

FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
October 20, 2005

STATE EMPLOYMENT  
RELATIONS BOARD  
2005 OCT 24 P 12: 10

In the Matter of Fact Finding Between	]	
AFSCME, Ohio Council 8 and Local 1027	]	Serb Case # 05 MED-02-0072
and	]	
The Cincinnati Metropolitan Housing Authority	]	Date of Hearing: October 11, 2005

AWARD:

M. James Abernathy  
As Fact Finder (Neutral)  
1119 Sunnyslope Drive  
Cincinnati, Ohio 45229  
513-242-7172  
Fax 513-242-7127

Date of Report: October 20, 2005

M. James Abernathy, Fact Finder

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## APPEARANCES

### For the Union:

1. Robert Turner, Regional Director
2. Eric Clemons, AFSCME Local 1027, President
3. D. J. Williams, RS
4. Leonard Strawther, Ex Board
5. C. Williams, Ex Board
6. Alice Williams, Sec. Treasurer
7. Tim Napier, Vice President
8. April Carr, Ex Board

### For CMHA

1. Marilyn Shazor, Director Human Resources
2. Reema Ruberg, Director of Finance
3. Lisa Randolph, Paralegal

### Fact-Finder (Neutral)

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## I. INTRODUCTION

The American Federation of State County and Municipal Employees, AFL-CIO, Ohio Council 8, Local 1027 (hereafter “Union” or “AFSCME”) represents the bargaining unit and the Employer is the Cincinnati Metropolitan Housing Authority (hereafter “Company, “Employer,” or “CMHA.” The bargaining unit is comprised of approximately 180 employees. According to AFSCME, their workers perform a myriad of duties including building and grounds maintenance work, managing the housing complexes owned by CMHA, reviewing contracts with outside contractors, inspecting housing units, collecting rents and enforcing the rules of CMHA. A bank of employees is kept on twenty-four (24) hour call to service any problems that may arise. CMHA serves close to 14,000 residents in Hamilton County and provides a voucher program covering 7,000 families. Their stock of housing is throughout Hamilton County, including senior citizen high rises. It is the 17<sup>th</sup> largest housing authority managed by the U. S. Department of Housing and Urban Development (“HUD”). HUD has awarded it numerous times in the past for high performance. The previous Collective Bargaining Agreement between the parties expired on April 30, 2005. According to the Union, it asked for a written extension of the contract, but CMHA refused to extend.

Contract negotiations have been underway since March 3, 2005. Numerous bargaining sessions have been held since that time, including several mediation sessions. The Union further states that after the Union filed an Unfair Labor Practice (“ULP”) charge on May 18, 2005, the Company ceased dues deduction in June, 2005. On June 27<sup>th</sup>, the Union filed an Unfair Labor Practice charge pertaining to the dues deduction. The May 18, 2005 ULP charge requested State Employment Relations Board (“SERB”) to render a decision on the necessity of CMHA to bargain on the following items:

1. Anti-Violence Policy
2. Dress Code
3. Driving Eligibility
4. Equal Employment Opportunity
5. Garnishments
6. Inspection of Property
7. Mail Service
8. Nepotism
9. Political Activity
10. Relationship With Residents
11. Sexual Harassment
12. Prevention and Handling of Discrimination & Harassment Complaints
13. Smoke Free Workplace
14. Solicitation of Contributions
15. Telephones
16. Tuition Advancement
17. Purchase of Computers
18. Drug Policy

The Union offered both the ULP charges for Fact-Finder. CMHA agreed to discuss only the May 18 ULP on Dues. CMHA disagreed on participating on the June 27<sup>th</sup> ULP charges. This Fact-Finder decided to rule on the May 18<sup>th</sup> ULP charges on Dues since both parties were in agreement of discussing this at the hearing. The June 27<sup>th</sup> ULP charges will await addressing by SERB. Needless to say., this Fact-Finding Hearing got off to a rocky start.

The parties agreed to Mediation prior to Fact-Finding. Issues resolved by Mediation were:

1. Article 10 Union Leave
2. Article 29 Classifications
3. Article 33 Holidays

At the Union's request, the Fact Finder enumerates those Articles in the contract reached by tentative agreement prior to the date of the Fact Finding hearing. Those Articles are: 1, 2, 3, 4, 5, 6, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 30, 32, 37, 38, 39, 40, 41, 42, 43, 44, 45, and 46.

