

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

2006 OCT 18 A 11: 13

IN THE MATTER OF:)	
)	CASE NO.:06-MED-03-0334
Fact Finding between)	
)	
AFSCME, Ohio Council 8, Local 1696)	
)	FINDINGS AND
and)	RECOMMENDATIONS
)	October 16, 2006
Portage County Department of)	GREGORY P. SZUTER
Job & Family Services)	FACT FINDER

List of Appearances:

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INTRODUCTION

The Portage County Department of Job and Family Services (herein also "Employer" or "County") and Local 1696 American Federation of State, County and Municipal Employees Local 1696 and Ohio Council 8, AFL-CIO (herein "Union") are parties to the Collective Bargaining Agreement effective November 24, 2003 and expiring June 30, 2006. (herein "Agreement")

The undersigned was appointed Fact Finder in this dispute by the State Employment Relations Board (SERB) on July 6, 2006, pursuant to the Ohio Administrative Code, OAC 4117-9-05 (D) for fact finding and recommendations on open issues for a replacement Agreement.

There are approximately one hundred sixteen (116) bargaining unit members in the bargaining unit employed by the Employer and represented by the Union. The bargaining unit consists of employees who provide service to the citizens of Portage County as it pertains to the clients in need of financial assistance for various causes. The job titles of the bargaining unit were listed in the recognition clause of the Agreement with respect to job and family services ("JFS").

HEARING

With unresolved issues still pending, a fact-finding hearing was held on September 15, 2006, at the Employer's location in Ravenna, Ohio. Pre hearing briefs of the issues were submitted on September 5, 2006, with proposals and exhibits in conformity with OAC 4117-9-05(F).

Both parties attended the hearing and elaborated upon their positions regarding the issues remaining at impasse through their representatives. In attendance were: AFSCME, Local 1696 Staff Representative, Stevan P. Pickard, with assistance of Sheila Grega, President Local 1696 who gave testimony. The Employer was represented by Ronald Habowski, Esq. In attendance and testifying for the Employer were Anita D. Herington, Director; Lynn Leslie, HR Director; and Terri Burns,

Assistant Director, Fiscal. Also present were Brian K. Boykin, Assistant Director, Administration for the Employer; and Judy Scott, President; Karen Collins, Secretary; Joan Meloy, Trustee and Lisa Walker - Alternata, Treasurer for the Union. One joint exhibit (JX)¹ was received in evidence. The Union also offered sixteen (16) exhibits (UX)². The Employer offered fourteen (14) exhibits (EX)³.

¹ JX 1 Agreement between The Portage County Department of Job and Family Services and The American Federation of State, County and Municipal Employees, Local 1696 and Ohio Council 8, AFL-CIO, effective November 24, 2003 until June 30, 2006.

² UX 1 Flex Time Work Schedule effective 7-1-89
UX 2 Memo to administrators from Sue Stark dated 5-1-00 relating to flex schedule options
UX 3 Amendment of Certification dated 8-13-92
UX 4 AFSCME Care Plan, revised 11-04
UX 5 AFSCME Care Plan, revised 6-1-98
UX 6 AFSCME Care Plan, revised 1-1-96
UX 7 AFSCME Care Plan, revised 3-1-03
UX 8 Appendix A "Certification of Election Results and of Exclusive Representation" dated 10-25-84
UX 9 Agreement between Portage County Department of Human Services and AFSCME Local 1696 and Ohio Council 8 dated 2-26-86
UX 10 Report and Recommendation of Fact Finder in the matter of Local 1696 and Portage County Commissioners dated 10-7-91
UX 11 Summary of changes to Agreement between Portage County Department of Human Services and Local 1696 dated 12-9-94
UX 12 Tentative Agreement between Portage County Department of Human Services and Local 1696 and Ohio Council 8 dated 11-3-97
UX 13 Tentative Agreement between Portage County Department of Human Services Local 1696 and AFSCME Ohio Council 8 dated 8-29-00
UX 14 Report and Recommendation of Fact Finder in the matter of Portage County JFS and AFSCME Local 1696, SERB #03-MED-03-0330 dated 11-19-03
UX 15 Letter to Holmes County DJFS from Leroy Elmore dated 7-21-06 regarding Ohio AFSCME Care Plan Benefits
UX 16 Memo from Monica Hayes, Employee Benefits Specialist dated 2-14-06 regarding the 2006 healthcare plan

³ EX A Agreement between Portage County Sheriff's Department and OPBA, Sergeants and Lieutenants, dated 6-4-04
EX B Agreement between Portage County Sheriff's Department and OPBA, Deputy Sheriffs, dated 6-4-04
EX C Agreement between Portage County Engineer and Teamsters Local Union No. 436, dated 2-8-05
EX D Agreement between Portage County Solid Waste and Freight Drivers, Dockworkers and Helpers Union, Local 24 effective 11-1-04
EX E Agreement between Portage County Commissioners Building Department and Teamsters

The date of the Fact Finder's Report has been extended to *October 16, 2006*.

MEDIATION

The parties agreed to mediation and proceeded with the assistance of the Fact Finder to address certain of the Open Issues identified on September 15, 2006. The Union and County reached a number of tentative agreements at that session. Without objection, those agreements are incorporated in the report and recommendation.

ISSUES

The issues for consideration by the Fact Finder are:

(according to the Union)

1. Article IX - Disciplinary Procedure
2. Article XVIII (*) Overtime
3. Article XIX - Sick Leave
4. Article XXV (*) Wages, Longevity, PERS Pick Up
5. Article XXVI (W) On-Call Pay
6. Article XXX - Work Rules
7. Article XXXIII - Miscellaneous Provisions
8. Article XL - Duration of Agreement (retroactively)
9. no article - Retroactivity
10. New Article (W) Union Proposal (Grievance Mediation)
11. New Article (W) Union Proposal (AFSCME - P.E.O.P.L.E. deduction)

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- Local Union No. 436 dated 6-7-05
- EX F Agreement between Portage County Commissioners Sanitary Engineer and Teamsters Local Union No. 436 dated 12-20-05
- EX G Agreement between Portage County Commissioners Motor Pool Department and Teamsters Local Union No. 436 dated 6-8-06
- EX H Agreement between Portage County Commissioners Dog Warden and Teamsters Local Union No. 436 dated 6-8-06
- EX I Agreement between Portage County Commissioners Nursing Home and AFSCME Local 3630 dated 11-1-01 and 6-14-05
- EX J PCDJFS Crosswalk (undated)
- EX K JFS Terminations (Jan 2004 - March 2006)
- EX L Schedule "A" (Year 1 - 6/30/07)
- EX M Summary: Employer's Wage Proposal (2006 - 2008)
- EX N SERB Quarterly (First Quarter 2006) re wage settlement data

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|-----|------------------|-----|--|
| 12. | New Article | (W) | Union Proposal (Union Leave) |
| 13. | New Article | (W) | Union Proposal (Neutrality) |
| 14. | New Article | (W) | Union Proposal (AFSCME Legal Service Fund) |
| 15. | New Schedule "A" | - | Pay Range (2007, 2008, 2009) |
| 16. | New Schedule "B" | (*) | Longevity Schedule |

(according to the Employer)

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|-----|------------------|-----|--|
| 1. | Article II | - | Union Recognition |
| 2. | Article III | - | Probationary Employees |
| 3. | Article IV | - | Dues Check Off |
| 4. | Article XII | - | Seniority |
| 5. | Article XIII | (*) | Vacancy, Promotions and Transfers |
| 6. | Article XIV | - | Temporary Vacancies |
| 7. | Article XVI | (W) | Labor-Management Conference |
| 8. | Article XVII | - | Hours of Work and Workweek |
| 9. | Article XVIII | (*) | Overtime |
| 10. | Article XX | - | Leaves of Absence |
| 11. | Article XXI | - | Military Leave |
| 12. | Article XXII | (*) | Holidays |
| 13. | Article XXIII | (*) | Vacations |
| 14. | Article XXIV | (*) | Expense Reimbursement |
| 15. | Article XXV | (*) | Wages, Longevity, PERS Pick Up |
| 16. | Article XXVII | - | Insurance |
| 17. | Article XXX | - | Work Rules |
| 18. | Article XXXI | (*) | Job Descriptions, Job Audits and Evaluations |
| 19. | Article XXXII | - | Job Security |
| 20. | Article XXXIII | (*) | Miscellaneous Provisions |
| 21. | New Schedule "A" | - | Pay Range (2007, 2008, 2009) |
| 22. | New Schedule "B" | (*) | Longevity Schedule |

The (W) reference above are to issues withdrawn at or immediately before the hearing.

Mediated agreements are noted as such above by (*). All references to Sections of the above Articles made hereafter in this report are made to the current contract numerations.

CRITERIA

In compliance with Ohio Revised Code § 4117.14C(4)(e) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact Finder considered the following in making the findings and

recommendations contained in this report.

1. Past collective 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 the public service or in private employment.

In as much as this proceeding is an advisory interest arbitration, the general standards of interest arbitration are part of what the sixth criteria refers to. Those are located in ELKOURI & ELKOURI HOW ARBITRATION WORKS (Sixth Edition, Ruben, Editor. BNA, 2003) at pp1358-1364.

As quoted therein, note:

" . . . [interest arbitration] calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations – they have left it to this board to determine what they should, by negotiation, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to?" *Twin City Rapid Transit Co.* 7 LA 845 at 848 (McCoy *et al.* 1947)

As a public sector statutory proceeding in the nature of advisory fact finding under the Ohio's law, the interest of the public is a third element in the balance of equities. ELKOURI at p. 1361.

Two themes recur here. One are the "textual changes." This is the first time in 13 years that the Agreement has been proofread by the parties and by the Employer's new director in particular. The other is that both parties recognize that the current wages are curtailing staffing opportunities.

ISSUE: Article II Union Recognition

CONTRACT SECTION: Article II Sections .01 and .02

EMPLOYER PROPOSAL:

.01 Removal of Cashier 1, Clerk 2, Custodial Supervisor, Service Aid 1, contract Evaluator/Negotiator, Training Officer 1, Data Entry Operator 2 and 3 from Union representation.

Add Child Support Case Manager, Custodial Worker and Fiscal/Eligibility Specialist to Union represented classifications.

.02 Removal of County Welfare Administrator 4 and Fiscal Officer 2 from job classifications excluded by Union representation.

Add County Job and Family Administrator, Assistant County Job and Family Administrator, Fiscal, Assistant County Job and Family Administrator, Administration, Contract Administrator, MIS Coordinator, Communications Officer, Facilities Supervisor, Fiscal Supervisor, Child Support Supervisor, Customer Service Supervisor and Training Officer 1 to list of job classifications to be excluded from Union representation.

