

STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

January 30, 2009

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*In the Matter of the Fact Finding Hearing Between:*

MULTI-COUNTY JUVENILE )  
ATTENTION SYSTEM )

And )

AFSCME, OHIO COUNCIL 8, )  
LOCAL 3987 )

SERB Case No. 2008-MED-03-0364 ✓  
2008-MED-03-0365

APPEARANCES

For the City:

Michael L. Seyer, Esq.  
David C. Riker  
Ron Sigman  
Donna Ogrissey  
Jonathan Noe

Clemans Nelson & Associates  
Administrator  
Director of Detention/Treatment  
Personnel Director  
Clemans Nelson & Associates

For the Union:

Lou Maholic  
Robert Jackson  
Jennifer DeLong  
Christina Snyder-Kerper  
May Triplett  
Nancy Tomska

Staff Representative, AFSCME, Ohio Council 8  
Youth Leader 2  
Youth Leader 2  
Youth Leader  
Cook  
Maintenance Worker

Fact-Finder:

Virginia Wallace-Curry

## INTRODUCTION

This matter concerns the fact-finding proceeding between Multi County Juvenile Attention System (“Employer” or “MCJAS”) and the American Federation of State, County, and Municipal Employees, Ohio Council 8 and its Local 3987 (the “Union” or “AFSCME”). There are two bargaining units in the Union. Unit #1 consists of approximately 18 individuals employed in part-time/full-time status in the Cook and Maintenance Repair Worker 1 and 2 classifications. Unit #2 consists of approximately 100 individuals employed in part-time/full-time status in the Youth Leader 2 and 3 classifications. This is the parties’ first agreement.

The parties held multiple bargaining sessions. Impasse was declared, and the parties proceeded to fact-finding. Virginia Wallace-Curry was appointed Fact-finder in this matter by SERB. The parties, with the assistance of the Fact-finder, held three more days of negotiations. The parties reached tentative agreements on many issues and elected to proceed to a hearing on the remaining unresolved issues. The tentative agreements on all the issues are incorporated in this report and recommended by the fact-finder.

A hearing on the remaining unresolved issues was held on December 17, 2008, and the parties were given a full opportunity to present their respective positions. The fact-finding proceeding was conducted pursuant to Ohio Collective Bargaining Law and the rules and regulations of the State Employment Relations Board, as amended.

In making the recommendations in this report, consideration was given to the following criteria listed in Rule 4117-9-05 (K) of the State Employment Relations Board:

1. Past collectively bargaining agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted

to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

**UNRESOLVED ISSUES**

1. Attendance and Punctuality
2. Fair Share
3. Holidays
4. Insurance
5. Kitchen
6. Non-discrimination
7. OPERS
8. Shift Differentials
9. Sick Leave
10. Staff Coverage in Emergencies
11. Successor
12. Vacation
13. Wages
14. Witness and Jury Duty

**1. Attendance and Punctuality**

**Union's Proposal** - The parties reached tentative agreement on the issue of Attendance and Punctuality. The Union agreed with the Employer's final proposal. However, the Union would like to add a section that relates to *diminimus* time. The section would prevent employees from being disciplined for up to seven minutes prior to the ending time of their work shift or after the starting time of their work shift should employees leave early or arrive late. This is the amount of time the Employer is not required to include in its overtime calculations when employees must remain after their shift.

**Employer's Proposal** - The Employer rejects the Union's proposal. Employees will be disciplined if they cannot arrive on time, or if they leave before the end of their shift. Allowing for employees to leave early or arrive late without discipline condones such behavior and creates a hardship for the employee who must remain until the tardy employee arrives.

**Recommendation** - The Employer's argument has merit and is recommended. When employees are allowed to be late, it forces other employees to stay past the end of their shift to compensate for the late ones. This is unfair to employees who must work overtime without pay and provides no incentive for late employees to get to work on time on a regular basis. The disciplinary scheme to which the parties have already agreed allows employees to be late twice before receiving a verbal warning on the third occurrence. This will allow for the occasional late occurrence and discourage employees from being habitually late.

### **Recommended Contract Language**

#### **PUNCTUALITY**

**Section 1.** Employees must notify the shift supervisor at least one (1) hour or more in advance of their scheduled shift if they are unable to report for work at their normal starting time. Failure to notify the shift supervisor will result in loss of compensation during the delay and may result in disciplinary action.

