement *unless by prior written agreement between the parties.*

Analysis: Employee morale and continuing concern about job elimination and unit attrition persuade the Fact-Finder that the language recommended is necessary and appropriate.

Article 24, Subcontracting

Employer Position-Present Contract

The Employer shall not subcontract for work or services that would result in a layoff of bargaining unit employees or result in the elimination of a bargaining unit classification.

In the event the Employer finds it necessary to subcontract work, the Union shall be given prior notification and the opportunity to propose alternate solutions during Labor Management meetings.

Union Position - (Add to current contract)

The Employer agrees that bargaining unit work and positions will not be depleted because of the requirements of any outside agency.

Recommended Language: Present contract.

Analysis: Both Union and Employer made persuasive presentations concerning the matter of the Lott Industries relationship. The present language specifies that the "...Employer shall not subcontract for work or services that would result in a layoff of bargaining unit employees or result in the elimination of a bargaining unit classification." Although inclusion of the Union language might provide a psychological boost, it would be redundant, and not constructive for either Union or Employer, especially in light of the sensitive yet crucial continuing relationship the Employer must maintain with Lott Industries.

Article 25, Union Stewards/Union Officers

x x x x

Section B

Union Position: Present Contact

Employer Position

The Union shall elect or assign one steward per facility [except two stewards will be permitted at Larc Lane School and satellites, and Transportation will be permitted four (4).] The steward's jurisdiction shall be defined as the facility in which the steward works.

Recommended Language: Employer Position, Modified.

Section B

The union shall elect or assign one steward per facility, except two stewards will be permitted at Transportation. The steward's jurisdiction shall be defined as the facility in which the steward works. Recommended Language: Employer Position

Analysis: The fact that four stewards are concentrated in one location is not conducive to a rational, orderly application of the contract, and in fact appears to be in conflict with the Present Contract, and especially with its dispute resolution capabilities. . For the aforementioned reasons, an equitable solution requires that steward representation be structured in such a way that there is some balance among the locations in relation to the number of employees at that location and the need for steward representation. It is apparent that Transportation is the focal point of frequent concerns regarding MULs and other potential problems leading to the need for representation. It is reasonable to permit two stewards at the Transportation Department, especially in light of other recommendations in this report which address related issues.

Section G Officer Release Time

Union Position: Modified Present Contract. See below.

Employer Position: Delete

1. Local President

The Local President will be permitted to set aside two (2) full days per week for Union business. The Executive Vice President will be permitted to utilize the above when the Local President is on vacation or extended leave.

2. Vice President

The Unit Vice President and Executive Vice President will be permitted to set aside up to three (3) [four (4)] hours per week [during direct service time, whenever practical,] on the three (3) days when the Local President is not available to do Union Business.

Recommended Language: Employer Position

Analysis: There was no convincing evidence of the need to have more time under broader terms.

Article 35, Hours of Work

Employer Position: Current Contract

Union Position: See the following.

A. In the event it is necessary to change an employee's regular starting time, [except in emergencies,], the Employer shall give each employee affected by the change and the Union a ten [10] work day written notice. In the event the Employer determines a need to change the number of hours in a facility's standard work week, the Employer will negotiate said change with the Union. Such change shall not be arbitrary or capricious.

B. In the event the Employer implements staggered starting/closing times, the Employer shall canvass employees by seniority and classification; giving those of greatest seniority first opportunity to either accept or reject the new hours. If there is insufficient number of employees accepting the new hours, the Employer shall assign the least senior employee. This article does not apply to overtime, flex time or comp time or to positions requiring varied hours.

Section C

The parties agree that those bargaining unit employees (et al), except Vocational Trainer, Travel Trainer, Trave-Leisure Trainer and Job Coach Trainer, will continue to remain on their Monday through Friday work week of five (5) consecutive days of eight (8) hours each, for the life of this agreement.

The listed classifications above are required from time to time to work unfavorable hours. Unfavorable hours is defined as those hours of work after 4:30 p.m. Monday through Friday, or on a Saturday or Sunday. Seniority will be utilized for those employees signing up for these special activities on unfavorable hours as defined herein. Inverse seniority may be utilized.

Recommended Language: The Union position is recommended, as detailed above.

Analysis: An employee needs to have a firm idea of the hours or work to which he/she is committed, without being concerned about constant change, which can create and abet continuing discontinuity in one's personal life. Nevertheless, the need for employees to work unfavorable hours on some occasions is recognized, and can be dealt with under existing arrangements.

