

AFSCME Ohio Council 8,  
Local 1992

(UNION)

TRUMBULL COUNTY  
BOARD OF MR/DD

(EMPLOYER)

- and -

STATE EMPLOYMENT  
RELATIONS BOARD

2008 FEB 11 A 11: 58

CASE 2007-MED-05-0625

**FACT - FINDER'S REPORT**

**February 9, 2008**

Proceedings before Jared D. Simmer, Fact-Finder. The undersigned was selected by the Parties to serve in the role of Fact-Finder in the above-captioned case pursuant to the provisions of Section 4117-9-05 of the Ohio Revised Code.

**I. APPEARANCES**

**FOR THE UNION:**

Jaladah Aslam of ASCME, and Joanne Walker, Sheryl A. Polta, Rich Gilronan and James Fellows.

**FOR THE AUTHORITY:**

David Blaugrund, Esq., and Gail Winner, Cynthia L. Totten, Ed Stark, Doug Burkhardt and Thomas F. Stanko for the County Board.

**II. BACKGROUND**

This proceeding involves collective bargaining negotiations between AFSCME Local 1992 and the Trumbull County Board of MR/DD. This local has approximately 240 full-time employees. The bargaining unit includes all of the Board's employees except for management, confidential,

supervisory, part-time, temporary, seasonal, casuals, and employees in the unclassified service.

The current collective bargaining agreement ("Contract") expired on August 31, 2007. Prior to this hearing, the parties had negotiated and resolved most items, but were unable to reach agreement on a number of others.

A hearing was scheduled and held on January 17, 2008 in the Board's administration building. In advance of this hearing, both parties chose to file pre-hearing position statements which were duly received and considered by the Fact-Finder. Prior to the swearing in of witnesses, with the assistance of the Fact-Finder, the Parties attempted to mediate a tentative agreement that resolved all of the outstanding issues in the new contract. However, even though good progress was made, that effort did not result in a settlement, and as a result the Parties have asked the Fact-Finder to issue a Report.

Note: At the hearing, three (3) issues remained unsettled – healthcare premiums, wages and staff assignments. The Fact-Finder will consider and make recommendations on all three, infra.

It is important to note that changes in the contract that the Parties negotiated and tentatively agreed in the negotiations leading up to the fact-finding hearing are adopted without discussion (to wit, Opening Statement, Preamble, and Articles 1, 2, 6, 8, 9, 10, 11, 12, 14, 17, 19, 20, 22, 28, 30, 38), and any existing contract provisions that are neither addressed in this Report nor part of the Parties' T.A. are carried over from the last contract, unchanged, and incorporated by reference.

## **FACT-FINDER'S FINDINGS AND RECOMMENDATIONS**

### **Article 12 – Staff Assignments**

#### **Union's Position**

The Board employs both 12-month and 9-month bus drivers in the bargaining unit. Historically, drivers bid on bus routes strictly on the basis of their seniority with the Board, regardless of whether they work 9- or 12-months. That is, rather than 12-month employees being eligible to bid only on 12-month routes, and 9-month employees being eligible to bid only on 9-month routes, employees can bid on either regardless of their employment status and the most senior employee gets the route.

Even though the Parties' contract language is silent on whether or not this practice is permissible, the Union points out that while unconventional the practice is not prohibited and has become accepted via a longtime past practice (since 1989 or 1990). Accordingly, the Union asks that there be no change to current contract language, and that the present bidding protocol be maintained.

#### **Employer's Position**

While acknowledging that the current bidding practice has been followed for a number of years, the Employer contends that the current practice should be changed.

First, it emphasizes that while the current contract does not expressly prohibit the practice of allowing 9-month bus drivers to bid on 12-month routes, neither does it expressly mention it, either. Second, as a practical matter, permitting 9-month employees to bid on 12-month routes allows them to "cherry pick" the most favorable routes, then still allows them to take summers off. This, then, forces the Board to make inconvenient and costly staffing changes to provide coverage for that three month time period.

Third, while the practice may or may not have evolved into an established past practice does not in turn require that it be maintained, particularly in light of

the fact that it goes against custom and practice in the industry, and in an era of tight budgets, is unnecessarily costly and inconvenient to maintain.

For these reasons, the Board insists that good business practices and common sense require that the contract language be clarified to permit 12-month bus drivers to only be eligible to bid on 12-month routes, and 9-month drivers to only be eligible to bid on 9-month routes.

