

BACKGROUND:

The Employer, the Avon Lake Public Library, founded in 1931, in keeping with its broad educational mandate, provides access to a range of publications and informational services for the some 18,145 residents of the City.

Of the Library's fifty-four employees, ten full-time and twenty-nine regular part-time employees in nineteen position classifications form a Bargaining Unit for which the Service Employees International Union District 1199, AFL-CIO, was certified as the exclusive representative by the State Employment Relations Board on July 8, 2004.¹ The classifications include Adult Services Librarian, Young Adult Librarian; Children's Librarian; Adult Services Associate; Youth Services Associate; Chief Cataloger; Facilities Maintenance Manager; Computer Technician; Cataloging Assistant; Circulation Specialist; Youth Collection Clerk; Acquisitions Clerk; DiscoveryWorks Specialist; Materials Processor; Circulation Assistant; DiscoveryWorks Assistant; Graphics Specialist; Young Adult Assistant and Non-Student Page.

¹ The full-time employees work 37.5 hours per week. Ten employees are scheduled to work twenty or more hours per week but less than thirty. One employee works 30.75 hours per week and another works 30 hours per week.

The Departments to which employees in these classifications are assigned include: Children's Services, Young Adult Services, Adult Services, DiscoveryWorks, Technical Services and Circulation.

Between September 28, 2004 and March 14, 2005 the parties convened eighteen bargaining sessions which resulted in tentative agreements being reached on all or parts of some twenty-three (23) Contract Articles.

Thereafter, prior to the date of the Fact-Finding hearing, the parties, through informal discussions were able to conclude tentative agreements on all or part of two additional Contract Articles.

A list of all tentative agreements is attached to this Report as Table "1".

When the parties were unable to make much progress in resolving the issues remaining in dispute, Union requested Fact-Finding, and the undersigned was appointed Fact-Finder by the State Employment Relations Board on April 1, 2005.

A mediation session and an evidentiary hearing were held on May 3, 2005 at the Library offices.

At the request of the Library the Fact-Finder issued subpoenas to compel three employees to appear at the Fact-Finding hearing.

The Fact-Finder was successful in persuading the parties to accept some of his suggestions on putting to bed the remaining issues. A list of those mediated tentative agreements is appended to this Report as Table "2".

The Fact-Finder finds appropriate and recommends adoption of all of these tentative agreements.

Timely in advance of the evidentiary hearing, the parties provided the Fact-Finder with the statements required by Ohio Administrative Code 4117-9-05(F) and the Ohio Revised Code Section 4117.14(C)(3)(a).

Remaining at issue were proposals submitted by the parties on the subjects set forth below:

1. Fair Share Fee;
2. Management Rights;
3. Mandatory Sunday Work;
4. Premium Pay For Sunday Work;
5. Holiday Pay;
6. Salary Schedules; and
7. Wages.

Additional proposals were made by each party to add other Articles, Sections of Articles, Supplements and Appendices, but were subsequently abandoned. Consequently, all proposals for Contract provisions which have not been specifically referred to above, and which are not discussed below, are deemed to have been withdrawn.

In making his recommendations upon all of the unresolved issues the Fact-Finder has been guided by the

factors set forth in O.R.C. Section 4117.14(C)(4)(e) and Ohio Administrative Code 4117-9-05(K) namely:

"(a). past collectively bargained agreements, if any, between the parties;

"(b). comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

"(c). the interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

"(d). the lawful authority of the public employer;

"(e). the stipulation of the parties;

"(f). such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment."

CONTRACT PROVISIONS AT ISSUE:

I. Article II, Section B Union Security - "Fair

Share" Provision:

The Union's Proposal:

The Union seeks to include within the initial Contract a Union security provision which contains the requirement

that employees become and remain Union members or pay to the Union a "Fair Share Fee" as a condition of employment.

The Library's Proposal:

The Library opposes inclusion of any requirement that employees pay Union dues or "Fair Share Fees" as a condition of employment. It argues that such provisions are neither required nor customary in public sector collective bargaining contracts, and that imposition of such a mandate would create friction between Union members and those who decline to join the Union, and, hinder recruitment of new employees.

The Fact-Finder's Analysis and Findings:

According to the Union's presentation at the evidentiary hearing a once amicable employment relationship existing at the Avon Lake Public Library was impaired in the spring of 2003 when the Trustees and Senior Management changed certain working conditions and diminished certain benefits which staff members had long enjoyed.

The Trustees reduced full-time staff hours from 38 to 37.5 hours per week, eliminated three paid floating holidays or personal days, decreased the number of annually earned sick leave days from fifteen to twelve, abolished premium pay for work on Sunday, made Sunday work mandatory rather than voluntary, and limited holiday pay to those

employees whose regularly scheduled work day fell on the holiday.

Many of the employees, including those with long service, were embittered by what they perceived to be the attitude of the Trustees: "If you don't like it, you can leave."

In response to these events, members of the Library staff began an organizational drive and petitioned the State Employment Relations Board for a representation election which resulted in SEIU District 1199 being certified as the exclusive representative of the Bargaining Unit for the employees in the nineteen classifications. Twenty-eight staff joined the Union and authorized the Library to deduct their Union dues from their paychecks.

It was apparent from the testimony and comments made at the Fact-Finding hearing, that there still remains a significant amount of distrust and hostility - a "we" - "them" attitude - which impairs the development of a mature, cooperative and problem solving relationship.

It is in this context that, despite the substantial progress made in developing the terms of the initial Labor Agreement, the Union sees the Library's opposition to a "fair share fee" Union security arrangement is seen as a "union-busting" effort, designed to influence members of

the Bargaining Unit to drop out of the Union when they see that some colleagues are not paying for the services of the Union out of their salaries. Given this environment, the Fact-Finder believes it would be prudent for the Library to acquiesce in the Union's proposal for the sake of moving to facilitate a harmonious employment environment.

