

**STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO**

In the matter of Fact Finding between;)	No. 08-MED-02-0161
)	
CINCINNATI METROPOLITAN)	
HOUSING AUTHORITY,)	Hearings: June 16, 2009
)	and June 24, 2009 at
Pubic Employer,)	Cincinnati, Ohio
)	
and)	
)	
AFSCME, OHIO COUNCIL 8,)	Date of Report:
LOCAL 1027,)	August 10, 2009
)	
Employee Organization.)	

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STATE EMPLOYMENT
RELATIONS BOARD

FACT FINDING REPORT

Appearances:

Mitchell B. Goldberg, Appointed Fact Finder

For the Employer:

James Hubbard,	Human Resources Generalist
Angela Stearns,	Assistant General Counsel
Reema Ruberg,	Chief Financial Officer
Cecil McNorry,	Director of Public Housing
Lisa Thomas,	Manager, Human Resources

For the Union:

Peter McLinden,	Regional Director, AFSCME, Ohio Council 8
Cherie Williams,	Housing Specialist, Leasing
Eric Clemons,	President, Local 1027
Gregory Stewart,	Vice President, Local 1027
Alice Williams,	Secretary/Treasurer, Local 1027
D. J. Williams,	CCA
David Tackett,	Maintenance Mechanic

I. Introduction and Background.

SERB appointed the undersigned at the Fact Finder for this public employment dispute on April 16, 2009. The Employer operates a nonprofit agency that provides affordable housing to approximately 30,000 residents throughout Hamilton County. It administers the Section 8 Housing Choice Voucher program to approximately 11,000 households. It provides management services to approximately 5,200 low-income qualified public housing units. HUD oversees the administration of the programs. CMHA is funded by HUD and receives revenues from subsidized rent from its public housing tenants.

CMHA has approximately 285 employees. There are three bargaining units who are represented by IUOE, GCBTC and Local 1027. The collective bargaining agreement (“CBA”) between CMHA and Local 1027 expired on April 30, 2008. The Union represents many different classifications such as construction contract administrators, maintenance workers, equipment operators, laborers, office and clerical workers, and related housing and property personnel. The Union includes approximately 180 employees, the largest number of employees in the respective bargaining units. The unit was most recently certified on November 19, 1992.

The parties met in negotiations on many occasions after the expiration of the agreement. While certain issues were resolved, many were not, including the most important economic issues. The parties provided the Fact Finder with timely pre-hearing statements identifying and explaining the unresolved issues. Some issues were resolved

or narrowed in terms of the parties' expressed original positions, but the following issues were not resolved. This report hereby adopts, and incorporates herein all previously agreed upon tentative agreements (TAs) reached during negotiations, all agreements reached during the hearing, and all unchanged language in the expired CBA for purposes of this Report, as if completely recommended by this Fact Finder.

The parties agreed to extend the Fact Finding period, and the period for issuing this Report. It was agreed that the issuance date shall be August 10, the date this report is mailed to SERB. The Fact Finder's following recommendations on all unresolved issues are in accordance with the requirements set forth in the Ohio Revised Code, as well as applicable regulations and published SERB guidelines.

The following issues were unresolved: (1) Recognition (Article 1); (2) Union Leave (Article 10); (3) Grievance Procedure (Article 18); (4) Uniforms (Article 21); (5) Contracting of Work) (Article 23); (6) Hours of Work (Article 25); (7) Wages (Article 28); (8) Health Insurance (Article 31); (9) Holidays (Article 33); (10) Vacations (Article 34); (11) Sick Leave (Article 35); (12) FMLA (Article 35); (13) Bereavement Leave (Article 37); (14) Duration (Article 48); (15) New Employee Orientation (New Article); (16) Overtime (New Article); (17) Callbacks (New Article); (18) AFSCME CarePlan (New Article); (19) Memorandum of Understanding; (20) Appendix I Classification Series; (21) Appendix II – Pay Period Schedule for Calculation of Sick Leave Incentive.

II. Economic Evidence.

HUD determines the amount of funds distributed to CMHA and the other housing authorities in accordance with a complex formula.¹ CMHA must comply with specific guidelines relative to the use of funds once they are received. There have been significant changes affecting the allocation and use of funds since the ratification of the expired CBA.

