

**IN THE MATTER OF FACT FINDING**

2009 FEB 19 P 1:49

**BETWEEN**

**THE SOUTHWEST LICKING SCHOOL DISTRICT**

**AND**

**THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
LOCAL UNION NO. 413**

**SERB CASE # 08-MED-03-0246**

**ADVOCATE FOR THE DISTRICT:**

**Susan L. Oppenheimer, Esq.  
BRICKER & ECKLER, L.L.P.  
100 South Third Street  
Columbus OH 43215-4291**

**ADVOCATE FOR THE UNION:**

**Susan D. Jansen, Esq.  
DOLL, JANSEN & FORD  
111 West First Street, Suite 110  
Dayton OH 45402-1156**

**Bud Raver, Vice President  
TEAMSTERS LOCAL UNION 413  
555 East Rich Street  
Columbus OH 43215**

## **INTRODUCTION**

The bargaining unit is represented by the Teamsters Local 413 (Hereinafter "Union" or "Teamsters") and the Employer is the Southwest Licking School District (hereinafter "Employer" or "District" or "Board"). The bargaining unit is one of three bargaining units represented by the Teamsters in the District. It contains approximately forty-three (43) employees and is comprised of approximately thirty-three (33) bus drivers, two (2) bus mechanics, and two (2) transportation/dispatchers. The previous contract, which was the first contract between the parties, expired June 30, 2008. The parties held several negotiation sessions prior to fact-finding and were able to resolve a large number of issues. However, not all issues were able to be settled, which led to fact finding.

A mediation/fact-finding hearing was held on September 22 and November 20, 2008 over the issues addressed in this report. Prior to a formal submission of evidence, the fact-finder made a concerted effort to

reconcile the differences between the parties over the unresolved issues listed above. Settlement possibilities were explored with the parties in an effort to find common ground upon which to construct a settlement. The parties were able to reach a tentative agreement on a few additional issues, but the majority of the unresolved items were presented at the hearing that followed mediation efforts. Both advocates represented their respective parties well and clearly articulated the position of their clients on the issues in dispute. Following fact finding and by mutual agreement both advocates submitted post hearing briefs in support of their positions. The Employer's and the Union's position statements are attached to this report and for purposes of efficiency will be referenced and not restated in the body of this report. Under each issue the parties' respective positions shall be referred to in this report as simply EP, Employer's position, and UP Union's position.

### **OVERALL RATIONALE FOR RECOMMENDATIONS**

Since September of 2008 the current state of the national and state economy has become a daily topic of conversation. Ohio's economy remains uncertain as does the financial outlook for many states. Recently Governor Strickland outlined the considerable magnitude of Ohio's revenue shortfall both in the current and next biennium budgets, and the

necessity of having to take decisive action to reduce costs in order to balance the state's budget. This cost cutting will most likely result in layoffs (or reductions by attrition) of state employees in a variety of agencies. Adding to these issues is the overall impact of a national economy in prolonged recession with little certainty of its length or breadth. Nationally major employers almost on a weekly basis continue to announce layoffs that number in the tens of thousands. Approximately 600,000 jobs were lost in January of 2009 alone. Moreover, the woes of the domestic auto industry and its potential direct and secondary affect on jobs in Ohio continues to loom large as the auto industry attempts to weather the economic times with the help of congressional loan relief. Compounding the problem of job losses is the credit crunch and its impact upon housing values.

However, the overall extent to which these serious financial conditions impact the District is unclear. Various public sector entities in the state are fairing differently, and as of this writing it is not clear what benefits the recently passed congressional economic stimulus package as well as the new state budget will eventually have upon the District. Nevertheless, to ignore the very real economic jitters that employees and employers are having during these times is to ignore the elephant in the room. All parties, employees and employers alike, are concerned about their bottom lines. On the other hand, one must be careful in generalizing

the likelihood of "economic woes" for every employer. Furthermore, it is axiomatic that the delivery of quality service depends on recruiting and retaining quality employees, which includes bargaining unit, non-bargaining unit, and managerial employees. Central to maintaining a quality workforce is the maintenance of a competitive wage structure that provides a fair wage for skills, along with quality benefits, and a reasonable working environment even in trying times.

## CRITERIA

### OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the *basis upon which the following recommendations are made:*

|                |   |
|----------------|---|
| <b>Issue 1</b> | <b>Article 8, Sections 8.1 Discipline and 8.2 Discipline Timing</b> |
|----------------|---|

Employer's Position

See EP

Union's Position

See UP

Discussion

**8.1** The Collective Bargaining Agreement already contains a just cause provision and how this mutual commitment of the parties was intended to operate in relationship to O.R.C. 3319.081(1) cannot be readily resolved by the application of the statutory criteria. Additionally, the application of comparables has little weight here. This is an issue forged by the parties within the unique context of their Agreement and relationship, and they, and not a fact finder, need to address this issue in negotiations or through arbitration.

**8.2** The Employer asserts that the other internal comparable bargaining unit, which is represented by the same bargaining agent, has language that mirrors that of the current language for the instant unit. But to base an argument upon a single example that runs contrary to convention, and more importantly is in opposition to the intent of the parties in applying progressive discipline is not persuasive with regard to the treatment of verbal warnings. Moreover, the Employer's position as to how long verbal warnings should remain in an employee's file is not generally supported by external comparables or labor relations convention. However, the Union's position to treat verbal and written alike does not account for the differences between levels of minor discipline.

Based upon the well accepted principles of progressive discipline, which the parties have specifically committed themselves to in Section 8.1, verbal warnings are clearly intended to be a lesser form of discipline than written warnings and therefore their active period of retention should reflect this difference. If they are not distinguished from one another they

lose their significance as progressive forms of discipline and become interchangeable. It is common for verbal warnings to only remain active for twelve months or less in collective bargaining agreements. Furthermore the parties in the current agreement, have clearly tied levels of retention to the severity of discipline and any fact finding decision should remain consistent with the parties bargaining history.

The same principle that addresses progression should be reflected in document removal language. Even if minor discipline is no longer considered active, most employees are negatively affected by having the record of inactive discipline maintained for years and in terms of retention to have said minor discipline treated in the same fashion as more severe discipline. In general progressive discipline involves a "carrot and stick" approach to corrective employee behavior. The stick is obviously the formal addressing of an issue with an employee accompanied by the clear message that progressive discipline will be applied if conduct is not corrected. However, the carrot nature of said discipline is the ability of an employee to correct his/her record and receive reinforcing recognition by his/her supervisor for making said correction. An important component of the reinforcement is the physical act of having his/her record being cleared by the timely removal of discipline from their personnel file. Applying progressive disciplinary theory, if an employee can in effect cleanse his/her record in a timely fashion the integrity of the disciplinary system is maintained and there exists a greater incentive for the employee to act in a manner that keeps his/her record clean.

It is also recognized that in Section 8.1 the parties have agreed that verbal (oral) and written warnings are not afforded full due process through arbitration. Therefore based upon this fact and the above discussion regarding the efficacy of progressive discipline, it is not unreasonable for an employee to be able to remove expired minor discipline from his or her record upon the expiration of said discipline, providing the lesson of the discipline has been learned and not repeated. Suspensions, particular those of a substantial nature, are clearly in a different category and it is not unusual for discipline of this nature to be maintained for a longer period of time in an employee's file. The fact finder is also aware of the need for public employers to maintain records for a specific length of time and the following recommendations are intended to address the removal of minor dormant discipline from an employee's personnel file without interfering with any statutory record retention requirements that must be adhered to by public employers in Ohio.

Determination:

**8.1 Maintain current language.**

**8.2 1<sup>st</sup> paragraph current language**

**2<sup>nd</sup> paragraph shall be modified as follows:**

Further, **any verbal reprimands issued shall not be used for the purposes of progressive discipline after twelve (12) months and at the request of the employee shall be removed from an employee's record at the end of the twelve (12) month period, providing no intervening discipline action has occurred and the pending discipline is not for the same or similar incident.** Any written reprimand issued shall not be used for the purpose of progressive discipline after a period of more than eighteen (18) months, **and at the request of the employee shall be removed from an employee's record at the end of the eighteen (18) month period, providing** no intervening disciplinary action has occurred and the pending discipline is not for a same or similar incident. Any suspension of ten (10) days or less issued shall not be used for the purposes of progressive discipline after a period of more than twenty-four (24) months, if no intervening disciplinary action has occurred and the pending discipline is not for a same or similar incident. Any suspension of more than ten (10) days issued shall not be used for the purpose of progressive discipline after a period of more than thirty-six (36) months, if no intervening disciplinary action has occurred and the pending discipline is not for a same or similar incident. **Unless otherwise specified above,** at the request of a bargaining unit member, disciplinary documents shall be removed from the employee's personnel file after thirty-six (36) months, provided there has been no same or similar infraction.