#### Finding and Recommendation

The Fact-Finder takes notice of the fact that the Parties' contract is silent on the issue of whether or not the current bidding practices for bus drivers is permissible. He also takes notice of the fact that the current practice defies both common sense as well as usual customs in the industry, and places an unfair staffing burden on management. In fact, the Fact-Finder is aware of no other contract in Ohio that permits such a practice.

Having said that, however, it is also clear that the way bus routes are assigned, due to a long-standing practice, has risen to the level of a past practice that provides a mutually understood interpretation of otherwise silent contract language. Therefore, while the Fact-Finder accepts at face value the Employer's arguments for changing the contract, he does not recommend doing so at the present time. Rather, because one party should not be permitted to achieve in arbitration what it did not/can not seek at the bargaining table, this Fact-Finder recommends no changes to existing practices, but does recognize that as 9-month bus driver positions become vacant the Board, via its authority under the management rights clause, has the latitude to convert said routes into 12-month routes.

In that respect, the following contract language is recommended:

#### **Section 1 – Education Program**

***Instructor III's, IV's and Instructor Assistants, shall fill out an annual preference for assignments. These preferences will include pre-school, primary, intermediate, and secondary age levels in the multi handicapped special education category. Although all levels will be available for any particular year.***

***Staff shall rank their choices by order of most preferred to least preferred. Staff preferences must be submitted by April 1<sup>st</sup> to the employer and the employer shall notify employees of their tentative assignment and post a listing of such by May 1<sup>st</sup> of each year.***

***Although Instructor IV's will submit a preference, Instructor IV's shall maintain assignments on a continuing basis. Preferences will only be used if a vacancy in school- age occurs and an Instructor IV wishes to submit his/her name for consideration or for job abolishment or lay-off.***

***For all annual assignments, staff shall be assigned based on classification seniority. For instructors, classification seniority shall be based on total years as an instructor with the agency.***

***The Employer retains the right to determine all individual classroom assignments within each age level and to determine work site assignments for secondary level assignments.***

***Any vacancy that occurs between May 1<sup>st</sup> and the start of school will be filled according to preferences submitted by staff. The Employer, as needed, shall assign staff who have not submitted a list of preferences. If staff assignments are made other than as provided hereto, the employee shall have the right to challenge the assignment through grievance procedure.***

***If elimination of class, either in pre-school or school age occurs, as long as the total number of classes (school age and pre-school) remains the same, it will be considered a lateral transfer not a lay-off. The transfer will be done according to classification seniority, which for instructors is total number of years as an instructor with the agency.***

***The Employer agrees to re-open discussion of instructor annual assignment language if contracts with local school districts are developed.***

#### ***Early Intervention***

***Program Assistants assigned to Early Intervention shall maintain their Instructor Assistant classification and nine month employee status, but shall not participate in the annual preference process unless an employee wishes to submit his/her name for consideration for an Instructor Assistant vacancy in the pre-school and/or school age program.***

***Early Intervention Program Assistants shall be expected to work at their usual assigned position for the Early Intervention Summer Session each year. In the event that additional programming is needed due to operational needs, Early Intervention assistants will be offered the additional work in descending order of seniority first and if there are no volunteers or insufficient number of volunteers, it shall be assigned, on a rotating basis in inverse order of seniority.***

#### ***Preschool Summer Assignments***

***Preschool summer assignments will be offered to Preschool Instructors first on a voluntary basis in descending order of seniority as an Instructor IV (Preschool teacher). If there are no volunteers or insufficient volunteers for the Summer Program, the work shall be assigned, on a rotating basis, in inverse order of seniority.***

***Preschool Instructional Assistants shall first be offered Summer Program work in descending order of seniority. In the event there is an insufficient number of Preschool Assistants, the Summer Program work will be offered to all other Classroom Instructional Assistants and Program Assistants in that order, before the Employer will utilize substitute employees. Nothing in this paragraph will be construed to mean Summer Preschool Program work is mandatory for Instructional Assistants.***

***The parties agree that pre-school assignments during the term of this Agreement shall be based on a two (2) day week, six (6) week summer program. Any expansion during the term of this Agreement will be discussed with the Union prior to implementation.***

**Section 2 — Transportation: Vehicle Operators II and Bus Aides**

***Ten (10) days prior to the opening of the school year, all bus routes shall be bid. All bidding shall be done in descending order of seniority. All routes shall be identified by general information including the area to be covered; the facility at which the route ends; if it is a "double run"; the number of aides assigned to the specific route; the number of individuals in wheelchairs; the number of stops; and the approximate time of the route. No names of individuals on the routes shall be used in the identification of the route.***