Those Articles remaining at impasse and before the Fact Finder are:

1. Article 7 Union Dues
2. Article 11 Union Office
3. Article 25 Hours of Work and Overtime
4. Article 28 Wages
5. Article 31 Health Insurance

6. Article 34 Vacation
7. Article 35 Sick Leave
8. Article 36 FMLA
9. Article 47 Duration , Modification and Termination of Agreement

## **II. CRITERIA**

In compliance with ORC 4117.14©(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

1. Past collectively bargaining agreements between the parties.
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those 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, 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;
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 public service or in private employment.

## **III. ARTICLE 7, UNION DUES/FAIR SHARE FEE**

### A. UNION'S POSITION

The Union states that the stoppage of the dues check off was unfair because the other two Unions, the Greater Cincinnati Building Trades Council (CBTC) and The International Union of Operating Engineers (IUO), Local #20 enjoy that service. It contends the contract ending April 30, 2005 provided for Dues check-off but was arbitrarily stopped in June, 2005. They want current language.

## B. CMHA'S POSITION

CMHA claims management rights to stop dues. The labor cost of \$2,197.52 per year was cited as another reason. Dues check-off is not guaranteed and they no longer care to do it.

## C. DISCUSSION

Dues check-off is generally accepted throughout the collective bargaining world. It does not cost much; has little or no impact on the bottom line of finances and can create goodwill between Management and Unions.

## D. FACT-FINDER'S RECOMMENDATION

Dues check-off be incorporated in the new contract. Current contract language: Dues check-off shall not be retroactive.

# **IV. ARTICLE 11 UNION OFFICE**

## A. UNION'S POSITION

The Union stated that the office provided by CMHA is not an office at all. It is a stairwell with leaky pipes and utilities and is unsafe.

## B. CMHA'S POSITION

CMHA seeks to maintain the status quo and continue to provide access to a secure room for Local 1027 to utilize as an office. CMHA notes that the office does not cost AFSCME anything and CMHA does not have to provide an office for them.

## C. DISCUSSION

The parties differ widely on what constitutes an office. The current office appears to be shared with leaky pipes and utilities. Although the office is free, the Union deems it unsuitable to conduct Union business. Nevertheless, CMHA is willing to provide space.

#### D. FACT FINDER'S RECOMMENDATION

CMHA provide an office suitable for conducting Union business. The office shall be for the sole purpose of conduction Union business.

##### 1. Contract Language: Article 11 Union Office 11.1

“The President of the Union shall be provided office space to be used for the sole purpose of conducting Union business. This room shall have electrical and telephone outlets and be reasonably lighted. CMHA may at its option furnish the room with furniture suitable for conducting Union business. CMHA will have thirty (30) days from the ratification of this Agreement to provide suitable office space.

#### V. ARTICLE 25 HOURS OF WORK AND OVERTIME

##### A. UNION'S POSITION

###### 1. **25.7.2 Scheduled Overtime**

The Employer will notify employees of scheduled overtime as soon as practicable. Any employee who has been notified to report for work outside his/her normal scheduled shift, shall, unless he/she has been subsequently notified not to report to work, receive three (3) hours work or pay in lieu thereof. Each separate call-out shall be paid at the three (3) hour minimum. Supervisors shall not hold call-outs and allow them to accrue in order to avoid the three (3) hour minimum. It is understood at if work is performed prior to the start of the regular work shift and continues into the regular shift, the pay rate shall revert to straight time at the start of the regular shift and shall continue at that rate for eight (8) working hours. If an employee has worked through the night on an overtime situation he/she shall have the right of working his/her next regularly assigned shift.