UNION PROPOSAL: Current contract language

POSITIONS: The Employer:

The proposal changes certain job classifications between those represented by the Union and those excluded from representation by the Union. The additions to the inclusion list of the unit reflect the current job titles and the deletions from the unit description are the job titles that are no longer in use. One exception to this is Training Officer I, which moved from Section .01 to Section .02 based on the job duties that the position performs. In particular, Training Officer I participates in evaluations of the bargaining unit employees, particularly on probation. This position is not in the bargaining unit in surrounding counties. The changes to the exclusion paragraph (.02) reflect the job positions as they exist now with the addition of the Training Officer I.

POSITIONS: The Union:

The Union is not in a position to agree or disagree. The current bargaining unit language reflects the certification. Certainly supervisors should be excluded, but the Union is not in a position to agree or disagree, in part from lack of sufficient information and in part because it is a SERB matter. The Union is willing to consider a joint petition if that is appropriate. It cannot agree to a change in the Agreement.

FINDINGS AND RECOMMENDATION:

Changes in the bargaining unit description are not a mandatory subject of bargaining to which the parties can insist to impasse. They are within the primary jurisdiction of SERB which may be overridden only by the agreement of the parties within the context of the SERB procedures.

Recommendation:

No change recommended as proposed.

ISSUE: Article III Probationary Employees

CONTRACT SECTION: Article III, Section .01

EMPLOYER PROPOSAL: The probationary period is converted from 120 work days to calendar days. County proposes to change probationary period for some classifications from 150 work days to 180 calendar days and remove requirement to successfully pass Civil Service Test. Remaining are textual changes. Trainer I is deleted.

UNION PROPOSAL: Current contract language

POSITIONS: The Employer:

The Employer is attempting to achieve consistency with County policy by proposing to standardize the probationary period to calendar days. There is no material increase in the probationary period. It also proposes to omit Civil Service which is not a requirement and Trainer I per Article I.

POSITIONS: The Union:

The Union agrees to all the changes with the exception of the Training Officer I reference based upon its position stated under Article II, since it is in the bargaining unit.

FINDINGS AND RECOMMENDATION:

The parties reached a mediated settlement of this provision with one exception.

Recommendation:

The employer's proposal is recommended except the reference to the Training Officer I. It is recommended that Training Officer I not be deleted.

ISSUE: Article IV Dues Check Off

CONTRACT SECTION: Article IV, Sections .04 and .11

EMPLOYER PROPOSAL: Textual language changes to sections .04 and .11 to correct spelling errors and dates for improved reading.

.11 Elimination of 61 days for Union dues/fees to completion of probation.

UNION PROPOSAL: Current contract language

POSITIONS: The Employer:

The Employer proposed to change the reference on Union dues/fees from 61 days to the probationary period of 120/150 calendar days to coordinate with the proposed changes of Article III. It is an effort of coordination to have consistent timing throughout the Agreement. The changes on the timing are meant to coordinate with Article III for ease of administration on the period before representation by the Union. The Union does not represent probationary employees for disciplinary purposes.

POSITIONS: The Union:

The Union does not oppose the textual changes but does oppose the change in the period before commencement of Union dues/fees and representation which currently is 61 days. The Union proposes to keep 61 days at which time the bargaining unit member either becomes a union member or tenders a fair share fee to pay for services of representation. The Union, which does not represent probationary employees for disciplinary purposes, nonetheless represents them for other purposes. There is no substantive nexus between Union entry and the probationary time period. By placing it after the probationary period, which is 120 or 150 days, extendable for an additional 30, Union membership is postponable up to a half year.

FINDINGS AND RECOMMENDATION:

Textual corrections to coordinate the probationary period with Article III and the elimination of 1992 references are unopposed.

The Union's point of the lack of nexus between Union representation and the probationary period being successfully completed is well taken. A period of 120 or 150 calendar days extendable by 30 more means the employee would not have Union representation for up to 180 days, compared to 61 days now. That is 16% of the contract term. This is an extraordinary period by all generally accepted comparisons. Union representation is to be afforded probationary employees for all but disciplinary purposes. That is not sufficient reason to postpone their participation in the Union through dues or fees for so long. It adversely affects the unit to have free riders for such a long period during which many contract administration problems can arise between labor and management that have nothing to do with discipline.

Recommendation:

Paragraph .04 revision is recommended. Paragraph .11 shall remove reference to 1992 as a textual correction. No other change on .11.

ISSUE: Article IX, Disciplinary Procedure

CONTRACT SECTION: Article IX, Sections .02(A), .03(A,B,C,D,E,H) and .04.

EMPLOYER PROPOSAL:

- .02 Most changes to .02(A), 3(A,B,C,D,E) are of textual changes.
- .03(H) Employer proposes only one Union representative at all meetings.
- .02(A) & .04
Employer proposes "Letter of Counseling" become "Written Reprimand"

UNION PROPOSAL: .03(A) The Union proposes to define "a reasonable time" for making charges for discipline to 72 hours.

- .04 The Union proposes to reduce the length of time records of disciplinary action will remain in the employee's file arguing the times are extremely excessive.

POSITIONS: The Employer:

Most rewriting improves readability. The proposed change of "employer" to "supervisor" in .03(A) is because the employer is technically the County Board of Commissioners and it is the supervisor that gives the notice, not the Board.

The change of terminology from "letter of counseling" to "written reprimand" reflects existing practice. Counseling is considered a pre-disciplinary step in which the employee and supervision have communication on a subject, while the letter of reprimand states the consequences. Concerns over whether counseling is disciplinary can be addressed by the fact that the Employer has a burden of proof to prove discipline.

On the Union proposals, three days or 72 hours notice to the employee is not feasible. Many circumstantial contingencies would defeat it, such as a supervisor missing work or where the subject of the incident is not amenable to being addressed in such a short period of time, such as sexual

harassment.

On .03(H) the Employer opposes additional Union representatives in a disciplinary interview that is not related to the grievance procedure.

On the Union proposal .04, the Employer opposes any reduction on the length of time records remain in the file. This is not a workable clause in any event. Employer records are government agency documents and cannot be destroyed and creating a separate file for removed records is nonsensical.

POSITIONS: The Union:

The Union does not oppose changing the "employer" to the "supervisor" and other textual changes. Revision of .02 does not change the meaning and is generally agreeable except the Union cannot agree to "immediate" discharge due to the pre-disciplinary hearing requirement of the law.

The change of the "letter of counseling" to letter of reprimand is objectionable. Counseling is currently a disciplinary step. When an employee is counseled and informed of consequences of their action, they should have Union representation. It is too difficult to structure a change in the progressive disciplinary policy to have counseling become non-disciplinary because when notice of the penalty is given it becomes further justification for a penalty at a later time.

The Union proposes defining the reasonable time of .03(A) to become 72 hours before a charges are made by management to the employee. Without defining this, the delay could cause a "double whammy." By that the Union means a habitual offense such as tardiness might go without discipline one or two or three times over a week or two before the supervisor gets around to giving notice. By that time the employee has committed the offense additional times and has been deprived of the opportunity to self correct through progressive discipline that an earlier notice would have

given.

The Union opposes limiting representation to one. At the present time the Union already has three people that attend Step 3 meetings, the grievant, a steward and an officer, sometimes a business agent. Changing language to one representative could disadvantage the Union in a grievance procedure.

The Union proposes to reduce the length of time in which adverse disciplinary action remain in the employee's file. The current times are excessive. Prior discipline is used as a basis for further discipline and having such long times puts an employee at a disadvantage for a longer period of time.

FINDINGS AND RECOMMENDATION:

Unopposed textual changes will be recommended.

The change of terminology of "letter of counseling" to "written reprimand" in and of itself is not consequential. A reprimand is a notice given to an employee either orally or written of an infraction and a current consequence and a future consequence. By considering counseling to be pre-disciplinary the Employer is in effect creating another step from the Union's perspective. However, to implement it, the Employer must not allow it to become disciplinary in any way. It is meant to be informational and instructive and informal, but to carry with it no immediate consequence and no threat of future consequence for repetition. That is a hard needle for the Employer to thread. Employers certainly have the right to communicate with their employees in non-disciplinary settings for instruction which sometimes includes correction, particularly with respect to operational or safety procedures. However, where the matter is one of conduct or attendance, any reference to the expected standard becomes veiled discipline. Any time that such counseling transgresses that boundary, it triggers the employee's rights to representation. If the Employer cannot provide the

assurances that the employee's rights would be respected, it runs the risk of failure of its progressive disciplinary policy. That being said, it is noted that the proposal is a change of "letter of counseling" to "written reprimand." Hence, this is not a question of mere counseling, which can be at any level of a discussion so long as it is not disciplinary or it can be a verbal warning. Therefore, henceforth upon the Employer's proposal being recommended, no letters of counseling may be provided whatsoever. Anytime they are, they shall be considered a letter of reprimand because this proposal is not intended to be the creation of a new procedure, (i.e. a written counseling), but to be a name change only.

In mediation 30 calendar days of Section .03(A) was accepted in lieu of the Union proposal of 72 hours.

The proposal on .03(H) for one Union representative is not well taken. There is no argument based upon any necessity or abuse by the Union. Indeed, the only evidence is that in higher steps of the grievance procedure there are more than one Union representatives present which has not presented a problem. By imposing the standard of one representative, the regime of the Agreement changes sufficiently to cause confusion when the existing practice does not seem to have any confusion. No change will be recommended.

Record retention was addressed with additional testimony from Employer witnesses indicating that no second file is maintained and that employee records do in fact remain in their file notwithstanding paragraph .04. The current language does not require that the records be literally removed. Rather this jargon is intended to convey that the records will have no effect on determining the progression of discipline after a stated period. A progressive disciplinary policy depends on the availability of prior discipline being present to document corrective measures in the event of future derelictions. The current practice of 12 months is not an inordinately short time. Indeed reducing

it by half, to six months, would frustrate the progressive disciplinary program. Twelve months is not an extreme position and an employee who is making efforts to improve performance, attendance, safety and conduct should have no difficulty in meeting that standard.

Recommendation:

Paragraph .02(A) and .03 textual corrections except for "immediately" in .02 are recommended as agreed. Paragraph .03(A), replacement of the term "employer" with "supervisor" is recommended. Replacement of "a reasonable time" with "30 calendar days" is recommended. For paragraph .03(H), there is no recommended change. The change of the name of "letter of counseling" to "written reprimand" is recommended for .02(A) and .04. Employer's paragraph .04 will be recommended with the addition: "Counseling an employee or any record thereof by a supervisor is not part of the progressive discipline and may not be relied upon in any manner to justify a level of disciplinary penalty at any time."