***Summer routes for children shall be filled on the basis of seniority of those nine-month employee indicating interest in such additional work. Those nine-month employees committing to these routes for the entire time period shall be compensated at their regular hourly rate of pay for the duration of the assignment.***

***Employees shall not be permitted to use their sick leave or personal days to cover absences during this period (i.e. no work — no pay). The Employer will make the information concerning the number of employees needed for summer route assignments by the end of the school year. The Employer reserves the right of assignment of these summer routes and no route bidding shall occur for these additional assignments. Summer routes not voluntarily filled by bidding in descending order of seniority shall be assigned on a rotating basis in inverse order of seniority for the entire period. Compensation for summer assignments shall be at the employee's regular rate.***

***The results of all such bidding and assignments shall be posted on the bulletin board in the transportation lounge. In the event of a vacancy during the course of an assignment year, the newly hired employee who fills the classification vacancy, shall drive such vacant route for the remainder of the assignment year.***

***Over the life of the negotiated agreement as nine-month transportation driving positions become vacant, the Board has the ability to convert said routes to twelve month routes.***

**Section 3**

***Should the Board, in its sole discretion offer an extended program in the Fairhaven School requiring cafeteria staff, leadership reserves the right to assign nine-month current cafeteria employees to that assignment in order of reverse seniority, if none first voluntarily accept the extra work. Pay is the then current hourly rate times hours worked. No vacation time will accrue.***

## Article 27 – Salary Schedules

### Union’s Position

The Union was willing to accept the Board’s proposed 3% increase in employees’ base pay in each year of the 3-year contract, but insisted that any increases be granted retroactively back to the September 1, 2007 (the day after the current contract’s expiration date).

In addition, the Union’s position was that retroactivity in pay should not be linked to a requirement of a similar retroactivity in healthcare premium cost increases that the Board was proposing. The Union was concerned that if the two were linked in that way, the membership would run the risk that the past healthcare cost increases would match or exceed the proposed recoupment in retroactive wages.

### Board’s Position

The Board, on the other hand, argued for a 3%-3%-3% across-the-board wage increase which it believed was consistent with increases for other Board employees, and consistent with similarly situated, comparable employers in its geographic market.

However, it believes that if any wage increase is going to be granted retroactively (an enhancement for the membership which technically is not required), then it’s appropriate that any increases in the memberships’ healthcare costs incurred by the Board should also be accounted for. In other words, if it would be appropriate for the Board to retroactively grant pay increases to bargaining unit employees, then it should also be appropriate for the Board to retroactively pass along any healthcare cost increases that have transpired during that same time period.

### Finding and Recommendation

The Fact-Finder takes note of the fact that the 3%/year increase proposed by the Board is commensurate with most other contracts in the Ohio public sector, and commensurate with what other Board employees have been granted. In addition to the matter of comparables, the Fact-Finder also takes notice that the Board faces an uncertain economic future for like other MR/DD boards around the state its funding

levels are contingent on the largesse of federal/state/local governments. In addition, it would seem that to recommend an increase beyond the 3-3-3 that others are getting could provide the Union with a pyrrhic victory. That is, if such an increase was seen as excessive, and in turn, resulted in proposed levies either not being put on the ballot by the county commissioners or those levies being voted down by the electorate, then the resulting budget shortfalls could lead to the eventual downsizing of staff, or the more radical privatization of the entire function. With these concerns in mind, the Fact-Finder proposes that the Union receive a 3%-3%-3% increase in base wages over the three years of the new contract, and that such increase be retroactive back to the September 1, 2007 expiration date of the current agreement. (The issue of whether or not to recommend retroactively linking wage increases with higher healthcare costs will be discussed in the next section).

In that respect, the following contract language is recommended:

***Salary schedules for bargaining unit employees are as follows:***

***Effective September 1, 2007, the base rate of each classification shall be increased by 3% with Step continuation.***

***Effective September 1, 2008, the base rate of each classification shall be increased by 3% with Step continuation.***

***Effective September 1, 2009, the base rate of each classification shall be increased by 3% with Step continuation.***

***The parties agree that hourly rates for purposes of determining equal or lower classifications under Article 18, Layoff and Recall, of the Collective Bargaining Agreement are as reflected in Exhibit A, Wage and Salary Schedules.***