###### 2. **25.9.3 Schedule:**

Supervisors within each maintenance location, as set forth in Section 25.8.1, shall prepare a yearly call back schedule which shall be distributed by the second week of January to all Senior and General Maintenance Workers. All Senior and General Maintenance Workers are required to serve on the call back rotation schedule. The call back schedule shall be modified as employees enter or leave the maintenance location. The rotation will begin with the General Maintenance Workers followed by the Senior Maintenance Workers, in the order of their seniority. An employee, ~~with the prior approval of their Supervisor,~~ may find a replacement or switch their call back schedule with another employee. Supervisors will not deny an employee's request to switch call-back weeks as long as the scheduled employee: (1) secures his/her replacement; (2) notifies his/her supervisor, in writing, of the switch/ replacement by 4:00

p.m. on Wednesday; and ~~(3) the scheduled and replacement employees are from the same maintenance location.~~ Replacement may be from the same maintenance location or from another maintenance location. The seven (7) day call back rotation begins on Friday at 4:40 p.m. and ends the following Friday at 8:00 a.m.

**3. 25.9.4 Compensation:** Employees will receive a minimum of six (6) hours call-back pay for their seven-day rotation in addition to any overtime worked while on call-back. Failure to respond to a call-back waives the six-hour minimum pay, in addition, the employee will receive an extra \$.45 per hour for all hours actually worked. An employee on call must respond to the call-back within 20 minutes. The Supervisor will first attempt to reach the employee by telephone, then by pager and then by radio, unless prior arrangements have been made. The employee shall be considered to be on the clock from the time he/she receives the call-back to work from the Supervisor.

## B. CMHA'S POSITION

CMHA strongly objected to the language proposed by the Union in these sections.

CMHA contends that the current system meets the following requirements:

1. Enable CMHA to quickly respond to calls.
2. Provide CMHA with a designated individual(s) to serve call-back for a specific period of time.
3. Provide CMHA access to the designated individual(s) 24 hours a day.
4. Be the most efficient use of the Supervisor's and the Employee's time.
5. Provide a back-up system in the event the primary system should fail.
6. Allow Supervisors to maintain control of the process.
7. Ensure the individuals serving call-back have the necessary skills to resolve issues when called. CMHA contends that the Union's proposal would result in CMHA losing control of this process. CMHA further contends that it is a management right to define worker qualifications and who can serve as replacements.

## C. DISCUSSION

The Union contends that under Scheduled Overtime when employees are called to duty outside of his or her normal scheduled shift, they receive three (3) hours work or pay in lieu thereof. The Union contends that supervisors have been holding call-outs so that the

affected employee will have more than one call when asked to report to duty. The Union wants to be paid three (3) hours for each call. They contend that supervisors allow the calls to accrue (accumulate) in order to avoid any additional three (3) hour minimum. The Union believes it is not only a money issue but a safety issue because many of the calls are late at night and in rough neighborhoods where crime is high. It causes employees not to get sufficient rest before their regular shift starts. The Union wants the call-back schedule modified as employees enter or leave the maintenance location. The Union does not want prior approval of a Supervisor when finding a replacement or switching call-back schedule with another employee. The Union does not want scheduled and replacement employees restricted to the same maintenance location. It wants the option of replacements to come from another maintenance location. The Union wants to add “overtime worked while on call-back” in addition to current minimum of six (6) hours rotation. Finally the Union wants its employees to be considered to be on the clock from the time he/she receives the call-back to work from the Supervisor. No evidence was put forth to prove that these measures taken en-toto would be more efficient and cost saving than the current measures in place. The Fact-Finder empathizes with those workers going late at night and early in the morning in crime ridden areas, but that is the nature of the job. It must be done. Perhaps a collaboration with the City and County police might help in these situations. CMHA on the other hand presented evidence proving that the current system had checks and balances, Supervisory control, employee capability to handle the job, provide a back-up system if needed, provide designated individuals to serve call-back, assure calls are quickly responded to and appears to serve the highest and best use of the Supervisor’s and employee’s time.

#### D. FACT-FINDER’S RECOMMENDATION

1. Current Language of Article 25  
Attached as Exhibit 1

## VI. ARTICLE 28 WAGES

### A. UNION'S POSITION

The Union proposes to keep contract language as it is in the current agreement. It is proposing a 3.5% increase in each of a three-year agreement, retroactive to May 1, 2005. The Union stressed that its wage increase is consistent with past wage increases recently negotiated between it and the employer and also between CMHA and the Operating Engineers. The Union laments that it has not been provided with a copy of CMHA's financial statements for fiscal year 2005, although it has asked for them in writing at least two (2) times. Union states that CMHA continues to hire employees and, based on aforementioned points, believes CMHA has the ability to pay.