**Such notification should include an indication of when the employee can be expected to report for work. If the shift supervisor is unavailable, the employee will then report off to the senior staff on shift.**

**Employees who are delayed in reporting for work more than one-half (1/2) hour and who have not notified their supervisor of their expected tardiness may lose their right to work the balance of the work day. Those employees permitted to report to work late will be paid only for the time they actually worked.**

**Section 2.** Employees will be permitted two (2) occurrences within any contract year of reporting late for work, up to one (1) hour, to choose from one of the following options:

- A. vacation time;**
- B. compensatory time;**
- C. request a schedule adjustment on the same day the lateness occurred;**

**D. request leave without pay (LWOP);**

**Therefore, additional incidents shall subject the employee to the following:**

- **3<sup>rd</sup> lateness – verbal warning**
- **4<sup>th</sup> lateness – written warning**
- **5<sup>th</sup> lateness – 5 day suspension without pay\***
- **6<sup>th</sup> lateness – 10 day suspension without pay\***
- **7<sup>th</sup> lateness – dismissal**

**\* The applicable provisions of Article \_\_\_\_, Corrective Action, Section 6, may be imposed.**

**Section 3. Employees must report to their supervisor after being late or absent, give an explanation of the circumstances surrounding their tardiness or absence, and certify that they are able to work. Employees are expected/required to report for work during inclement weather conditions.**

**Section 4. Employees must report to their supervisor after being late or absent, give an explanation of the circumstances surrounding their tardiness or absence, and certify that they are able to work. The supervisor should record the information for the employee's file and the employee must complete the applicable leave form. The supervisor will then forward the proper leave form with the payroll to the Personnel Department.**

**When appropriate, the supervisor should counsel the employee on the importance of good attendance and warn that excessive tardiness or absences, regardless of the causes, will lead to progressive discipline.**

**Employees who are absent from work for three (3) consecutive days without giving proper notice to Multi-County JAS are subject to removal from their position. Any employee who uses excessive leave without pay and/or without notice to his supervisor is guilty of neglect of duty, which will result in disciplinary action.**

## **2. Fair Share**

**Union's Proposal** - The Union has changed its original proposal and now accepts the Employer's position that only new employees will be required to pay a fair share fee to the Union. However, the Union also proposes that current employees who have elected to be Union members cannot opt out of the Union without paying a fair share fee.

**Employer's Proposal** - The Employer rejects this proposal and maintains its offer to require all new hires to pay a fair share fee if they do not opt to belong to the Union.

**Recommendation** - The Union's position is recommended. Employees who have supported the Union and reaped the benefits of the collective bargaining agreement should not be permitted to remove their financial support once the agreement has been reached. They are not required to continue to be members of the Union, but they must continue to support their fair share of the benefits won by the Union.

### **Recommended Contract Language**

#### **FAIR SHARE FEE**

**Section 1. Each bargaining unit employee hired after the effective date of this agreement who does not become a member of the Union shall as a condition of employment pay a fair share fee to the Union. The obligation to pay the fair share fee shall commence sixty-one (61) days following an employee's date of hire. Current employees who elected to become Union members must pay a fair share fee if they choose to resign from the Union. Fair share fees shall be paid by automatic payroll deduction. Fair share fee deductions do not require prior authorization from the affected employee. The Union shall prescribe a rebate and challenge procedure which complies with applicable state and federal law. Fair share fees shall be deducted and transmitted to the Union in the same manner as regular dues. The Employer shall provide the Union with an alphabetical list of names and addresses of those employees who had a fair share fee deducted along with the amount of the fair share fee deduction.**

**Section 2.** The parties agree that neither the employees nor the Union shall have a claim against the Employer for errors in the processing of deductions, unless a claim of error is made in writing to the Employer within sixty (60) days after the date such error is claimed to have occurred. If it is found that an error was made, it will be corrected at the next pay period that the Union dues deduction would normally be made by deducting the proper amount.

**Section 3.** The Union warrants and guarantees that no provision of this article violates the law or constitution of either the United States of America or the State of Ohio. Should the Employer be sued by any person or entity or charged by any administrative agency on any theory arising in any way out of this article, the Union shall indemnify the Employer for all expenses it incurs in its defense including, but not limited to, reasonable legal fees. The Union shall indemnify the Employer for any award made against it as a result of this article.

### **3. Holidays**

**Union's Proposal** - The Union and the Employer agree on which days will be observed as holidays. In addition the Union requests that employees who are normally scheduled to work in excess of eight hours on a day on which a holiday falls, will receive additional holiday pay for the excess hours worked. It proposes that a holiday that falls on a Saturday or Sunday be observed on either the preceding Friday or following Monday. Lastly, the Union requests that holidays be alternated when possible between bargaining unit employees at a facility so no bargaining unit employee will work two consecutive holidays, unless mutually agreed upon by the employee, Employer and Union.

**Employer's Proposal** - The Employer rejects as unfair the Union's proposal to have employees who normally work on a holiday to receive more holiday pay. It also rejects the Union's proposal that holidays be alternated because it would be unworkable.

**Recommendation** - The Union's proposal that those who normally work more than eight hours a day be compensated for all hours on a holiday at holiday pay. This would result in a handful of employees being compensated when others are not. Employees who work more than eight hours a day are compensated for doing so. There is no need for them to be overcompensated by paying more holiday hours than everyone else.

The Union's proposal to alternate holidays has not proven to be a problem in the past and is not necessary at this time. However, the proposal to celebrate a weekend holiday on the preceding Friday or following Monday is recommended.