There are ten members of the Bargaining Unit who do not wish to become Union members. Their wishes must be respected. Many, if not all of them, also oppose being compelled to pay an "administrative fee" to the Union. Only one such member testified at the hearing, but from his comments it appears essential to clear-up some misconceptions which apparently cloud their thinking on the issue. Payment of the service fee sought by the Union does not commit any employee to support the Union's political, social or other agendas, nor to endorse any of its programs. It is strictly a payment to defray the cost of negotiating and administering the labor agreement.

As a result of the certification of the Union as the exclusive representative of all Bargaining Unit employees, the "collective bargain" replaces "individual bargaining". As such representative the Union has the duty to bargain on behalf of all employees in the Bargaining Unit, without regard to whether they are Union members or not, to

establish the terms and conditions of their employment. It may not favor Union members nor discriminate against non-members. In this regard, the Fact-Finder emphasizes that it is the duty of the Union to keep all members of the Bargaining Unit informed about issues and developments, explain the Union's positions and respond to their inquiries.

Not only is the Union responsible for conducting contract negotiations, but also, for administering the grievance process and making the decision as to whether any unresolved issue will be submitted to arbitration. No individual employee, however much directly and adversely affected, has the right to compel arbitration of a dispute over the interpretation or application of the terms of the Contract, not even over whether any disciplinary sanction was imposed for "just cause".

These representative services of the Union are not cost free. And, it is not unfair to require non-Union members to contribute to the cost of providing those services rather than, as the expression goes, obtain a "free ride".

Of course, non-Union members may be obliged to pay only a "fair share" fee. This means that the cost of Union activities unconnected with its representational duties

including, among other things, political action, may not be assessed against non-Union members.

All non-Union members of the Bargaining Unit have a right to have the Union formulate a procedure for determining the cost of representation, and set an appropriate discount from the prescribed Union dues.

To the extent that a fair share fee is thought to go beyond the proportionate share of legitimate expenses connected with the representational duties of the Union, the fee may be challenged by any objecting non-Union members before the State Employment Relations Board.

On this subject O.R.C. Section 4117.09(C) provides:

"The agreement may contain a provision that requires as a condition of employment, on or after a mutually agreed upon probationary period or sixty days following the beginning of employment, whichever is less, or the effective date of a collective bargaining agreement, whichever is later, that the employees in the unit who are not members of the employee organization pay to the employee organization a fair share fee. The arrangement does not require any employee to become a member of the employee organization, nor shall fair share fees exceed dues paid by members of the employee organization who are in the same bargaining unit. Any public employee organization representing public employees pursuant to this chapter shall prescribe an internal procedure to determine a rebate, if any, for nonmembers which conforms to federal law, provided a nonmember makes a timely demand on the employee organization. Absent arbitrary and capricious action, such determination is conclusive on the parties except that a challenge to the determination may be

filed with the state employment relations board within thirty days of the determination date specifying the arbitrary or capricious nature of the determination and the board shall review the rebate determination and decide whether it was arbitrary or capricious. The deduction of a fair share fee by the public employer from the payroll check of the employee and its payment to the employee organization is automatic and does not require the written authorization of the employee."

The Library asserts that requiring non-Union members to pay a fair share fee through payroll deduction as a condition of retaining their employment would be divisive, impair morale and create inter-personnel hostilities. This assertion is entirely speculative. The testimony of the single non-Union, Bargaining Unit member presented at the hearing did not go so far as to claim that a fair share fee payment requirement would create such hostilities. Indeed, past experience suggests that the opposite is more likely to be the case - friction will develop between those who pay Union dues and those who pay nothing.

The Union points out that at least twenty-five public libraries with Collective Bargaining Contracts have adopted "fair share fee" provisions including the Elyria Public Library and the Lorain Public Library System.

Furthermore, according to records maintained by the State Employment Relations Board, at least fifty-eight non-

Library governmental units in Lorain County, including the City of Avon Lake, (exclusive of its uniformed personnel) have entered into Collective Bargaining Agreements with Unions which contain similar "fair share fee" provisions. In none of those cases is there evidence that the Library's fears of dissension were realized.

By the same token, the Library's concern that the imposition of a fair share fee requirement would hinder its ability to attract competent new employees, has not proven to be the case where other public libraries have adopted such a requirement, and there are no circumstances which would indicate a contrary result will come to pass in the present case.

The Fact-Finder's Recommendations:

The Fact-Finder finds appropriate and recommends the adoption of the Union's proposal as modified and set forth in Table "3" hereto.

II - Article III - Management's Rights

The Library's Proposal:

The Library seeks to include in the Contract a traditional "Management Rights" provision which details the various aspects of its operational authority which is reserved to it by statute.

The Union's Proposal:

The Union does not oppose the Library's proposal on its merits. Rather, it seeks to exact a "quid pro quo" from the Library whereby its agreement to include the Management Rights clause becomes the consideration for the Library's acceptance of the Union's "fair share fee" proposal.

The Fact-Finder's Analysis and Findings:

It is customary, indeed almost universal, that Collective Bargaining Agreements in both the public and the private sectors contain a provision which outlines the rights of management to direct the work force and otherwise control the operations of the business or agency, subject to, and limited by, of course, other specific provisions in the Collective Bargaining Agreement. The "Management Rights" sought here by the Library are those which grant no more than is customary, and sanctioned by the Ohio Legislature in the governing Statute.

However, absent incorporation of these rights into the Collective Bargaining Agreement, issues arising in the work place which implicate Management Rights cannot be addressed through the grievance and arbitration procedure, but rather must be referred to a judicial or other forum. Consequently, the incorporation of a Management Rights clause into the Collective Bargaining Agreement expands the

scope of the alternative dispute resolution procedure designated by the parties, and is in furtherance of the policy which makes arbitration of labor disputes the procedure of choice.

Since the Fact-Finder has already recommended adoption of the Union's "fair share fee" proposal, the Fact-Finder sees no impediment to similarly recommending the Library's Management Rights proposal.

The Fact-Finder's Findings and Recommendation:

The Fact-Finder finds appropriate and recommends the adoption of the Library's proposal as set forth in Table "4" hereto.

III - Article XIII, Section G - Premium Pay For Sunday Work.