### B. CMHA'S POSITION

Offer wage increases of 2%, 2% and 1 effective on the date of ratification (estimated to be December 1, 2005).

### C. DISCUSSION

CMHA is dependent on federal funding through the Housing Urban Development Department (HUD) of the federal government. Income from rents is not a major player in its budgetary funding. These are extraordinary economic times and call for some sacrifice of all concerned. The oil crisis which has been exacerbated by Hurricane Katrina and others require a hard look at how Management and Unions allocate their resources. Out of Hurricane Katrina comes legislation at the federal level that may impact the way CMHA and HUD housing authorities across the country operate. Current proposals have Public Housing Authorities recouping budget deficits by using reserve or carry-over accounts holding excess funds carried over from previous years. If this legislation is passed, then HUD would have the authority to tap these reserve accounts all over the country to help disaster victims. Although no budgetary figures were shared with the Fact-Finder for fiscal year June, 2005,

CMHA states that it is running a \$2.6 million deficit to the fiscal year 2005 budget approved by HUD. CMHA says it has to tighten its belt and find new ways of doing business. CMHA says it has chosen a reduction of benefits as opposed to a reduction of staff as a first line of action. CMHA presented evidence that Public Housing Authorities were in belt tightening modes throughout the country. Laying off workers and cutting benefits are the predominant modes of cutting costs. Based on this scenario, CMHA is offering the Union 2% effective upon ratification of the contract (estimated December 1, 2005); 2% effective December 1, 2006, and 1% effective December 1, 2007. This is a total of 5% over the next three (3) years. The previous contract covering fiscal years 2003, 2004 and 2005 was for 5, 2 and 2%. CMHA's current offer would be a decrease of 4% over three (3) years. This is too much of a decrease. Likewise, the Union is seeking 3.5% for three (3) years. Under the above mentioned scenario, this is unrealistic.

The AFSCME employees have been of great asset to CMHA helping to enable CMHA to garner numerous awards from HUD as a high performing agency. In the year 2005 one other bargaining Union has renewed its contract with CMHA. The Operating Engineers effective June 30, 2005 through June 30, 2008. Wages granted were 3% per year for July, 2005 through July, 2007, for a total of 9% over the three year period.

CMHA wants any wage agreement to take place upon ratification of the contract (estimated December 1, 2005). The Union wants any wage agreement to be retroactive to May 1, 2005. The Union claims it was not properly notified in accordance with Article 47, Duration, Modification and Termination of Agreement (see discussion in Article 47).

#### D. FACT-FINDER'S RECOMMENDATION

Wage increases of:

2005 3%

2006 3%

2007 2%

Wages shall be retroactive to May 1, 2005.

### **VII. ARTICLE 37 HEALTH INSURANCE**

#### A. UNION'S POSITION

The Union is offering to pay 10% of premium cost or \$29.63 for single plan and \$81.48 for family plan, whichever is less.

#### B. CMHA'S POSITION

CMHA is offering for the Union to pay 9% of the cost of current premiums which are \$9,777.00 for family plan, and \$3,555.24 for a single plan. CMHA proposes to phase in 15% for each of the next two (2) years for the Union's share.

#### C. DISCUSSION

The parties were very far apart on Health Insurance. The reason was a misunderstanding in general and having incorrect figures. Over the objection of the Union, the Fact-Finder asked for correct figures on insurance. They were supplied and a coming of the minds was at hand. With Health Insurance increasing on a yearly basis, it is common for Management to ask employees to share in the cost. The current proposal for 2005 asks employees to contribute 9% of the cost of insurance. This is in line with what other employees across the country are paying. Some are even paying 20%, however, fifteen percent (15%) would be phased in for each of the next two years under 's proposal.

**D. FACT-FINDER'S RECOMMENDATION**

31.2 Employees covered by the Health insurance Plan will contribute 10% of the monthly amounts for the life of the agreement.

Employees will be notified of any premium changes in years two and three.

This provision is retroactive to September 1, 2005, the effective date of the new premiums.

