FACTFINDING REPORT

STATE EMPLOYMENT RELATIONS BOARD

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2009 JAN -7 P 1:06

January 5, 2009

In the Matter of:

Cuyahoga Metropolitan Housing Authority	)	
	)	Case Nos. 08-MED-03-0171
and	)	08-MED-03-0172
	)	
AFSCME, Ohio Council 8, Local 1355	)	

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APPEARANCES

For the Authority:

Craig M. Brown, Counsel
Edward M. Chyun, Counsel
Jeffery Patterson, Chief of Staff & Operations
Mark Hunt, Director of Human Resources
Carolyn J. Gaiter, Director of Asset Management
Priscilla Pointer-Hicks, Director, HCUP-CMHA
Jeffrey Werner, Consultant
Louanne Chung, Chief Financial Officer

For the Union:

Basil W. Mangano, Attorney
Joseph J. Guarino III, Attorney
Hernando Harge, Staff Representative
David Patterson, President
Elkanard Smith, Building System
Valerie Southern, Vice President
Anthony Howard, HQS Inspector
Brenda Tarr, Recertification Specialist
Angela Burton, Material Maintenance Specialist
Salita Baker, Eligibility Specialist

Factfinder:

Nels E. Nelson

BACKGROUND

The instant case involves the Cuyahoga Metropolitan Housing Authority and AFSCME, Ohio Council 8, Local 1355. The authority is an independent political subdivision of the State of Ohio. It provides housing for approximately 50,000 low-income residents of Cuyahoga County. The union represents two bargaining units. The clerical unit consists of 129 employees in 18 different job classifications. The maintenance unit consists of 286 employees from 12 different classifications..

The parties began negotiations on June 27, 2008, for successor agreements to the ones due to expire on June 30, 2008. The parties agreed to extend the contracts to August 31, 2008, and to make any wage increases retroactive to July 1, 2008. However, in July 2008 negotiations were suspended pending a re-run of an election of the union's local officers.

The re-run election was completed and negotiations resumed on August 20, 2008. On that date, the parties extended the contracts to October 31, 2008. They subsequently engaged in negotiations on a number of days and a tentative agreement was reached November 20, 2008, but was rejected by the membership.

The Factfinder was notified of his appointment on December 4, 2008. The factfinding hearing was held on December 19, 2008. The Factfinder agree to furnish his report and recommendations no later than January 5, 2009.

The recommendations of the Factfinder are based upon the criteria set forth in Section 4117-9-05(K) of the Ohio Administrative Rules. They are:

(a) Past collectively bargained agreements, if any, between the parties;

(b) 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;

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

(d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

ISSUES

The parties submitted seven issues to the Factfinder. For each issue, he will set forth the positions of the parties and summarize the arguments and evidence presented by them in support of their positions. The Factfinder will then offer his analysis, followed by his recommendation for each issue.

1) Article 11 - Union Representation, Section 11.1 - The current contracts grant the local president two days per week of paid released time to conduct union business and one day per week for each of the chief stewards. The authority proposes to eliminate the paid released time. The union seeks to retain the current contract provision.

Authority Position - The authority argues that its demand ought to be adopted. It claims that there is no justification for the union's released time demand. It acknowledges that union time has become a fixture in some very large public sector bargaining units, such as AFSCME's 2,000-member bargaining unit in the City of

Cleveland, but claims that it is not appropriate in a bargaining unit of less than 400 employees.

The authority contends that the local president has spent an inordinate amount of time on union business. It reports that from July 1, 2007, to December 31, 2007, 38.93% of his possible paid hours were devoted to union business and that in the period from January 1, 2008, to December 12, 2008, the figure was 38.25%. The authority asserts that this forces other employees to work harder to cover for him.

Union Position - The union argues that the authority's demand should be denied. It points out that David Patterson, the current president, testified that he handles step three meetings, participates in arbitration hearings, meets with employees and representatives of outside agencies, and responds to numerous telephone calls. The union notes that he stated that the perception of the misuse of union time is based on the comments of his union rivals.