The Union's Proposal:

The Union seeks to provide additional compensation for all part-time employees who work on Sunday at the following rates:

Grade I - \$3.50 per hour;
Grade II - \$4.50 per hour;
Grade III - \$5.50 per hour;
Grade IV - \$6.50 per hour, and
Grade V - \$7.50 per hour

With respect to full-time employees who perform work on Sunday the Union demands that they receive 7.5 hours of

paid compensatory time-off, to be taken, unless otherwise agreed, in full-day increments and that the compensatory time be scheduled during the work week following the worked Sunday, unless otherwise agreed.

The Library's Proposal:

The Library rejects any additional payment or time-off to employees who work on Sunday as imposing an unwarranted additional cost.

It takes the position that the Library is regularly open on Sunday, and is heavily utilized by patrons. Since Sunday is part of the Library's normal work week, no additional compensation should be paid to employees who are scheduled to work on that day.

The Fact-Finder's Analysis and Findings:

In keeping with public demand, as measured by circulation volumes, the library is open for four hours on Sundays from the week after Labor Day to the week before Memorial Day.

The Library is usually staffed with twelve employees, including two Pages (salary grade I); one DiscoveryWorks Assistant or DiscoveryWorks Specialist (salary grades II or III); two Youth Services Associates (salary grade IV); two Adult Services Associates or Librarian (salary grades IV or V); one Youth Adult Assistant or Young Services Associate

(salary grade III or IV) and four Circulation Assistants or Circulation Specialists (salary grades II or III).

The total additional wage cost per Sunday of the Union's proposal, exclusive of "rollups", and the wage increases that will be included in the Contract is estimated at \$300.00. For the remainder of 2005 the additional cost is projected to amount to \$4,500.00. In 2006 the cost could increase to \$10,659.00 and to \$11,737.00 in 2007.

The Union observes that through the spring of 2003 Avon Lake Library employees were receiving time and one-half for working on Sundays, and this remains the policy at both the Lorain and Greene Public Libraries. A survey of twenty-four unionized Public Libraries shows that a majority authorize the payment of time and one-half, or in some instances double time, for work on Sundays, and several offer an alternative of compensatory time-off.

The Union maintains that the cost of its premium pay proposal can be offset by a series of efficiencies. First, one of the two member teams manning the Adult Reference desk on Sundays could be eliminated, and the services of the Young Adult Associate could be utilized to aid in covering the Adult desk during break times and busy periods.

Second, the services of the Guard could be dispensed with on Sundays, since "a member of the management should always be on duty to deal with situations that arise." The Union notes that the Westlake Porter Library, has no security staff, but instead has a member of the City Police Department walk through the building hourly. The same practice could be adopted at Avon Lake.

Next, since the Library circulation is lowest during the months of September and May, the Library could be closed on Sundays during these months. This is the practice at the Lorain Public Library which is open from 1:00 p.m. to 4:00 p.m. on Sundays only from October through April.

Even without these cost savings initiatives the Union maintains that if full-time employees assigned Sunday work were given 7.5 hours of compensatory time-off and the time-off scheduled on a day during the week when a substitute would not be needed to replace them, the Library would, in effect, incur no additional cost. The Union states that the Westlake and Lakewood Libraries follow this procedure.

Finally, the Union concludes that the offer of premium pay on Sundays would encourage employees to volunteer to work on Sundays, and mandatory Sunday scheduling would no longer be necessary.

The Library responds that its Board of Trustees decided on May 8, 2003 to pay straight time for Sunday work, effective the following September, as a result of the need to save money because of the then pending cuts in State funding.

Staff were advised of the change in compensation, and notified that Sunday work would be mandatory and that employees would be scheduled to work one out of every four Sundays.

The Sunday hours worked by part-time staff were additional to their regular weekly hours. Full-time staff members working on Sunday were assigned four hours of compensatory time-off during the week.

According to the Library, it was willing to pay a premium in the past for Sunday work when its funding "was not so tenuous". It calls the Fact-Finder's attention to the fact that several non-Union Libraries have eliminated Sunday premium pay, and that both the Unionized Elyria and the Ritter Public Libraries pay for Sunday work at the straight time wage rate.

The Library vigorously opposes the Union's proposal to allow compensatory time-off for full-time employees who work on Sunday because it would create significant scheduling problems, and impose a heavy financial burden

since, in effect, the Library would be compelled to pay twice, once for the employee who worked the Sunday and again, possibly at overtime rates, for the substitute filling-in for the employee enjoying the compensatory time-off.

On the other hand, the Library proposes to maintain the number of hours that part-time employees are regularly scheduled during the rest of the week, so that the Sunday hours are additional to their normal schedule.

Payment of premium pay for Sunday work rests upon the foundation that Sunday is normally a day of rest for most of the population, and, consequently, leisure, social, family and religious activities are planned and held on this day. The relatively few members of the work force who are required to work on Sunday are out of phase with family and friends, and are deprived of the opportunity to engage in and enjoy these activities. The loss of this opportunity is thought to justify the payment of extra compensation for Sunday work.

So it was that, for at least ten years prior to the fall of 2003, the Library paid time and one-half to employees who had been scheduled to work on Sundays.

And, as, previously mentioned, a survey of twenty-four Unionized Libraries in Ohio reveals that a majority offer additional compensation or time-off for Sunday work.

Although payment of Sunday hours at a premium rate of time and one-half for the some thirty-four to thirty-six Sundays each year on which the Library will remain open imposes an additional cost, the aggregate amount is well within the present financial capabilities of the Library. The present estimated additional cost in 2006, for example represents less than .0048 percent of the Library's 2005 budget and only some .0078 percent of its salaries and benefits outlays. This cost has been taken into account by the Fact-Finder in considering his other economic Recommendations.

Whether any or all of the Union's cost control suggestions have merit is for the Library to decide since they pertain to matters which are within the purview of its exclusive Management Rights. So also, respect must be accorded to the Library's judgment that the Union's proposal that full-time employees be given 7.5 compensatory hours-off would, at the very least, create burdensome scheduling problems, and more likely at least double the cost of the Sunday service because of the need to assign substitutes to cover for the absent employee.