**8.3 to 8.6 current language.**

## Union's Position

See UP

## Employer's Position

See EP

## Discussion

The parties reached tentative agreement on several sections of Article 11, but in fact finding the parties presented their position on one section in dispute, Section 11.1.3. It involves bidding on field trips by bus drivers. The Union contends that the current language in effect precludes approximately 17 of the most senior drivers from taking field trips due to a conflict with their regular routine routes that average between 35 and 37.5 hours per week. If more senior drivers were permitted to take field trips, which are often related to transporting sports teams to matches or games, it would most likely cause overtime due to the fact that the average length of the trips would cause the more senior drivers to exceed 40 hours of work in a week. The Union asserts that more junior drivers, who work far less hours in their routines routes, end up working field trips and are advantaged financially. The Union is willing to limit the overtime to 5 hours per week.

The Employer proposes current language arguing it must do everything it can to maintain control over its overtime costs. It contends that during negotiations it dropped its demand to eliminate double time for Sunday field trips even though the number of Sunday field trips has increased in the past three years. In addition, the Employer avers it agreed to other changes in Article 11, specifically in Sections 11.4.1 and 11.6.1. Finally, the Employer argues that it has only been since December of 2005 that it was able to come from under fiscal watch and that the current 5-year forecast shows deficit spending beginning in FY 2009.

While I understand the Union's well articulated argument concerning the frustration of more senior bus drivers being prevented from taking more lucrative field trips, an employer has the right, and frankly the obligation to control the expenditure of public funds. The District's past experience with fiscal matters and its hard work to become more efficient are recognized as prudent efforts to be accountable to the interests and welfare of the public. Moreover, the current fiscal crisis facing the state of Ohio also underscores the importance for public employers to carefully manage their resources.

Determination:

**Maintain current language**

**Issues: 3      Article 15.1 Employee Materials and Facilities**

Union's Position

See UP

Employer's Position

See EP

Discussion

The parties, having already agreed to changes in Section 15.2, are in disagreement over the amount of clothing allowance for mechanics and the addition of a shoe allowance for bus drivers. During the current Agreement the parties raised the yearly mechanic's clothing allowance from \$125.00 to \$250.00. The current yearly allowance for another classification, which is covered by another bargaining unit, is \$125.00. This amount was also increased three years ago from \$75. The Union proposes another doubling of the mechanics' clothing allowance to \$500 per year to more adequately compensate mechanics for their clothing and boots.

The cost of living during the last three plus years has somewhat eroded the purchasing power for the clothing allowance and justifies a minor adjustment in the allowance in order to maintain its value. However, a

search of the internet will reveal that the cost of clothing and boots varies greatly as does the preference of mechanics in terms of what is personally comfortable and utilitarian to wear. Furthermore, evidence submitted into the record regarding boots for drivers does not support the establishment of this benefit at this time.

Determination:

**The following is recommended:**

### **15.1 Uniforms**

**15.1.1 Mechanics. Effective in 2009,** Mechanics shall be provided a clothing allowance of **\$275.00 per fiscal year.** Mechanics must submit proper receipts for clothing/boots to the Board Treasurer to receive said allowance.

### **15.1.2 Maintain current language**

### **15.2 TA**

### **15.3 Maintain current language**

|   |
|---|
| <b>Issues: 4 Article 35 Pay Provisions, Section 35.1 Wage Increase; Section 35.3 CDL, Renewal, Drug Testing, and Physical Exams; Section 35.4 In-Service Meetings</b> |
|---|

Union's Position

See UP

Employer's Position

See EP

## Discussion

The Union proposes a 5% increase for each year of a three year agreement and the Employer proposes a 2% increase each year of a two year agreement. In addition to general wage increases, the Union is seeking reimbursement for the cost of renewing CDLs, payment for attending in-service/training meetings, additional time for trip inspections/fueling, and the stipend for head mechanic. The Employer argues that its proposal is reasonable in light of all internal comparables. The Board points out that its across-the-board proposal is in addition to any step increases that are applicable. The step increases range from 3% to 4%.

The Employer argues that even a 2% increase each year of the Agreement shows the need for deficit spending in 2009 and an actual deficit in 2011. Finally, the Employer cites the probability of state budget cuts, which will affect its finances in the coming years. The Union asserts that while its proposal is somewhat higher than one might expect, it is justified in light of comparable data and the savings that would be realized from its health care proposal. The Union points out that the Board's proposal, came late to the table, and did not even match the 2.5% (effective July 1, 2008) received by the teachers. The Union argues its health care proposal, which recommends a switch to the Michigan Conference of Teamsters Welfare Fund Benefit Plan, would provide medical and prescription coverage at a significant reduction in costs.

Internal comparables are persuasive in matters of wages, absent circumstances that justify a departure from the "going" internal wage increase provided to all other employees. While the Union in good faith is directly tying its wage proposal to its health care initiative, the parties do not appear to be ready to depart from a more conventional health care dynamic to a new, yet unproven carrier. Health care is a complicated matter, and anything new, no matter how good, will normally be met with considerable skepticism and inertia. The Union has initiated a dialogue around a proposed departure from the past that may have potential to save the Employer money, yet convincing the Board and other employee groups of its value has yet to take place. This needs to occur before any cost savings offset can be considered as an influencing factor in settling wages. At this point it is unclear as to the meaning and import of the Governor's new state budget and there are certainly more questions to be answered before any reasonable judgments can be rendered. The Governor clearly desires to make educational improvement a major priority, and his budget proposal regarding funding of school districts in conjunction with wide reaching educational initiatives awaits state house

and senate scrutiny. In what form the proposal will be adopted by the state legislature and how it will specifically impact the District, both educationally and monetarily is at present unclear. What is more likely is that in the next round of negotiations the parties will have a firmer grasp of the changes that will take place (or at least some clearer direction) and how they may affect employees in the bargaining unit.

The Union's proposal to increase compensation for the head mechanic is unsupported by the any evidence of a change in responsibilities or duties warranting such a change. The same reasoning applies to the Union's bus cleaning proposal and inspection proposal. While there may be a need to revisit these issues in greater detail in the next round of negotiations, the financial condition of the District does not lend itself to such improvements in the face of the need to place an emphasis, albeit modest, on wages.

The Employer made a strong case for maintaining internal wage increase consistency among all groups of employees, bargaining and non-bargaining alike. Of course, that same principle should apply in the future if any other labor agreements are renewed or re-opened during the life of the Agreement. It is also clear from the evidence that the parties have in good faith reached agreement on competitive wage increases in the past. (from July 1, 2005 to June 30, 2008) The Union also made a strong argument to increase wages above the 2% level with the use of external comparables, but this proposal comes at a time of unprecedented uncertainty in both the economy and in proposed educational reform.

It is noted that the one exception to the application of a uniform two percent (2%) increase involves the Teacher's bargaining unit. In that single case, the teachers agreed to add additional time on their workday in exchange for an additional ½% in pay, above the 2% increase all others received. Presumably this change was made to improve the performance and function of the District in the delivery of education. The additional ½% appears to have been a quid pro quo exchange for additional time at work and therefore it cannot serve as a reasonable comparable increase in the instant matter. In fact, the length of the work year for teachers, as well as employees in the bargaining unit, may increase if the Governor's educational reforms for a longer school year are adopted as proposed. It is important to note that the Governor in his plan for education reform strongly emphasized quality and accountability. The same principles should apply, not only to teachers, but to all employees. The instant unit is made up of primarily bus drivers and during the mediation/fact finding process the issue of quality performance had a partial airing. The following recommendation captures that discussion in recognizing quality performance among bus drivers.

Finally, the evidence demonstrates that the District, which has had a recent history of levy failures, must renew or replace levies in 2009 and 2010. Moreover, the continued uncertainty in State support and additional mandates on the District lend credence to the Employer's position regarding wages and the length of the Agreement.

Determination:

**The following is recommended:**

35.1 Regular Rate of Pay: The wage scales and additional pay provisions for bargaining unit employees are attached as Exhibits. The salary schedule will be increased during the term of the Agreement as follows:

- Two percent (2%) effective and retroactive to July 1, 2008**
- Two percent (2%) effective July 1, 2009**

**All other Sections shall be maintained as current language, except add new Section 35.5 which reads as follows:**

**35.5. Beginning with the 2009/2010 school year, for every one thousand consecutive hours (1,000 hours) driven by a bus driver (includes all hours driven regardless of assignment) during which he/she receives (1) no citations, (2) has no at fault accident findings, and (3) has no active discipline on his/her record (including criminal convictions) at the time he/she reaches 1,000 hours, a driver shall receive a \$100.00 quality performance stipend. A driver will be required to keep track his/her own consecutive hours driven and must notify the administration when one thousand (1,000) consecutive hours have been obtained. Consecutive hours can be rolled over from one school year to the next school year. If a driver leaves the employment of the District there will be no partial payments for less than one thousand consecutive hours driven during which a driver meets the above stated quality criteria.**

Union's Position

See UP

Employer's Position

See EP

Discussion

When dealing with an employer who has a relatively small number of employees, be they bargaining unit or non bargaining unit employees, it is reasonable from the standpoint of negotiations strength with insurance carriers that all employees should be under the same plan or plans. It is also clear from the evidence that the District and its Unions have an insurance committee that monitors, assesses, and recommends health insurance options. In its position, the Union is recommending the adoption of the insurance plan from the Michigan Conference of Teamsters Welfare Fund. Plans of this nature can and do provide quality benefits at very competitive prices. A review of the benefits and costs of the plan submitted to the fact finder demonstrates it is worthy of consideration. (Union Ex. 7, 8) However, it appears that this plan, as a viable substitute for current plan, has not had a conventional airing. As argued by the Employer, it is reasonable to consider an approach that covers all employees and carving out a small group of employees may have an adverse impact on other employees.