Analysis - The Factfinder recommends that the authority's demand be adopted. While he appreciates the significant demands the president's position places on his time, the released time that the union seeks is substantial given the size of the bargaining unit and was not supported by data from any comparable public sector employers. Furthermore, the contract provides for stewards and chief stewards to process grievances. The reduction in released time for the president and chief stewards, which was part of the tentative agreement, appears to reflect a compromise, which is part and parcel of negotiations. The factfinding process, however, relies primarily n the statutory criteria. In the instant case, those criteria do not support the continuation of released time for the

president and chief stewards given the size of the bargaining units and the financial challenges facing the authority.

Recommendation - The Factfinder recommends the following contract language:

> CMHA recognizes the right of the Union to select Local Union Officers (not to exceed two (2) for the combined bargaining units which comprise a single Local) to represent the employees in the bargaining units. The Union President shall receive, investigate and process all Step III grievances. In addition, the Union President or his/her designee, in the Union President's absence, shall attend all orientation sessions involving new bargaining unit members. The Authority shall notify the President via e-mail of a pending new employee orientation session for Local 1355 bargaining unit members by the Friday before the scheduled Monday orientation. In the event the Union President is unable to perform his/her duties for an extended period of time due to illness, injury or vacation, the Vice President will receive, investigate and process grievances in addition to his/her normal duties during the absence of the Union President. A Local Union Officer may act when necessary in place of a Steward when the Steward is absent.
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> The Union will furnish CMHA a written list of the Union Officers and Stewards. In addition, the Union will notify CMHA of any deletions or substitutions to the above list.

2) Article 19 - Hours of Work, Section 19.1 - Overtime (Maintenance Contract) & 19.3 - Overtime (Clerical Contract) - The current contract includes holiday pay, vacation pay, jury duty pay, bereavement pay, and excused absences as hours worked for purposes of the calculation of overtime. The authority wishes to exclude holiday pay, vacation, and excused absences. The union seeks to retain the current contract language.

Authority Position - The authority argues that its proposal ought to be adopted. It points out that it is currently operating at a loss and that the changes it seeks will help control overtime costs. The authority claims that its proposal will mean that

employees will be less likely to turn a sick day into a "vacation day" if they know that such hours will not count toward overtime. It observes that the overtime premium is compensation for employees who work beyond their normally scheduled hours but employees using paid time off are not working and, therefore, not entitled to overtime. The authority suggests that the union recognized the reasonableness of its proposal by including it in the tentative agreement.

Union Position - The union argues that holidays, vacation, and excused absences should continue to be included in the calculation of overtime. It points out that the Akron, Dayton, Portsmouth, and Stark housing authorities count holidays and vacation toward overtime. The union acknowledges that the authority's demand was part of the tentative agreement but states that it agreed to it to obtain a wage increase in excess of 3%.

Analysis - The Factfinder recommends that the authority's demand be adopted. The change that it seeks has been made in many public sector collective bargaining agreements in recent bargaining in response to employers' attempts to control overtime costs. In fact, the evidence submitted by the union indicates that only four of the eight housing authorities include both holidays and vacations in their overtime calculations. The union apparently recognized these points when it agreed to the change sought by the authority in the tentative agreement.

Recommendation - The Factfinder recommends the following contract language:

> Maintenance Contract: The normal work week for regular full-time employees shall be forty (40) hours of work in five (5) consecutive eight (8) hour days, exclusive of the time allotted for meals during Monday to Sunday. CMHA will prepare the above work week schedules pertaining to the work location in question, utilizing the seniority of the affected employee to choose the

scheduled work week in order of their classification seniority after Management has asked for volunteers to cover other than a Monday through Friday work week. Should CMHA decide that it does not have the skills coverage to meet operational requirements it may assign other employees with the necessary skills to the work week schedule in question. If requested, CMHA shall provide to the Union its justification for the utilization of the employee so assigned, at which time the Union may grieve the issue in accordance with Article 12 at Step III. CMHA shall have the right to prepare the work week schedule twice a year and shall maintain such schedule unless CMHA has determined to revert back to the Monday through Friday work week, or if CMHA decides to assign a "temporary" work week due to a bona fide need. A "temporary" work week will be defined as a change in an employee's schedule that will not exceed two (2) weeks. The ten (10) minute wash-up time at the end of the day shall be part of the eight (8) hour day.