ISSUE: Article XII Seniority

CONTRACT SECTION: Article XII, Section .02, .03, .04, .05, .06 & .07

EMPLOYER PROPOSAL: Changes to .02 and .03 (new .04) are textual corrections.

.03(new)

County proposes new Section .03 to read "Union employees returning within two (2) years and new hires with experience at an Ohio or county department of job and family services within two (2) years will be credited with their years of service on the pay scale but seniority will start on the date of re-hire/hire." The remaining sections are to be renumbered.

UNION PROPOSAL: Current contract language

POSITIONS: The Employer:

The Employer proposes a two year pay credit to certain new hires as a recruitment tool. It has been experiencing turn-over and difficulty in attracting and retaining qualified applicants in certain classifications. The proposal protects the seniority system by having the rehire begin seniority at day one but they receive wage credit for two years of prior service with the same agency. By retaining the seniority differential, they have lower vacation priority and lower layoff retention prospects among other seniority based benefits. This does not penalize any of the employees that stay.

POSITIONS: The Union:

The start rate means pay for the start of employment. A person who leaves and comes back is starting employment just as they are starting on the seniority scale. They should start with the start rate. Allowing someone to have pay increases during their absence unfairly benefits them as compared to the employees who are loyal and stay and who in fact have maintained their skills and organizational knowledge while the absent person did not.

FINDINGS AND RECOMMENDATION:

The credit for similar service is not an extraordinary provision in public employment and is

actually extremely common for an example in teacher agreements. That unit surely is made up similarly to that of the employees here who have a good many degrees and advanced degrees among their ranks. The Union gave the example of an employee leaving for two years at \$9.00 and returning under the Employer proposal at \$10.00. It argues this is unfair to the employee who is working at \$6.00 who did not leave but is making \$8.00 when the other returns two years later. The Employer counters the Union sees only that the absent employee has advanced and is still ahead of the incumbent. However the Employer notes that the differential between the two when the first employee left was \$3.00 and that became only \$2.00 when that employee returned. So by the passage of time, the incumbent employee has improved themselves on the scale, vis-a-vie, the returnee. The Employer is correct that the example shows no adverse effect on the incumbent employee.

The example compares two employees potentially of different classifications or possibly the same but different seniority. If all things were identical, the returnee leaving at \$6.00 comes back at \$8.00 when the incumbent had stayed for \$8.00. This penalizes loyalty which is what the Employer complains it has too little of. There is no beneficial effect on recruitment to reward the turnstile. It simply empowers the wrong people. It is a different matter to use pay credit to attract new employees. That is particularly important when recruiting employees with advanced degrees who have an external constituency of their profession and standing within it. That will be recommended.

Recommendation:

Paragraph .02 was agreed and recommended. Employer's proposal will not be recommended on new .03 and new .04. Rather new .03 shall read:

New hires with experience of up to two (2) years at another Ohio or county department of job and family services will be credited with their years of service on the pay scale but seniority will start on the date of hire.

ISSUE: Article XIII Vacancy, Promotions and Transfers

CONTRACT SECTION: Article XIII, Sections .06, .07, .10, .11 & .12

EMPLOYER PROPOSAL: Changes to .04, .07 are corrections for improved reading.

- .10 County proposes an increase in probationary period from 90 working days to 120 calendar days
- .11 County proposes elimination of section and renumbering balance.
- .12 County proposes elimination of current language and replacement with "Job postings will be posted on Union bulletin boards, transmitted via email to employees or placed on the Portage County website and maintained by the county human resources department."

UNION PROPOSAL: Current contract language

POSITIONS: The Employer: This was agreed as mediated.

POSITIONS: The Union: This was agreed as mediated.

FINDINGS AND RECOMMENDATION: This was agreed as mediated.

Recommendation:

The Employer's recommendation on .06, .07 .10 and .11 are recommended. The Employer's proposal on .12 as revised through mediation will be recommended to state as follows. "If the Employer decides to fill a vacancy, the vacancy shall be filled within 30 calendar days from the date the posting expires."

ISSUE: Article XIV Temporary Vacancies

CONTRACT SECTION: Article XIV, Sections .02, .03, .04, .05 & .06

EMPLOYER PROPOSAL: County proposes elimination of .02 and renumbering of remaining sections.

.04 County proposes elimination of restriction that temporary vacancies not exceed ten (10) weeks as new .03.

UNION PROPOSAL: Current contract language

POSITIONS: The Employer:

Except for custodial positions, it takes at least ten weeks for others, particularly social workers, to become productive. By the time the person is becoming productive, they have to leave the position according to the current Agreement since that is the end of the ten week temporary vacancy. The Employer proposes 26 weeks before the position has to become permanent. The Employer cannot fill these positions internally. They are filled externally because employees are reluctant to take a temporary vacancy they will have to give up, although some do. Most are caused by FMLA reasons and are often longer than ten weeks, such as 12, which means the person is usually coming back to the position. Internal employees are reluctant to take such a position.

POSITIONS: The Union:

The Employer does not have to go outside of the bargaining unit unless they cannot find inside qualified candidates. If they hire a temporary employee from the outside for as long as six months, that is the same as putting them into a bid job. Six months is a long time to have someone fill a position without becoming permanent when the employee is not coming back.

FINDINGS AND RECOMMENDATION:

Testimony on behalf of the Employer indicated that persons working on a Master's of Social Work have to put in a number of hours in the field and cannot do it full time because of class

commitments. They are available to take these temporary positions.

Ten weeks is nearly 3 months's work time. It should be a sufficient length of time to have a position filled on a temporary basis. If the position is longer, it can become a bid position and then filled from the outside, if not internally. Leaves already allow for six months to have a temp back-fill a person who will be returning from a leave of absence.

The temporary vacancies should be at a minimum able to coordinate with the Family Medical Leave Act. The Employer having the requirement to back-fill an FMLA absence should not be under constraints to remove someone or hire them before the expiration of that absence. Consequently it will be recommended that 13 weeks, which is half of the Employer's proposed 26, will be recommended. If a person is proficient within ten weeks and since FMLA expires within 12, 13 weeks is sufficient to hold the position temporary without being bid or filled on a permanent basis.

Recommendation:

The Employer proposal is recommended except to revise the restriction of temporary vacancies under .04 (new .03) as follows:

- .04 The temporary vacancy shall not exceed thirteen (13) weeks, except when the position is vacant because of an employee's approved leave of absence, in which case it shall not exceed twenty-six (26) weeks. A temporary vacancy may extend beyond the thirteen week period above by mutual agreement between the Employer and the Union. Thirty (30) day emergency appointments are not subject to the provisions of this Article.

ISSUE: Article XVI Labor-Management Conference

CONTRACT SECTION: Article XVI, Section .02

EMPLOYER PROPOSAL: County proposes removal of caseload levels as the purpose for labor/management meetings.

UNION PROPOSAL: Current contract language

POSITIONS: The Employer: Withdrawn

POSITIONS: The Union: No change agreed.

FINDINGS AND RECOMMENDATION: No change to the Agreement.

Recommendation: No change recommended.

ISSUE: Article XVII Hours of Work and Workweek

CONTRACT SECTION: Article XVII, Sections .01, .04 and (new) .05

EMPLOYER PROPOSAL:

- .01 County proposes textual changes to language for ease of reading and to specify breaks as mid morning and mid afternoon.
- .04 County proposes a new section as follows, "Flex Time. Non-probationary employees with managerial approval may adjust their work schedules. At its discretion, management has the right to return an employee to a standard work schedule."

UNION PROPOSAL: .04 & .05

Current contract language of Article XVII but incorporates Union proposals from XXXIII on flex time to refer to negotiated flex policy and restate pilot project as new section.

POSITIONS: The Employer:

The Employer proposes changing the language for breaks during the work day in part because of editing but also because employees have abused the flexibility of break time. Employees have come in late and requested their break be assigned to cover their tardiness, or they ask for it to cover their leaving early. In addition, some who come in tardy such for as doctor appointments, often arrive at the time their normal break begins and go immediately to break instead of to work.

The Employer proposed to remove the existing flex time language that refers to the 1989 policy in Article XXXIII and to replace it with language under Article XVII as a more appropriate location, but which does not make reference to that policy. Rather, it states only that non-probationary employees may adjust their schedule with approval by management which retains the discretion to return to a standard schedule. The Employer insists it needs flexibility to schedule the work. The 1989 policy does not replace the Collective Bargaining Agreement. The Employer's discretion is still required in Paragraph B of that policy. The pilot program of 2000 is intended to be just that. If pilot programs become part of Agreements, the County Commissioners will be hesitant

to explore pilot programs in the future. That would be to a detriment of the employees and the Agency both. There is no "fits all" solution to flex time. Some work cannot be done without supervision or without security. Management needs to retain the right to break a tie where employees are opting for the same schedule without concern over grievances. Approval of the supervisor is the tie breaker. The Employer's proposal really does not change anything. The 1989 policy is predicated on management discretion and so is the Employer's proposed language in the Agreement.

POSITIONS: The Union:

The Union does not oppose the changes in .01 beyond the feasibility of implementing them. Some revisions were recommended for purposes of reading. Scheduling breaks mid-morning and mid-afternoon and the lunch mid-day, the Union considers beneficial to other employees who are disadvantaged by those leaving at critical opening and closing times.

The Union agrees to move the flex-time provision from Article XXXIII but proposes that it be a new paragraph under XVII at Sections .04 and .05. Flex time is currently covered by an agreement between the Union and the County Commissioners dated July 1, 1989, which is referenced in the current contract language. The Union proposes to attach that policy as an exhibit to the Agreement. In addition to the 1989 policy, the Employer issued a supplemental memorandum in May 1, 2000, that expanded the flex program with two more options on a pilot basis. The two additional options are for four/ten hour shifts, one beginning at 7:00 and the other beginning at 7:30 with various days off. It was not negotiated and is subject to change. The Union proposes making it a part of the Agreement. It has been in effect for six years. Since it is not a negotiated, withdrawal of the pilot program it would not be grievable. The Employer's argument that it should not be committed to four/tens for safety purposes does not make sense. The Employer instituted this program for six years and did not have safety and security issues to prevent it or that have arisen.

Flex times are undoubtedly a condition of employment. The Union has a role in agreeing to begin or change it and should have a role in whether the changed condition should be ended. The rule should be standard and grievable.