The Housing Choice Voucher Program, based upon the revenue and expense numbers for the month ended in April 2009, is running at a year-to-date deficit. HUD has mandated that CMHA reorganize its financial structure to an asset management model. Prior to this, CMHA received its funding in lump sum payments for allocation and management as one entity. The Asset Management model now requires it to separate its 5,200 public housing units into several management entities. Management, budgeting and accounting is now performed for each project, which includes 18 Asset Management Properties, referred to as AMPs. Each AMP is responsible for its own fiscal viability and HUD now funds each AMP, and each AMP pays for its own expenditures.

Each AMP must include the expenses of each CMHA employee assigned to it, and each AMP is expected to balance its budget and not operate at a deficit. When a deficit occurs for a designated amount of time, an AMP may be considered as “troubled” or potentially unsustainable. Eight of CMHA’s 18 AMPs that are running at a deficit may fall into this category.

¹ The subsidy from the HUD formula is Project Expense Level (PEL) + Utility Expense Level (UEL) + Add-ons – Formula Income = Operating Subsidy Eligibility.

The funding formula applies to each HUD housing authority and the new formula now applies to each AMP. CMHA has been designated as one of the 26% of all housing agencies that have received decreased funding under the new formula. If the total amount of operating subsidy exceeds the amount of total funding approved by Congress, HUD prorates the funding by dividing the total eligibility by the appropriated amount. The prorated amount was 88.96% for 2008. Accordingly, each of the 18 AMPs received only 88.96% of its needed subsidy. The balance must be obtained from other revenue sources. The prorated amount has declined since the last CBA was signed. There was a sharp decline from 96% prior to the last CBA to 86% or below, before it increased to the present 2008 level of 88.96%.

The above funding problems led to a CMHA layoff that included 10% of its exempt staff and 4% of its AFSCME staff. Services were reduced or eliminated, including the closing of the Millvale Learning Center. The IUOE and Building Trades units accepted wage freezes in their contracts. Instead of percentage across the board increases that have been negotiated in the past, the Agency has agreed to pay lump sum amounts that are not added to the base wages. No exempt employee will receive a merit increase for fiscal year 2009. Performance bonuses that have regularly been paid in the past were not distributed in 2008.

CHMA's mission, as a non-profit entity, is to provide affordable housing to Hamilton County residents who are in need. The new formula and new reorganization structure has adversely affected the Agency's ability to serve its clients. Moreover, the

poor economic environment, increased layoffs and foreclosures has increased demand for client services and housing, at the same time that the new funding and reorganization has caused the Agency to reduce its workforce and eliminate services.

The Union states that its members must be recognized and rewarded with fair compensation notwithstanding the above economic circumstances. CMHA employees have achieved the highest rating of “High Performer” for the Agency for seven consecutive years, in accordance with HUD’s Public Housing Assessment System. A third-party organizational and management assessment study conducted by Gilmore Kean, LLC in April 2009 concluded that CMHA is “a very well-run agency.” The study recommended increasing the operational budget for staffing, ensuring HUD mandatory functions are funded before non-mandatory items, that site maintenance teams be developed with a central maintenance unit that would perform specialized maintenance tasks by highly skilled maintenance mechanics. The study “strongly” supports the concept of site management responsibility for the delivery of all housing services to residents (p.75). It recommended realignment in management staffing due to difficulties with managing a site in addition to oversight responsibilities. It further recommend reducing three area managers to two.

III. Unresolved Issues.

(1) Recognition – Article 1

The parties were able to negotiate an agreement on this issue through mediation at the hearing. They agreed to maintain the current contract language.

(2) Union Leave – Article 10

The expired contract contains 12 days for paid union leave. The Union wants to add 4 additional days to send its officers/stewards for updated seminars and training sessions, including those sponsored by SERB, FMCS, AFL-CIO and other organizations. The additional training and education would benefit both the Union and the Agency because it will produce better labor-management relations, and better assist the parties in resolving workplace disputes and grievances. The existing 12 days has remained unchanged since the '97-'99 CBA, and needs to be increased to deal with the complexities in the workplace and in labor relations.

The Union also proposes to expand the language to include conference, seminar or educational opportunities. It believes that the language adds more clarification to the existing term “conference” without materially expanding the use of Union leave time.

The Agency opposes the above proposal for economic reasons, and requests that the existing language remain unchanged.

I agree with the Agency that this is not the appropriate time to add 4 additional paid leave days to the CBA. The present economic conditions do not warrant this additional expense.

Recommendation. No change.