Article 36, Overtime Pay

Employer Position - See below

When an employee is required by an authorized administrative authority to [be in active pay status] work more than forty (40) hours in any calendar week, he shall be compensated for such time over forty (40) hours except as otherwise provided in this section, at one and one half (1 1/2) times his base rate of pay. Such compensation for overtime work shall be paid no later than at the conclusion of the next succeeding pay period.

x x x

Union Position -added language-see below

Section B

Effective 7-1-04 and thereafter employees will receive Shift Differential Pay for working hour(s) or being assigned to a second (2nd) shift of third (3rd) shift hours. The second (2nd) shift differential pay is \$1.00 per hour added to the employee(s) base rate of pay (3:00 p.m. - 11:00 p.m.) The third (3rd) shift differential pay is \$2.00 per hour added to the employee(s) base rate of pay (11:00 p.m. - 7:00 a.m.)

Section C

Hours worked or assigned on a weekend shall be paid at an additional one dollar (\$1.00) per hour for all hours worked or assigned for Saturday work. Hours worked or assigned hours worked or assigned on a Sunday shall be paid at an additional \$2.00 per hour for all such hours worked or assigned.

Recommended Language: Present Contract

Analysis:

The Employer at first impression makes a strong case for the existence of excessive overtime payments under the present contract. There is no doubt that this is a relatively low paid unit, and that "current language permits employees who are on vacation or sick leave *during a week* to receive pay for overtime." The problem may be the need for more assertive employer control over the assignment and approval of overtime, and over the use of vacation time to round out a 'full' day. It is not apparent from the exhibits that an employee was on vacation or sick leave on the same day that he/she worked overtime, except for cases of union release time, in which case it is possible that a union official found it necessary to impinge on a vacation day to conduct union business. It is also apparent that the unit using the most overtime was Transportation, which has four stewards, undoubtedly one source but not the only source of the use of overtime in that department. This situation has been addressed at least partially in Article 25. It is probable that overtime will continue to be a significant matter in that department, but that situation does not justify a significant change in overtime policy for the whole unit. The overall financial condition of the agency does not commend itself to the Union request for special pay for second and third shift or weekend work assignments.

Article 41, Sick Leave

Employer Position - Present Contract

Union Position - Changes in Section A and Section F, as follows.

Section A

Sick leave shall be granted pursuant to the Ohio Revised Code, Section 124. Employees shall be permitted to accumulate sick leave at the rate of [~~four 4.0~~] four and six tenths (4.6) hours for each eighty (80) hours of service.

Section F

An employee shall be granted paid funeral leave for [one (1) day] three (3) days per occurrence for any member of the employee's immediate family. Immediate family for the purposes of Sections E and F shall be defined as grandparents, brother, sister, brother-in-law, sister-in-law, daughter-in-law, son-in-law, father, father-in-law, spouse, child, grandchild, a legal guardian, or other person who represents a parent. Funeral leave shall not be deducted from an employee's sick leave. Additional days needed to attend or assist in a funeral [may be deducted from an employee's sick leave up to four (4) work days for a total of five (5) work days.] shall be at the employee's request.

Recommended Language- Employer Position

Analysis: The Employer has a generous sick leave package, has implemented a recently negotiated sick leave donation program, and has experienced rapidly increasing costs for substitute workers. Further, Employer notes that several years ago the parties agreed to reduce the accumulation of sick leave per 80 hours of service from 4.6 to 4.0 in exchange for two personal leave days, and Employer asserts that the Union seeks to return to 4.6 days of accumulation with nothing in return. It is not reasonable to add to Employer costs with this change in benefits especially in view of rapidly increasing costs for temporary replacements for substitute workers. Furthermore, this recommendation, as with all the others, should be considered in light of the total set of Fact-Finding recommendations.

Article 46, Return to Work After Authorized Leave of Absence

Employer's Position - Present Contract

Union Position - add to Article 46

In the event an employee is off on a B.W.C. injury or in the transitional duty program the employer will fill that position with a temporary position, according to Article #8, until the employee is deemed able to return to work. If the employee is deemed to never be able to return to their position it shall be posted according to Article #8. The temporary employee shall be afforded all benefits under this contract.

Recommended Language: Employer's Position, Present Contract..

Analysis

The Employer notes that it implemented a Transitional Duty program several years ago to address its high workers compensation premiums and seeks to return employees to work as soon as they are able. A joint labor management committee meets regularly to review workers compensation cases. This committee has agreed to extend the 90 day requirements on a case by case basis. In view of increasing workers compensation costs, the Employer seeks to avoid any language which may discourage timely return to work. Employer approach is rational and would appear to be in the best interest of the injured worker.