FINDINGS AND RECOMMENDATION:

The changes to Sections .01 seem to be an effort to have the Agreement as a substitute for supervisory control of the work force. Having flexibility to use breaks to cover late ins or early outs, or to extend time away from work after legitimate absence is frustrating to both management and to the employees who are working. However, using the Agreement to provide for supervisory control of the work force is not an adequate substitute for discretion. Language placing the break mid-morning is relatively vague with respect to timing. Setting them at that juncture assists in avoiding abuse at the beginning and ending of shifts or possibly extending lunch time. Based on the work day from 8:00 a.m. to 4:30 p.m. with a half hour lunch assumed to be around noon, mid-morning breaks would arise between 9:30 a.m. and 10:30 a.m. and mid-afternoon breaks would arise between 2:00 p.m. and 3:00 p.m.. However, that does not address the problem of people coming in after legitimate absences and going directly to break. The parties have agreed to modification that addresses the first problem, but not the second. Their modification will be recommended with the additional language recommended by the Fact-Finder.

The joint flex time work schedule policy of 1989 appears to be a comprehensive yet flexible document. It allows Agency directors to set up choices of options. It leaves advance approval of the employee to request the supervisor. It allows for emergency situations, has a multiplicity of options, and gives role to seniority. It covers other considerations for a variety of different types of employees. The Fact-Finder's review of the document recommends it highly as a well crafted policy even for a situation that defies "fits all" solutions. The Employer's recommendation that managerial

discretion to create and remove flex time options would obviate this policy. It would put the policy in limbo since it would constitute a subsequent agreement. The most likely effect is that the 1989 policy would have been repealed in favor of management discretion alone. While that may or may not be the intention, that is certainly a likely result and an unfortunate one considering the creativity that went into preparing the document. The Union's point is well taken that the document should be accessible and attached to the Agreement and so that will be recommended. The Union's proposal that the pilot program of May 1, 2000, be incorporated into the Agreement will not be recommended. As a pilot program, it should not be discouraged by having it become fixed. It was contemplated in the 1989 Policy that the Employer would develop other options in addition to the ones that are presented in the policy. The pilot program happens to be an instance of that.

Recommendation:

The following is recommended for the first paragraph .01, with the second being deleted. "WORK DAY. The normal work day shall consist of eight (8) consecutive hours from 8:00 a.m. to 4:30 p.m. The work day shall include a one half hour lunch, scheduled near the middle of the work day, taken without pay. In addition, the work day shall include two (2) rest periods consisting of fifteen (15) minutes each taken with pay, one in mid-morning and one in mid-afternoon. Employees may request approval of their supervisor to take breaks at other times provided they have worked prior to the break or after the break for a period not to exceed 90 minutes. Employees shall be relieved of all duties, including on-call duties, during the lunch and rest periods."

It is recommended that Section.04 of Article XVII replace .04 of Article XXXIII and shall read as follows: "FLEX TIME. The Employer and Union have agreed to a flex time policy dated June 16, 1989, which is effective July 1, 1989, attached hereto as Exhibit _____."

No other recommendations.

ISSUE: Article XVIII, OVERTIME

CONTRACT SECTION: Article XVIII, Sections .01, .04(A&C), 0.5 & 0.6

EMPLOYER PROPOSAL: Changes to Sections .04(A), .05 and .06 are textual.

.01 County proposes regulation of overtime only by managerial approval.

.04(C) County proposes to increase amount of compensatory time which may be accrued from one hundred twenty (120) hours to two hundred forty (240) hours.

UNION PROPOSAL: .01 The Union proposes to allow for vacation time to be credited as active pay status for overtime calculation.

.04(C) The Union proposes to remove the time limitation during which compensatory time is to be used.

POSITIONS: The Employer:

Paragraph .01 and .04(A) describe the management discretion retained over scheduling of overtime. It only states the current practice and the obvious management right. Paragraph .04(C) increases hours of comp time to coordinate with county-wide policy on the same subject. The other changes are typographical corrections.

POSITIONS: The Union:

The Union does not object to the statement of management rights in .01 or the increase in hours in .04(C).

The Union states that because the Employer controls the approval of vacation, vacation time should be credited as active pay status for overtime. An employee using less than 8 hours vacation time such as for an appointment should not be forced to have it taken away for overtime calculations. The Union states that by limiting the amount of time employees may utilize earned compensation time, could cause employees to be forced to take time which could conflict with operational needs. By not limiting usage of comp time, the Employer retains it's management rights.

FINDINGS AND RECOMMENDATION:

After the initial statement of position, this was mediated and agreed revisions are reflected in the recommendation. The Employer agreed to not count vacation taken in segments under eight hours as overtime. The Union's position on .01 was withdrawn.

Recommendation:

The Employer's proposals on .04(A&C), .05 and .06 are recommended as proposed. Section .01 will be recommended as agreed in mediation as follows:

- .01 An employee shall be paid overtime at the rate of time and one-half (1 ½) his or her regular rate of pay for all hours in active pay status in excess of forty (40) hours each week. **OVERTIME MAY ONLY BE WORKED WITH MANAGERIAL APPROVAL.** For purposes of this article Vacation of ~~less than 8 consecutive hours~~ shall not be construed as hours in active pay status. Sick leave shall not be construed as hours in active pay status.

ISSUE: Article XIX, SICK LEAVE

CONTRACT SECTION: Article XIX, Sections .05, .06, .07 & .12

EMPLOYER PROPOSAL:

.05 To replace existing .05 with the following, "Employees are expected to be in attendance daily and sick leave is to be used only for those reasons set forth below. An employee may submit a request for sick leave for the following reasons:

1. Illness, injury, or pregnancy-related condition of the employee.
2. Exposure of an employee to a contagious disease which could be communicated to and jeopardize the health of other employees.
3. Examination of the employee, including medical, psychological, dental, or optical examination by an appropriate licensed healthcare practitioner.
4. Death of a member of the employee's immediate family, in accordance with .06.
5. Illness, injury, or pregnancy-related condition of a member of the employee's immediate family where the employee's presence is reasonably necessary for the health and welfare of the employee and affected family member.
6. Examination, including medical, psychological, dental or optical examination of a member of the employee's immediate family by an appropriate licensed practitioner where the employee's presence is reasonably necessary."

.06 & .12

Employer proposes to add "foster child."

.07 Employer proposes to reduce sick leave payout at retirement to a maximum of 30 days with eligibility beginning at 10 years.

UNION PROPOSAL: .06 The Union proposes the addition of the term "foster child."

.07 The Union proposes to substantially modify sick leave paid on retirement to recite language consistent with current County policy.

.12 The Union proposes to modify that three (3) paid days be given upon the death of a family member and two (2) additional days be made available from accumulated sick leave.

POSITIONS: The Employer:

The substantive changes of additional language to .05 mirrors county policy, making it easier to administer county-wide. The numbered sub-paragraphs all reflect FMLA concerns. Employer policy will be equitable in the sense that it will apply to all county employees without a special case being made for the bargaining unit.

The Employer opposes the Union proposal to rewrite the county sick leave buy-out. It is a matter of costs. The Employer proposes to devote all economic benefits to improve wages due to the recognized concerns of the currently existing low pay scale. It proposed a reduced buy-out.

No objection was made to the addition of "foster child" in .06/.12.

POSITIONS: The Union:

The Union proposes the addition of "foster child" to sick pay consistent with FMLA concerns and more important with the Agency's mission, which is to care for foster children among others.

The Union withdrew the proposal for .12.

The Union agreed to the Employer's proposals on .05. The Union proposed to add a reference to the county policy for the amount of sick leave to be paid upon retirement. Without incorporating the county policy, it is subject to change by the Employer with limited rights for the Union to enforce an employee's reliance upon the benefit at retirement. The Union proposes cashing out 25% of the sick leave but with larger maximums based on tiers per a range of years of service.

FINDINGS AND RECOMMENDATION:

After the presentation, the only matter at issue was any change with respect to incorporating the county policy on payment of sick leave on retirement. There was no case for the necessity of change made other than the abstract allegation that it is a low amount for the cash out of this benefit. While the Employer expects that less is better, the issue remains a to whether the current level has

presented any operational problems. For example, there been no evidence that employees routinely (or in some numbers) immediately before retirement preferred sick leave rather than to attend work in order to retain the value of this benefit. Had there been, the conclusion might be that the benefit is too low in view of the current cash out. This is not to say employees should be encouraged to take a sick leave under circumstances where it is not due, but employees approaching retirement often have what might be termed elective health concerns because they had put them off in favor of working a full schedule, so that they need time off to attend to them before a change in their health benefits at retirement. However, the case was not made on the facts and adjusting the benefit on an abstract basis to reduce it without comparisons is insufficient.

Recommendation:

Paragraph .06 and .12 shall include the term "foster child." Paragraph .05 shall be the Employer's proposal. Paragraph .07 and .12 will not change.

ISSUE: Article XX Leaves of Absence

CONTRACT SECTION: Article XX, Sections .01, .02, .03, .04, .05, .06, .07 & .08

EMPLOYER PROPOSAL: County proposes deletion of Sections .01, .02 & .05 and renumbering of remaining sections and revision to Section .03 to improve reading.

.08 (New Section .05) County proposes deletion of requirement to maintain Life Insurance and AFSCME Health Care Plan during FMLA.

UNION PROPOSAL: Current contract language

POSITIONS: The Employer:

The deletions are for the purpose of being able to follow county policy. This facilitates the ease of administration which is beneficial to the unit as well as the Employer by avoiding mistakes and having benefits similar to other employees of the county. The county policy cannot be incorporated into the agreement because it is a policy and as such stands on its own. It is not a negotiated document.

POSITIONS: The Union:

The Union agrees conditionally on the deletions with the exception of the reference in .08 (new .05) as to the AFSCME care plan. The condition the Union has for its agreement, other than the AFSCME plan, is its concern over the continuing effect of county policy. The Union is concerned that there may be changes in county policy that are beneficial to the employees. Without the incorporation of the county policy in the Agreement, the Union is unable to enforce the policy. If there is no clause in the Agreement, then the policy applies.

FINDINGS AND RECOMMENDATION:

The case was not made that the Union should not have enforceable rights with respect to leaves of absence by governing this term of employment by a unilateral policy. Certainly it is a

mandatory subject of bargaining as a term and condition of employment. The Union cannot avail itself of the grievance procedure for its proper application, nor for its rescission. Rather it may resort only to statutory procedures if they are at all applicable, which is highly unpredictable. Therefore the Employer's recommendation will be adopted with modification.