When it comes to health care, employers and employees, as well as unions, are all on the same side and have the same goals. They are all seeking the best coverage for the lowest price. In considering the Teamster's plan for all District employees, it is hoped that there does not exist any elements of union animus that may interfere with an object assessment of the Union proffered plans that could save the District money. However in making a recommendation, this fact finder must respect the bargaining history of the parties, which appears to utilize the health care committee to first assess plans and carriers prior to making recommendations. In addition, the Employer makes a convincing argument that the current contractual requirements between the District

and Medical Mutual of Ohio may have to be overcome before a new carrier is selected.

Determination:

**It is recommended that the Employer proposed plan be adopted effective March 1, 2009 (See Appendix A).**

|                 |                   |                          |
|-----------------|-------------------|--------------------------|
| <b>Issue: 6</b> | <b>Article 39</b> | <b>Term of Agreement</b> |
|-----------------|-------------------|--------------------------|

Union Position

See UP

Employer's Position

See EP

Discussion

State funding and new mandates regarding education have yet to be decided upon by the state legislature. Moreover, arguments provided by the Employer regarding the uncertainty of finances in the District and the timing of levies in 2009 and 2010 are strong factors in support of a two year, rather than three year, agreement. Both parties may be in a better position to negotiate a more competitive salary and benefit package if local funding is renewed or increased for an extended period of time, and there is more clarity regarding state funding and new educational mandates.

Determination

**The Agreement shall run from July 1, 2008 through June 30, 2010.**

**Issue: 7    Article (New)    Contract Sequence**

Employer's Position

See EP

Union's Position

See UP

Discussion

The evidence submitted into the record does not support a change in the current language governing contract sequence at this time.

Determination

**Maintain current language.**

## TENTATIVE AGREEMENT

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues, copies of which they have retained. These tentative agreements, on all or portions of articles, and any language recommended to change and or remain current are all part of the recommendations contained in this report. Any issues, or sub-issues not specifically addressed are also intended to remain current language for purposes of this report.

The Fact-finder respectfully submits the above recommendations to the parties this 18<sup>th</sup> day of February 2009 in Portage County, Ohio.

A handwritten signature in black ink, appearing to read "Robert G. Stein", written over a horizontal line.

Robert G. Stein, Fact-finder

## Appendix A

### ARTICLE 37 INSURANCE PROVISIONS

**37.1 Hospitalization and Major Medical Insurance.** The Board will make available a policy of Hospitalization and Major Medical Insurance to all bargaining unit members employed by the Board prior to ~~ratification of this Agreement~~ **July 1, 2005 who are regularly scheduled to work at least fifteen (15) hours per week** and to all bargaining unit members hired ~~after the ratification date of this Agreement~~ **on or after July 1, 2005** who are regularly scheduled to work at least twenty (20) hours per week.

This insurance will provide benefits that are equivalent to or will exceed those of the hospitalization/major medical insurance that was available in the District to Administrators on April 1, 1990.

It is understood that this hospitalization/major medical insurance is available on a voluntary basis. To be eligible and included, each bargaining unit member must register in and be a part of the approved Southwest Licking Local School District plan.

There will be no reimbursement to a bargaining unit member enrolled in another similar hospitalization plan.

The responsibility for notifying the Treasurer of intent to participate in the approved plan rests with the bargaining unit member.

It is further agreed that the Board will pay the following amounts toward the premium of the above described insurance plan:

**37.1.1 Single Premium.** Eighty percent (80%) of the actual monthly premium for all bargaining unit members hired prior to ~~ratification of this Agreement~~ **July 1, 2005 who are regularly scheduled to work at least fifteen (15) hours per week**; eighty percent (80%) of the actual monthly premium for all bargaining unit members hired after ~~ratification of this Agreement~~ **on or after July 1, 2005** who are regularly scheduled to work at least thirty-two (32) hours per week; an amount equal to eighty percent (80%) of the actual monthly premium for the medium plan for all bargaining unit members hired after **February 2, 2006 and prior to March 1, 2009** ~~the ratification of this Agreement~~ who are regularly scheduled to work between 20 and 31.99 hours per week **and who are taking Board hospitalization and major medical insurance as of June 30, 2008**; and fifty percent (50%) of the actual monthly premium for all bargaining unit members hired **on or after March 1, 2009 who are regularly scheduled to work between 20 and 31.99 hours per week**. In the event of an increase in the premium, the Board will pay ~~eighty percent (80%)~~ the same percent, as listed above, of such increase.

**37.1.2 Family Premium.** Eighty percent (80%) of the actual monthly premium for all bargaining unit members hired prior to ~~ratification of this Agreement~~ **July 1, 2005 who are regularly scheduled to work at least fifteen (15) hours per week**; eighty percent (80%) of the actual monthly premium for all bargaining unit members hired after ~~ratification of this Agreement~~ **on or after July 1, 2005** who are regularly scheduled to work at least thirty-two (32) hours per week; an amount equal to eighty percent (80%) of the actual monthly premium for the medium plan for all bargaining unit members hired after **February 2, 2006 and prior to March 1, 2009** ~~the ratification of this Agreement~~ who are regularly scheduled to work between 20 and 31.99 hours per week **and who are taking Board hospitalization and major medical insurance as of June 30, 2008; and fifty percent (50%) of the actual monthly premium for all bargaining unit members hired on or after March 1, 2009 who are regularly scheduled to work between 20 and 31.99 hours per week.** In the event of an increase in the premium, the Board will pay ~~eighty percent (80%)~~ the same percent, as listed above, of such increase.

**37.1.3** In the event that a bargaining unit member and his/her spouse are both employed by the Board and are both covered under the same family plan as offered by the District, the Board will pay the actual family plan monthly premium or the sum of the current amounts being paid by the Board for a single plan plus a family plan, whichever is less.

**37.2 Dental Insurance.** The Board will make available an insurance policy covering dental care to all bargaining unit members employed by the Board prior to ~~the ratification date of this Agreement~~ **July 1, 2005 who are regularly scheduled to work at least fifteen (15) hours per week** and to all bargaining unit member hired ~~after the ratification date of this Agreement~~ **on or after July 1, 2005** who are regularly scheduled to work at least twenty (20) hours per week.

This insurance will provide benefits that are equivalent to or exceed those of the dental care plan in effect in the District on September 1, 1985.

It is understood that the dental care plan is available on a voluntary basis. To be eligible and included, each bargaining unit member must register in and be a part of the approved Southwest Licking Local School District plan.

There will be no reimbursement to a bargaining unit member enrolled in another or similar dental care plan.

The responsibility for notifying the Treasurer of intent to participate in the approved plan rests with the bargaining unit member.

It is further agreed that the Board will pay the following amounts toward the premium of the above described dental insurance plan:

**37.2.1 Composite Premium.** The Board shall pay, based on the composite monthly rate, the actual monthly premium per eligible bargaining unit member or up to \$35/month per bargaining unit member, whichever is less.

**37.3 Term Life Insurance.** The Board will provide thirty-five thousand (\$35,000) dollars term life insurance to each bargaining unit member hired prior to ~~the ratification date of this Agreement~~ **July 1, 2005** who is ~~employed a minimum of~~ **regularly scheduled to work at least** fifteen (15) hours per week at no cost to said bargaining unit member. The Board will provide thirty-five thousand (\$35,000) dollars term life insurance to each bargaining unit member hired ~~after the ratification date of this Agreement~~ **on or after July 1, 2005** who is regularly scheduled to work at least twenty (20) hours per week. If allowed by the insurance company providing life insurance to Board ~~employees~~ **bargaining unit members**, an eligible bargaining unit member may purchase at his/her own cost additional life insurance.

The coverage shall include double indemnity for accidental death and dismemberment. This plan is voluntary and the responsibility of notifying the Treasurer of intent to participate shall rest with the bargaining unit member.