**VIII. ARTICLE 34 VACATION**

**A. UNION'S POSITION**

34.1 Employees hired in the Bargaining Unit after February 28, 1992 will receive vacation with pay which accumulates during each month of service according to the following schedule:

Years of Service	Days of Vacation
0 years but less than 65 years	10 days (3.08 hours /pay period)
65 years but less than 11-10 years	15 days (4.62 hours/pay period)
11 10 years but less than 20 years	20 days (6.16 hours/pay period)
20 years or more	25 days (7.70 hours/pay period)

Employees continuously employed in the Bargaining Unit prior to February 28, 1992 receive vacation with pay which accrues according to the following schedule:

Years of Service	Days of Vacation
0 years but less than 10 years	15 days (4.62 hours /pay period)
10 years but less than 11 years	18 days (5.54 hours/pay period)
11 years but less than 20 years	20 days (6.16 hours/pay period)
20 years or more	25 days (7.70 hours/pay period)

34.4 In order to qualify for cash in lieu of vacation, Employees with less than ~~six~~ five years of CMHA service must take at least five full days of vacation every twelve months. Employees with more than five years of service must take at least ten full days of vacation every twelve months.

34.5 A maximum of ~~20 vacation days (160 hours)~~ two years of accrual time can be carried over into the next vacation year. The vacation year ends on the pay period closing which includes New Year's day.

At the end of the vacation year, vacation balances which exceed ~~160 hours~~ two years of accrual time will be paid off. Cash payment for excess vacation shall be paid at a rate of one hour's pay for ~~two hours~~ each hour of vacation cashed in.

#### B. CMHA'S POSITION

CMHA wishes current language for vacations.

#### C. DISCUSSION

34.1 The Union points out that in proposing to change this section, it is only seeking what CMHA has already granted the Greater Cincinnati Building Trades Council in its collective bargaining contract ending December 31, 2005.

34.4 In this section, the Union seeks to lower the number of years in order to qualify for cash in lieu of vacation from six years to five. This would be an added cost for CMHA.

34.5 In this section, the Union seeks to increase the maximum amount of accrual time to be carried over into the next year from 20 vacation days (160 hours) to the Union's proposal of two years of accrual time. This too would be an increase in cost to CMHA.

#### D. FACT-FINDER'S RECOMMENDATION

Days of vacation – Article 34.1

Accrual to be changed to

Years of Service	Days of Vacation
0 years but less than 5 years	10 days (3.08 hours /pay period)
5 years but less than 10 years	15 days (4.62 hours/pay period)

10 years but less than 20 years	20 days (6.16 hours/pay period)
20 years or more	25 days (7.70 hours/pay period)

All other items remain current contract language.

**IX. ARTICLE 35 SICK LEAVE**

A. UNION’S POSITION

35.1 Union is opposed to CMHA’s proposal to cut sick leave accrual in half from 10 hours per month to five (5) hours per month. Union points out that Management gets 15 days per year for sick leave.

35.2 In this section the Union proposes increasing the sick leave bonus incentive from \$150.00 to \$200.00 when the employee uses two or less sick leave days (16 hours) in the six month period. The Union proposes to add to this section, “Employees who take no sick leave in a six-month period shall receive a \$300.00 performance incentive.”

35.3 The Union wants to modify the section under subsection 4. Pregnancy and/or childbirth and related conditions, to read:

“For any personal illness or medical condition (e.g., pregnancy, surgery) which is expected to keep the employee off work for more than five (5) days, the employee must submit a written request for family and Medical Leave (FMLA), in accordance with Article 36. To the extent possible, requests for FMLA must be submitted in advance to the Director of Human Resources.”

B. CMHA’S POSITION

CMHA wants to cut sick leave accrual in half from ten (10) hours per month to five (5) hours per month. CMHA also proposes eliminating all together the sick leave bonus incentive. CHMA is opposed to the language change proposed by the Union in Section 35.3

### C. DISCUSSION

The Union points out that CMHA wants to cut sick accrual from 10 hours per month to five (5) hours per month. The Union also opposes CMHA's proposal to eliminate sick leave bonus in Section 35.2 of Article 35. The Union points out that the Operating Engineers earn sick leave at a rate of 10 hours per month (15 days per year) through June 30, 2008. The Union seeks to not only keep the sick leave bonus provision, but to increase it from \$150.00 to \$200.00. The Union also seeks to make it optional to submit a written request for Family and Medical Leave (FMLA), in accordance with Article 36. The Union indicated that Management enjoys fifteen (15) days per year sick leave accrual and a bonus of \$200.00 per year.