Deletion of .01, .02 and .05 are appropriate since they are covered by the mandatory provisions of FMLA referred to in .08 (new .05). The changes with respect to current .08 (proposed new .05) coordinate with changes in another article and will be considered there. See Article XXVII

Recommendation:

Sections .01, .02 and .05 shall be deleted with the reference of new .05 (former .08) being reserved for other determination. (Cf. Article XXVII) Note: Correct title of new .05 to be "Medical." Other provisions to be renumbered. In addition, the following shall be adopted as part of newly numbered Section .05. "Leave of absence policy adopting optional benefits permitted by FMLA will be grievable under the same conditions and circumstances as the Union may protest reasonable work rules for the regulation of conduct under Article XXX."

ISSUE: Article XXI Military Leave

CONTRACT SECTION: Article XXI, Sections .01, .02, .03, .04, .05, .06 & .07

EMPLOYER PROPOSAL: County proposes deletion of entire Article and replacement with the following, "Eligible employees shall be entitled to military leave and reinstatement rights to the extent provided by State and Federal law."

UNION PROPOSAL: Current contract language

POSITIONS: The Employer:

Military leave is a subject that is complex and regulated both by federal and state governments. The Employer proposal is more candid and clear than the provisions of the current contract language. There is no loss of benefit because the county policy is obligated to follow both state and federal law. A collective bargaining agreement is subject to federal law but there is an issue as to whether the Agreement would supercede state law on this subject. If there is any improvement in state law, it would more surely be reflected in county policy than if it were in the Collective Bargaining Agreement alone.

POSITIONS: The Union:

The Union is uncertain whether the county policy is better than what the law provides or not. If it is better, it would prefer to follow the county policy but that is not clear. For example, if the state provides that an employee on leave receive the difference between his gross wages and his uniform pay up to \$500 and the county takes it up to \$900, the Union would want to have the \$900 benefit.

FINDINGS AND RECOMMENDATION:

This is different than leave of absence because there is a voluminous external regulation on the subject that interplays with the Agreement. Federal law, of course, would be controlling but the effect of state law, as opposed to collectively bargained provisions, is in doubt. While the county's

current intention is to mirror state law, it can conceivably improve upon it. Considering the employees who are the beneficiaries of this term, it is incumbent on the parties to provide most liberally for their benefit as they do for ours, as their fellow citizens.

Recommendation:

The Employer's proposal is recommended with modification: "Eligible employees shall be entitled to military leave and reinstatement rights to the extent provided by State and Federal law, provided that should the County Board of Commissioners approve a policy with terms more beneficial to the eligible employees from their perspective, said employees shall be entitled to the most beneficial terms to the exclusion of the lesser beneficial terms on the same subject."

ISSUE: Article XXII Holidays

CONTRACT SECTION: Article XXII, Sections .01, .06 & .07

EMPLOYER PROPOSAL: County proposes textual changes for improved reading.

UNION PROPOSAL: The Union proposes clarification to .01.

POSITIONS: The Employer: This was agreed as mediated.

POSITIONS: The Union: This was agreed as mediated.

FINDINGS AND RECOMMENDATION: This was agreed as mediated.

Recommendation: The Employer's proposed changes are recommended.

ISSUE: Article XXIII Vacations

CONTRACT SECTION: Article XXIII, Sections .02, .03, .08, .09 & .10

EMPLOYER PROPOSAL: County proposes textual changes to language in Sections .02 and .08 for improved reading.

.03 County proposes deletion of Section .03 and replacement with the following, "Employees are expected to use accrued vacation leave in the year in which it accrues and prior to the employee's next anniversary date. An employee may carry over earned vacation leave for a period not to exceed three (3) years from the employee's anniversary date with the approval of the Board of Commissioners. Vacation credit in excess of three (3) years of accrual will be eliminated."

.09 County proposes deletion of Section .09

.10 County proposes deletion of Section .10

UNION PROPOSAL: Current contract language

POSITIONS: The Employer: This was agreed as mediated.

POSITIONS: The Union: This was agreed as mediated.

FINDINGS AND RECOMMENDATION: This was agreed as mediated.

Recommendation: The Employer's proposed changes are recommended.

ISSUE: Article XXIV Expense Reimbursement

CONTRACT SECTION: Article XXIV, Sections .01(B&C)

EMPLOYER PROPOSAL: County proposes meal reimbursements be "based on the U.S. general services administration standards for meals and incidental expenses." County proposes, "any accommodations over one hundred dollars (\$100) per night must be prior approved by the supervisor."

UNION PROPOSAL: Current contract language

POSITIONS: The Employer: This was agreed as mediated.

POSITIONS: The Union: This was agreed as mediated.

FINDINGS AND RECOMMENDATION: This was agreed as mediated.

Recommendation: The Employer's proposed changes are recommended.

ISSUE: Article XXV, Wages, Longevity, PERS Pick-up

CONTRACT SECTION: Article XXV, Sections .01 & .02

EMPLOYER PROPOSAL: County proposes deletion of last sentence of Section .01 and change .02, longevity, for clarity.

UNION PROPOSAL: The Union proposes to modify Section .01 by deletion of the last sentence.

POSITIONS: The Employer: This was agreed as mediated.

POSITIONS: The Union: The Union proposes deletion of language that has caused uncertainty and confusion in past wage issues. This was agreed as mediated.

FINDINGS AND RECOMMENDATION:

The parties addressed the wage schedules "A" and "B" (*viz*) separately and addressed only the language of this Article. This was agreed as mediated.

Recommendation: The Employer's proposed changes are recommended.

ISSUE: Article XXVI, On-call Pay

CONTRACT SECTION: Article XXVI, Section .01

EMPLOYER PROPOSAL: Current contract language

UNION PROPOSAL: The Union proposes to modify Section .01 by an increase in the on-call allowance.

POSITIONS: The Employer: This has nothing to do with gas prices. It is standby or waiting pay.

POSITIONS: The Union: The Union realizes that this Article was raised last negotiations, albeit minimally, but that the cost of gas prices makes this request not out of line and only affects a few employees.

FINDINGS AND RECOMMENDATION: The Union withdrew.

Recommendation: No change from current contract language.

ISSUE: Article XXVII Insurance (incl Ancillary reference in XX .08)

CONTRACT SECTION: Article XXVII, Section .02

EMPLOYER PROPOSAL: County proposes deletion of entire Section .02

UNION PROPOSAL: Current contract language

POSITIONS: The Employer:

For many years the Employer has been attempting to have a single group provider for its health coverage. This is obviously cost effective by having as large a group as possible. This benefits the employees by avoiding trade offs and costs among the several units and also by having consistency of benefits across all the agencies.

The Commissioners have been on a relentless mission to have uniformity and are eventually getting there. The Employer has tried to change all 14 agreements and currently had changed nine. This will be number ten. The Employer demonstrated that out of it's nine agreements, eight have already limited the insurance article to what appears as the Section .01 of the current contract language. Two have a brief second article covering supplemental Workers' Compensation coverage.

The only other unit that had the AFSCME care program was the nursing home agreement that expired June 30, 2004. It no longer has the plan now either. The Employer's first proposal there was to delete the Plan at the nursing home which the Union opposed initially but ultimately agreed for it's 2005-2007 Agreement. Therefore, this is the last employee group that has the AFSCME care program and one of only five that do not have identical language with the other nine units.

The Employer's supplemental plan for family coverage costs the employees \$45.20 per pay period. Everyone in the county pays the same. The Employer recognizes this is a cost shift but it also recognizes that cost shifting has been the trend in insurance coverage for many years both in public and private sectors. The past Fact-Finder reports notwithstanding, this is a different situation. The

situation in 1991 certainly is not operable in the present circumstances. The most recent Fact-Finding report to approve the AFSCME care program is no longer applicable either.

Even though this is an additional cost and a concessionary proposal, it also coordinates with the Employer's ability to retain employees by having wages sufficiently high. This combination of concerns brings the Employer to propose folding in the cost of the pre-tax AFSCME care plan into the wages. While proposing to eliminate the AFSCME care program and the \$42 per month pre-tax payment, the Employer also proposes to substitute the cost of that program in post-tax wages in the amount of \$.35. That amount recognizes that this is currently a pre-tax benefit. The Employer factored in an additional \$.10 per hour in what it terms a gross-up plus its hourly cost of \$.25.

POSITIONS: The Union:

The Employer proposes to delete the AFSCME care plan. The employees are covered by the group hospital, surgical and medical (HSM) insurance provided by the County Commissioners for all other county employees. The AFSCME care program is a supplemental policy. Its coverages are provided by a joint trusted multi-employer plan and are available to employees of other counties, specifically Summit County JFS. The plan is also available to any other county employees, even those not represented by AFSCME, where a county already has some of its employees covered by the plan. As a supplemental plan, it provides coverage for dental services, life insurance and hearing aides to the bargaining unit at the pretax cost of \$42 per employee per month. Although vision and prescription drugs are available through the AFSCME care program, they are provided currently through the County HSM program.

Currently the Portage JFS employees and the Portage County nursing home employees are participants in this plan. The removal of the care plan at the nursing home is currently under a grievance. The business agent that bargained the new agreement there has been terminated for that.

The AFSCME care program has been a condition of employment ever since the first Collective Bargaining Agreement. The bargaining unit was certified in October, 1984. The first Agreement effective 1985 to 1987 incorporated the program pursuant to a Fact-Finding recommendation and has remained there ever since. The Employer has made several attempts to eliminate this. In 1991, a Fact-Finder recommended that it be retained and the Employer accepted it. In 1994, the Employer agreed to include the program at \$31 per month per employee. In 1997, again pursuant to a Fact-Finder recommendation, the Employer agreed to the care program and to pay any increase. In 2000, without going to Fact-Finding, the plan was agreed again. In 2003, the Employer proposed to eliminate the program for consistency of coverage amongst all the other county agencies. It is the same argument the Employer is making now. The Fact-Finder rejected it at that time and the Employer agreed to the recommendations which became part of the Agreement.

There is no additional cost to maintaining the plan at \$42 per employee per month. Meanwhile the Employer proposes to substitute its supplemental plan at the cost of \$45.20 per pay period per employee which is paid by the employee after tax. That is a cost to the employees of \$180 while they lose a pre-tax benefit of only \$42. In addition, the employees will not have the same coverage. There is no hearing aide coverage. There is dental coverage in the Employer plan. The life insurance the Employer provides is charged on a sliding scale and is based on insurability which may preclude some employees from having coverage. It is in addition to the \$45.20 per month. Overall this is a net take away from wages for lesser benefits.