**37.4 Confidentiality.** The names of individuals who have filed claims for health care benefits, the amounts of claims filed or paid on behalf of any covered person and the medical records relating to any claims shall not be public records subject to any limitation in the public records laws. Reports to be made by the Third Party Administrator to the Southwest Licking Board of Education shall not by individual insured identify the particular treatment, care or diagnosis received by an individual.

### **37.5 Insurance Committee**

**37.5.1 Purpose.** Each calendar year an Insurance Committee (Committee) shall meet at least quarterly to develop such proposals as the Committee deems appropriate concerning the level of insurance benefits available and offered. This standing Committee's responsibilities shall include:

- a. monitoring insurance costs;
- b. reviewing and modifying benefits; and
- c. selecting insurance carriers and/or third-party administrators for all insurances listed in this Article.

**37.5.2 Membership.** The committee shall consist of the Treasurer and the Director of Personnel, four (4) members appointed by the President of the Southwest Licking Education Association for two year terms (members may be reappointed for additional terms), ~~four (4) two~~ **four (4)** members appointed by Teamsters Local Union 413, and two (2) members appointed by the Superintendent from the classified staff. The ~~four (4) two~~ **four (4)** members appointed by Local 413 shall serve two year terms. The Treasurer shall serve as the chair of the Committee.

**37.5.3 Operation.** The Committee shall meet at least sixty (60) days in advance of any insurance contract rollover/renewal and at other times at the call of the chair. The Committee shall formulate its proposals concerning carriers or third-party administrators by a majority vote of all of its members. Any proposal of the Committee shall be presented to the Board to approve or reject same. Any action or inaction of the Board shall be final in each of those regards and not grievable or otherwise subject to appeal.

The Committee is not empowered to unilaterally make changes in health care benefits without ratification by the Union and approval by the Board. The creation of the Insurance Committee does not diminish or in any way reduce the Board's and Union's rights or responsibilities.

[no change in 37.6]

**37.7 Insurance premiums shall be paid by bargaining unit members and the Board on a monthly basis, the same amount each month of a plan year, without any front-loading or back-loading of premium amounts.**

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

|                                 |   |   |
|---------------------------------|---|---|
| <b>IN THE MATTER OF</b>         | : |   |
| <b>FACT FINDING BETWEEN</b>     | : |   |
|                                 | : | <b>CASE NO. 01-MED-03-0246</b>              |
| <b>TEAMSTERS LOCAL UNION</b>    | : |   |
| <b>NO. 413,</b>                 | : |   |
|                                 | : | <b>Before: Robert G. Stein, Fact Finder</b> |
| <b>Union,</b>                   | : |   |
|                                 | : |   |
| <b>and</b>                      | : | <b><u>POSITION STATEMENT FILED</u></b>      |
|                                 | : | <b><u>ON BEHALF OF TEAMSTERS</u></b>        |
| <b>SOUTHWEST LICKING LOCAL</b>  | : | <b><u>LOCAL UNION NO. 413</u></b>           |
| <b>SCHOOL DISTRICT BOARD OF</b> | : |   |
| <b>EDUCATION,</b>               | : |   |
|                                 | : |   |
| <b>Employer.</b>                | : |   |
|                                 | : |   |

---

This Position Statement is filed in accordance with Ohio Administrative Code Rule 4117-09-05(F).

**1. APPEARANCE**

This Position Statement is filed on behalf of Teamsters Local Union No. 413 ("Union").

The Union's principal representatives are:

Susan D. Jansen, Esq.  
Doll, Jansen & Ford  
111 West First Street, Suite 1100  
Dayton, Ohio 45402-1156  
(937) 461-5310

Bud Raver, Vice President  
Teamsters Local Union No. 413  
555 East Rich St.  
Columbus, Ohio 43215

## **2. DESCRIPTION OF BARGAINING UNIT**

The Union was certified on June 9, 2005 as the exclusive bargaining representative for a bargaining unit consisting of all employees in the following classifications: bus driver, bus mechanic, bus monitor, and transportation receptionist/dispatcher employed by the Southwest Licking Local School District Board of Education (hereafter "Board"). Currently there are approximately 40 employees in the bargaining unit.

## **3. CURRENT COLLECTIVE BARGAINING AGREEMENT**

The current collective bargaining agreement is a three year contract with effective dates of February 2, 2006 through June 30, 2008. (A copy of the current agreement is attached as Exhibit 1. A copy of the current position descriptions are attached as Exhibit 2)

The School District employees are divided into four (4) separate bargaining units; three (3) Teamster units and one OEA/NEA unit. The Board is currently party to two other collective bargaining agreements, with a third agreement pending resolution of these negotiations. The Board is party to a contract with the non-administrative certified staff which includes all full-time and part-time teachers/tutors employed in the District under a regular contract. The unit also includes school guidance counselors, school nurse, speech therapists, librarians employed under regular contract, LD tutors employed on an hourly basis and substitutes who have taught 120 days in a school year in the Southwest Licking School District. The certified bargaining representative for this group of employees is the Southwest Licking Education Association/OEA/NEA. The Board recently entered into a 2 year contract for this group of employees with an effective date of July 1, 2008.

The Board is also party to another contract with Teamsters Local Union No. 413(known as the third unit) which is the certified bargaining representative for a unit composed of

custodian, head custodian, central copy, in-school suspension, computer room supervisor, study hall monitor, cooks, head cooks, assistant head cooks, building secretaries and aides. This contract has an effective date of February 21, 2008 through June 30, 2010.

Finally, the Board and Teamsters Local Union No. 413 have reached tentative agreement on nearly all of the outstanding issues for a unit which consists of all employees classified as maintenance assistants and grounds/maintenance employees employed by the Board. The resolution of this contract awaits a resolution of these negotiations.

**4. STATEMENT DEFINING ALL UNRESOLVED ISSUES  
AND THE POSITION OF LOCAL 413 WITH REGARD TO EACH  
UNRESOLVED ISSUE**

The parties have been in negotiations since approximately April, 2008. With the assistance of a SERB Mediator and the assistance of Fact Finder/Mediator Rob Stein, the parties were able to arrive at a number of tentative agreements; however, there remain a few outstanding issues. (A copy of the tentative agreements is attached as Exhibit 3). The unresolved issues stemming from the Union's proposals are set forth below with reference to the Articles of the collective bargaining agreement. A copy of those proposals is attached hereto.

1. **ARTICLE 8 – DISCIPLINE**

Currently, the contract language provides that the Board shall not discipline any employee without just cause and provides for a typical progressive discipline scheme which maybe modified if the employee engages in serious offenses which require immediate termination. During the term of this contract, the Union interpreted this language to provide that the Board must have just cause in order to terminate or non-renew an employee's contract.

During negotiations for the contract for the maintenance assistants and grounds – maintenance group of employees, the Board representatives notified the Union that they interpreted the contract language to provide that the Board would not be required to have just cause in order to non-renew an employee’s contract. The Board representatives stated their interpretation of “termination” in Article 8, Discipline, would not include a decision to “non renew” a limited contract.

The Union believes that the Board’s interpretation of the existing contract language is incorrect because in Section 8.5 of the existing contract, the parties agreed that the Article 8 provisions regarding discipline supercede and take the place of the Ohio Revised Code Sections governing the discipline of employees, including R.C. Section 3319.08(1). R.C. 3319.08(1) governs contracts for non-teaching employees and provides that newly hired, non-teaching school employees shall enter into written contracts for employment which shall be for a period of not more than one year. If such employees are rehired, their subsequent contracts shall be for a period of two years. After the termination of the two year contract, if the contract of a non-teaching employee is renewed, the employee shall be then given a continuing contract where the employee may not be terminated except for violation of specific written rules and regulations set forth by the Board or for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or any other acts of misfeasance, malfeasance, or nonfeasance.

When the Board and the Union negotiated the current contract language, they provided in Section 8.5, that the “just cause” language in Section 8.1, which is applicable to all bargaining unit employees, would supercede and take the place of R.C. Section 3319.08(1). Therefore, the Union believes that the existing contract language eliminates the limited contract concept

embodied in R.C. 3319.08(1) and instead mandates that employees shall not be disciplined, including discharge, without just cause. Discipline would include termination because the current Section 8.1 discusses those offenses for which an employee may be terminated.

However, in order to ensure that the parties do not have to arbitrate whether just cause applies to the termination of an employee with less than three years' employment with the Board, the Union proposes amending Section 8.1 to provide: "The Board shall have just cause in order to non-renew or terminate an employee."

2. **ARTICLE 8, SECTION 8.2 – TIMING OF DISCIPLINE**

The Union proposes to reduce the period of time that a verbal or written reprimand may be used for purpose of progressive discipline from a period of eighteen months to twelve months. Similarly, the Union proposes that any suspension of ten days or less shall not be used for the purpose of progressive discipline after a period of eighteen months. The current contract language provides for twenty-four months. The Union also proposes that any suspension of more than ten days shall not be used for the purpose of progressive discipline after a period of more than twenty-four months, reducing the current contract language which provides for thirty-six months. Finally, the Union proposes that at the request of a bargaining unit member, disciplinary documents shall be removed from the employees personnel file after twenty-four months provided that there has been no same or similar infraction. This period of time is reduced from the current contract language which provides for thirty-six months.