Instead, the Fact-Finder recommends that both part-time and full-time employees receive time and one-half their applicable straight time rates of pay for hours worked on Sunday.

The Fact-Finder's Recommendations:

The Fact-Finder finds appropriate and recommends that all work on Sunday be compensated at time and one-half the applicable straight time hourly rate of pay as set forth in Article XIII, Section G attached hereto as Table "5".

IV - Article XIII, Section G - Sunday Scheduling

The Library's Proposal:

The Library wishes to maintain the Sunday scheduling instituted in 2003 whereby employees are assigned by the Library on a rotating basis requiring employees in designated classifications to work on Sundays once every four weeks. The number of hours a full-time employee is scheduled to work during the other days of a Sunday workweek is correspondingly reduced so that the employee works no more hours than during a non-Sunday workweek.

The number of hours that a part-time employee regularly works during the remainder of the workweek is not reduced by hours worked on Sunday.

To accommodate the needs of employees who have functions to attend on a particular Sunday, the Library

allows employees who have been scheduled to work on a Sunday to "trade" Sundays with another employee so that the employee initiating the trade reciprocates by replacing the trading partner on one of the Sundays on which the trading partner is scheduled to work.

The Union's Proposal:

The Union seeks to have all Sunday hours scheduled as additions to the regular work week and filled by volunteers including non-Bargaining Unit employees when necessary.

If there are insufficient volunteers, then the Union would allow the Library to schedule qualified employees on a rotating basis subject to the limitation that no employee would be required to work more than one Sunday in four.

The Fact-Finder's Analysis and Findings:

The Library insists that the introduction of the mandatory Sunday rotation policy in September 2003 has been successful because "no Library employee has quit because of this rotation policy, nor has any employee been disciplined for violating this policy." It asserts that the introduction of its rotation policy was necessary in order to provide a comprehensive training experience for employees and to assure that competent and experienced staff are always on duty on Sundays. Utilization of non-

Bargaining Unit employees as Sunday substitutes would not serve these objectives.

The Union, on the other hand, argues that many of its employees do not wish to work on Sundays because of family responsibilities and other regularly recurring commitments. For many years Sunday staffing needs were satisfied by the use of volunteers. The Union contends that that practice was practical then, and continues to be efficacious today.

The determination of the number and classifications of personnel that are needed to staff Sunday operations is a managerial decision falling within the scope of the Library's "Management Rights" to which deference must be paid unless that decision is arbitrary, unreasonable or otherwise constitutes an abuse of its discretion. Here, the testimony adduced by the Library indicates that the change in Policy in September of 2003 was made in good faith as the result of perceived need, and not taken cavalierly or as a punitive measure.

According to Manager of Support Services Judy Means, who has charge of Sunday scheduling, the volunteer dependent pre-September 2003 Sunday hour scheduling was unduly burdensome, taking a "considerable amount of time, over a span of several weeks to complete."

Furthermore, the free substitution of employees resulted in members of the Technical Services staff not working on Sundays. As part of the Support Services Department, Technical Services staff members may be needed to assist at the Circulation Desk during busy periods any day of the week. Working on Sundays, to man the Circulation Desk allows those employees to become more familiar with all of the processes of the Circulation Desk, such as registering a new patron, extending patron privileges and renewing material.

It is also valuable, Ms. Means continued, to have Technical Services staff "speak directly with patrons, hear the public's comments and concerns regarding our database, to use "I-Bistro" (... [the Library's] on-line public access catalog), and gain general knowledge of the Circulation Desk, which in turn, helps them become well-rounded, cross-trained employees."

Furthermore, Sunday is one of the busiest days of the week, and the Circulation Desk operates at a brisk rate.

Ms. Means opined:

"We would not be able to present our best service to the public if the majority of the Sunday staff was comprised of substitutes. The Circulation would not be staffed with ... substitutes during the week days or Saturdays, and it would not be appropriate to do so on Sundays."

Ms. Means averred that the Library's "very liberal ... trades policy" allows employees to trade with another employee for a Sunday-off when needed. If the Sunday scheduled employee cannot locate another employee willing to negotiate an exchange, then Ms. Means either finds a trade for the employee, works the Sunday herself or fills the hours with a substitute. Moreover, employees who are absent because of illness on an assigned Sunday, are not required to make-up the Sunday hours.

The Library is open a maximum of thirty-six Sundays during the course of any year. The current rotation system which requires the Sunday services of personnel once every four weeks results in an employee being required to work a maximum of only nine Sundays during the course of any year. Particularly, in light of the liberal trade policy the Fact-Finder does not consider the existing Sunday scheduling to constitute an undue burden upon any employee.

The Fact-Finder's Findings and Recommendation:

The Fact-Finder finds appropriate and recommends the adoption of the Library's proposal as set forth in Article XIII, Section G attached hereto as Table "5".

V - Article XIV, Sections C and D - Holidays:

The Library's Proposal:

The Library proposes to offer full-time employees who are regularly scheduled to work on a day that the Library is closed on account of a holiday, 7.5 hours of holiday pay for each holiday.

For part-time employees who would ordinarily have worked on the day the Library is closed on account of a holiday, the Library offers to provide holiday pay equivalent to the wages they would have received but for the holiday closure.

The Union's Proposal:

The Union proposes that full-time employees be given 7.5 hours of paid leave for each holiday. With respect to part-time employees the Union proposes that they be given paid holiday leave, pro-rated based on the formula: Total weekly permanent hours/37.5 x 7.5 hours = number of pro-rated holiday hours rounded up to the nearest whole hour increment.

The Fact-Finder's Analysis and Findings:

For the same reasons as it opposes the grant of compensatory paid time-off for full-time employees who work on a Sunday, the Library rejects the Union's proposal to provide them with an additional 7.5 hours of paid leave whenever the Library is closed on account of a holiday.

The Library considers holiday pay as compensation for employees who had been scheduled to work, but cannot because the Library is closed on account of the holiday. Thus, the Library proposes to pay only its employees who lost time as a result of a Library closing for holiday, and not to provide holiday pay for employees who had not been scheduled to work. The effect of the Library's proposal is to maintain the regular weekly compensation for employees who would otherwise miss work because of the holiday, but provide no additional benefit to employees who had not been scheduled to work on the holiday.