FINDINGS AND RECOMMENDATION:

Uniformity for its own sake, particularly with respect to supplemental coverage, is not sufficient to carry the day without all things being equal. In this case, they are not. The Employer proposes offering a dental plan at the monthly cost of \$180 after tax in lieu of a pre-tax benefit of

dental, life and hearing aide coverage of \$42 per month. There is a large mismatch in the employee cost that is not compensated in the Employer's proposal of a \$.35 hourly wage increase, even though it includes additional \$.10 gross-up to compensate for the pre-tax effect. Not only is the cost disproportionate in the way it falls on the employee even after the Employer's proposed compensatory wage change, but the benefits are different. As noted, hearing aides are not covered but neither is life. The employees may have life insurance at an additional cost over and above the \$45.20 per pay period in the Employer plan. Consequently, to replicate the coverage that the employees currently have would cost them in excess of \$180 post-tax for those who qualify for the life insurance. Some will not qualify based on insurability standards of the carriers offered.

Bottom line is that the elimination of this benefit is not adequately compensated in the Employer's proposal. It does not provide the same benefits and does not even provide coverage for all employees. Therefore, having uniformity amongst all the county agencies has little to recommend for it with these inequalities.

The major considerations for uniform coverage amongst all the employing units in the county is to facilitate administration, reducing overall it's cost to the public and theoretically freeing revenues for other employee uses. Second, it is to provide the Employer with a large enough buying group to achieve competitive pricing for the supplemental benefit. Third, by eliminating the Union plan, the Employer has more opportunity to shift additional cost to the employees in the future.

The \$45.20 per pay period may be competitive but \$42 per employee per month is more competitive. Since the AFSCME care plan is available for any employer who has made it available to some of it's employees, it would appear that the Employer is missing an opportunity to benefit it's other employees at a lesser cost. That cannot be asserted with total certainty because obviously the schedule of benefits as between the contending MetLife dental plan and the AFSCME dental plan are

not in evidence. The choice not to explore that means that the cost shifting feature is paramount.

Nonetheless, given the nature of health care pricing, particularly supplemental benefits like dental coverage, depriving the Employer of every possible tool is not something that the Fact-Finder finds comforting. Dental insurance, as is well known, is not insurance but is virtually a pre-paid savings plan for a certain limited menu of services. It is structured almost entirely as "you get what you pay for." Inferentially then, the AFSCME plan could have a schedule of benefits that would suffer in comparison to the MetLife group plan.

It is also a conversion from pre-tax to post-tax. As such it implies somewhat of an elective nature. Without exploring that completely, some testimony at hearing made mention of the employees being left with the Employer's "cafeteria" plan if they go without the AFSCME care plan. Hence to some degree employee election plays a role in the benefit selection.

Therefore, it cannot be found that the schedule of benefits for the Employer's dental program suffers adversely by comparison to the AFSCME care program on this record. It has to be assumed that it is comparable or better, and it may be elective to a degree. Given that, the Employer should have the benefit of the doubt in attempting to have uniform coverage for its employees in order to put it in the best competitive situation for pricing purposes. The Fact-Finder is favorably disposed to recommending the Employer's proposal, except that its cost is insufficiently compensated in the wage changes. If it were, the recommendation would be otherwise.

Recommendation:

There is no recommended change to this Article.

ISSUE: Article XXX, WORK RULES

CONTRACT SECTION: Article XXX, Sections .01 & .02

EMPLOYER PROPOSAL:

.02 County proposes to increase the period of employee notification for new rules to 10 days and set the time for grievances on work rules at 5 days.

UNION PROPOSAL: .01 The Union proposes 15 days for the parties to meet before implementation of work rules.

POSITIONS: The Employer:

Expanding time for notification of employees about work rules is to the employee's benefit. Seven days is too short because of weekends and holidays that could interfere with fair notice. The additional clause setting a time limit for filing grievances on work rules is administratively necessary. Once the Employer goes through the process of internally developing rules, discussing them when the Union requests, and giving notification, it needs to know that the work rules are acceptable and not subject to being challenged later.

The Employer opposes a mandatory meeting with the Union to discuss the rules. The current process of discussing them upon request is sufficient and has not been a problem.

POSITIONS: The Union:

The Union believes that giving a specific period of time for notice and meeting before implementation of new work rules is reasonable. The idea of advance meeting before notification to employees will give a better understanding of the rules and improve information to members on how a work rule will affect them. The Union believes this is a courtesy to the members.

Additional notice to the employees is not objectionable. Limiting grievances to five days before their implementation is not feasible. The many ways rules can be unfairly applied cannot be predicted so the Union must be able to grieve.

FINDINGS AND RECOMMENDATION:

The Union's point is well taken that advance discussion is more beneficial to the Union and the membership for understanding and dissemination of that understanding. However, mandatory meetings impair the Employer's ability to be able to exercise its management rights through work rules by placing a barrier at the Union's control. If the Employer is required to meet with the Union and the Union chose to not meet, does the rule ever become effective? What are the risks if the Employer enforces it? Fifteen days, which is an odd number and over two weeks, is too long a period to delay implementation. It will be recommended to resolve this that the Union shall have not less than seven days to request a meeting prior to the implementation of the rule. This would allow the Employer managerial flexibility and also give the Union sufficient advance information that will assist in the balance of the work rule section.

The Employer proposal to expand from seven to ten days notice to the employees is not objectionable by either the Union nor the Fact Finder and will be recommended for the reason the Employer stated.

Setting a time limit on filing grievances on the rules will not be recommended. Section .03 states the parties agree that all the work rules will be reasonable and reasonably applied and enforced. Setting a time limit for contesting the reasonableness of the rules or their enforcement or application is not feasible upon their effective date. There are too many situations where rules may apply and too many distinctions that could lead to different enforcement for the rules to be grievable then. The reasonableness (or unreasonableness) of a rule may not be obviously apparent until a concrete fact situation is presented. While there may be some rules that can certainly be contested as not reasonable as soon as they are written, that is not many. By setting a time limit, the Employer is insisting that every rule be grieved as soon as it is issued because the Union would lose its right to

do so later. That would only serve to increase grievances and potentially arbitrations, and not to improve it administration of the Agreement.

Recommendation:

The second sentence of .01 shall read, "Upon the request of the Union, the Employer shall meet with the Union and discuss such rules and shall postpone their implementation so that the requested meeting may be conducted not less than seven (7) days before the effective date."

It shall be recommended that the term seven (7) days of Section .02 shall become ten (10) days. No other recommendations.

ISSUE: Article XXXI Job Descriptions, Job Audits and Evaluations

CONTRACT SECTION: Article XXXI, Sections .04 & .05

EMPLOYER PROPOSAL: County proposes textual language changes to Sections .04 and .05 for improved reading.

UNION PROPOSAL: Current contract language

POSITIONS: The Employer: This was agreed as mediated.

POSITIONS: The Union: This was agreed as mediated.

FINDINGS AND RECOMMENDATION: This was agreed as mediated

Recommendation: The Employer's proposed changes are recommended.

ISSUE: Article XXXII Job Security

CONTRACT SECTION: Article XXXII, Section .02

EMPLOYER PROPOSAL:

- .02(5) County proposes textual changes for improved reading.
- .02(6) County proposes changing #6A to substitute 2 part-time per classification and to delete #6B eliminating named positions, and to renumber and re-letter the balance.

UNION PROPOSAL: Current contract language

POSITIONS: The Employer:

The first change is a name change only in .02(5).

The Employer is proposing changes in the employment of part time workers. Paragraph .02(6) permits two part time workers per specified classification. The proposal eliminates the job titles of Vehicle Operators, Social Service Worker II and Social Service Worker III to allow two part-timers for any job title. It also removes the limitation of a 26 weeks maximum in a calendar year for part time workers. These are bargaining unit members and not temporary employees so should not be limited to an annual limitation of 26 weeks. The part time workers are used for back logs or peak periods to meet the work load. It is not the Employer's intention to get rid of full time in favor of part time workers.

POSITIONS: The Union:

This proposal will erode the bargaining unit. Although the part timers are bargaining unit members, having too many of them will reduce the number of full time employees needed. The Employer already has the ability to hire temporary persons for up to six months for leave of absence without filling the position. Twenty-six weeks for part timers should also be long enough before a person is determined to be needed and able to work on a full time basis. The Union is concerned

about overuse of this provision and prefers to have them used for specific times and specific purposes as in the current contract language.

FINDINGS AND RECOMMENDATION:

In order to be included in the bargaining unit, part time workers typically need to be regularly scheduled. That does not necessarily mean on a weekly or monthly basis or for any particular schedule but there should be some regularity. In that way they can share a community of interest with the other bargaining unit members who are full time. Their foreseeable continuation on a schedule distinguishes them from casual workers which is another marker of their community of interest with the bargaining unit.

The Union's point that the 26 week requirement is sufficient to satisfy these two criteria is well taken. The 26 weeks in the current language is not necessarily a consecutive period but can be spread throughout the calendar year giving the Employer enough latitude and flexibility to retain them on a regular schedule for a long enough period to have a community of interest with full time employees. No change will be recommended for .02 (6B).

The change in .02 (6A&B) to a maximum of two part time workers per classification could be reasonable but the case was not fully demonstrated. From the pay scale and recognition clause there are obviously a large number of classifications which could indicate that possibly there may be only one or two or a few incumbents in some of them. If so the Employer's proposal to change to two part timers per classification could be a significant change of the work force. However, on this record that is hypothetical since the evidence was not presented as to why part timers were needed in the classifications other than the ones listed in the current contract language. No recommendation to the change in .02 (6A & B) will be made.

The change to .02 (5) is a name change and without objection will be recommended.

Recommendation:

The Employer's proposal on .02 (5) shall be recommended with no other change to this Article.

ISSUE: Article XXXIII, MISCELLANEOUS PROVISIONS

CONTRACT SECTION: Article XXXIII, Sections .01, .02, .03, .04, .05, .06 & .07

EMPLOYER PROPOSAL:

- .01 County proposes to add to Paragraph A a reference to the following to Section .01, "Refer to Portage County Weather Emergency Policy and attach it as Appendix A and to delete Paragraph B.
- .02 County proposes to delete entire Section .02
- .03 County proposes to delete new Section .03
- .04 County proposes to delete entire Section .04 and remove it to Article XVII and renumber remaining sections.

UNION PROPOSAL:.04 The Union proposes to officially incorporate the Flex Time policy previously agreed upon which became effective July 1, 1989.

- .08 The Union proposes to add a new section on flex schedule.

POSITIONS: The Employer: This was agreed as mediated.

POSITIONS: The Union: This was agreed as mediated.

FINDINGS AND RECOMMENDATION: This was agreed as mediated.