3. **ARTICLE 11 – HOURS OF WORK AND OVERTIME**

The parties have agreed to a number of changes in this Article, however, there remains one unresolved issue, in Section 11.1.3. Currently, the parties have a bidding system whereby drivers may bid on field trip opportunities in an equitable manner, however, the Board has taken

the position that it will not permit drivers to bid on or take a field trip if the trip will require the driver to work more than 40 hours in the week, thereby requiring overtime. However, the Board will authorize overtime for field trips when no other drivers are available. In the 2006 - 2007 school year, the Board paid approximately \$6,000.00 in overtime for field trips.

Because of the Board's position, the top 17 senior drivers, who typically drive a kindergarten route and therefore routinely drive an average of 35 to 37.5 hours per week, are precluded from taking field trips. An average field trip during the winter wrestling season or during the spring, which is when most sporting event field trips occur, would be approximately five to six hours. Nearly one-half the bargaining unit is thereby precluded from taking any of the field trips because they would be paid overtime for approximately 1 to 3.5 hours of overtime. The drivers cannot take the smaller mid-day trips because they conflict with the kindergarten routes. The result of this situation is that the junior drivers often earn closer to forty hours per week than do the senior drivers.

To remedy this situation, the Union proposes that a driver will be permitted the opportunity to bid on the field trip board even if the trip causes the driver to be in overtime status, provided the overtime hours do not exceed five hours per pay period. Although the actual cost of this proposal is difficult to calculate, the Union estimates that the proposal may cost the Board, at a maximum, an additional \$15,750.00 per year. It arrives at this calculation by estimating that there are fifteen pay periods which encompass vast majority of the field trip opportunities. The maximum number of hours of overtime hours per pay period would likely be three and one-half (3.5) hours and the total number of drivers would likely be ten drivers affected.

The parties agreed upon the proposed change to Section 11.4, Mechanics' Schedules, and 11.6, Drivers' Regular Rates.

4. **ARTICLE 15, SECTION 15.1.1 – MECHANICS ALLOWANCE**

The parties agreed upon a change to Section 15.2 Equipment, however, there remains an unresolved issue in Section 15.1.1 which provides for the mechanics clothing/boot allowance. Currently, mechanics are provided a clothing allowance of \$250.00 per fiscal year. The mechanics must submit proper receipts for clothing and boots to the Board Treasurer to receive the allowance. The Union proposes increasing the allowance to \$500.00 per year to more adequately compensate the mechanics for the cost of proper clothing and boots.

5. **ARTICLE 35, PAY PROVISIONS, SECTION 35.1, REGULAR RATE OF PAY**

The Union proposes a five percent (5%) wage increase across the board for all employees effective July 1, 2008, July 1, 2009, and July 1, 2010. While this proposal is somewhat higher than might be expected, the proposal is appropriate in light of the comparables and the Union's health insurance proposal. The Board did not put a proposal on the table until late in the negotiations, November 20, 2008, and the proposal the Board submitted was even lower than the 2.5% effective July 1, 2008, which was provided to teachers. The Union's higher wage proposal is also justified by the cost savings the Union's health insurance proposal would provide to the School Board.

The Union's wage proposal is justified based on the evidence from the comparable school districts in Licking, Fairfield, Pickaway, Franklin and Delaware Counties with an enrollment between 1,900 to 4,100. The enrollment of Southwest Licking Local is 3,457. A review of the comparables shows at the entry level, the bus drivers of the Southwest Licking Local Schools are 8.7% below average, and at ten years they are 3.2% below average.

Correspondingly, at the entry rate, the mechanics are 17% below average, while at ten years they are 7.7% below average. In addition, the average wage increase for the 2008-2009 school year was 3.19%. (A copy of the comparable wage charts have been attached to this position statement as Exhibits 4 and 5). Finally, School Administrators received bonuses and increases significantly higher than the 2% offered the bargaining unit.

**6. ARTICLE 35, PAY PROVISIONS, SECTION 35.3**

Currently, all bargaining unit employees who possesses a commercial driver license, which are all of the bus drivers, are reimbursed by the Board for 50% of the fees required of the Bureau of Motor Vehicles to renew their CDL.

The Union proposes that the Board reimburse employees for 100% of the costs to remain certified. The cost shall include the cost of background checks as well as time spent in classes and with the trainer. The Union also seeks that the Board pay all times spent on drug testing and on annual physical examinations.

**7. ARTICLE 35, PAY PROVISIONS, CHANGES TO NOTES ON THE BUS DRIVER'S SALARY SCHEDULE**

Currently, bus drivers are paid thirty minutes each day for combined pre-trip and post-trip inspections at their regular rate of pay. The Union proposes that the thirty minutes be broken down into twenty minutes for pre-trip and ten minutes for post-trip. This language is necessary because the current Transportation Director insists the drivers split the time equally between pre-trip and post trip and the drivers need more time for the pre-trip than fifteen minutes.

The Union also proposes that this pre and post-trip inspection time does not include bus fueling and cleanup, and rather proposes that the driver be paid for the actual time spent in fueling the bus. The Union also proposes that the time spent on annual cleaning of the buses be

increased from five hours to eight hours and the stipend to be paid to the head mechanic to be increased from \$500.00 to \$1,000.00 per fiscal year.

## **8. INSURANCE**

The current contract language provides that the Board will make available a policy of hospitalization and major medical insurance to all bargaining unit members employed by the Board prior to the ratification of the Agreement and to all bargaining unit members hired after the ratification agreement who are regularly scheduled to work at least twenty hours per week. Regarding the plan design, the Contract provides the insurance will contain benefits that are equivalent to or exceed those of the hospitalization/major medical insurance that was available in the District Administrators on April 1, 1990. Regarding the premium contributions, currently, the Board pays 80% of the actual monthly premium for all bargaining unit members hired prior to the ratification of the 2006-2008 contract and for all bargaining unit members hired after the ratification of the contract who are regularly scheduled to work at least 32 hours per week. The Board also pays 80% of the premium of the middle plan for all bargaining unit members hired after the ratification of the contract who regularly scheduled to work between 20 and 32 hours per week. (A copy of the current plan design and premium costs for the Board and for employees is attached as Exhibit 6).

The Union proposes to retain the current contract language with respect to the Board's contribution to the premium for the employees depending upon when they were hired and the number of hours they work. However, the Union proposes to add, as an alternative to the existing group medical and hospitalization insurance coverage, the option beginning July 1, 2009 to enroll in the Michigan Conference of Teamsters Welfare Fund Benefit Plan which provides

medical and prescription insurance. The Union proposal, if adopted, would save the Board a significant amount of money each year.

Currently, the Board offers employees three (3) choices in health insurance plans. The choices are known as the Medical Mutual Premium Plan, the Base Plus Plan, and the Base Plan. (Exhibit 6) A vast majority of the employees are enrolled in the Medical Mutual Premium Plan.

The Union has proposed two plans sponsored by the Michigan Conference of Teamsters known as the JDN-3B Plan and the EDN 26 Plan. (A copy of each plan with the summary plan description as well as the premium costs is attached hereto as Exhibits 7 and 8). The JDN-3B Plan is the Plan that is most comparable to the current Medical Mutual Premium Plan. (A copy of a side-by-side comparison between the 3 Board plans and the 2 Union plans is attached as Exhibit 9). Both of the Michigan Conference of Teamsters Plans are administered by Anthem Blue Cross/Blue Shield with a local panel of providers.

Currently, an employee enrolled in the Family Medical Mutual Premium Plan is paying 20% of \$492.69 which is \$266.05 per month while the Board pays 80% of \$1,330.26 which is \$1,064.21 per month. Both of the Michigan Conference of Teamsters' Plans offer a composite rate for groups of less than fifty (50) and tiered rates for groups of fifty (50) or more. For purposes of comparison, the rates for the Michigan Conference of Teamsters' Plans for the core medical and prescription drug coverage are used. While the Michigan Conference of Teamsters' Plans offer dental and optical coverage as well as life insurance, short term disability and total and permanent disability coverage, those amounts must be disregarded because the Board's Plans only offer medical and prescription drug coverage. Comparing just the medical and prescription drug coverage of both Plans, the employee share for a family plan under JDN-3B would be \$252.33 per month while the Board's share would be \$1,009.32 per month. This

would result in the Board saving \$690.36 per month per employee for a single plan and \$658.68 per month per employee for the family plan. The Board would realize additional savings in the 2010-2011 plan year and the 2011-2012 plan year as the plan rates are guaranteed for each of those years and are only projected to increase approximately eight (8%) percent in the 2010-2011 plan year and three (3%) percent in the 2011-2012 plan year. The Michigan Conference of Teamsters Plans offer the added advantage to the Board of predicting health insurance costs in the second and third years of the contract.