The Union, on the other hand, views holiday pay as a bonus which entitles a full-time employee, whether or not scheduled to work that day, to take another day-off with pay. For part-time employees the Union proposes that all participate in the "bonus" and that the additional compensation which would otherwise be paid to the employees who were scheduled to work on a holiday on which the Library was closed be reduced and pro-rated in the same fashion as the compensation to be received by employees whose regular work schedule did not include services on the day on which the holiday fell.

The Fact-Finder's Analysis and Findings:

The Fact-Finder has already rejected the Union's proposal for paid compensatory time-off for full-time employees who have been scheduled to work on a Sunday, and similarly finds its corresponding proposal for holiday time-off with pay to be imprudent. But, he also finds the Library's proposal for holiday pay to be paid only to full-time employees who had been scheduled to work on the day the holiday falls, to be inappropriately discriminatory because those favored employees will have worked fewer hours while their colleagues will have had to have worked their normal complement to receive the same pay.

It is most persuasive that a survey of twenty-four Unionized libraries reports that everyone of them provides holiday pay to all full-time employees, and none limit the benefit to those who were scheduled to work on the day the holiday fell.

The Fact-Finder will recommend this Policy.

As to the treatment of part-time employees, the Library points to the fact that some public libraries having collective bargaining agreements, including Greene County Public Library, and the Lorain Public Library System, do not pay their regular part-time employees for holidays when the libraries are closed if the employees are

not normally scheduled to work on the day of the week on which the holiday falls.

The survey of Unionized public libraries reveals that only seven limit holiday pay to part-time employees who are regularly scheduled to work on the day on which the library is closed because of a holiday. Fifteen offer pro-rated pay to part-time employees, and the balance deny holiday pay.

The Fact-Finder believes the policy followed by the majority is more appropriate than the proposals advanced by either the Library or the Union, although the Union's proposal represents a form of pro-ration.

The parties did not offer cost estimates of the competing proposals. Nonetheless, the Fact-Finder observes that offering all full-time employees holiday pay for the nine scheduled holidays and pro-rating holiday pay for part-time employees would not result in a significant increase in total wage costs for the Library, and the additional benefit has been considered by the Fact-Finder in his other recommendations for the total economic package.

Of course, as the Library points out, those part-time employees who have been scheduled to work 7.5 hours on days on which holidays fall would be disadvantaged under a pro-

ration system. But, the Union takes the position that this inequity is outweighed by the fact that a pro-ration policy benefits the great majority of part-time employees who otherwise would lose out by the "luck of the draw" scheduling.

In matters involving intra-bargaining unit fairness considerations, the Union's choice deserves deference.

The Fact-Finder's Recommendation:

The Fact-Finder finds appropriate and recommends the adoption of the Holiday Pay provision set forth in Table "6".

VI - Article XXIV - Wages

The Library's Proposal:

The Library's proposes across-the-board wage increases of 4% effective as of June 1, 2005, 3% effective as of June 1, 2006 and 3% effective as of June 1, 2007, and to move the salary scale ranges up by 2.5%, 2% and 2% in those three years. The Library also proposes to raise the minimum starting hourly wage for Non-student Pages to \$7.00 from \$6.42, and to provide them \$0.25 per hour wage increases after they complete 300 and 600 hours of service. The Library has also offered to increase the wage rates for Non-student Pages with two or more years of service by the amount of the general wage increases.

The Union's Proposal:

The Union seeks annual increases of 5%, retroactive to January 1, 2005.

The Fact-Finder's Analysis and Findings:

In 2001 the Library engaged Belz & Associates, Inc. to undertake to develop and install an updated compensation system based upon job analyses with the objectives of establishing an internally equitable relationship among the various position classifications and externally competitive pay levels using as comparable entities the following nine public agencies: Avon Lake Public Schools; City of Avon Lake, Euclid Public Library; Kirkland Public Library; Lakewood Public Library; Lorain Public Library; Rocky River Public Library; Westlake Porter Public Library and Willoughby-Eastlake Public Library.

In October 2001 the Library adjusted job descriptions, position classifications and pay rates in accordance with the recommendations of the consultant.

As of May 31, 2005, four years later, the pay scale rates placed in effect in October 2001 have been increased by an aggregate total of appropriately 4%, and periodic wage increases have been granted to employees the amount of which was partially based on "merit".

The salary schedule established for the 2001-2002 Library year is set forth in Table 7. The current salary schedule is shown in Table 8.

According to an April 26, 2005 State Employment Relations Board Wage Increase Report covering eleven Unionized Public Libraries - less than one-half - of the total number for which 2005 Contract data was available, the average wage increase in 2005 was 2.75%. The increases ranged from 1% in one Library to 4.5% in another.

Only eight libraries reported having negotiated wage increases commencing in 2006. The average increase amounted to 2.18%, and the increases ranged from 1% in one Library to 3% in five Library systems.

Whether the increases proposed by the Library will equilibrate the compensation of its employees with those of comparable Unionized libraries for Contract years 2006-2007 and 2007-2008, is problematic.

It should be noted that the Library has allocated some 60.5% of its 2005 budget or \$1,363,700.00, for employees salaries and benefits. Although this amount is larger than in past years, the percentage of the Fund devoted to employee compensation is smaller. In 2003, for example, the Library spent 64.0% of its Operating Budget on salaries and benefits.

In rejecting the Union's demand for five percent across-the-board increases in each year, the Library cites the uncertainty of the financial support libraries will receive in the future.

In addition to the State's Library and Local Government Support Fund, the Library derives revenues from general property and tangible taxes, public gas and electric utility deregulation reimbursement, homestead and rollback. It receives a much smaller portion of its revenues from fines, fees, interest and refunds.

For 2005 the Library anticipates revenue from the LLGSF of \$790,000.00, income from various tax levies of \$1,300,000.00 and receipts from all other sources of \$65,000.00, making a total of \$2,155,000.00.