Recommendation:

The Employer proposals are recommended with the understanding that the deletion of .04, Flex Time includes its removal from this Article to Article XVII where it has been considered previously.

ISSUE: Article XL, Duration of Agreement (Retroactivity)

CONTRACT SECTION: Article XL

EMPLOYER PROPOSAL: County proposes to begin Agreement from date of ratification.

UNION PROPOSAL: The Union proposes to modify Article XL to reflect a three year agreement beginning 7-1-06 retroactively.

POSITIONS: The Employer: The Employer opposes.

POSITIONS: The Union: There has been no undue delay on the part of the Union and the unit should not be penalized in wages by circumstances not of their responsibility.

FINDINGS AND RECOMMENDATION:

The new Agreement retroactive to expiration of former Agreement is typical and appropriate in as much as the FFR is issued in such a short time after expiration.

Recommendation:

Insert in Article XL July 1, 2006, for effective date of the three year Agreement, expiring June 30, 2009. Wages will be retroactive but implementation of other new contract terms will be prospective only for the purpose of the grievance procedure.

ISSUE: New Article - Union Proposal (Grievance Mediation)

CONTRACT SECTION: New article

EMPLOYER PROPOSAL: No position given

UNION PROPOSAL: Entire new section

POSITIONS: The Employer: No change agreed.

POSITIONS: The Union: Withdrawn

FINDINGS AND RECOMMENDATION: No change to the Agreement.

Recommendation: No change is proposed.

ISSUE: New Article Union Proposal (AFSCME - P.E.O.P.L.E. deduction)

CONTRACT SECTION: New article

EMPLOYER PROPOSAL: No position given

UNION PROPOSAL: Entire new section

POSITIONS: The Employer: No change agreed.

POSITIONS: The Union: Withdrawn

FINDINGS AND RECOMMENDATION: No change to the Agreement.

Recommendation: No change is proposed.

ISSUE: New Article - Union Proposal (Union Leave)

CONTRACT SECTION: New article

EMPLOYER PROPOSAL: No position given

UNION PROPOSAL: Entire new section

POSITIONS: The Employer: No change agreed.

POSITIONS: The Union: Withdrawn

FINDINGS AND RECOMMENDATION: No change to the Agreement.

Recommendation: No change is proposed.

ISSUE: New Article Union Proposal (Neutrality)

CONTRACT SECTION: New article

EMPLOYER PROPOSAL: No position given

UNION PROPOSAL: Entire new section

POSITIONS: The Employer: No change agreed.

POSITIONS: The Union: Withdrawn

FINDINGS AND RECOMMENDATION: No change to the Agreement.

Recommendation: No change is proposed.

ISSUE: New Article Union Proposal (AFSCME Legal Service Fund)

CONTRACT SECTION: New article

EMPLOYER PROPOSAL: No position given

UNION PROPOSAL: Entire new section

POSITIONS: The Employer: No change agreed.

POSITIONS: The Union: Withdrawn

FINDINGS AND RECOMMENDATION: No change to the Agreement.

Recommendation: No change is proposed.

ISSUE: New Schedule "A" Pay Ranges (2007, 2008, 2009)

CONTRACT SECTION: New Schedule "A"

EMPLOYER PROPOSAL: The Employer proposes adjusting the pay ranges with the movement of certain job classifications, as among the pay ranges and in addition a wage increase over three years. The increase consists of a 4.9% increase over the current Agreement for the first year plus compensation for the translation of the pre-tax AFSCME care plan to a post-tax wage in the amount of an additional \$.35, plus fold-in of the longevity increase for years five and nine. For the second year, the proposal is a 2% increase on the total of the first year, and the third year is a 2% increase on the second year.

UNION PROPOSAL: The Union proposed an Appendix A, Wage Scale, identical with that of the Employer, including folding in longevity increases for years five through nine but without the compensatory increase for elimination of the AFSCME care plan.

The effect of this calculation on the current wage scale is a 4.9%/3%/3%.

POSITIONS: The Employer:

The Employer's two abiding concerns in the wage adjustment, other than folding in the longevity increases agreed elsewhere, is to address the translation of the AFSCME care program to a post-tax wage payment and to adjust the wage scale sufficiently to improve its competitive position to attract and retain employees.

There are also textual changes. One designates pay ranges by sequential lettering instead of the current idiosyncratic numbering.

The Employer also presented a comparison of the changes and consolidation in pay ranges between current classifications and those that it proposes. It designated the ones it proposes to abolish and those it renames.

The Employer also proposes changes of certain renamed categories to other positions. Using its proposed lettering of ranges, the Eligibility Referral Specialist I was moved from pay range F to

G, and the Eligibility Referral Specialist II was moved from G to H. The Training Officer was removed from H, based on the proposal to remove the position from the bargaining unit. Social Services Worker II was divided between ranges H and I with the higher rate for experience although the amount was not designated. These changes were based on the Employer's study that, from January, 2004 to March, 2006, the period during which the current Administrator was incumbent, the Employer lost 33 employees ranging in experience from 0 to 5.7 years. (Thirty-three terminations in 27 months is more than one a month over a 1 ½ year period.) The classifications impacted most were IM Worker 3, Child Welfare Worker SSW3 and Social Services Worker. The Employer's concern is that it is becoming an OJT Agency for other counties or even other agencies within the county.

The Employer demonstrated its methodology for the calculation from the current base rate to the proposed base for each of the ranges for the first year up to the tenth year. The Employer costed the current AFSCME care plan using \$43 to arrive at a \$.25 increase. (Using \$42 would be just under \$.25 and would not produce materially different data for these purposes). It added a gross-up factor of \$.10 per hour to compensate for the difference between the amount of the pre-tax contribution to the AFSCME care plan and a post-tax wage equivalent. The total of \$.35 was added to each of the new rates that had already been increased from the current level by a 4.9% as a market adjustment. After the additional value for the AFSCME care plan, the new proposed base rate is achieved. In addition, for years five through nine, the current contract longevity scale was added in. This increased the proposed base rate even further in those years. The second and third year of the contract had a 2% increase on the ultimate proposed base rate that was arrived through the above algorithm on year one of the Employer's proposal. Obviously the classifications that are moving up in the ranges would be receiving larger increases.

Since the pay schedule is a step and grade type scale, it includes within it the potential for an anniversary date increase when an employee moves across the scale during the contract year one. That could occur as the employee moves from first year of employment to the second, etc. From year to year during the contract term the entire scale is adjusted by an additional general or contract increase. Because of the combination of general increase and step progression, an employee in any given position on the pay scale during the term of the contract would have significant increases. For example the entry level pay range A would increase from the current contract rate to the proposed base rate and then have step adjustments before 2007 plus the 2007 contract increase; step adjustments during 2007, then the 2008 increase, and potentially even a later increase after that. The Employer demonstrated with the starting, five year and ten year rates that the combined step progression and general contract increases for the employees through three years of the contract would have the potential or typical increases in the range of 18%, with a low of about 12% and a high of about 24%. With an average increase of about 18% over three years that works out to about 6% per year. This far outstrips the most recent SERB quarterly report of the ten year annual wage increase statement data which is currently just under 3% and has been running between 3% and 3.7% per year over the past ten years.

POSITIONS: The Union:

The Union does not oppose the adjustment of the pay ranges with the movement of certain job titles to increase their compensation on the scale. It has reservations on classification changes that relate to the recognition clause. It does not oppose renaming the ranges.

With respect to the scale itself, the Union had proposed an adjustment to begin using the old fifth year scale as the new starting rate and then to make the adjustments annually from that point forward. This would address the concerns of the Employer over having high enough wages to attract

and retain employees. Advancing the scale by five years from the current period would convert the old start rate of \$8.58 to the old start rate of the fifth year of \$10.19, or 19% increase in one year. Additional improvements were made year to year after that.

That proposal was withdrawn in favor of the proposal that mirrored the Employer's proposal except for the proposed compensation for translating the AFSCME care plan costs into a wage increase. Second and third years are a 3% increase in the Union proposal but that yields a lower dollar increase than the Employer's proposal. For example, using the start rate of the current contract of \$8.58, the Union proposes 4.9% increase to \$9.00 and then 3% produces \$9.27 and \$9.55 in the out years. This contrasts with the Employer's proposal of the same initial 4.9% plus \$.35 for the AFSCME care program yielding \$9.35 with 2% increases thereafter producing \$9.54 and \$9.73 in the out years. The Union is therefore willing to accept lower future increases in dollar terms in order to retain the AFSCME care program.

FINDINGS AND RECOMMENDATION:

This negotiation presents the unusual impasse of parties agreeing on the percentage adjustment for the first year, but still at impasse over components of the final proposed pay for the entire first year and with the Union proposal lower in the second and third year than the Employer. Market adjustment and rolling in of the longevity increases between year five and nine do not present a problem because they are straightforward wage calculations and are essentially agreed. So it is taken that a 4.9% market adjustment and a 2% or 3% thereafter could be recommended but for the role of the translation of the AFSCME care plan to a post-tax wage.

The first component that needs attention is the design of the pay schedule itself. Translating the pay ranges to the alphabet from their prior designation is sensible and the movement of the positions within the proposed classifications within the ranges identified by the Employer is

adequately demonstrated as necessary. Indeed the Employer might have shortchanged its arguments since the turnover it demonstrated did not occur over 27 months but in fact occurred over 22 months, with the most recent termination in October, 2005. In that period it lost 1 ½ persons a month or three people every two months. It also lost an average of 1.7 years of experience on average. Nearly all of them were compensated at the upper third of the scale. The volume in combination with the fact that entry level positions are not attriting indicates that the adjustment that the Employer proposes is well justified. The only problem remains whether the changes in the names of the classifications can be accommodated without a change in the bargaining unit and the bargaining unit cannot be changed until the parties clarify the unit with SERB. Consequently despite overwhelming willingness to recommend the Employer's adjustment of the constituent classifications in each pay range, it cannot be recommended under the current set of circumstances, but the pay ranges themselves being designated by new titles can.

The substantive wage dispute focuses on whether the concessionary position proposed by the Employer on the AFSCME care program is adequately or correctly compensated and whether the competitiveness of the wage scale is sufficiently addressed. The Employer's theory is that it would merely translate the *Employer's cost* of the AFSCME care plan into wages and that should be sufficient provided it included an adjustment for the tax effect. To the Union, that position is insufficient because the Employer has quadrupled the *employee's cost* out of pocket for the benefit that is being taken away while giving back only 25% of its value in a wage adjustment.

Two methods can demonstrate the value of the wage reduction for employees to participate in the more costly plan.