A comparison to other local school districts shows the bargaining unit employees pay a greater percentage of the premium than do employees in other districts and the Board pays more for health insurance than do other districts. (A copy of this comparison is attached as Exhibit 10). Out of the 13 districts surveyed, 9 districts offered health insurance at a lower cost to their employees while retaining similar benefits. (A copy of this comparison is attached as Exhibit 11). Clearly, a change is in order, particularly when the Board, in one year, can save \$96,826.00 in health insurance premium costs just on the family plan alone by exchanging the Medical Mutual Plan for the Union's JDN-3B. (A copy of the cost savings calculation is attached as Exhibit 12).

While the Board consistently argued during negotiations that it did not have sufficient money to fund more than a two (2%) percent wage increase for the bargaining unit over a two year contract, it also inconsistently continued to ignore the Union's efforts to save the Board money through a change in health insurance plans. The Union believes that the Board cannot consistently attempt to keep the employees from receiving a better than two (2%) percent wage increase while at the same time ignoring the employees' efforts to bring health insurance costs in line.

Respectfully submitted,

**DOLL, JANSEN & FORD**

---

Susan D. Jansen  
111 West First Street, Suite 1100  
Dayton, Oh 45402-1156  
(937) 461-5310

**CERTIFICATE OF SERVICE**

I hereby certify that an exact copy of the foregoing Position Statement has been delivered to Susan Oppenheimer, Bricker & Eckler LLP, 100 South Third Street, Columbus, OH 43215-4291 and Robert G.Stein, 4030 State Route 43, Suite 202, Kent, OH 44240-6554, via e-mail and regular mail on this 23<sup>rd</sup> day of December, 2008.

---

Susan D. Jansen

1

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

|                                     |   |                                    |
|-------------------------------------|---|------------------------------------|
| In the Matter of                    | : |                                    |
| Fact Finding Between                | : |                                    |
|                                     | : |                                    |
| International Brotherhood of        | : |                                    |
| Teamsters, Local Union No. 413      | : | Case Number 08-MED-03-0246         |
| (transportation unit),              | : |                                    |
|                                     | : |                                    |
| Employee Organization,              | : |                                    |
|                                     | : | Before Fact-Finder Robert G. Stein |
| and                                 | : |                                    |
|                                     | : |                                    |
| Southwest Licking Local             | : |                                    |
| School District Board of Education, | : |                                    |
|                                     | : |                                    |
| Employer.                           | : |                                    |

**POSITION STATEMENT FILED ON BEHALF  
OF THE EMPLOYER, SOUTHWEST LICKING  
LOCAL SCHOOL DISTRICT BOARD OF EDUCATION**

Based on the agreement of the parties to waive hearing and submit this matter upon briefs, Employer Southwest Licking Local School District Board of Education hereby submits its position statement specifying the unresolved issues and its position on each issue in the above-referenced matter.

**I. DESCRIPTION OF THE EMPLOYER AND ITS BARGAINING UNITS**

The Southwest Licking Local School District is a public school district in Licking County, Ohio. The vast majority of the Board's 453 employees are in one of four bargaining units. The Southwest Licking Education Association/OEA represents 246 teachers and other classified staff. The International Brotherhood of Teamsters, Local Union No. 413 ("Union"), represents three bargaining units of the Board – a transportation unit consisting of 43 employees, a 3-person unit of maintenance and grounds employees, and a "third unit" consisting of approximately 100 employees in the

classifications of Custodian, Head Custodian, Central Copy, In-School Suspension, Computer Room Supervisor, Study Hall Monitor, Cooks, Head Cooks, Assistant Head Cooks, Building Secretaries and Aides.

The current negotiations are between the Board and the Union’s transportation unit, which includes bus drivers (33), bus mechanics (2), transportation/dispatchers (2), and bus monitors (6). As the names of the various positions in the bargaining unit indicate, the employees in the unit perform a variety of functions to provide transportation to students of the District.

**II. BARGAINING HISTORY**

The Board has had an OEA unit of teachers for more than 20 years. The Board and the Union do not have a long bargaining history, as the transportation unit was only certified in 2005. The first contract between the Board and the Union, achieved through mediation with a fact-finder, was in effect from February 2, 2006, through June 30, 2008 (copy attached as Exhibit 1). These negotiations are for a second contract.

Just this year, the Board entered into an initial contract with the Union’s third unit (custodians, cooks, etc.), which is in effect from February 21, 2008, through June 30, 2010 (copy attached as Exhibit 2). In addition, the Board completed negotiations with the teachers’ unit in September, 2008, for a successor contract that is in effect from July 1, 2008, through June 30, 2010 (copy attached as Exhibit 3). No contract has yet been reached with the Union’s maintenance and grounds unit (a tentative agreement was voted down).

### **III. UNRESOLVED ISSUES**

There are seven unresolved issues. The Board's current proposals on these issues are attached as Exhibit 4 (except where the proposal is simply to retain current contract language). The following sets forth the Employer's position on each of the unresolved issues.

#### **1. Article 8, Sections 8.1 and 8.2 - Discipline**

The Union proposes to incorporate the concept of contract non-renewal into Section 8.1 of the discipline article of the contract and to impose a "just cause" requirement for non-renewal of a bargaining unit member's contract. The Board proposes to retain current contract language in this Article.

The current text of Article 8, Section 8.1, is identical to the text of the discipline article recently negotiated between the same parties (the Board and the Union) for the current contract governing the Union's third unit (also Article 8, Section 8.1). Exhibit 2. There is no logical reason to have a different discipline article for transportation employees than for other non-teaching employees. There is also no logical reason to reference contract non-renewal in a discipline article.

By statute, contract non-renewal is a concept distinct from termination and other discipline. R.C. 3319.081(C) governs discipline, including termination, of non-teaching employees of a local school district, whether they are on a limited contract (in their first three years of employment) or a continuing contract of employment under the statute. Pursuant to R.C. 3319.081(C), an employee may be suspended or demoted or his or her contract may be terminated by the Board only for one of the listed reasons (a "for cause" requirement).

A separate statute, R.C. 3319.083, governs contract non-renewal of non-teaching employees of a local school district who are on a limited contract (in their first three years of employment). Pursuant to R.C. 3319.083, a board of education may elect not to renew an employee's limited contract merely upon notice to the employee of the board's intent. No "cause" is required. If the board fails to provide the required notice, the employee is deemed re-employed.

When the Board and the Union first negotiated the discipline provisions of Article 8, which departed from the statutory standard, they expressly superseded the discipline provisions of R.C. 3319.081 (see Article 8, Section 8.5). Exhibit 1. The parties did not, however, supersede R.C. 3319.083 or make any reference to contract non-renewal in the contract. Management has the statutory right to non-renew the contracts of bargaining unit employees on limited contracts of employment simply upon notice of non-renewal and should not be required to give up that right.

In Article 8, Section 8.2, the Union proposes to shorten the time periods for retention of discipline. The current text of Section 8.2, is identical to the text of Article 8, Section 8.2, in the contract recently negotiated between the Board and the Union for the Union's third unit. Again, there is no logical reason to have a different discipline article for transportation employees than for other non-teaching employees.

It should also be noted that the current contract language is more favorable for the bargaining unit members than language in Article 5, Section L, of the teachers' contract, which specifies that discipline may only be expunged after three (3) years, and only with the agreement of the superintendent, provided there has been no same or similar infraction. Exhibit 3. The current contract language is also more favorable for the

bargaining unit members than the statutory scheme applicable to non-teaching employees who are not in any bargaining unit. The statute does not provide for any expungement of discipline, so discipline is retained in the employee's personnel file indefinitely.

**2. Article 11, Section 11.1 - Hours of Work and Overtime**

The only remaining disagreement over Article 11 concerns the Union's proposal to add a subsection 11.1.3 in Section 11.1, which would require the Board to permit each bargaining unit member to work up to five (5) hours of overtime per pay period (there are 26 pay periods in a contract year). The Board proposes current contract language in Section 11.1.

The Board has dropped its proposal to eliminate the current provision in Section 11.1.2 requiring double-time to be paid on Sundays (the proposal was for financial reasons, as there has been an increase in the number of Sunday field trips since the initial contract was negotiated). The Board has also agreed to the Union's proposed new language in Sections 11.4.1 and 11.6.1.

Section 11.1 currently permits overtime only if authorized in advance by the Superintendent or designee. Similarly, current contract language in Article 14, Section 14.1.1, mandates that overtime must be approved in advance by the Superintendent or designee, "except where a field trip is not scheduled to result in overtime hours and unforeseen circumstances cause overtime hours to occur." Thus, a driver generally is not permitted to bid on trips that will result in overtime to the employee.