Those employees that have been designated as Custodians shall be available to work twenty-four (24) hours per day seven (7) days per week. In lieu of "call-back" pay, Custodians will be paid time and one-half for all hours worked in excess of eight (8) hours per day; when the employee works in excess of forty (40) hours in the week. In return, Custodians will pay a maximum economic rent of $150.00 per month, unless otherwise required by HUD, for their rent of a CMHA apartment on the work site that they are employed.

Maintenance personnel shall be paid time and one-half for all hours worked in excess of eight (8) hours per day where the employee has worked in excess of forty (40) hours in the week. For purposes of this section, hours worked shall be deemed to include: 1) Jury Duty Pay, and 2) Bereavement Pay. All other time off with pay shall not be considered for purposes of calculating overtime under this Section.

Clerical Contract: Time and one-half shall be paid for hours worked in excess of eight (8) hours per day where the employee has worked in excess of forty (40) hours in the week. For purposes of this Section, hours worked shall be deemed to include:

1. Jury Duty Pay; and
2. Bereavement Pay.

All other time off with pay shall not be considered for purposes of calculating overtime under this Section.

3) Article 19 - Hours of Work, Section 19.2 - Call Back (Maintenance Contract) - The current contract provides that maintenance employees who are called

back for emergencies are to be paid time and one-half or four hours of straight time, whichever is greater. The authority seeks to require employees to work more than one hour before they receive time and one-half or four hours of straight time. The union opposes the authority's proposed change.

Authority Position - The authority argues that the current contract provision has become a financial burden. It claims that on a number of occasions it has had to pay employees four hours of straight time for responding to a service call that lasted less than ten minutes. The authority complains that in some cases, employees have responded to two calls that each lasted less than 15 minutes but have received eight hours of straight time pay.

The authority states that it is not trying to eliminate call back pay. It claims that it is simply trying to find a fair and reasonable way to compensate employees for responding to emergency service calls. The authority suggests that the union recognized the reasonableness of its proposal and accepted it as part of the tentative agreement.

Union Position - The union opposes the authority's demand. It maintains that emergencies often arise in the very early morning hours, requiring employees to report to the estates with little or no protection. The union adds that the authority's proposal ignores the fact that in many cases, preparing for work and traveling back and forth to work entails significant time and money. It claims that the cost-saving to the authority would not be that great.

Analysis - The Factfinder must recommend that the authority's proposal be incorporated in the contract. While the Factfinder does not believe that the stipulation that employees who are called back to work must spend at least one hour at work before being

guaranteed either time and one-half or four hours of straight time pay will impact very many employees, it will eliminate the windfalls that arise in a few cases where employees are called in for very short times more than one time.

Recommendation - The Factfinder recommends the following contract language:

> Maintenance Contract: The regular workday shall be set by CMHA between 6:00 a.m. and 6:00 p.m. Employees shall be given their preference of starting time as determined by CMHA, by seniority within the affected classification and location. Maintenance personnel who are scheduled to the second shift (2:30 p.m. to 11:00 p.m.) shall be paid twenty cents ($.20) an hour additional for the Code 2 shift, and maintenance personnel who are scheduled to work on the third shift (10:30 p.m. to 7:00 a.m.) shall be paid thirty-five cents ($.35) an hour additional for the Code 3 shift.
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> Should maintenance personnel, other than Custodians, be called back to work outside his/her regular work hours for an emergency, then he/she shall be paid time and one-half or four (4) hours, straight pay, whichever is greater. This compensation shall only apply when an employee has remained on the "call back" for more than one (1) hour. When an employee responds to a "call back" and works for any time less than or equal to one (1) hour he/she shall be compensated in accordance with section 19.1 above. For purposes of this Section, an employee is "called back" whenever asked to perform work after having punched out for the day and has left the premises without having been advised of the need to remain.