- 1. Years of service for purposes of movement on steps of the salary schedule for nine (9) month employees shall be a minimum of one hundred-twenty (120) days actually worked from the first day of each program calendar year through the last day of each program calendar year.***
- 2. For teachers, see 3317.13(A)(1)(a) through (d).***

***For a twelve (12) month employee a year of service for purpose of movement on salary "steps", a minimum of one hundred seventy-three (173) days actually worked between the first and last day of a program year.***

***[Actual wage scale charts should be completed and inserted by the Parties following contract settlement].***

## Article 28 – Health Insurance and Related Benefits

### Union’s Position

The Union asks that the current Board-provided health insurance, both in coverage and in cost to bargaining unit employees, be maintained. It suggests that the Board has not provided a compelling argument either for requiring employees to share more of the costs, nor to try and retroactively recapture past increases back to the end of the last agreement.

### Board’s Position

The Board contends that bargaining unit members should be required to pay 10% of the costs of all health, dental, vision and prescription drug insurance coverage. In support of its position, the Board points out that this is the norm for almost all of Trumbull County’s elected officials, boards and commissions. In fact, the Board emphasizes that the County Commissioners have said that in order for them to support placing an additional operating levy to help fund the Trumbull County MR/DD on an upcoming ballot, it expects these employees to pay their fair share (i.e., 10%) of their insurance costs (and, the Board points out, it will need all the help it can get due to the fact that no additional levies passed in the polls in November 2007).

While current bargaining unit members only pay 1% of their gross salary towards their insurance costs, the Board points out that this issue was discussed in the last set of contract negotiations and at that time these employees were put on notice that the Board would insist on the 10% level in the next contract (3 years down the road, bringing us up to the present).

### Finding and Recommendation

Healthcare is a contentious issue across the entire state, in union and non-union organizations, both profit and not-for-profit. The reasons are simple; it’s tremendously expensive, cost escalations are both unpredictable and burdensome, and it’s a benefit that many public sector employees have had provided by their employers at little or no cost. However, be this as it may, the trend is clear;

employers shifting more and more of the expenses of coverage to employees in a way that has them "share the risks" of rising costs going forward.

While in the case at hand it's understandable that bargaining unit employees would insist on their current level, and costs, of benefits, it's a rarity for employees in today's work world to enjoy top-of-the line healthcare coverage at next to no cost, and least of all part-time workers who seldom have the option of coverage at all. However, the reality is that continuation of this coverage at next-to-no cost to this bargaining unit has simply become untenable, particularly when other union and non-union employees in the county have faced reality and agreed to more equitably share the burden.

In that regard, this Fact-Finder finds that the Board's request is both understandable and reasonable in light of the budgetary pressures it faces. Therefore, it is recommended that members of Local 1992 begin paying 10% of the premium costs during the life of this contract.

To temper this recommendation, it should be pointed out that employees were provided notice in 2004 that this day of reckoning would be approaching. So, the Union not only had three years advance notice, but during this same period of time have been contributing far less towards the cost of their premiums (1% of gross salary) than probably any other public sector employee group in the county (who have been paying 10% of the premiums).

Further, there are other issues that warrant emphasis. Under this contract, the Board provides a full year of healthcare coverage to employees who only work nine months; an aberration in today's world of work. But perhaps even more unusual, it also provides full family coverage to employees who are only employed for 720 hours a year! In other words, for these part-time employees, the County incurs over \$1400/month in health insurance premiums (\$17,000/year at today's premium levels) for employees who are, in turn, only earning about \$6,000/year! One would have to conclude that in an era of spiraling healthcare costs, this is simply neither a prudent nor sustainable business model.

And, under the Fact-Finder's recommendation, any employee who opts out of continued Board coverage is charged nothing, but is, in fact, paid \$100/month not to participate.

Lastly, what is good for the goose is good for the gander. Having recommended that wage increases be retroactive, it is only logically consistent that healthcare cost increases also be retroactive. And, a quick calculation reveals that for most of the bargaining unit employees the cost of retroactive health insurance premium increases will likely be offset by the retroactive wage increase.