The current contract provisions on overtime reflect the strong desire on the part of the Board to control overtime hours in order to control costs. These provisions were hard-fought in the initial contract negotiations and agreement was only reached at the

final mediation session with the fact-finder. The Board opposes the Union's proposal because it would impose a significant financial burden on the District.

The Board was placed in fiscal watch status on March 17, 2005, before the Union was certified to represent any employees of the Board. At that time, the Board as a cost-cutting measure eliminated virtually all overtime hours across the board in all classifications. The Board only came out of fiscal watch on December 20, 2005. The overtime restrictions have remained across the board since that time. Nevertheless, the Board has generally been able to fulfill its transportation needs without overtime work by bargaining unit members.

The current five-year forecast shows deficit spending beginning in FY 2009 (which commenced July 1, 2008) and an actual deficit by FY 2011. A copy of the 5-year forecast is attached as Exhibit 5.

There is no justification for guaranteeing overtime hours to bargaining unit members under these circumstances. This is a management rights issue, as well as a cost issue.

### **3. Article 15 - Employee Materials and Facilities**

The parties have agreed to a change in contract language proposed by the Union in Article 15, Section 15.2. The remaining disagreement concerns the Union's proposal to revise Section 15.1 to increase the clothing allowance for mechanics and add a shoe allowance for bus drivers. The Board proposes current contract language in Section 15.1.

An increase the mechanics' clothing allowance is not financially justifiable. The Board doubled the allowance from \$125.00 to \$250.00 just three (3) years ago. Moreover, the current clothing allowance for custodians is only \$125.00 (increased in

2008 from \$75.00). To the best of the Board's knowledge, no other school district in Licking County provides a clothing allowance to mechanics.

Likewise, there is no legitimate reason to provide a shoe allowance to bus drivers. They can wear boots or other shoe covers if the bus garage is snowy or muddy. The Board is not aware of any other school district that provides a shoe allowance to bus drivers. When asked during negotiations to name a school district that provides a shoe allowance to bus drivers, the Union could not do so.

**4. Article 35 – Pay Provisions**

The Union proposes to revise Article 35, Sections 35.1, 35.3, and 35.4, as well as the notes on the bus driver and bus mechanic salary schedules.

**A. Section 35.1 – Wage Increase**

In Section 35.1, the Union proposes a wage increase of 5% in each year of the contract, on top of the step increases that bargaining unit members already receive. The Board proposes a wage increase of 2% retroactive to July 1, 2008, and 2% effective July 1, 2009. This increase is reasonable when compared with other increases received by both unionized and non-union Board employees.

2% is the increase in wages that the Board has budgeted for all administrators and employees, including those in this bargaining unit. Exhibit 5. The superintendent's contract includes a 2% raise in 2008-2009 and 2009-2010. The Board likewise approved a salary increase of 2% in 2008-2009 and 2009-2010 for the Treasurer. A copy of the Board meeting minutes from October 16, 2008, regarding the Treasurer's salary is attached as Exhibit 6. Article 32 of the contract between the Board and the Union's third unit provides for a wage increase identical to what the Board proposes for the

transportation unit – 2% on July 1, 2008, and 2% on July 1, 2009. Article 31 of the teachers’ contract likewise provides for an increase of 2% in each year of the contract -- 2% on July 1, 2008, and 2% on July 1, 2009.<sup>1</sup>

In this bargaining unit, the budgeted 2% increase is on top of the “step increases” that each bargaining unit member received for the 2009 fiscal year and will receive for the 2010 fiscal year on the current salary schedules. The step increases range from 3% to 4%. Exhibit 1.

The cost differential between a 2% and a 3% wage increase in the District is approximately \$190,000 *per year*. Building in a 2% wage increase each year, the five-year forecast already shows deficit spending (excess of expenditures over revenues) of \$822,834 in FY 2009 and an actual deficit by 2011. The 5-year forecast is probably overly optimistic because it builds in a 3%, 3%, 4% income tax increase, despite the recession; with the last recession, income tax increases dropped to 2-3%.

In addition, the 5-year forecast does not account for state-level budget cuts that are coming down the pike and are likely to affect school district funding from the Ohio Department of Education. As noted above, the District was in fiscal watch status until fall of 2005. The Board is making every effort to avoid a recurrence and to avoid the layoffs that many school districts are being forced to make in this abysmal economy.

The District has a permanent improvement levy that will need to be renewed or replaced in calendar year 2009. In addition, the District will need to replace its

---

<sup>1</sup> The teachers’ contract also provides for an “additional” 0.5% increase on a one-time basis as of July 1, 2008 “in return for the extra time in the workday set forth in Article 18B.” The workday has not increased for any other classification of Board employee. It should also be noted that Article 32 of the third unit contract contains a “me too” provision on the wage increase that expressly excludes a “me too” for the *additional increase given to teachers in exchange for a longer workday*.

emergency operating levy during calendar year 2010. The current emergency operating levy provides the school district with \$3,250,000 per year. The Board Treasurer currently estimates that the replacement levy will need to be \$4,000,000 or more per year to meet the District's needs. Based on the District's levy history and the current economy in Licking County and elsewhere, however, it is probable that the District will have difficulty passing this levy. A tax levy history is attached as Exhibit 7.

The last emergency operating levy failed four times before it passed (it took the District from November 2003 thru May 2005 to obtain passage). An income tax levy on the ballot in November 2004 also failed and has not been tried again. The District's most recent levy on the ballot – a bond issue – also failed, both on March 4, 2008, and again on November 4, 2008. Exhibit 7. The bond issue is needed to alleviate overcrowding in the District high school and middle school, which is forcing the District to consider split sessions for some grades next school year.

The vast majority of other school district's recent tax levies have gone down to defeat in Licking County in the last two general elections, despite the fact that the majority of school district levies passed statewide. The following school district levies failed in Licking County in November 2007: Lakewood Local's emergency operating levy and a proposed new income tax; Newark City's emergency operating levy; Johnstown-Monroe Local's permanent improvement levy and new income tax for operating expenses; and Northridge Local's proposed earned income tax.

The following school district levies failed in Licking County in November 2008: Northridge Local's emergency operating levy; C-TEC's operating levy; Johnstown-Monroe Local's permanent improvement levy and income tax for operating expenses;

Newark City's emergency operating levy; and North Fork Local's building assistance issue. Election results for school districts in Licking County published on the Ohio Department of Education's website are attached as Exhibit 8.

The Board has a history of giving good wage increases when it has the money to do so, cutting back only when financially necessary: Wage increases were 7% in July 2001, 5% in July 2002, 4% in July 2003, 0% in July 2004, 2 increases of 2% each during 2005-2006 (one in July 2005 and the other in January 2006), 3% in July 2006, and 3% in July 2007 – an average increase of 3.25% over the period, excluding the step increases that bargaining unit members also received.

The overall hourly wage rates and number of steps for every classification in this unit exceed those offered by other school districts in Licking County. Salaries and benefits as a percentage of operating expenditures at Southwest Licking exceed all but 1 district in Licking County. The only district in Licking County that spends a higher percentage of its operating costs on the salary and benefit package is Newark City. The Board spends 61.06% of its operating expenditures on salaries and 20.19% on benefits, for a combined total of 81.25%

Transportation employees of school districts in Licking County are the proper group for comparison because those are the employers with whom the Board competes for employees in this unit. School bus drivers, monitors, mechanics and dispatchers rarely look outside the county for employment. Moreover, Licking County is not comparable to Franklin County or other neighboring counties in terms of overall wealth, revenue sources, and other financial factors.

The District has had no difficulty hiring employees in any of the classifications in this bargaining unit and has not regularly lost employees to other school districts either within or outside of Licking County.

The public interest would not be served by a greater expenditure on wages for this bargaining unit. Rather, the public interest is served by the Board's fiscally responsible wage proposal, which is intended to avert a fiscal crisis and/or layoffs that would adversely affect students. The Board's proposed wage increase of 2% in each year of the contract is fair and reasonable, in light of all of the foregoing factors.

**B. Section 35.3 – CDL Renewal, Drug Testing And Physical Exams**

In Section 35.3, the Union proposes that bargaining unit members should be reimbursed for 100% of the cost of renewing their CDL, including the cost of background checks, time spent with a trainer, and time spent in classes for CDL renewal. The Board currently pays 50% of the fee paid to the Bureau of Motor Vehicle to renew the CDL. The Union also demands that bargaining unit members be paid for time spent on drug testing and annual physical examinations. The Board currently pays the out-of-pocket cost of the drug testing and physical examinations. The Board proposes to retain current contract language in Section 35.3.

The possession of a valid Commercial Driver's License and background checks are pre-conditions to employment, not terms and conditions of employment. Therefore, they should be the employee's responsibility. To the best of the Board's knowledge, based on a review of collective bargaining agreements from various locations in Ohio, school districts do not typically pay bus drivers for time spent at courses to renew a CDL.