(3) Grievance Procedure – Article 18

The present provision provides for a permanent rotating panel of arbitrators. The Agency proposes the elimination of the permanent panel system with the use of the Arbitration and Mediation Service (“AMS”) so that arbitrator choices may be expanded. The Union argues that there is no need to change the present system. There are very few arbitrations.

I agree with the Union that the Agency has not presented a compelling reason for any change. Absent further negotiations and agreement, the language should remain unchanged.

Recommendation. No change.

(4) Uniforms – Article 21

The Union wants to increase this benefit by requiring the Agency to furnish maintenance workers with 3 additional CHMA logo tee shirts, which the employees will clean at their own expense. The Agency sees no justifiable reason for increasing its expenses in this area. I agree with the Agency, that even though this item is relatively inexpensive, there is no compelling reason to require the Agency to make these purchases.

Recommendation. No change.

(5) Contracting of Work – Article 23

This is a major issue between the parties. The Agency contends that it must change the existing restriction in 23.1 that prevents it from laying off employees who are not probationary employees due to its exercising of its subcontracting rights. It must have flexibility to permit each AMP to make these decisions as necessary to remain viable. For example, a particular AMP with its own budget problems may not be able to afford the costs charged by the Agency's ground crew for landscaping and upkeep. It may be able to save money for this expense by hiring a less expensive contractor. If a number of AMPs are in this position the Agency could wind up being over-staffed with ground crew employees, and a lay-off might be warranted. The AMP structure has limited the Agency's ability to absorb these potentially displaced ground crew workers, because the problem AMPs would not be able to take on more labor expenditures. While this is now a hypothetical situation, the Agency must protect itself from this scenario that could occur over the life of the next agreement.

The Agency has been able to negotiate these changes with the Building Trades with new language in their CBA. It is proposing similar language in this contract, which will have more of an economic impact upon the Agency if the need for subcontracting arises, that in turn would produce necessary lay-offs. An AMP would not be permitted to use subcontractors until it has demonstrated 3 consecutive months of negative, year-to-date fiscal data. It could then utilize subcontractors only up to the point that the AMP reaches a break-even point (year-to-date). Once that point is reached, the AMP must cease using the subcontractors.

The Union naturally believes that the Agency's proposal amounts to an assault upon the job security of its members. Presently, according to the Agency, 11 of the 19 AMPs were operating at losses in '07-'08. If this continues, there will be significant layoffs. No other Housing Authority has this type of language in their contracts. The Agency's nightmare scenario is premature. It is only in the second year of its funding program – the poor economic funding problems have not materialized to the extent that this major area of job security needs to be tampered with.

The parties argued over whether a failing AMP may receive funds from another AMP that has excess cash, and whether this should be accomplished before any layoff is considered. The Union argued that this can be done – the Agency argued that no AMPs have excess cash after their 1-month reserve, and that HUD regulations make it difficult to move monies around from one AMP to another. My analysis begins with the recognition that the Agency already has certain contracting rights for essential public needs, when it is uneconomical for the Agency's employees to perform the work.

The fact that the Building Trades agreed to new language that expanded Agency subcontracting rights persuades me that the Agency's need for additional flexibility due to the new AMP financial system is a real concern that needs to be addressed. The parties attempted to negotiate new language through mediation during the hearing, but they reached an impasse in certain critical areas. The following recommendation is my attempt to overcome their respective obstacles, and to deal with each of their legitimate concerns.

Recommendation.

- 23.1 It is recognized that the Employer has rights and obligations in contracting for matters related to its operations. The exercise of the Employer's contracting or subcontracting rights include essential public needs where it is uneconomical for the Employer's employees to perform said work. The Employer agrees that it will not lay off employees who have completed their probationary periods and have Bargaining Unit status because of the exercise of its contracting and subcontracting rights unless said contracting is occurring at sites currently referred to as Asset Management Properties ("AMPS") that have demonstrated six (6) consecutive months of negative fiscal data, or directives from the U.S. Department of Housing and Urban Development, or legislative changes necessitate. Once the above AMPS have returned to break-even status, or the negative fiscal data has been controlled such that it is no longer continuing, the Employer's contracting or subcontracting shall be discontinued. If one or more of the above negative performing AMPS regress again into negative performing status for three (3) consecutive months, the contracting or subcontracting may resume. Once negative status is again controlled and the AMP returns to break even operating status, the contracting or subcontracting shall be discontinued.