Article 54, Transportation Employees

Section A

Employer & Management Position - Present Contract, adapted as follows, with the addition of Sections O and P.

This article shall apply to the following classifications:

Bus Monitor
Mail Carrier
Routing Systems Technician
Safety Technician
Training Technician
Vehicle Operator
Clerk Transportation
Mechanic I
Mechanic II

Section B

All community trips shall be assigned based on rotating seniority lists. The Transportation Department will establish two lists for community trips in accordance with Section B.2. Each list will be based on total seniority with the Employer. Subject to Section B.4, if an employee accepts an extra assignment under Article 29, the employee may not bid on a community trip that would conflict with the employee's Article 39 assignment.

1. An employee's name will be removed from the community trip/short notice rotational list upon written request. An employee will be reinstated upon a subsequent written request.

2. All community trips will be posted on the dispatch bulletin board every Friday morning. All Vehicle Operators/Bus Monitors are eligible to sign up for community trips with their classification. The most senior employee (based on the rotating seniority list) responding by 4:30 p.m. the second work day will be given first selection of current postings. The weekly community trip list is derived from those individuals who their names prior to 4:30 p.m. on the second work day. Exceptions to the schedule will be mutually agreed upon by labor and management. The Employer will award the community trips based on rotational seniority on the established day and time weekly.

All employees wishing to bid on community trips must submit their written bid, by trip number, as posted, at least one hour prior to the bidding process. Any trips posted after the initial posting will be announced via the communication system prior to bid day so employees have ample time to submit a new bid if interested. Bid must have date and time stamp in order to be valid. The employee agrees that they will complete the assignment awarded or this will be treated as a pass in the rotation. Bids will be handled mutually by management and a union representative who will be paid for actual time spent.

3. Community trip pay will be at the employee's regular rate of pay.

4. Regular Vehicle Operators/Bus Monitors will be used for all community trips unless none are available, provided the community trip does not conflict with the Vehicle operator/Bus Monitor's regular [A.M.] route, except community trips [exceeding] offive (5) hours or more.

5. Acceptance or non-acceptance of a community trip shall be considered the Vehicle Operator/Bus Monitor turn in rotation including both short notice and community trip lists.

6. If a community trip is canceled and the employee is notified prior to reporting for the trip, the employee shall be placed on the top of the next rotation list, from which the canceled bid was given. If the employee is not notified and reports for a trip assignment that is canceled, the Vehicle Operator/Bus Monitor shall be paid for one (1) hour of pay or actual time spent whichever is greater and their name shall be placed on the top of the next rotation list, from which the canceled bid was given. Cancellation bids will be given at the next scheduled bid day following the cancellation. Trips canceled on bid day will be awarded at the following week's bid day.

7. If a Vehicle Operator/Bus Monitor is asked to take a community trip on short notice (a trip which will occur prior to the next community bid day) the short notice rotational list will be used. These trips will be called out via the vehicle communication system when appropriate.

8. When an urgent request/vacancy occurs within [one (1) hour] two (2) hours of the trip departure, community trip assignments may be made out of rotation to the most senior Vehicle Operator/Bus Monitor available and present. Short notice rotation trips shall be called out via the communication system between 7:30 - 8:30 a.m. and 3:00 - 4:00 p.m., when possible. All garage trips shall use the rotation list.

9. Community trips will have one (1) staff person from the facility requesting the community trip other than the Vehicle Operator and/or Bus Monitor assigned to each bus.

10. If the Employer fails to follow proper procedure for assignment of community trips, the remedy afforded the employee who is missed will be reviewed on a case by cases basis. Remedies include compensation, placement at the top of the rotational list or other appropriate remedy.

11. One Bus Monitor will be assigned for[one (1) through four] up to five (5) wheelchairs on a community trip, and two (2) Bus Monitors will be assigned for[five (5) through eight (8)] six (6) or more wheelchairs per community trip.

Section C

Extra [Driving] Requirement

1. Extra assignments will be assigned as needed from a rotational seniority list or regular Transportation Department staff provided that appointment to such assignment does not conflict with the individual's duty assignment subject to Section B.4.

2. Additional assignments will be by mutual agreement at Labor Management meeting.

3. The Employer will not use management or supervisory personnel to complete bus routes in lieu of substitute employees unless no substitutes are available. All double runs will be offered to the most senior driver willing to accept double runs on a rotating basis.

Section D

A community trip shall be defined as any trip requiring use of a bus. It shall not be a violation of agreement for employees other than Vehicle Operators to volunteer to drive a facility-based van provided that this individual has complied with the facility-based van procedures. The facility-based vans are not to exceed designed capacity or be used in violation of state regulations or law.