In that respect, the following contract language is recommended:

***All full time employees are eligible for full health, prescription, and life insurance coverage.***

**Section 1**

***For the duration of this Agreement, the health insurance coverage shall be as follows:***

***Deductibles: \$150.00 Single/\$300.00 Family  
Co-insurance: \$400.00 single/ \$800.00 family subject to  
90/10 co-payment 100% paid.  
Maximum Out-Of-Pocket Expense: \$500.00 Single/\$975.00 Family  
Office Visits: \$15.00  
Office procedures subject to office visit co-payments  
ER: \$75.00 each visit  
Prescription Drugs: After Care Plan Cap is reached,  
Rollover = \$5.00 Generic/\$20.00 brand name.***

***All bargaining unit participants in the Plan will be enrolled in the PPO (CMM).***

***All changes in coverage for the purpose of cost containment may be subject to the recommendations the Joint Health Care Committee with the approval of the bargaining unit and the Employer.***

**Section 2.**

***Bargaining unit employees who are covered under the Board's health policy shall contribute to premium costs at the rate of 10% of the premium costs including any premium increases or decreases over the life of this contract.***

***It is also mutually agreed that the Board shall pay in full all premiums required for the Employer's Life Insurance Plan. The Life Insurance benefit shall be in the amount of \$25,000.00 per eligible employee (subject to the recommendations of the Health Insurance Committee) for the duration of this agreement.***

**Section 3.**

***The Board agrees to absorb the cost of any premium increase during the life of this Agreement, except for that portion of the premium cost to be paid for by the employee pursuant to Section 2 of this Article.***

**Section 4.**

***Any employee who waives family health insurance coverage shall be paid \$100 per***

*month for such waiver. The employee shall notify the program of this Waiver on the appropriate Board approved form. The form shall apprise the employee of his/her rights and the employee will verify that he/she has alternative health care coverage.*

**Section 5.**

*The Joint Health Care Committee may meet quarterly to monitor health care usage, premium costs, coverage, etc. and to make recommendations for cost containment, increases in cost sharing and other matters pertaining to health insurance. If necessary, or if requested by either party, the health care insurance consultant will be present at these meetings.*

**Section 6.**

*Employees eligible for hospitalization benefits under this Article shall be entitled to a continuation of such benefits for a period not to exceed three (3) months, if the employee has a bona-fide, job-related Workers' Compensation illness or injury.*

**Section 7 - Maintenance of Standards.**

*For the duration of the Agreement, the Employer will continue to co-pay the remainder of the premiums for Health Care benefits not covered by the employee contribution for each employee. The Employer further agrees to maintain all benefits at the same level or better for the duration of the Agreement.*

**AFSCME CARE PLAN**

*The Employer shall contribute each month, for each bargaining unit employee, the following amounts to the Ohio AFSCME Care Plan,*

***Effective 9/1/04***

<del>Prescription Drugs</del>	<del>\$16.00</del>
<del>Vision Level 1</del>	<del>\$.75</del>
<del>Dental Level 2</del>	<del>\$ 6.00</del>
<del>Hearing Care</del>	<del>\$ 0.50</del>
<del>Total</del>	<del>\$ 149.00 per month</del>

***Effective 1/1/05***

<del>Prescription Drugs</del>	<del>\$133.00</del>
<del>Vision Level 1</del>	<del>\$ 6.75</del>
<del>Dental Level 2</del>	<del>\$ 26.00</del>
<del>Hearing Care</del>	<del>\$ 0.50</del>
<del>Total</del>	<del>\$ 166.25 per month</del>

<del>Effective 1/1/06</del>	
<del>Prescription Drugs</del>	<del>\$133.00</del>
<del>Vision Level 1</del>	<del>\$ 6.75</del>
<del>Dental Level 2</del>	<del>\$ 26.00</del>
<del>Hearing Care</del>	<del>\$ 0.50</del>
<del>Total</del>	<del>\$ 166.25 per month</del>

**Effective 1/1/08**

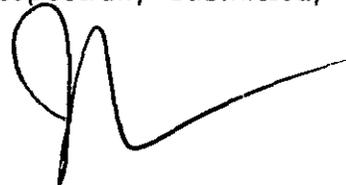
<b>Prescription Drugs</b>	<b>\$150.00</b>
<b>Vision Level 1</b>	<b>\$ 12.00</b>
<b>Dental Level 2</b>	<b>\$ 34.00</b>
<b>Hearing Care</b>	<b>\$ 0.50</b>
<b>Total</b>	<b>\$ 196.50 per month</b>

Conclusion

While this Fact-Finder realizes that neither Party will be fully satisfied with this Report, I do believe that the facts support the conclusion that it meets the standard of both Parties being equally unhappy the recommendations. So, in that respect, I suggest that, in toto, it's a package that both parties can feel comfortable recommending to their respective constituencies.

Issued: February 9, 2008

Respectfully submitted,



Jared D. Simmer, Esq.  
Fact-Finder

attach.