4) Article 28 - Wages - The current contract includes 13 classifications for the maintenance unit and 18 classifications for the clerical unit. The average wage for the combined units is $13.90. The union demands 75-cent per hour wage increases effective January 1 of 2008, 2009, and 2010. In addition, it seeks unspecified equity increases of up to $4.00 per hour in the first year of the agreement. The authority offers 40-cent per hour wage increases effective January 1 of 2008, 2009, and 2010.

Union Position - The union argues that employees in both bargaining units are severely underpaid compared to other public and private sector employees doing comparable work. It states that clerical employees are paid $1.50 to $4.50 per hour less than employees doing similar work at other housing authorities. The union claims that "only in the rarest of instances are CMHA clerical wages higher." (Union Pre-Hearing Statement, page 2)

The union contends that in many cases maintenance employees are underpaid. It observes that the Bureau of Labor Statistics reports that the mean and median wages for maintenance and repair workers in the Cleveland-Elyria-Mentor area are $17.64 and $17.29 per hour. The union suggests that the description from the Occupational Outlook Handbook indicates that these wages are for employees who do similar work to that done by CMHA maintenance workers.

The union maintains that wage inequities are prevalent for the Service Person II, IV, and V classifications compared to other housing authorities. It states that the inequities are as high as $4.00 per hour. The union claims that the job descriptions for a number of other housing authorities indicate that employees in those agencies are doing the same work as the Service Person classifications in CMHA.

The union acknowledges that its wage proposal involves significant costs. It points out, however, that the union membership soundly rejected the tentative agreement, which included a wage increase of 50 cents per hour effective January 1, 2008, and 40 cents per hour increases effective January 1 of 2009 and 2010. The union stresses that the authority must address the wage issue.

Authority Position - The authority argues that its financial condition is bleak. It states that increased economic pressures require cost-cutting. The authority indicates that despite its efforts it lost $2.2 million in 2007 and $23 million in 2008, less $14 million it expects to recapture based on previous excess payments.

The authority contends that the Housing Choice Voucher Program, which employs 69 employees from the clerical unit, has limited resources. It points out that it gets an administrative fee from HUD for operating the program, which represented only $8.2 million of the $104.7 million total revenue in 2007. The authority notes that in 2007 it paid $6.0 million in salaries and benefits to the employees working in the program.

The authority maintains that the Asset Management Properties, which are treated by HUD as separate, for-profit entities, are in poor financial shape. It reports that seven of the 11 AMPs operated at a loss and that the others barely covered their costs. The authority indicates that unlike for-profit businesses, housing authorities depend on HUD for revenue and cannot raise rents on their own initiative.

The authority claims that its financial hardship is increased by a number of factors. It observes that unpaid rents were $1.5 million in 2007 and are estimated to be $1.0 million in 2008 and 2009. The authority states that the cost of utilities was $19.3 million in 2007 and is estimated to be $21.9 million in 2008. It adds that property insurance, which was $3.3 million in 2006, was $3.8 million in 2007.

The authority argues that its wage proposal is quite generous. It indicates that its offer of 40-cent per hour increases is equivalent to approximately 3% raises each year of the contract. The authority states that this exceeds the wage increases for public employers in the Cleveland labor market as reported by the State Employment Relations Board.

The authority charges that the union's wage demands represent "the height of irresponsibility." It points out that the $4.00 per hour across-the-board equity increase sought by the union is equal to a 29% increase and would cost $3.5 million. The authority notes that the union's demand for 75-cent per hour wage increases would cost $600,000 each year. It states that the combined effect is a 34% increase in the first year of the contract followed by 4.1% and 4.0% increases.

The authority claims that the union is cherry-picking dissimilar public housing employers to justify its wage demand. It maintains that jobs at the other agencies are very different from its jobs. It acknowledges that it has some employees comparable to those at the other agencies but states that they are not in the AFSCME bargaining units.

The authority rejects any argument that it does not pay its maintenance employees prevailing wages. It reports that during the 2002 negotiations Factfinder Jonathan Klein found that it was required to pay employees the higher of the negotiated wages or the prevailing wages as determined or adopted by HUD and offered several illustrations of prevailing wages.[1] The authority emphasizes, however, that in a subsequent arbitration case, Arbitrator Earl Curry held that Klein could not set prevailing wages and that his illustrations used incorrect prevailing wage rates.