Section E

The Employer will initiate corrective action, in accordance with Ohio Revised Code, when an enrollee jeopardizes the safe operation of a bus. It shall be the responsibility of the employee to report the incident(s) to his immediate supervisor. The Employer will in service annually all Vehicle Operators and Bus Monitors regarding Ohio revised code or Ohio D.O.T. Rules and Regulations regarding what will occur when an enrollee jeopardizes the safe operation of a school bus. The Employer will keep a written record as to when in service was provided and who attended. This record will be provided to the Union then (10) days after the in service.

Section F

Vehicle Operator/Bus Monitors shall receive a two (2) day workday advance notice of meetings except in emergencies. All employees are required to attend regularly scheduled Transportation Department staff meetings and will be paid for actual time spent.

Section G

Any transportation assignment not defined in this article will be resolved in Labor Management meetings.

Section H

Each Vehicle Operator/Bus Monitor will be provided appropriate information for each individual transported.

Section J

When a Transportation Department employee is required to work in a higher classification within the Transportation Department, the employee shall be paid the rate of the higher classification.

Section K

In the event that no Vehicle Operator accepts an extra [driving] assignment, the Employer will offer the assignment to other qualified CDL bargaining unit members in the Transportation Department via a rotational seniority list.

The Employer reserves the right to assign the least senior Vehicle Operator/Bus Monitor if an insufficient number of Vehicle Operators/Monitors accept [driving] assignments after following procedures listed in Sections B or D.

Section L Vehicle Operator Experience

The Employer and Union agree that upon completion of one year successful driving experience by a Vehicle Operator, that the employee would meet the minimum qualifications for experience in the positions of Habilitation Technician or Teacher Assistant.

Section M Bus Monitor/Travel Experience

The Employer and the Union agree that upon completion of one year successful work experience with individuals who have mental retardation/developmental disabilities, that the above employee would meet the minimum qualifications for experience in the positions of Habilitation Technician or Teacher Assistant.

Section N [note: previously C3]

The Employer will not use management or supervisory personnel to complete bus routes in lieu of substitute employees unless no substitutes are present and available. [All double runs will be offered to the

most senior driver willing to accept double runs on a rotating basis.]

The Employer reserves the right to assign the least senior qualified bargaining unit member if an insufficient number of Vehicle Operators/Bus Monitors are available to work on a given day.

Section O

All Transportation employees involved with Major Unusual Incident (MUI) investigations, pre-disciplinary conferences, disciplinary hearings, or investigation of matters relating to same, that are not scheduled during normal route hours, shall be paid a minimum of one-half (.5) hour, or actual time involved, whichever is greater.

Section P

A joint committee shall be established to implement a time clock in the Transportation Department to address compensation issues when Management requires employees to be present at MUI investigations and/or pre-disciplinary conferences.

Recommended Language: Employer position, see above.

Analysis: The parties agreed to the addition of Clerk Transportation, Mechanic I, and Mechanic II in Section I, and to modifications of language which seemed appropriate. Sections O and P are significant inasmuch as the Fact-Finder is convinced that more attention should be paid to the degree and extent of the demands on the employee's otherwise personal time.

Article 61, Hospital, Medical, Prescription Drugs, Dental Benefits

Union Position - Present Contract

Employer Position - See immediately following.

Section A

Effective January 1, ~~[1989]~~ 2005, the Employer shall provide [at no cost] to all employees covered by this Agreement the [fully paid traditional] single or family county plan of health benefits including prescription drug and dental or a plan substantially equivalent. The Employer will continue to provide coverage under the county plan for hospital, medical, prescription drugs, and dental benefits including any changes offered by the county plan subject to the rest of this article.

If an employee elects to enroll in a health plan that exceeds the cost of the [traditional] least expensive plan offered by the county, the employee will pay through payroll deduction the difference of the higher cost over the [traditional] least expensive plan. Employees will pay any co-pay under any HMO plan.

Effective March 1, 2005, the employees will pay, through payroll deduction, fifty per cent (50%) of any increases in premiums for hospital, prescription drugs or dental benefits.

Section B

In the event that the Board employs both spouses, only one spouse may carry the family health care coverage [at no cost] If the spouse carrying the coverage leaves the agency, dies, or a divorce occurs, the remaining employee will automatically be covered upon notification to the Human Resources Department.