If employees have been laid off, no subcontracting of work traditionally performed by the laid off employee's classification shall occur at sites currently referred to as AMPS not meeting the definition as described above unless that subcontracting is due to work falling under modernization or capially funded projects. It shall not be considered a lay off if the employee is transferred or given other duties at the same pay.

If the Employer anticipates contracting work or services which may have an impact on Bargaining Unit employees, a meeting must be held with the Union, prior to the implementation of such contracts except in the event of an emergency, for the purpose of discussing the Employer's need for its decision to contract or subcontract. The Employer shall provide the Union with all of its financial records and information upon which its decision is based at least 48 hours before the scheduled meeting.

An AMP subcontracting pursuant to this Article can no longer subcontract once that AMP has achieved positive year-to-date

fiscal data (break-even).

23.2 Nothing contained herein shall be interpreted to preclude the right of the Employer to contract or subcontract work, regardless of whether such work is of a character customarily performed by employees in the Bargaining Unit, so long as no employees who have completed their probationary periods and are covered by this Agreement are laid off as a result of the contracting or subcontracting unless said contracting is occurring at sites currently referred to as Asset Management Properties (“AMPS”) that have demonstrated the negative fiscal data for the required periods set forth in 23.1 above, or because of directives from the U.S. Department of Housing and Urban Development, or legislative changes necessitate. If employees have been laid off, no subcontracting of work traditionally performed by the laid off employee’s craft shall occur at sites currently referred to as AMPS not meeting the definition as described above unless that subcontracting is due to work falling under modernization or capitally funded projects.

Welfare to work participants shall not displace permanent bargaining unit employees, nor shall they be used to reduce the number of hours worked by bargaining unit employees.

Recall rights of laid off employees shall be protected. Once a non-performing AMP that has laid-off employees returns to break-even status, and any existing subcontracting has been terminated, the Employer must begin recalling laid off employees if it continues the work previously performed by subcontractors. The Employer must notify the Union, and a meeting must take place within a reasonable time to review and implement member recall rights.

(6) Hours of Work – Article 25

The Union proposes to change the normal workweek in 25.1, providing 40 hours per week, consisting of 5 consecutive days, 8 hours per day, but adding the requirement that the 5 days be from Monday through Friday. It proposes language in 25.6 providing that an employee shall have the right of their next regularly assigned shift when they have

worked through the night on overtime or a callback. It proposes new language providing for a 3-minute grace period for all members beginning at their normal start time to clock in without disciplinary penalty.

The Agency proposes new language permitting 4 consecutive 10-hour days, Monday through Friday. It wants flexibility in its scheduling of employees. It agrees the Union's new language in 25.6, but believes it should be in the overtime article. It objects to the 3-minute grace period for clocking in. It would agree to separate Article 25 into three separate articles, Hours of Work, Overtime and Callbacks. Otherwise, it prefers to maintain current language under the Hours of Work provisions. It drafted a proposed new Overtime article attempting to address Union concerns that the existing language is confusing to employees. It allows for normal overtime selection by seniority and the proper employee with regard to classification. It also adds a voluntary sign-up list for potential overtime assignments.

I suggest that the parties put in place anything that they can agree upon relative to these subjects. Absent their agreement, I see no reason to change any of the existing provisions.

Recommendation. No change.

(7) Wages – Article 28

The Agency, because of its economic concerns, is proposing a package of signing

bonuses and lump sum payments. This is similar to the packages that were agreed to with the IUOE and the Building Trades. Avoiding across-the-board wage increases on the base will permit the Agency to limit wage freezes, mandatory furloughs, layoffs, or concessions sought by other public employers. Exempt employees have already incurred wage freezes, and none will receive any merit increase for FY '09, or possibly FY '10. Some have not received a merit increase in nearly 24 months. At the same time, the lump sum payments permit employees to deal with the increases in the cost of living, including increased health insurance costs. The Agency also proposed new language under 28.2 that requires all employees to receive the same corresponding wage rate for their classification group. The Agency's proposal is conditioned upon the Union's acceptance of the Agency's health insurance proposal.

The Union's proposal provided for wage equity adjustments for Automotive Aide (Group 2 to 4), General Maintenance Worker (4 to 5), and Office Specialist I (File Room) to Group 3. It originally proposed wage rate increases of 3.75% across-the-board retroactive to May 1, 2008, 3.75% for 2009 and 4% for 2010.