As this Report is being written the State Budget has just been adopted. The Library and Local Government Support Fund ("LLGSF") appropriation levels through fiscal 2007 will be maintained at the present 2004 level without change. The Library's wage proposal was based upon an assumed five percent reduction in such funding beginning in fiscal year 2006, which fortunately, will not come to pass.

The Fact-Finder takes into account the fact that the 2004 ending balance in the Library's General Fund as reported in the "Fund Cash Position" (un-audited) as of

December, 2004, was \$564,940.00, representing some twenty-five percent of its 2005 General Fund appropriation budget of \$2,255,600.00, The extent to which any of this balance was encumbered is unclear. No General Fund accounting records were presented. But, it is the burden of the Library to prove any claim of "inability to pay", and no such showing has been made.

Furthermore, the Fact-Finder observes that even though the four percent wage increase the Library budgeted for 2005 was to become effective as of January 1st pursuant to the tentative Agreement reached between the parties, any wage increase becomes effective as of June 1, 2005. In consequence, the actual increase for calendar year 2005 will amount to only 2.32%.

In view of this circumstance the Fact-Finder believes that a wage increase of 4.5% effective as of June 1, 2005 is appropriate and will so recommend.

The Fact-Finder also will recommend wage increases of an additional 4% effective as of June 1, 2006 and an additional 4% effective as of June 1, 2007.

He will recommend the Library's proposal to increase the salary scale range by 2.5% effective as of June 1, 2005, an additional 2% effective as of June 1, 2006 and an additional 2% effective as of June 1, 2007.

He also will recommend the Library's wage proposal for Non-Student Pages.

He rejects the Union's proposals of 5% annual wage increases as excessive in light of the total economic package recommended by the Fact-Finder and available comparative data.

The Fact-Finder's Recommendation:

The Fact-Finder finds appropriate and recommends the adoption of the wage increases and salary schedules set forth in Table "9" of his Report.

Report of Findings and Recommendations signed, dated and issued at Cleveland, Ohio this 11th day of July, 2005.



Alan Miles Ruben
Fact-Finder

AMR:ljj

TABLE "1" - TENTATIVE AGREEMENTS:

Article I - Parties and Purpose
Article II - Recognition
Article IV - Union Security and Union Rights*
Article V - Non-Discrimination
Article VI - Job Openings and Appointments
Article VII - Temporary Transfers
Article VIII - Probationary Period
Article IX - Disciplinary Procedure
Article X - Grievance Procedure
Article XI - Seniority*
Article XII - Layoffs and Recalls
Article III - Hours of Work*
Article XIV - Holidays*
Article XV - Paid Time-Off*
Article XVI - Leaves of Absence
Article XVII - Paid Leaves*
Article XVIII - Employee Development
Article XIX - Termination of Employment
Article XX - Staffing
Article XXI - Performance Reviews
Article XXII - Position Descriptions and Grades
Article XXIII - Health Insurance*
Article XXV - Drug-Free Workplace
Article XXVI - Miscellaneous
Article XXVII - Waiver of Negotiations
Article XXIX - No Strike/No Lockout
Memorandum of Understanding - Labor - Management
Relations

(*Portions still in dispute)

(Article numbers have changed during the course of the negotiations).

TABLE "2" - MEDIATED TENTATIVE AGREEMENTS

1. Memorandum of Understanding - Cash Out of Vacation Leave;
2. Memorandum of Understanding - Employees Working Less Than 22.5 Hours Per Week;
3. Memorandum of Understanding - Pay Adjustment For One Employee;
4. Article IX - Seniority, Sections A,B,C and D;
5. Article XXI - Wages, Sections A,C,D,E and F;
6. Article XIV - Paid Leaves;
7. Article XXII - Health Insurance;
8. Article XXXIII - Dispute Settlement Procedure, and
9. Article XXXIV - Duration

TABLE "3" - UNION SECURITY - FAIR SHARE

A. It shall be a condition of employment that all employees covered by this Agreement on the effective date of this Agreement shall become and remain members of the Union, or in lieu of Union membership, pay to the Union fair share fees through payroll deduction. Additionally, it shall also be a condition of employment that employees covered by this Agreement who are hired, rehired, or transferred after the effective date of this Agreement shall, on the sixtieth day following the beginning of such employment, become and remain members of the Union, or in lieu of Union membership, pay to the Union fair share fees through payroll deduction.

B. For purposes of this Article, an employee shall be considered a member of the Union if the employee tenders to the Union periodic dues and initiation fees through payroll deduction. Fair share fees shall be no greater than Union dues, and shall be calculated in accordance with applicable law.

C. Upon notification to the Library that an employee in the Bargaining Unit has failed to become or remain a member in the Union, or has failed to pay to the Union fair share fees through payroll deduction, and has refused, after due notice, to correct such failure, such employee shall be immediately discharged upon written demand for such discharge by the Union.

D. The Library agrees to deduct dues and fair share fees in accordance with the Constitution and Bylaws of the Union from the pay of employees. The Library will deduct dues or fair share fees from bargaining unit employees from all paychecks. All deductions shall be transmitted to the Union no later than the fifteen (15) days following the deduction, together with a list of the employees in the bargaining unit paying such dues or fees by payroll deduction, including information for each employee on the number of hours worked and/or paid, and the employee's rate of pay. Upon receipt the Union shall assume full responsibility for the disposition of all funds deducted.

E. The Library's obligation to make deductions shall terminate automatically upon the termination of employment or transfer of an employee to a job classification outside the bargaining unit.

F. The Union shall indemnify and hold the Library and any of its agents harmless against any claims, demands, suits and other forms of liability that may arise out of, or by reason of action taken or not taken by the Library for the purpose of complying with any of the provisions of this Article, or in reliance on any notice or authorization form furnished under any provision of this Article.