Section C

For employees who are scheduled to work 25 hours straight time or less per week and hired after January 1, 1989, the Employer will provide [at no cost] single coverage under the [traditional] county plan. An employee may elect to purchase the family plan at an additional cost not to exceed fifty percent (50%) of the family plan cost.

Section D

If the Employer changes carriers, the Union will be given thirty (30) days notice prior to the effective date of the change in carriers.

Recommended Language: Employer Position, as set forth above.

Analysis: Drastically increasing health care costs are a major problem nationally, not only for employers but for employees. The 'pot' is only so large, i.e., it is finite, which means that money for other costs, especially wages, must be balanced with other needs, especially health care. Therefore this recommendation should be considered in tandem with the overall set of recommendations.

It is well known that where the individual has an investment in his/her personal health care, health care costs tend to become more reasonable over time. The State Employment Relations Board (SERB) reports that the majority of Ohio public employers (70%) require employees to share in the cost of health insurance premiums. Of county employees responding to the SERB survey, 76% have premium sharing for employees who choose coverage under a family plan. The average monthly contribution for county employees is \$91.73 for family coverage and \$34.01 for single coverage. The Employer notes that the parties have agreed on a Section 125 Plan, sometimes known as flex benefits, which if properly used will lessen the impact on employees for premium cost sharing.

A significant benefit for the Employer is that in joining with other county employees in their health care plan, MRDD should be able to curtail rapidly increasing costs, or at least limit the extent of the increases. The

Employer's cost for health insurance premiums since 2001 for this bargaining unit exceeded \$850,000, and the total cost for this bargaining unit exceeds \$3,000,000. There was a 15 per cent (15%) increase in premium costs from 2002 to 2003 for both the Family Health Plan and Dental Plan, with cumulative increases from 1990 through 2003 of four hundred ninety per cent (490%) for prescriptions under a single health plan and four hundred six per cent (406%) for prescriptions under a family plan.

Article 70, Wages

Union Position - See below.

A. The salary schedule will be effective upon signing of the Agreement.

Effective first pay of:

July 1, 2004	4% on base rate of all employees
July 1, 2005	4% on base rate of all employees
July 1, 2006	4% on base rate of all employees

F. The parties will restructure the annual salary rates and hourly wage rates into a single wage schedule, based upon appropriate national, state, and local wage practices. A joint Wage Restructuring Committee with four (4) management representatives and four (4) union representatives will be established no later than July 30, 2004. The parties will utilize national, state and local studies and rates of pay, comparing job titles and duties to assist this committee in arriving at recommendations.

The recommendations and report will be submitted to the Board and to the Union membership for consideration for the next contract negotiations, but no later than August 2, 2006.

Any changes recommended affecting wages, hours and/or other terms and conditions of employment will be subject to negotiations when the parties renegotiate the current contract. The committee may use outside consultants to assist them in the study.

Employer Position - See below.

A. The salary schedule will be effective upon signing of the Agreement.

Effective first pay of:

July 1, 2004	2% on base rate
July 1, 2005	2% on base rate
July 1, 2006	2% on base rate

Recommended Language: Union Proposal

Recommended Wages: Three (3) Per Cent on the base rate for all employees for 2004, 2005, 2006

Analysis: The totality of these recommendations allow the Employer the opportunity to reduce or at least reduce the rate of increase of hospital, medical, prescription drugs, and dental premium costs; gain some relief from escalating overtime/sick leave and workers compensation costs; and benefit from a less cumbersome and costly system of union steward responsibilities. The employee gains a pay increase which is substantial but not generous in view of the totality of this set of recommendations. Even so, it is realistic in view of the long term future for the Employer in dealing with its financial and organizational health, and, perhaps its continued long-term existence as a viable entity. With wise use of the Section 125 Plan, or flex benefits, and the limited increases in the cost of living, this is an equitable package.

Section F is a Union request to formalize the continuation of a study process intended to move all unit employees to a single wage schedule.

The objective is to do so in time for a recommendation preceding the next round of bargaining. It appears that both the study and the possible restructuring would be positive developments and lead to continuing improvement in the labor-management relationship.

Article 73, TERM OF THIS AGREEMENT

The term of this agreement is from July 1, 2004 through June 30, 2007.

SPECIAL NOTE: All side letters and memorandums of understanding are to be carried over to the new Agreement.

Respectfully submitted,



Donald R. Burkholder, Ph.D.,
Fact-Finder

September 8, 2004

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above Fact Finder Report and Recommendation was served on September 8, 2004 upon the parties listed in the manner shown.

Original, Regular Mail

State Employment Relations Board
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Donald R. Barkholz
Sept 8, 2004 *DM*