The authority maintains that HUD has approved its prevailing wages for 2003 through 2009. It acknowledges that in 2003 a HUD representative in Cleveland initially stated that its wages were below prevailing wages. The authority stresses, however, that HUD's Chicago Regional office subsequently stated that the wage survey conducted by its Cleveland representative was inaccurate and indicated that the data CMHA submitted was representative of prevailing wages in the Cleveland metropolitan area.

[1] At that time employees were represented by SEIU Local 47.

Analysis - The Factfinder is faced with substantially different wage proposals. The union demands 75-cent per hour wage increases for each year of the contract, which produces an increase of 15.4% over three years. In addition, it seeks equity increases up to $4.00 per hour in the first year.[2] The authority proposes 40-cent per hour increases each year of the contract, which results in an increase of 8.40% over three years.

The union's demand must be rejected. First, the data it submitted does not support such large increases in wages. The data are from diverse areas of Ohio, involve a small number of classifications, represent different years, and include varying job titles. Second, even if the data suggest that wages at CMHA are behind some other housing authorities, it is the result of a number of rounds of bargaining. The union's demand appears to be an attempt to eliminate or significantly reduce any existing gap in a single round of bargaining. Third, CMHA simply does not have the ability to pay the union's demand, even excluding the equity adjustment.

The authority's wage offer is more reasonable. It provides for wage increases which exceed the average increase for public employers in the City of Cleveland and in Cuyahoga County. In addition, SERB's Wage Increase Report, dated January 2, 2009, indicates that wage settlements statewide will be less than those offered by CMHA.

The Factfinder, however, recommends that the first year wage adjustment be increased to the 50 cents per hour as was included in the tentative agreement. While the authority can point to the deterioration of economic conditions and the continuing announcements of deficits and layoffs by public employers since the tentative agreement was reached, the Factfinder believes that the larger first year increase, which produces a

[2] The union provided no information as to which classifications should receive equity increases. The authority stated that if all classifications received the $4.00 per hour equity adjustment, the cost would be $5.0 million over the term of the agreement.

three-year wage increase of 9.08%, better reflects the total of the recommendations made by the Factfinder.

Recommendation - The Factfinder recommends the following contract language:

Employees shall receive the following general wage increases:

A. Effective July 1, 2008, Fifty Cents (50¢) per hour.
B. Effective July 1, 2009, Forty Cents (40¢) per hour.
C. Effective July 1, 2010, Forty Cents (40¢) per hour.

5) Article 29 - Insurance, Section 29.6 - The current contract provides for a comprehensive major medical plan, currently offered through Medical Mutual, and an HMO, offered through Kaiser Permanente, with annual deductibles of $300 for single coverage and $600 for family coverage, 10% co-insurance with out-of-pocket maximums of $1,000 for single coverage and $2,000 for family coverage, a $75 co-pay for emergency room visits, and a $20 co-pay for office visits. Employees pay $45 per month for single coverage and $75 per month for family coverage. The authority seeks to increase the current monthly contributions to $55 and $85 per month on January 1, 2009, and $65 and $95 per month on January 1, 2010. It also proposes an increase in life insurance coverage from $10,000 to $15,000.

The union opposes any increase in employee premium contributions. It offered no comment regarding the proposed change in life insurance coverage.

Authority Position - The authority argues that its proposal ought to be adopted. It points out that in recent years healthcare costs have risen more than the overall rate of inflation and are likely to continue to rise more rapidly than prices in general. The

authority observes that employers have responded by increasing employees' share of healthcare costs through higher deductibles, out-of-pocket maximums, and office and prescription co-pays as well as through increased employee premium contributions.