TABLE "4"

ARTICLE III
MANAGEMENT RIGHTS

A. The Library reserves and retains solely and exclusively all of its legal rights to manage its operations as such rights existed prior to the execution of this Agreement, excepting solely such modifications as are made by the express provisions of this Agreement. The Library's rights include, but are not limited to, the right to determine the facts that are the basis of its management decisions; to establish, change or abolish policies, practices, rules or procedures for the conduct of the Library's operations, its employees and its service to the citizens using the Library's facilities and services, and including, but not limited to, the following:

1. To determine matters of inherent managerial policy, which include, but are not limited to, areas of discretion or policies such as the Library's functions, programs and standards of services, its overall budget, its utilization of technology and its organizational structure;
2. To select and determine the number and types of employees required; to manage and direct its employees, including the right to select, hire, promote, supervise, evaluate, or reward; to suspend, discipline, demote, or discharge for just cause; to lay off, transfer, assign, schedule, promote, or retain employees; and to relieve employees from duty in accordance with the Library's operational needs;
3. To determine when a job vacancy exists, the duties and qualifications to be included in all job classifications, and standards of quality and performance to be maintained by its employees;
4. To maintain and improve the efficiency and effectiveness of the Library's operations;
5. To determine the overall methods, processes, means or personnel by which the Library's operations are to be conducted, and to manage and determine the location, type and number of its facilities, equipment, and programs;
6. To determine the size, composition and adequacy of the workforce, to establish, alter or change work schedules, to determine the necessity for overtime and any amount required thereof; to establish, modify, consolidate and to determine staffing patterns, including but not limited to, the assignment of employees, qualifications required and areas worked;
7. To determine the overall mission of the Library;
8. To take actions to carry out the Library's mission;
9. To determine and from time to time re-determine the number and types of its employees; and to manage and maintain its facilities including, but not limited to, its grounds, roadways, buildings and other property.

10. To promulgate and enforce employment rules and regulations related to job performance and to otherwise exercise the prerogatives of management, provided such rules and regulations are not inconsistent with the terms of this Agreement;

11. To maintain the security of its records and other pertinent information in accordance with law;

12. To determine and implement necessary actions in emergency situations.

B. In addition, the Library hereby retains and reserves unto itself all rights, powers, authorities, duties and responsibilities confirmed or invested in it by the laws and Constitutions of the State of Ohio and the United States of America. The exercise of any such right, power, authority, duty or responsibility by the Library and the adoption of such rules, regulations, policies as it may deem necessary, and as they apply to the employees represented by the Union, shall be limited only by the express, written terms of this Agreement.

IMPORTANT NOTE: Although the Library has agreed to change the wording of this proposed Article to the Agreement, the Library expressly states that it is not changing or reducing any of the management rights it has and intended to have by virtue of its last proposal concerning management rights. It is the Library's intent to maintain all of its management rights that it has not revised by virtue of the other written terms and provisions of the Agreement.

TABLE "5"
ARTICLE XIII, SECTION G,
SUNDAY SCHEDULES AND SUNDAY PRIMARY PAY:

1. All employees may be scheduled to work Sundays when the Library is open on Sunday.
2. The Library will assign Sunday hours to employees on a rotating basis.
3. The Library will reduce the number of hours that a full-time employee is scheduled to work on a Sunday on one (1) or more days during the rest of the workweek, so that the employee is scheduled the same number of hours in the workweek as is usual for the employee. The Library will not adjust the hours that part-time employees normally work during the remainder of the workweek, for employees scheduled to work on a Sunday.
4. Employees may trade scheduled Sunday hours with their managers' approvals. Managers will ensure that a designated in-charge employee is always on duty.
5. Employees initiating successful trades must notify their managers in writing or via e-mail by the preceding Saturday.
6. Employees needing to trade, but who cannot find someone with whom to trade, can seek assistance from their supervisor.
7. The Library will pay all employees one and one-half (1.5) times their regular hourly wage rate for all hours they work on a Sunday.

**TABLE "6" - ARTICLE XI, SECTION C,D AND E
HOLIDAY PAY:**

C. The Library will pay full-time employees holiday pay of seven and one-half (7.5) hours for each holiday.

D. The Library will pay part-time employees holiday pay pro-rated based upon the current number of regularly scheduled hours as compared to a full-time schedule, rounding-up the holiday time to the next highest half-hour, where necessary.

E. The Library will not pay holiday pay to employees who have a non-scheduled absence during all or part of their scheduled hours on the workday before or the workday after a holiday-related closing.

Avon Public Library
SALARY SCHEDULE
(2001 - 2002)

| Grade | Points | RANGE | | |
|-------|---|---------|----------|---------|
| | | Minimum | Midpoint | Maximum |
| I | Page 197 - 220 | \$6.15 | \$7.25 | \$8.35 |
| II | Materials Processor; Circulation Assistant; Security Guard; DiscoveryWorks Assistant; Young Adult Assistant; Substitute, Public Services 221 - 270 | \$8.50 | \$10.00 | \$11.50 |
| III | Cataloging Assistant; Circulation Specialist; Youth Collection Clerk; Acquisitions Clerk; Deputy Clerk-Treasurer/Administrative Assistant; DiscoveryWorks Specialist; Supervisor, Pages; Graphics Specialist 271 - 330 | \$10.60 | \$12.50 | \$14.40 |
| IV | Youth Services Associate; Adult Services Associate; Chief Cataloger; DiscoveryWorks Supervisor; Public Relations/Marketing Specialist; Facilities Maintenance Manager; Computer Technician 331 - 385 | \$11.20 | \$14.00 | \$16.80 |
| V | Young Adult Librarian; Adult Services Librarian 386 - 440 | \$14.40 | \$18.00 | \$21.60 |
| VI | Network Coordinator; Manager, Youth Services; Manager, Support Services; Clerk-Treasurer 441 - 495 | \$18.40 | \$23.00 | \$27.60 |
| VII | Assistant Director 496 - 550 | \$20.80 | \$26.00 | \$31.20 |
| VIII | Director 551 + | \$28.00 | \$35.00 | \$42.00 |