### D. FACT-FINDER'S RECOMMENDATION

Article 35 Sick Leave to remain current language. No changes.

## **X. ARTICLE 36 FMLA**

### A. UNION'S POSITION

The Union proposes the following changes to Article 36 FMLA:

36.1 For any personal illness or medical condition that qualifies under FMLA (e.g. pregnancy, surgery), which is expected to keep the employee off work for more than five (5) days, the employee ~~must~~ may submit a written request for Family and Medical Leave (FMLA). Except in the case of an emergency, requests for FMLA must be submitted in advance to the Director of Human Resources.

36.2 In accordance with the Family and Medical Leave Act (FMLA), the Employer provides eligible employees with up to twelve weeks of unpaid leave during any rolling twelve-month period for any of the following reasons:

1. A serious health condition that causes the employee to be unable to perform one or more essential functions of his/her position.

2. To care for the employee's spouse, child (18 years or younger) or parent who suffers from a serious health condition;

3. The birth, adoption or foster placement of a child with the employee.

An employee taking Family and Medical Leave ~~must~~ may use any available accrued sick leave and may use vacation for leave and ~~must~~ may use available sick leave for leave taken because of the birth, placement or adoption of an employee's child and to care for such child or to care for the employee's spouse, child or parent who suffers from a serious health condition.

Family and Medical Leave is only available to employees who have been employed for at least twelve consecutive months and have worked at least 1250 hours during the previous twelve month period.

36.4.2 Procedure. Bargaining unit employees may donate ~~vacation~~ sick leave time to the Donated Time Bank. The time donated will be converted at a rate equal to the employee's base pay rate.

Employees receiving donated time will receive time at their base pay rate. Employees are only eligible to receive donated time if they have exhausted all available leave. Employees may not receive donated time in lieu of disability retirement. Donated time does not qualify the recipient for additional vacation or sick leave accrual.

Vacation time may be donated at any time during the calendar year. Time must be donated in one hour intervals.

The bargaining unit will appoint a committee to evaluate requests for donated time and decide upon donations to be made from the Donated Time Bank. The committee will convene during non-working hours. The committee will forward their authorized requests for donated time to the Director of Human Resources, who will verify the employee's eligibility in

accordance with this Article. It is the Committee's responsibility to communicate their decisions to the bargaining unit members.

All authorization for donated time must be within the leave parameters as defined in this Article.

In no case may donated time be used to extend an employee's service date for retirement purposes.

#### B. CMHA'S POSITION

Current contract language. On 36.1 and 36.2 CMHA agrees with Union on donating 36.4.2 sick leave instead of vacation.

#### C. DISCUSSION

36.1 The Union wants to substitute the word must for the word may when submitting a written request for Family and Medical Leave. IN other words the Union wants the option to not submit a written request for Family and Medical Leave. CMHA rightfully wants a written record for the request.

36.2 The Union wants to substitute the word must with may in Paragraph 2 to give employees options pertaining to the use of any available sick leave and vacation time used for Family and Medical Leave. This is a reasonable request of the CMHA to use the wording MUST.

#### 36.4.2 Donated Time

The Union wants to be able to donate sick leave time rather than vacation time to the Donated Time Bank. The Union has a good point since it is sick time donated for sick leave.

#### D. FACT-FINDER'S RECOMMENDATION

36.1 Current Contract language.

36.2 Current Contract language.

36.4.2 New Contract Language:

Procedure. Bargaining Unit employees may donate sick leave time to the Donated Time Bank. The time donated will be converted at a rate equal to the employee's base pay rate.

XI. ARTICLE 47 DURATION AND MODIFICATION OF AGREEMENT

A. UNION'S POSITION

The Union contends that it was not properly notified by CMHA that its contract was not renewed as of April 30, 2005. Its position is that the new contract should be retroactive to April 30, 2005. The Union contends that Article 47 requires a written notice by either party to the other party of its intention to terminate the Agreement. The Union says it never received such a letter.

B. CMHA'S POSITION

Management proposes that the contract be effective upon date of ratification for three years. CMHA contends that it did send a letter of termination of contract in accordance with Article 47.