First, assuming the AFSCME care plan is \$43 per month and the MetLife is \$45 per pay check, the difference is \$137 per month which becomes \$.79 per hour.¹ To reflect the employee's

cost the \$.79 per hour difference added to the Employer's value of the \$43 translation to wages becomes \$1.14. When added to the market rate increase of 4.9% of the start rate is \$10.14.² This falls between the Employer's proposed base of year two and year three on the first year proposal. It is also hauntingly reminiscent of the Union's old proposal to begin the pay scale for the new contract at the old year five rate of \$10.19.

An alternative is to determine the monthly value of the \$0.35. If \$43 per month is \$0.25, then \$0.35 per month is \$60.³ If the cost of the MetLife program is reduced by \$60, the employee's true cost is \$120 which translates into \$0.69⁴. If the employees are to be compensated for the loss of the AFSCME care plan and the cost of the additional post-tax impact at \$0.69, the total base rate should be added to yield \$10.04, even closer to the year two of the Employer's first year proposal of \$9.99.

From the standpoint of the *employee cost* the start wage to compensate for the reduction caused by the loss of the AFSCME care plan is \$10.19 or \$10.04 or at least \$9.99. The Employer counters that cost shifting is how employer provided medical coverages are surviving and replication of employee cost does not recognize that costs must be shared. However, the analysis from the prospective of the *Employer's cost* issues produces a quite similar result for different reasons.

The Employer points out that the employees maintain increasing earnings power by virtue of the step grade progression and the annual contract increases means the employees are compensated sufficiently to support a larger share of the employee cost. This seems to miss the point that these are artifacts of the existing structure. The Employer market increase of 4.9%/2%/2% amounts to 8.9% out of the 18% it demonstrated in this analysis over the three year period. The balance is made up of folding in longevity and compensating the AFSCME care program in the first year of the Agreement. Folding in longevity amounts to an average increase over the ten years in pay Range A of \$0.108. Taken over the current average rate in Pay Range A of \$10.24, that is a 1% increase.⁵

The AFSCME care plan increase compensation amounts to 3% on the same average rate. Thus the components of the 18% compounded increase over the years are 3% AFSCME care plan, 1% longevity and 8.9% market adjustment. That leaves the value of the step and grade scale to be the difference between the total of the above and 18%, or 5.1%.⁶ In other words, of the 18% over three year potential pay increase touted by the Employer, 5.1% is an artifact of the step and grade structure, 4% is paid for by the employee giving up other monies and 8.9% are the market increases.

Since half the improvement from the Employer's proposal originates beyond the market adjustment increases offered, the Employer cannot rely on that demonstration to compensate for the concessionary stance it has taken. The artifacts of the scale have been in place in the same form of the step and grade structure throughout the period when the AFSCME care plan premium and longevity pay were in place. The effects on recruitment and retention have still nonetheless been adverse. Without folding in the care plan and longevity, the dollar value of the compound increase is lower. However, the 5.1% increase built into the scale plus contract adjustments of 9% (eg 3 yrs x3%) produce hefty increases (eg. 14% over 3 years). That has failed to produce the retention desired by the Employer. This demonstrates that a more serious effort needs to be made to improve the scale beyond the market rate adjustment than the Employer wishes to recognize at this point. Indeed 8.9% increase over 3 years is 3% annually, well within the statewide SERB data presented. Following the market rate trend does not improve the competitiveness of the scale that is already adversely affecting retention and staffing. The Employer's proposal does not offer any improvement for recruitment and retention as such beyond taxing the employees for it. It is one thing to ask for cost sharing for health care and quite another to ask for it to subsidize competition for talent when the Employer's own effort towards that is only an average increase that competitors are getting too.

The new scale the parties should arrive at without the care plan must take into account both

the employee cost created by the loss of the benefit and the Employer's contribution toward the competitiveness of the pay scale. As demonstrated, to fully compensate the employee's cost in the loss of the care plan, the wage proposal should be adjusted so that the start rate should be year two of the Employer's proposed base. However, recognizing that there is a cafeteria feature to the Employer's plan, meaning that at least in life and dental there are some employee rights of election to participate or possibly to select levels of participation, that solution may actually overcompensate for the substitution of the Employer plan for the AFSCME care plan. An adjustment downward is justifiable on the basis of the electability of these benefits. In other words, if the employees can elect not to participate (or are not eligible), they ought not to have the benefit of their full cost replacement. A more just solution would be to increase the first year pay scale to year one on the Employer's proposed base. Using Pay Range A, this would be scheduled out as follows:

<u>S</u>	<u>Yr1</u>	<u>Yr2</u>	<u>Yr3</u>	<u>Yr4</u>	<u>Yr5</u>	<u>Yr6</u>	<u>Yr7</u>	<u>Yr8</u>	<u>Yr9</u>	<u>Yr10</u>
\$9.65	\$9.99	\$10.32	\$11.66	\$11.04	\$11.33	\$11.78	\$12.18	\$12.60	\$13.03	\$13.75

This has much to recommend it even though the increase is aggressive. It represents approximately 12.5% over the current rate. It discounts the electibility factor. It would allow the Employer itself to fund part of the competitiveness solution beyond the market trend of 9% over 3 years. The additional 3.6% is the equity adjustment of the scale to the market before 4.9% market rate adjustment year over year with the remaining being the employee contribution.⁷

Some fine tuning is possible based on the structure of the Employer's proposal. The Employer offered 4.9% for year one in an effort to be aggressive in wage adjustment for competitiveness. So doing it brought forward about 1% from the last two years and discounted that 2% due to later compounding. That is, rather than offer 3%/3%/3% per the state data, it reduced years two and three to 2% but did not add that 2% to year one in order that it become 5%. Obviously the 2% paid earlier

becomes compounded by the later years' increases. So it was reduced to 1.9% so the compounding effect is smoothed out. Therefore, if a competitiveness adjustment is made by the County beyond employee money and the going market of increases, the Employer may deserve to reconfigure the proposal. Rather than 12.5% for the first year, the proposal could reasonably be reduced by 1.9% (ie 4.9 - 3) and have that spread forward to years two and three so that the increases become 10.9% / 3% / 3%. That would produce a scale developed from the new Pay Range A start rate of \$9.49 / \$9.77 / \$10.07.⁸

Although either of the two scenarios of Pay Range A would be reported to SERB in the components of benefit replacement costs, market rate increases, and equity adjustments, the package nonetheless would be a serious outlier in any of the reporting vehicles. The willingness for such an increase is not anticipated. Therefore, it will not be recommended, but is demonstrated in the earnest hope that an Agreement could be reached on this basis by the parties if not on the recommendation.

The recommendation is the Union proposal. However, given the parties' agreement that effect of the wage scale is adverse to staffing efforts, it accomplishes little more than treading water. The overall adjustment equals 10.9% over three years in which the Employer contributes a mere 0.63% per year towards the competitive wage gap.⁹ It is at least something.

Recommendation:

The Employer's proposal for re-designation of pay ranges by letter is recommended.

The Union proposal of a 4.9% market increase for the first year and 3% in each of the second and third years will be recommended using current classification names unless otherwise modified through statutory procedures.

The change of classifications among pay ranges as proposed by the Employer will be recommended as follows: Using the recommended lettering of ranges (but in the final document

using the prior designations of the job classifications unless changed per above) Eligibility Referral Specialist I shall move from pay range F to G, and the Eligibility Referral Specialist II shall moved from G to H ; Social Services Worker II shall be divided between ranges H and I with the higher rate for two (2) years experience to coordinate with Article XII.03. The Training Officer I will not be removed from the bargaining unit.

ISSUE: New Schedule "B" Longevity Schedule

CONTRACT SECTION: New Schedule "B"

UNION PROPOSAL: The Union proposed a longevity payment scale beginning at year five through year 35 which had been withdrawn prior to hearing.

The Union has proposed Schedule "B" on the longevity issue which is the same as originally proposed by the County.

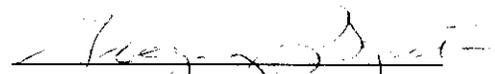
EMPLOYER PROPOSAL: The Employer proposed a longevity scale beginning at year ten through year 20 in three stages, each five years of \$.50, \$.75 and \$1.00, with all current longevity increases under ten years folded into the wage scale.

POSITIONS: The Employer: This was agreed as mediated.

POSITIONS: The Union: This was agreed as mediated.

FINDINGS AND RECOMMENDATION: This was agreed as mediated.

Recommendation: The Employer's proposed changes are recommended.


Gregory P. Szuter, Fact Finder
Made and entered at Cleveland, Ohio
October 16, 2006

PROOF OF SERVICE:
The foregoing has been send by overnight service on October 16, 2006 to AFSCME, Ohio Council 8, Local 1696 c/o Stevan P. Pickard and Portage County Job & Family Services c/o Ronald J. Habowski, Esq. of CHRISTLEY, HERINGTON & PIERCE per addresses shown on the cover with advance copy via email on the same date.

ENDNOTES

1. $12 \text{ mo } (\$180 - \$43 = \$137) / 2080 \text{ hrs} = 79 \text{ ¢}$
2. $\$8.58 \times 1.049 \% + (35 \text{ ¢} + 79 \text{ ¢}) = \10.14
3. $25 \text{ ¢} / \$42 = 35 \text{ ¢} / x$
 $25 \text{ ¢} \times x = 1505$
 $x = \$60.20$
4. $12 \text{ mo } (180 - 60 = 120) / 2080 = 69.2 \text{ ¢}$ or
 $(12 \text{ mo} \times 60.20) / 2080 \text{ hrs} = 34.7 = .35 = 69.7 \text{ ¢}$
5. $\sum (\text{longevity increases}) / 11 \text{ ranges} = 10.8 \text{ ¢}$
 $\sum (\text{current range A rates}) / 11 \text{ ranges} = \10.24
6. $35 \text{ ¢} / \$10.24 = 3\%$
 $10.8 \text{ ¢} / \$10.24 = 1\%$
 $4.9\% = 2\% = 2\% = 8.9\%$
 $18\% - \text{total } 12.9\% = 5.1\%$
7. $9.65 - 8.58 = 1.07 / 8.58 = 12.5\%$
 $12.5\% - 4.9\% - 3\% - 1\% = 3.6$
8. $12.5\% - 1.9\% = 10.9\%$
 $1.9 / 3 \text{ yrs} = .95 \text{ or } 1\%$
 $\$8.58 \times 1.109\% = \$9.49 \times 1.03 = \$9.77 \times 1.03\% = \10.07
9. $10.9\% - 9\% = 1.9\% / 3 \text{ yrs} = 0.63\%$