Avon Public Library
SALARY SCHEDULE
(2004/2005)

| Grade | Points | RANGE | | | |
|-------|---|------------|----------|---------|---------|
| | | Minimum | Midpoint | Maximum | |
| I | Page 197 -- 220 | \$6.42 | \$7.55 | \$8.68 | |
| II | Materials Processor; Circulation Assistant; Security Guard; Discovery Works Assistant; Young Adult Assistant; Substitute, Public Services | 221 -- 270 | \$8.84 | \$10.40 | \$11.96 |
| III | Cataloging Assistant; Circulation Specialist; Youth Collection Clerk; Acquisitions Clerk; Deputy Clerk-Treasurer/Administrative Assistant; Discovery Works Specialist; Supervisor, Pages; Graphics Specialist | 271 -- 330 | \$11.06 | \$13.01 | \$14.96 |
| IV | Youth Services Associate; Adult Services Associate; Chief Cataloger; Discovery Works Supervisor; PR/Marketing Specialist; Business Manager; Facilities Maintenance Manager; Computer Technician | 331 -- 385 | \$11.66 | \$14.57 | \$17.48 |
| V | Adult Services Librarian; Young Adult Librarian; Children's Librarian | 386 -- 440 | \$14.98 | \$18.73 | \$22.48 |
| VI | Manager, Technology; Manager, Children's Services; Manager, Support Services; Clerk-Treasurer | 441 -- 495 | \$19.14 | \$23.93 | \$28.72 |
| VII | Assistant Director | 496 -- 550 | \$21.64 | \$27.05 | \$32.46 |
| VIII | Director | 551 + | \$29.13 | \$36.41 | \$43.69 |

TABLE "9"
ARTICLE XXI - WAGES:

A. The Library will pay new employees a minimum of the New Hire Minimum rates reflected in the Salary Schedule attached as Appendix "A". The Library will consider the base hourly wage rates of existing employees, among other things, when it determines to pay a new employee at a rate higher than the New Hire Minimum rate.

B. Effective as of June 1, 2005, employees in Grades II through V will receive a four and one-half percent (4.5%) increase in their former base hourly wage rate or the Maximum rate listed on the Salary Schedule, whichever is less, as set forth in Appendix "A".

C. Effective as of June 1, 2006, employees in Grades II through V will receive a four per percent (4%) increase in their former base hourly wage rate or the Maximum rate listed on the Salary Schedule, whichever is less.

D. Effective as of June 1, 2007, employees in Grades II through V will receive a four percent (4%) increase in their former base hourly wage rate or the Maximum rate listed on the Salary Schedule, whichever is less, as set forth in Appendix "A".

E. New employees in Grade I will receive a \$0.25 wage rate increase after working three hundred (300) hours and another \$0.25 wage rate increase after working a total of six hundred (600) hours. Employees in Grade I who have at least two (2) years of service with the Library as of an anniversary date of this Agreement will receive the next respective increase set forth in Sections B, C and D of this Article as may be appropriate. Employees currently receiving more than \$7.00 an hour will receive the general wage increases set forth in Sections B, C and D as of June 1, 2005 and as of June 1st of each succeeding year thereafter.

F. Employees with base hourly wage rates on May 31, 2006 or May 31, 2007 that are higher than the applicable Maximum rates shown on the Salary Schedules effective with the first full pay periods after June 1, 2006 and June 1, 2007, respectively, will not be eligible for the above increases. However, those employees will receive a lump

sum bonus on the first payday following the first full pay periods after the new Salary Schedules become effective equal to the general percentage increase that the Library will provide to its Bargaining Unit employees multiplied by their compensation during the preceding twelve (12) months. **[This Section to be deleted, if no one is above the Maximum Rates on the new Salary Schedules].**

G. Employees with base hourly wage rates on May 31, 2006 or May 31, 2007 that, with the general percentage increase that the Library will provide to its Bargaining Unit employees in the first full pay periods after June 1, 2006 and June 1, 2007, respectively, would be higher than the applicable Maximum rates shown on those Salary Schedules will not be eligible for the above increases. However, those employees will receive a wage increase to the applicable Maximum rates in the new Salary Schedules and a lump sum bonus, payable on the first payday following the first full pay periods after the new Salary Schedules become effective, equal to the percentage difference between the general percentage increase that the Library will provide to its Bargaining Unit employees and the percentage increase to get them to the applicable Maximum rates multiplied by their compensation during the preceding twelve (12) months.

H. The Library will increase the base hourly wage rate of an employee who moves into a position in a higher Grade either the New Hire Minimum rate for the new Grade or five percent (5%) above the employee's base hourly wage rate in the former position, whichever is greater.

I. The Library will decrease the rate of pay of an employee who moves into a position in a lower Grade either the Maximum rate for the new Grade or five percent (5%) below the employee's base hourly wage rate in the former position, whichever is lower.

Salary Schedule

Effective 6/1/2005
(\$/hour)

| <u>Grade</u> | <u>New Hire Minimum</u> | <u>Midpoint</u> | <u>Maximum</u> |
|--------------|-------------------------|-----------------|----------------|
| I | \$7.00 | \$7.95 | \$8.90 |
| II | \$9.06 | \$10.66 | \$12.26 |
| III | \$11.34 | \$13.34 | \$15.33 |
| IV | \$11.95 | \$14.93 | \$17.92 |
| V | \$15.35 | \$19.20 | \$23.04 |

Effective 6/1/2006
(\$/hour)

| <u>Grade</u> | <u>New Hire Minimum</u> | <u>Midpoint</u> | <u>Maximum</u> |
|--------------|-------------------------|-----------------|----------------|
| I | \$7.20 | \$8.14 | \$9.08 |
| II | \$9.24 | \$10.87 | \$12.51 |
| III | \$11.57 | \$13.61 | \$15.64 |
| IV | \$12.19 | \$15.23 | \$18.28 |
| V | \$15.66 | \$19.58 | \$23.50 |

Effective 6/1/2007
(\$/hour)

| <u>Grade</u> | <u>New Hire Minimum</u> | <u>Midpoint</u> | <u>Maximum</u> |
|--------------|-------------------------|-----------------|----------------|
| I | \$7.40 | \$8.33 | \$9.26 |
| II | \$9.42 | \$11.09 | \$12.76 |
| III | \$11.80 | \$13.88 | \$15.95 |
| IV | \$12.43 | \$15.53 | \$18.65 |
| V | \$15.97 | \$19.97 | \$23.97 |