The Union contends that annual percentage wage increases has always been the norm. This is so with all of the Ohio MHAs. The Agency will have more than sufficient operating funds to pay for the Union's proposal. It will save considerable money from the increased employee paid health insurance premiums discussed *infra*.

The Agency's financial condition is not in distress. FY'07 ended with over a \$51 million balance equal to 43% of reserves as of July 2008, and a \$20 million surplus. The 88.96% operating fund pro-ration actually was an increase over previous estimates. Additional revenues will be forthcoming from an appropriations bill. This will produce \$255 million more in public housing operating funds, \$341 million more in Section 8 voucher funds, and \$718 million more in Section 8 Project-based voucher funds. This additional funding was \$3.4 billion above HUD's 2008 funding levels. The ARRA provides for \$19 million in capital funds for CMHA. Much of this money will be directed for uses that provide more work for the bargaining unit members. The FY'10 HUD budget is expected to increase by \$6.4 billion, a 13.5% increase over FY'09. Congress has increased HUD funding over 29% between 2006 and 2010.

CMHA's audited reports show that it was "very strong financially" in FY'05 – FY'08. There are high levels of reserves with a healthy surplus. The Union believes, contrary to the Agency's claims, that HUD rules permit fund transfers between projects so long as the awarding property has excess cash.

The lump sum payments proposed by the Agency show that in dollar amounts, they are not substantially different than the percentage increases proposed by the Union. Most employees are in classification groups 3-6. A lump sum of \$1200 would equate to percentage increases amounting to between 3.4% and 4.2%. Finally, it must be recognized that the bargaining unit employees have not received a wage increase since May 2007.

After considerable negotiations through mediation, the parties were able to narrow their differences. The Agency began to consider percentage wage increases instead of lump sum payments under certain conditions. It would agree to a contract that begins on July 1, 2009 with no retroactive payments. An \$800 lump sum payment would be made for the first year of a three-year contract that expires on June 30, 2012. It would agree to a 2% across-the-board increase in year-two, and another 2% across-the-board increase in year three.

The Union reduced its demands as well. It insists upon a May 1, 2008 beginning date with retroactive payments. A lump sum payment of \$1,500 per member would be paid to cover the period from May 1, 2008 to April 30, 2009. The second year would begin May 1, 2009 with a 3.5% across-the-board increase. A 3.5% increase would be made for the third year beginning May 1, 2010. Its proposal includes the reclassification of wage rates as proposed.

Recommendation. Based upon the evidence in the record, and the arguments presented, I recommend a three-year contract that begins May 1, 2009 and ends April 30, 2012. For the first year (May 1, 2009 – April 30, 2010), a signing bonus/lump sum payment (not added to the base) shall be paid to all bargaining unit members in the amount of \$1200 per member. In year two (May 1, 2010 – April 30, 2011), a 3% across-the-board increase shall be paid, and in year three (May 1, 2011 – April 30, 2012), a 3% across-the-board increase shall be paid. There shall be no retroactive payments before May 1, 2009. There shall be no change in the classifications.

(8) Health Insurance – Article 3

The Agency is very concerned about reigning in its health care costs to control its budget. It has been paying over 3 million dollars per year. The AMPs must now be charged for the health insurance costs for each of its employees. Accordingly, the Agency has developed a new three-tier structure where employees may choose their particular level of coverage that may lead to lower costs for the employees and the Agency. It believes the resulting package still provides for excellent benefits at a cost of approximately \$29,000 per employee for a three-year contract.

The Agency proposes to continue the present employee contribution level of 15% through March 31, 2010. Beginning April 1, 2010, the Agency proposes to offer employees an option to select one of the available plans. The Agency would contribute up to \$884 per month for the family plan, and \$303 per month for single coverage. In each of the subsequent years, the Agency would increase its premium contribution by 9%. In addition, each employee would receive \$700 per year in flex dollars to help cover the cost of deductibles, co-payments or other non-covered medical expenses. The flex dollars may also be used for dependent care expenses. If the employees choose the top-level plan, the Agency has agreed to apply the flex dollars to the premium cost to offset the employee's expense exposure.

The Agency believes that the new structure will still provide employees with some of the best coverage at the lowest costs among employees in Hamilton County.

Employees can potentially save \$57 per pay period or \$1,300 per year, amounting to an effective 4.28% in their hourly wages. The IUOE, the Building Trades and all of the exempt staff have accepted the new structure.