C. DISCUSSION

CMHA maintains that the effective date be upon ratification anticipated to be December 30, 2005. It insists that it notified the Union in the proper way of termination of the contract. It insists that the Union was notified by letter in a timely fashion. The Union asked to see a copy of the letter but CMHA was unable to produce a copy of it. The Union maintains it was never notified in accordance with Article 47 Duration, Modification and Termination of Agreement. Article 47 is presented here for the record

Article 47 Duration, Modification and Termination of Agreement

47.1 The parties recognize that this Agreement is subject to review and approval by the members of the Cincinnati Metropolitan Housing Authority Board of Commissioners. The CMHA Board of Commissioners shall meet to approve or disapprove of the Agreement at the next scheduled Board meeting following union ratification.

47.2 This Agreement shall continue in full force and effect through and including April 30, 2005 and thereafter from year to year unless either party gives written notice by certified mail to the other party of the proposed termination or modification of this Agreement or of a successor agreement, not less than 60 days nor more than 90 days prior to the expiration date, April 30, 2005, or the end of any yearly renewal period subsequent thereto.

47.3 If either party gives the other party notice of termination, modification or successor agreement as provided above, within 30 days following receipt of such notice, the parties shall commence collective bargaining negotiations. If settlement is not reached by the expiration date of this Agreement, April 30, 2005, or the expiration of any yearly renewal thereof, this Agreement shall continue in full force and effect until the 10<sup>th</sup> day following written notice given by either party to the other party of its intention to terminate the Agreement.

47.4 The provisions contained in Section 47.3 of this Article are intended by the parties to supersede any inconsistent provisions contained in O.R.C. §4117.14(B).

Executed by the undersigned this the 21<sup>st</sup> day of August, 2002.

#### D. FACT-FINDER'S RECOMMENDATION

Current Contract Language of Article 47 (noted above.)

New Contract shall be retroactive to April 30, 2005

Section 31.2 Health Insurance: Provisions of this section are retroactive to September 1, 2005.

M. James Abernathy, Fact-Finder

**ARTICLE 25  
HOURS OF WORK AND OVERTIME**

- 25.1 The normal work week for all full time Bargaining Unit employees shall consist of forty (40) hours per week, which shall consist of five (5) consecutive days of eight (8) hours per day. All hours worked in excess of eight (8) hours in any one day or in excess of forty (40) straight time hours in one week shall be paid at time and one half the regular rate of pay.
- 25.2 Work performed on the sixth or seventh day of the employee's work week shall be paid at time and one half the regular rate of pay unless the employee has not worked for forty (40) hours that week. In such cases, he/she shall receive straight time for the first forty (40) hours of the week and time and one half of the regular rate of pay for the balance.
- 25.3 Work performed on a scheduled holiday shall be compensated at time and one half of the regular rate of pay for the holiday.
- 25.4 No bargaining unit employee shall be scheduled for more than twelve (12) consecutive calendar days of work without receiving a day off, unless the employee so consents.
- 25.5 For any shift commencing between the hours of 4:00 p.m. and 12:00 midnight, differential pay shall be \$.35 per hour. For all hours worked between midnight and 8:00 a.m., shift differential pay shall be \$.45 per hour. To the extent practicable, shift preferences shall be based upon seniority.
- 25.6 For purposes of calculating overtime under this Article, annual vacation leave and paid holidays shall be considered hours worked, but other leave shall be excluded. There shall be no pyramiding of overtime.
- 25.7 Scheduled Overtime.
- 25.7.1 Backup/Volunteer List: The department of Human Resources will compile a backup/volunteer overtime list, by classification and in descending order of seniority, from among all affected employees who wish to volunteer for overtime opportunities. Regular full time employees shall have first priority for such overtime over part-time, temporary or seasonal employees.
- 25.7.2 The Employer will notify employees of scheduled overtime as soon as practicable. Any employee who has

been notified to report for work outside his/her normal scheduled shift, shall, unless he/she has been subsequently notified not to report for work, receive three (3) hours work or pay in lieu thereof. It is understood that if work is performed prior to the start of the regular work shift and continues into the regular shift, the pay rate shall revert to straight time at the start of the regular shift and shall continue at that rate for eight (8) working hours. If an employee has worked through the night on an overtime situation he/she shall have the right of working his/her next regularly assigned shift.