The authority contends that the 2008 Annual Survey of Employer Health Benefits, published by the Kaiser Family Foundation and the Health Research and Educational Trust, reveals that its insurance program is better than that provided by other employers. It reports that the survey indicates that average deductibles for single and family coverage are more than $500 and more than $1000 compared to $300 and $600 for its employees; office co-pays are $19 for primary care doctors and $28 for specialists compared to $20 for all doctors under its plan; and prescription drug co-pays are $10 for generic drugs, $26 for preferred drugs, $46 for non-preferred drugs, and $75 for fourth tier drugs compared to $6 for generic, $25 for preferred, and $35 for non-preferred drugs under its plan. The authority adds that nationally employee premium contributions are $60 for single coverage and $280 for family coverage compared to its employee contributions of $45 and $75.

The authority maintains that it must get health insurance costs under control. It states that it is facing financial challenges, which are only likely to get increase. The authority acknowledges that Medical Mutual's premium declined in 2008 but observes that several years ago it rose by 25%. It indicates that its proposal was part of the tentative agreement.

Union Position - The union argues that the increased premium contributions ought by the authority are not justified. It points out that the proposed $10 increase in the single and family rates amount to a 20% increase for single coverage and 14% for family

coverage. The union stresses that the authority is seeking these increases even though the premium for Medical Mutual decreased by 5% and Kaiser's premium increased only 9.5%.

The union contends that comparisons with other housing authorities in Ohio support its position. It reports that the Stark and Trumbull metropolitan housing authorities require no premium contributions by employees. The authority states that the Lorain and Parma housing agencies have much lower contributions than CMHA. It reports that the Akron Metropolitan Housing Authority mandates a 7% employee premium contribution.

The union challenges the data offered by the authority. It observes that the data is national data rather than Ohio data. The union adds that its data is for Ohio housing authorities who do the same work as employees at CMHA.

Analysis - The Factfinder recommends that the authority's health insurance proposal be adopted. First, CMHA employees enjoy very good health insurance. They have a 90/10 plan and have reasonable annual deductibles, out-of-pocket maximums, and office and drug co-pays.

Second, the proposed premium contributions are not unreasonable. While the union is correct that the data from the 2008 Annual Survey of Employer Health Benefits may not accurately reflect the situation for Ohio public employees, its findings are not entirely inconsistent with the data for Ohio. Page 12 of SERB's 16th Annual Report on the Cost of Health Insurance in Ohio's Public Sector, which was released on March 17, 2008, indicates that the average monthly employee premium contribution for public employees in Ohio in 2007 was $51.97 for single coverage (1021 respondents) and $144.76 for family coverage (1096 respondents). For metropolitan housing and port authorities the monthly

employee contribution was $51.83 for single coverage (33 respondents) and $152.41 for family coverage (36 respondents).

The Factfinder recognizes that the data the union provided for eight housing authorities may suggest lower employee premium contributions. However, while some of the contributions are less than those proposed by CMHA, others are higher. More importantly, there is no indication that the health insurance plans are the equivalent to the plan offered by CMHA or what the contributions will be in 2009 and 2010.

The Factfinder understands the union's concern about the fact that the employee premium contributions will increase even though the premiums paid by the authority to Medical Mutual will decrease. However, Jeffrey Werner, the authority's insurance consultant, explained that employee contributions should not respond to premium changes for a single plan or a single year but should reflect the long term trend in the cost of health insurance.

The Factfinder concludes that the $20 increase in the employee contributions over the three year term of the contract is not unreasonable given the contributions required of other employees and must be recommended.

Recommendation - The Factfinder recommends the following contract language:

Modify Insurance provision to reflect the following:

a. Increase monthly cost sharing as follows:

1) Effective January 1, 2009:

- Single coverage - $55.00 per month
- Family coverage - $85.00 per month

2) Effective January 1, 2010:

- Single coverage - $65.00 per month
- Family coverage - $95.00 per month

b. Maintain current prescription co-pays which shall remain as follows:

1.	Generic:	$6.00
2.	Formulary:	$25.00
3.	Brand (non-formulary)	$35.00

c. Maintain current office visit co-pay of $20.00.

d. Maintain current deductibles of:

- Individual - $300.00 per year
- Family - $600.00 per year

e. Increase life insurance from $15,000 to $20,000.