The Union proposes maintaining the status quo until April 1, 2010, but changing the contribution levels for the remainder of the contract to 80% (Agency) – 20% (members). It further proposes adding a new plan option, referred to as the Humana 90-10, thereby providing members with four plan options instead of three. It originally objected to the Health Savings Account option and limiting the Agency's contribution to a dollar amount instead of a percentage of the premium. This dollar amount limitation, in its opinion, unfairly exposes the members to ever increasing health insurance costs. The Union also proposed that all wellness programs be covered at 100% at first dollar.

It believes that its proposed changes are modest and reasonable, and could save the Agency over \$300,000 over the contract term. The Agency would have the responsibility to shop for healthcare benefits, and can negotiate with various providers for the best value. The percentage cost sharing arrangement is similar and comparable to the plans in the contracts of other Ohio MHAs.

The new Agency 3-tier plan has a very high cost for the first tier, which is the current plan, making the choice practically unavailable for any bargaining unit member. This is because they are among the Agency's lowest compensated employees. The second tier is an 80/20 cost sharing plan, and the third tier is the high deductible Health

Savings Account (“HSA”). The Agency’s proposal also contains objectionable cost-shifting language that sets specific limits on dollar amounts on employer paid premiums. This language could save the Agency up to \$3 million over the next three years, but will only provide employees with minimal benefits in the form of flexible dollars.

The Union particularly objects to HSAs. They do nothing to reduce health care costs – they only shift the costs to the employees. Employees, except those that are highly paid do not benefit from HSAs. Studies show that 72% of HSA participants spend less than \$1,500 per year, much less than their high deductible. As a result they are paying for benefits dollar for dollar without receiving any insurance benefit. Employees will often decide not to seek medical treatment knowing that they must pay the full cost upon to their deductible. As a result, the high deductible HSAs actually undermine the basic purposes of health insurance -- to reduce financial barriers, to obtain needed services, and to protect against financial hardship. It believes that the Agency has produced no evidence to refute these findings, and that it’s new proposed structure’s only purpose is to reduce its insurance costs.

Recommendation. I recommend that the current plan remain in effect without any changes until May 1, 2010. Thereafter, the Union shall review the plans and language relative to Agency paid health insurance benefits for each of the other employee groups, the IUOE, the Building Trades, and the exempt non-bargaining unit employees, including the plans available for the administrative employees and executives. It shall then select

which group's plan is the most suitable for its members, and that plan and related options and benefits shall begin on May 1, 2011, and be in effect for the remainder of the CBA.

I believe that all Agency employees should be on the same plan or structure so that the group is as large as it can be for purposes of negotiating coverage with competing carriers. I understand that there may be some differences between the actual plans available among the above groups. Accordingly, the Union should have the option to select the plans and structure that best suits its members, and otherwise equals the best available benefits and options.

I encourage the parties to resurrect an effective and meaningful insurance committee that includes representatives from each employee group, with regular meetings, so that the mutual interests of all employees may be served. I further suggest that the Agency consider the Union's request to add the Humana 90-10 plan that the Union proposed as an additional option. The Agency should further study this proposal and review its findings with the Union, to determine whether it presents a reasonable option that is cost-effective.

(9) Holidays – Article 33

The Union proposes adding two additional paid holidays, Good Friday and Christmas Eve. It has not received any additional paid holidays under the CBA since the initial contract after SERB certification in 1992. CMHA continues to have the original 11 holidays, compared with other Ohio MHAs that have 12, 13 and 14 holidays. The

parties agreed to modify the Columbus Day monthly designation from “November” to “October.” The Agency opposes any provision for additional holidays because of the additional costs and staffing concerns. I agree that this is not the appropriate economic environment for adding additional paid leaves in the form of additional paid holidays.

Recommendation. No change except for that agreed upon between the parties.

(10) Vacations – Article 34

The parties have agreed to eliminate the second table under 34.1. The vacation schedules apply to all employees in the unit. The Union proposes increasing the maximum vacation balance payouts under 34.5. They disagree over language that creates a leave request/approval process under 34.8. The Agency proposes that vacations be requested in advance equal to the number of days requested except for an emergency. It agrees that supervisors shall not unreasonably deny vacation requests.