25.7.3 Overtime shall be equalized to the extent practicable within each work unit. Employees who normally perform the same type of work shall receive equal overtime opportunities. Each work unit shall keep lists of employees by classification and seniority. These lists shall be available at appropriate work sites January 1st of each year and updated bi-weekly thereafter. All refused overtime hours will be charged as if worked.

25.7.4 Maintenance classifications only (does not include warehouse): The first offer of scheduled overtime will be assigned within each department, by appropriate classification to perform the work, as determined by the Supervisor. If no one in the department wishes to work the overtime, the Supervisor may offer the opportunity to employees on the backup/volunteer list. The Supervisor may order someone in the department to work the overtime if an emergency condition exists; otherwise, the overtime opportunity is offered to employees on the backup/volunteer list.

25.7.5 All other classifications: The first offer of scheduled overtime will be assigned within each department, by appropriate classification to perform the work in descending order of seniority, as determined by the Supervisor. If no one in the department wishes to work the overtime, the Supervisor will offer the opportunity to employees on the backup/volunteer list. The Supervisor may order someone in the department to work the overtime if the work requires specific familiarity with operations in the department; otherwise, the overtime opportunity is offered to employees on the backup/volunteer list.

25.8 Unscheduled Overtime: If all available employees refuse unscheduled overtime, the Employer will require overtime of the least senior employee who is qualified to perform the work.

25.9 Maintenance Classifications: Call backs

25.9.1 Call backs will be scheduled out of six (6) Maintenance locations:

- General Services-North I | Primary
- General Services-North II | Primary
- General Services-South | Primary
- Maintenance West | Primary
- Maintenance East | Primary
- Hightises | Primary

Depending upon seasonal needs, the Primary call back may need a backup. In these instances, the following maintenance locations shall serve as backups for each other: General Services-North I and II; General Services-South and Hightises; and Maintenance West and East.

25.9.2 Eligibility: General and Senior Maintenance Workers are eligible for call backs. Laborers and Maintenance Aides may be called as the need arises, but will not be assigned as the Primary call back employee. Employees must be eligible drivers under the terms and conditions of the CMHA auto liability policy to qualify for call backs.

25.9.3 Schedule: Supervisors within each maintenance location, as set forth in Section 25.8.1, shall prepare a yearly call back schedule which shall be distributed by the second week of January to all Senior and General Maintenance Workers. All Senior and General Maintenance Workers are required to serve on the call back rotation schedule. The rotation will begin with the General Maintenance Workers followed by the Senior Maintenance Workers, in the order of their seniority. An employee, with the prior approval of their Supervisor, may find a replacement or switch their call back schedule with another employee. Supervisors will not deny an employee's request to switch call-back weeks as long as the scheduled employee: (1) secures his/her replacement; (2) notifies his/her supervisor, in writing, of the switch/replacement by 4:00 p.m. on Wednesday; and (3) the scheduled and replacement employees are from the same maintenance location. The seven (7) day call back rotation begins on Friday at 4:40 p.m. and ends the following Friday at 8:00 a.m.

25.9.4 Compensation: Employees will receive a minimum of six (6) hours call back pay for their seven-day rotation. Failure to respond to a call back waives the six-hour minimum pay. In addition, the employee will receive an extra \$.45 per hour for all hours actually worked. An employee on call must respond to the call back within 20 minutes. The Supervisor will first attempt to reach the employee by telephone, then by pager and then by radio, unless prior arrangements have been made.

25.9.5 Vehicle: The call back employee for each location will be assigned a CMHA vehicle for the call back period. The vehicle may be driven home, but may not be used for any other purpose than to respond to the call backs. No vehicle may be driven home if the employee's residence is more than 20 miles from the location where the vehicle is to be picked up. The department director may grant exceptions as determined to be feasible. The vehicle must be returned at the end of the call back period, except in the case when the call back period ends on a holiday. In that instance, the vehicle must be returned on the next regular working day. If the employee is unable to report for work when the vehicle is due back, it will be retrieved by other CMHA personnel.

25.9.6 Unable to Respond: If an employee on call back cannot respond due to an emergency, it is the employee's responsibility to notify the on-call Supervisor immediately. If the Supervisor cannot be reached, the employee must notify the answering service.