What the Board currently pays in connection with license renewal for bus drivers is identical to what the Board pays in connection with teacher license renewal. The teachers’ contract provides in Article 46, under the heading of Certification/Licensure and Entry Year Costs, that the Board will “reimburse unit members for fifty percent (50%) of the cost of making application to upgrade or renew the certification(s) or license(s) held in the teaching field(s) in which they are currently assigned.”

Drug testing and annual physical examination are similarly requirements mandated by law, with which drivers must comply order to retain their CDLs. The Board did not impose these requirements. Therefore, it is more than fair that the Board currently pays for the costs of the testing and examination. The Board should not be made to pay for time spent by bus drivers complying with state and federal legal requirements. The Board opposes this proposal because of the additional cost it would impose.

**C. Section 35.4 – In-service meetings**

In Section 35.4, the Union proposes to add an unnecessary sentence specifying that bargaining unit members will be paid for time spent attending in-service training/meetings. The Board proposes to retain current contract language in Section 35.4. The existing language in Section 35.4 already provides that bargaining unit members will be paid for all time spent attending meetings mandated by the Board, which include in-service training/meetings.

**D. Notes On Salary Schedules**

The Union proposes to revise the notes on the bus driver salary schedule to specify that their pay for 30 minutes per day spent on pre- and post-trip inspection of the buses should be divided up as 20 minutes for pre-trip inspection and 10 minutes for post-

trip inspection; that they be paid for an additional 15 minutes each time they fuel a bus prior to their route; and that they be permitted to spend up to 8 hours of paid time instead of 5 hours of paid time cleaning their bus at the end of the school year.

In response to the Union's proposed changes regarding inspection and fueling, the Board proposes to pay each driver for a guaranteed minimum route time of 3.5 hours, plus any additional hours of work as reflected on the time clock. This would ensure that every driver was paid for all time spent on pre- and post-trip inspection and on fueling of the bus without overpaying any bargaining unit members who spent less time than 15 minutes on bus fueling or less time than 20 minutes on all pre-trip inspection tasks.

Even with current contract language on the salary schedules, however, all drivers are being compensated for time spent on pre- and post-trip inspection and fueling of their buses. To increase the amount paid as proposed would only mean paying public taxpayer dollars to drivers for nothing. At present, the thirty minutes paid to drivers for combined pre- and post-trip inspection builds in time spent on fueling. In addition, the Board currently pays drivers for down time between routes if it is not enough time for the driver to leave and come back, which is time that many drivers use to fuel their buses. Lastly, the Board currently pays all drivers for time worked based on the time clock, if the total time worked goes beyond their paid hours under the contract. The Board opposes the Union's proposal because it imposes an additional cost to the District and the public that is unnecessary and unwarranted.

The Board proposes current contract language with respect to the annual bus cleaning. When the bus drivers are all able to complete the annual cleaning within 5

hours, there is no legitimate reason to permit more time. To do so would provide an adverse incentive to do the job more slowly in order to get paid more.

The Union proposes to change the note on the mechanic salary schedule to increase the stipend to head mechanic from \$500 to \$1000 per year. The Board proposes to retain the existing language. Although the Board has been reluctant to eliminate the title of head mechanic, the reality is that the head mechanic now performs very few duties beyond those performed by the one other bus mechanic. The duties performed do not warrant an increase in the stipend amount.

#### **5. Article 37 – Insurance**

The Board proposes to revise current contract language in Article 37, Sections 37.1.1, 37.1.2, 37.2, and 37.3, to bring it into compliance with the Board policy on insurance (revised since the initial contract was negotiated) and to match the insurance terms set forth in Article 34 of the contract between the Board and the Union governing the third unit, without adversely affecting current employees. The Board's proposed language would increase the premium share and limit eligibility for low-hour employees hired after ratification of a successor contract. The Board is unsure whether the Union opposes the Board's proposed changes.

The Union proposes to revise current contract language in Article 37, Section 37.1, to require the Board to offer bargaining unit employees the option to enroll in the Michigan Conference of Teamsters insurance plan. The proposed language is not contained in the insurance article (Article 34) of the third unit contract or in the teachers' contract.

All of the Board's collective bargaining agreements contain provisions concerning an insurance committee, which is composed of representatives from each bargaining unit, representatives of management, and two members from the classified staff. The insurance committee is charged with developing proposals concerning offered insurance benefits and selecting insurance carriers. It should be up to the insurance committee to decide whether to recommend the Michigan Conference of Teamsters. This approach makes sense because there is an economy of scale with insurance – the best group rates are obtained if the benefit plan is the same for all Board employees.

Moreover, the Board's current agreement with its health plan provider, Medical Mutual of Ohio, prohibits the Board from offering a competing plan. Numbered paragraph 5 on page 20 of the contract between the Board and Medical Mutual of Ohio (MMOH) states: "The Group [defined as Southwest Licking School District] agrees not to enter into any other group health care contract, or sponsor any other program on behalf of its employees for health care benefits, other than an HMO program." A copy of the contract is attached as Exhibit 9.

The contract between the Board and MMOH also contains minimum enrollment requirements; if enrollment falls below the required minimum, MMOH can terminate the contract. Exhibit 9. Thus, if enough Union bargaining unit members opted for the Michigan Conference health plan instead of the current MMOH plan, health insurance for all other Board employees could be at risk.

**6. Article 39 – Term of Agreement**

Although this issue is technically unresolved, as the parties have not signed a tentative agreement on this article, there has been verbal agreement that the duration of

the contract will be two years, to expire on June 30, 2010. The Board Treasurer cannot certify a longer contract because the five-year forecast projects a deficit beyond that time.

7. **Article 40 (new article) – Contract Sequence**

The Board proposes a new article regarding the sequence of limited contracts to be issued to bargaining unit members, which would supersede the statutory scheme set forth in R.C. 3319.081(A) and (B) for the benefit of both parties. The bargaining unit members are currently issued contracts in accordance with the statute, meaning that their first contract is a “one-year” limited contract until the end of the school year and their second contract (if employment is renewed) is a two-year limited contract. If the Board does not non-renew the two-year limited contract, then the employee attains continuing contract status.

Proposed Article 40 would do two things. First, it would enable the Board to lengthen the time prior to issuance of a continuing contract if a bargaining unit member is hired in the middle of a school year rather than at the beginning of a year. Currently, even if an employee is hired in March, the employee’s first contract only runs until June 30, at which point he or she is entitled to a two-year contract. Second, it would enable the Board to put a bargaining unit member on a probationary contract for a year, following the employee’s two-year contract, if there are concerns about the employee’s performance.

The purpose of Article 40, in both cases, is to give the Board more time to assess an employee’s performance before having to make an “up or out” decision regarding the individual’s employment. Currently, if the Board has had insufficient time to assess an individual because he or she was hired mid-year or if the Board has concerns about an

employee's performance, the Board will elect to non-renew the employee's contract rather than risk having a poor employee on a continuing contract.

The Board believes this proposal benefits both parties. It gives the Board more time to assess an employee, gives an employee more time to prove him/herself, and ensures that an employee who is having performance difficulties for several years will be given specific assistance to improve. This, in turn, should help the Board and the employee avoid a non-renewal situation more often.

It should be noted that the genesis of this proposal was a situation in which the administration was recommending non-renewal of two non-teaching employees (in the Union's third unit), but wanted to be able to recommend a probationary contract instead. Because the statute does not give the administration or the Board that ability, the employees' contracts were non-renewed.

#### **IV. ITEMS ON WHICH TENTATIVE AGREEMENT WAS REACHED**

The Board requests that the fact-finder adopt the tentative agreements already reached by the parties on Articles 4, 5, 7, 9, 10, 13, 14, 22, 23, 25, 28, 33, 34, new article 41 (Videotape and Public Complaint), new article 42 (Labor Management Committee), and new article Miscellaneous (time clock system, lunch, meetings).

#### **V. CONCLUSION**

For all of the foregoing reasons, the Board respectfully requests that the fact-

finder recommend that the outstanding issues in negotiations between the Board and the Union be resolved in the manner set forth above.

Respectfully submitted,

---

Susan L. Oppenheimer (#0062655)  
BRICKER & ECKLER, LLP  
100 South Third Street  
Columbus, Ohio 43215-4291  
(614) 227-8822

Attorneys for Southwest Licking  
Local School District Board of Education

**CERTIFICATE OF SERVICE**

I, Susan L. Oppenheimer, hereby certify that a true copy of the foregoing document was served upon Susan D. Jansen, Esq., Doll, Jansen & Ford, 111 West First Street, Suite 1100, Dayton, Ohio 45402-1156, by e-mail, on this 5th day of December, 2008.

\_\_\_\_\_  
Susan L. Oppenheimer