The Union wants supervisors to approve or disapprove requests, and to notify the employees of their decisions by the end of the next workday. If no notice is given the request shall be deemed approved. Approved vacation shall not be changed without the employee’s written consent. The change even if consented to is null and void if the employee does not have any accumulated vacation leave when the vacation is taken. The Agency objects to any time limit for a response to a vacation request. It was willing to increase the payouts if the Union agreed with its wage increases and health insurance proposals.

Recommendation. No change except for that which has been agreed upon.

(11) Sick Leave – Article 35

The Agency wants the Union to agree to language that has been accepted by both of the other Unions and the exempt staff, which provides for additional personal leave time while keeping sick leave balances the same. Personal leave time would be accrued instead of sick leave time. Any unused personal time would become sick leave time at the end of the calendar year. Sick leave would then be used for bereavement leave or FMLA qualified leave. Employees now forfeit their accumulated sick leave if they leave employment for a reason other than retirement. Under the Agency's proposal, employees who leave employment for any reason except for termination for cause, would receive a scheduled pay out of accumulated sick leave and personal leave.

The Union proposes language that prohibits employees from being disciplined for usage of accrued sick leave hours. It believes that the Agency has unfairly attempted to discipline or threaten to discipline employees for use of contractually allotted sick leave time, alleging that such use is excessive or abusive. It further proposes adding a \$350 sick leave performance incentive for employees who do not use sick leave in a 6-month period. The Agency would save money in the long run. A similar policy is in effect for exempt employees. Finally, the Union proposes to increase the sick leave balance maximum pay at retirement from 600 to 1600 accumulated hours, up to a maximum of 800 hours paid at the rate of one hour for every two hours.

It objects to the Agency's personal leave proposal because it would diminish rights to use accumulated sick leave and bereavement leave. An employee would have 10 personal days a year, instead of 15 sick leave days a year. The leaves must be requested in advance and are subject to Agency approval. Moreover, discipline may be imposed for more than one "incident" of unscheduled personal leave per pay period. Lastly, the Agency's proposal limits carryover hours. The Agency proposes more sick leave cash out benefits, but few employees, as a practical matter, will qualify for any payouts.

Recommendation. No change except for that which has been agreed upon.

(12) FMLA – Article 35

The Agency's proposed changes in this article were contingent upon the Union's acceptance of its personal leave proposal. It reflects changes in the Act, and it adds a paragraph that prohibits an employee from taking FMLA leave to work elsewhere. Employees who were approved for FMLA to care for a family member were required to use vacation time. The Agency's proposal would permit employees to use their accumulated sick leave for any qualified FMLA absence, instead of vacation time.

The Union believes that the Agency's language is too restrictive on the subject of working elsewhere while on FMLA leave. It proposes a short sentence instead, that forbids taking FMLA leave and engaging in employment elsewhere, unless authorized by the Agency.

The Union proposes changes in the Donated Time Bank language in 36.5. The changes require the Agency to become involved by approving the donated time, and by administering the use of this time by issuing quarterly reports showing employee balances and any authorized usage in the previous three months.

Recommendation. I recommend that employees be permitted to use accumulated sick leave time or vacation time if they are approved for FMLA to care for a family member. I further recommend the Union's proposed language on the prohibition to work elsewhere when an employee is on FMLA. The Union's proposal for DTB changes is not recommended. The remainder of the language shall remain unchanged.

(13) Bereavement Leave – Article 37

The Agency is willing to provide more flexibility in the use of this leave time through its personal leave proposal. If the proposal were accepted, the Agency would agree to provide an additional day to attend a funeral that is more than 100 miles away. The Union wants this additional benefit in addition to adding in-laws to the bereavement leave provision. Both Union proposals would add additional costs for the Agency in term of additional employee paid leaves, and possible staffing concerns. This is not the time to increase the Agency's costs and benefits in this area, without something in return through negotiations.

Recommendation. No change.

(14) Duration – Article 48.

As stated above, the Agency prefers a three-year contract beginning with ratification. The Union proposes a three-year contract beginning in May 2008. I have attempted to provide a reasonable lump sum payment retroactive to May 2009, at which point a three-year contract would begin. Thereafter, percentage increases of 3% each year would be paid in years two and three. These percentages are somewhat higher than percentage increases being paid in other public employee contracts at this time. The recommended lump sum payments and the 3% increases will ameliorate somewhat the absence of pay increases before May 2009. The Agency obtained additional subcontracting rights and received what it proposed in health insurance. The lump sum payments of \$1200 per employee, retroactivity to May 2009, and 3% increases across the board on the base in the last two years is reasonable consideration for these gains.