6) New Article (Maintenance Contract) - Service Person II Training/Advancement Program

- The current contract includes three classifications which perform maintenance work. The Service Person II classification performs basic janitorial duties such as cleaning and mowing lawns. The Service Person IV classification does minor electrical, plumbing, and related work. The authority proposes a program that will require all employees in the SP II classification to complete a 36-hour training program at Cuyahoga Community College, at no cost to the employee, by January 1, 2010, to advance to the SP IV classification. The union proposes that the program be voluntary; that any SP IIs who do not pass the test for the program remain as SP IIs; that the authority pay all of the costs; and that the authority no longer hire SP IIs.

Authority Position - The authority argues that the proposed program is a win-win situation and ought to be adopted. It indicates that the program will produce a more qualified work force and long-term savings. The authority observes that at the same

time, employees will receive promotions and raises as well as free training and education, which will make them more marketable.

The authority states that it will provide all of the training. It points out that employees will receive a 36-hour basic maintenance course offered by CCC. The authority indicates that it will pay for the training and for the time the employees spend in the program. It stresses that the only requirement is that employees attend the training and pass the test no later than January 1, 2010.

The authority maintains that any employee with reasonable effort can complete the program. It reports that each class will consist of 15 to 20 employees and will be held during work time. The authority notes that the program will not be like an apprenticeship program where employees become licensed members of a trade.

The authority rejects the union's demand that the program be voluntary. It points out that a majority of employees are paid from revenue allocated to the LIPH program. The authority observes that HUD requires it to operate each AMP as if it were a for-profit entity. It asserts that advancing employees from SP II to SP IV will allow it to become more efficient and meet HUD's goal.

The authority charges that the union's demand that employees be grandfathered as SP IIs will hinder the success of the program. It states that it is concerned that employees may take the training but not be serious enough to pass it. The authority stresses that it proposed a side letter stating that it would work with CCC "to establish reasonable accommodations to provide the affected employees with the greatest opportunity for success, including extended timelines, testing accommodations and other educationally-approved learning and testing alternatives." (Authority Pre-Hearing Statement, page 34)

The authority questions the union's claim that some employees who are near retirement will not benefit from the training. It points out that it offered to enter into an agreement exempting such employees from the program. The authority indicates, however, that it is not willing to provide an unconditional exemption.

The authority maintains that it must have the discretion to select the order of attendance at the training course. It states that it needs this power to be sure that it has enough employees to cover the various shifts and worksites while training is in progress. The authority claims that it also needs to construct a diverse group of candidates with respect to age, experience, and qualifications to insure that all employees successfully complete the training

Union Position - The union argues that the authority's Training Advancement Program should be modified. It indicates the SP IIs, who comprise a substantial proportion of the maintenance unit, accepted their positions with the understanding that they would be required to perform certain tasks. The union complains that under the authority's plan they will be required to do new tasks.

The union contends that the SP IIs will be required to learn a substantial amount in only one year. It points out that SP IVs are responsible for a wide range of tasks, none of which are done by the SP IIs. The union notes that the authority requires SP IVs to have two or three years of progressively more responsible maintenance experience but proposes giving the SP IIs only one year to be trained as SP IVs.

The union complains that SP IIs will lose seniority in their classification. It reports that many of them "have expressed considerable disinterest in the TAP and genuinely fear the TAP is merely a guise to layoff long-term Service Person IIs or worse yet terminate

them." (Union Pre-Hearing Statement, page 5) The union states that its suggested change in the program ought to adopted.

Analysis - The Factfinder must recommend the authority's proposal. He believes that it is a win-win situation for the authority and the employees. Employees will receive free training that will enhance their skills and marketability as well as result in significant wage increases. The authority will have a more skilled and flexible workforce that should translate into cost savings.

The Arbitrator recognizes that some employees may not be interested in the program. Some may be suspicious of the authority's motives and the possible loss of classification seniority. Others may be concerned about their ability to successfully complete the training.

The Factfinder, however, does not believe that complaints should be problems. First, there is no suggestion that the training program will not improve rather than diminish the job security of employees who become SP IVs. Second, employees who are concerned about their ability to complete the program have been assured by the authority that CCC is very experienced in training adults from diverse backgrounds and is fully prepared to assist any individual who has difficulties.