Recommendation. May 1, 2009 through April 30, 2012. The parties agreed that the reference in Section 48.4 to Section 47.3 should be changed to Section 48.3.

(15) New Employee Orientation - New Article

The Union proposes that it be permitted to have a Union representative conduct a 10 minute orientation for new employees at the same time that Human Resources provides its orientation. The purpose is to educate uninformed employees about the CBA and the Union. This will cost the Agency nothing and will help improve labor relations by educating employees about their contractual rights and obligations.

The Agency believes this is not a mandatory subject of bargaining, and it is not interested in adding this to the contract. It would agree to provide new employees with a prepared packet of information provided by the Union.

Recommendation. I recommend that the packet suggestion be adopted at this time.

(16) Overtime – New Article

The Union believes that the parties have agreed to create a separate section for overtime, and to separate the existing provisions from the Hours of Work article. The Union wants to add language that would permit the Agency to order the least senior employee from the designated classification to work overtime assignments that were previously offered appropriate employees within the department, but were rejected. The previous language permitted the Agency to assign any employee to work the turned down overtime. The Union is interested in providing more seniority rights.

The Agency wants to add the right to take employees from the backup/volunteer list for unscheduled overtime. The Union wants to require the Agency to keep records of who is offered overtime, who worked it and who turned it down, so that it may better achieve its objective of overtime equalization. The Agency does not want to add to its administrative obligations. Records are now kept annually under the present system.

Recommendation. No change, except for that which has been agreed upon.

(17) Callbacks – New Article.

This Union proposal deals with calling employees back to work out of six maintenance locations. It wants to maintain the six locations; the Agency wants to eliminate them. The Union wants to increase the pay for employees who work callbacks by providing 6 paid hours in addition to any hours worked. The Agency opposes these additional costs.

Under the current provisions, Senior Maintenance Workers and General Maintenance Workers are used for callbacks. The Agency proposes using Maintenance Aides who are less skilled workers for callbacks. This would save the Agency money. The Union believes that any change in this area would be very unfair. SMWs and GMWs have been laid off, and have bumped into Aide positions. If they must be included in callbacks, they will be performing the same work as before, but now at a lesser rate of pay.

Recommendation. No change other than what has been agreed upon.

(18) AFSCME CarePlan – New Article

The Union proposes that the Agency be required to pay \$23.90 per month per unit member for the above insurance plan that provides for hearing aids and life insurance, an employee assistance program and a legal care plan. The Agency opposes these additional costs. It also opposes negotiating over this subject because it is not a mandatory subject of bargaining.

Recommendation. No change.

(19) Memorandum of Understanding

This issue has been agreed upon between the parties.

(20) Appendix I Classification Series

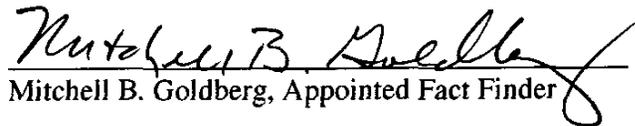
This issue has been agreed upon between the parties.

(21) Appendix II - Pay Period Schedule for Calculation of Sick Leave Incentive

The Agency's personal leave proposal would eliminate the sick leave incentive payment for non-use, which is now \$150. The Union wants to increase this incentive payment to \$300.

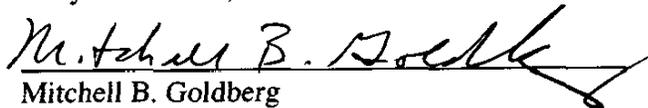
Recommendation. The dates shall be changed in Appendix II to reflect the new contract dates. The present sick leave incentive shall remain.

Date of Report: August 10, 2009


Mitchell B. Goldberg, Appointed Fact Finder

Certificate of Service

This Report was served upon Edward E. Turner, Administrator, Bureau of Mediation, SERB, 65 East State St., 12th Fl, Columbus, Ohio 43215-4213 by U.S. Mail first class, postage prepaid on August 10, 2009. Copies were mailed on the same date to Peter M. McLinden, Regional Director, AFSCME, Ohio Council 8, 1213 Tennessee Ave., Cincinnati, Ohio 45229-1097; and to James Hubbard, Human Resources Generalist, CMHA, 16 West Central Pkwy. Cincinnati, Ohio 45202.


Mitchell B. Goldberg