Recommendation - The Factfinder recommends the following contract language:

> Maintenance Contract: Implement a Service Person II Training/Advancement Program as follows:
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> Adopt the following protocol for the training and advancement of current employees in the Service Person II classification:
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> A. All employees in the Service Person II classification will be required to complete thirty-six (36) hours of training to be conducted in three

(3) hour sessions over a twelve (12) week period beginning on or about January 1, 2009.

B. CMHA will pay the cost of the course and the time spent in formal classroom or instructional programs.

C. CMHA will select the candidates for the training/advancement courses at its discretion.

D. Employees in the training/advancement program must satisfy the course requirements including any examination.

E. If an employee fails the course, the employee must re-take the test. The first re-test shall be at CMHA's expense as set forth above.

F. If the employee fails the test a second time, the employee will be required to take the course or test at the employee's expense and during the employee's non-working time.

G. If the employee does not pass the test by December 31, 2009, the employee will be terminated unless there is a vacancy in an equal or lower-rated classification for which the employee is qualified in which case the employee may transfer into the vacancy and be paid the established rate for that position.

H. Upon passing the course/test, the employee will remain in the Service Person II classification and be compensated accordingly until promoted at CMHA's discretion. Notwithstanding the above, the promotion from Service Person II to Service Person IV shall occur not later than January 1, 2010, provided the employee has fulfilled the course and examination requirements.

I. Upon promotion, the employee in the Service Person II classification will be paid in accordance with the entry level rate of the Service Person IV classification, which shall not be increased by the general wage increases set forth in this Agreement.

J. Enter into Side Letter on accommodations as follows:

CMHA recognizes that certain employees in the Service Person II classification who are subject to the Service Person II training/advancement protocol may suffer from challenges associated with learning and testing. In such cases, CMHA, in conjunction with the Union and Cuyahoga Community College, will work to establish reasonable accommodations to provide the affected employees with the greatest opportunity for success,

including extended timelines, testing accommodations and other educationally-approved learning and testing alternatives.

7) New Article - Longevity Pay - The current contract does not provide for longevity pay. The union proposes the following longevity schedule:

Continuous Years of Service	Amount of Longevity
2	$150
3	175
4	200
5	225
10	250
15	500
20	750

The authority rejects the union's demand.

Union Position - The union argues that its demand is reasonable. It points out that its schedule starts with a payment of $150 for two years of continuous service and reaches a maximum of $750 for 20 years of service. The union reports that the Parma Public Housing Authority and the Lucas and Stark Metropolitan Housing Authorities have longevity in their contracts.

The union indicates that longevity was included in the tentative agreement. It states that it was proposed to "sweeten the deal for ratification." The union observes that the authority has withdrawn longevity.

Authority Position - The authority opposes the union's demand for longevity pay. It acknowledges that longevity was included in the tentative agreement but notes that it called for $150 after eight years, $250 after 14 years, and $350 after 20 years. The authority asserts that longevity entails a high cost and represents a "foot-in-the-door" for the union.

Analysis - The Factfinder cannot recommend the union's demand. First, its proposal would immediately be very costly and could prove quite costly as the union seeks to enhance the benefit in subsequent rounds of bargaining. Second, the Factfinder believes that the demand for longevity is not in tune with developments in public sector bargaining. In recent years, many unions have been forced to give up existing longevity programs or to limit them to current employees. There have been relatively few instances of newly negotiated longevity plans.

The Factfinder recognizes that the tentative agreement included a modest longevity plan. However, as the union acknowledges, it was agreed to by the authority as a sweetener to reach a tentative agreement. When the union rejected the tentative agreement, it chose to risk loosing the sweetener. Unfortunately, since it rejected the tentative agreement, the economic situation has become more threatening, making it inappropriate for the Factfinder to recommend the creation of an expensive, new benefit.

Recommendation - The Factfinder recommends that the union's demand be denied.

Nels E. Nelson
Factfinder

January 5, 2009
Russell Township
Geauga County, Ohio