**Recommended Contract Language**

**HOLIDAYS**

**Section 1.** Each full-time employee shall be entitled to eight (8) hours of holiday pay at her regular straight time hourly rate of pay, for each of the following designated holidays:

|                                      |   |
|--------------------------------------|---|
| <b>New Year's Day</b>                | <b>1<sup>st</sup> day of January</b>          |
| <b>Martin Luther King Day</b>        | <b>3<sup>rd</sup> Monday in January</b>       |
| <b>Presidents' Day</b>               | <b>3<sup>rd</sup> Monday in February</b>      |
| <b>Memorial Day</b>                  | <b>As designated by the State Legislature</b> |
| <b>Independence Day</b>              | <b>4<sup>th</sup> Day of July</b>             |
| <b>Labor Day</b>                     | <b>1<sup>st</sup> Monday in September</b>     |
| <b>Columbus Day</b>                  | <b>2<sup>nd</sup> Monday in October</b>       |
| <b>Veterans' Day</b>                 | <b>11<sup>th</sup> day of November</b>        |
| <b>Thanksgiving Day</b>              | <b>4<sup>th</sup> Thursday in November</b>    |
| <b><i>Day after Thanksgiving</i></b> | <b><i>Friday after Thanksgiving</i></b>       |
| <b>Christmas Day</b>                 | <b>25<sup>th</sup> day of December</b>        |

**Section 2.** Employees shall be entitled to holiday pay in accordance with Section 1 herein if they are not scheduled to work on the observed day of the holiday. Employees who actually work on the observed holiday shall be entitled to holiday pay in accordance with Section 1 herein and shall receive their hourly base rate of pay for all hours actually worked.

**Section 3.** To be eligible for holiday pay, as described in Section 1 herein, an employee must work her last scheduled work day before the holiday and her first scheduled work day after the holiday, unless on vacation leave and/or funeral leave. If a holiday occurs during a period of vacation leave of an employee, the employee shall draw normal pay and shall not be charged for vacation leave on that holiday. Employees who are scheduled to work on the day designated as a holiday and who report off sick may be entitled to sick pay but shall not be entitled to holiday pay.

**Section 4.** A holiday that occurs on a Saturday or Sunday will be observed on either the preceding Friday or following Monday.

**Section 5.** Part-time employees will receive holiday pay equal to their normally scheduled work hours, subject to the provisions of Sections 1, 2, and 3 herein.

#### **4. Insurance**

**Union's Proposal** - The Union proposes to maintain the current level of health care and prescription benefits at the current employee premium contribution rate. It also proposes moving to the AFSCME care Plan for Dental IV Benefits, Vision Level III benefits and Hearing benefits. A comparison study shows that the Employer would save over \$80,000 each year by moving to the AFSCME Dental IV plan. The vision and hearing benefits would be paid out of this savings, and the Employer would still have over \$40,000 left for other uses.

The Union also proposes that the Employer implement a Section 125 Plan which would allow workers to make their health care contributions with pre-tax dollars, which would save them approximately 20% of the cost of the benefits.

**Employer's Proposal** - The Employer proposes language that provides health insurance at the same benefit levels and cost as all other employees within the agency. The health insurance plan currently in effect provides employees with hospitalization, dental and a

prescription plan with a month cost to the Employer of \$480.19 single and \$1,168.55 family.

The Employer also contributes \$2.90 per month toward a \$20,000 life insurance policy for all employees.

**Recommendation** - The Union's main proposal to purchase the AFSCME dental plan is rejected. That proposal is only viable if the dental, vision and hearing plans can be separated from the cost of health care through the consortium. However, the Employer provided evidence that this cannot be done. The cost of the dental, etc. is bundled in with the other health care costs and cannot be segregated.

As to the cost of the health care, it is recommended that bargaining unit employees pay the same as non-bargaining unit employees toward the cost of the premiums, which is currently at 7% of the premium cost. This provides equity between bargaining unit and non-bargaining unit employees. However, the language proposed by the Employer would permit the Employer to raise the percentage of the premium cost paid by *all* employees at anytime. That language cannot be recommended. The wages of bargaining unit employees are fixed for the contract term and the cost of health care has been considered in making recommendations for wages. Therefore, the amount of the contribution should not go higher than 7%.

### **Recommended Contract Language**

#### **HEALTH INSURANCE**

**Section 1. The Employer shall provide a hospitalization, dental, and prescription plan for those eligible employees who enroll in such plan. Said plan shall consist of benefit level(s) that are the same as those offered to non-bargaining unit employees of the Multi County Juvenile Attention Center (MCJAS). The cost of said plan(s) shall be shared by the Employer and the bargaining unit employees. Bargaining**

**unit employees, through payroll deductions, shall contribute the same amount towards the monthly premium cost as the non-bargaining unit employees or seven percent (7%), which ever is lower.**

**5. KITCHEN**

**Union's Proposal** - The Union proposes that there be a youth leader to oversee the youth when they are working in the kitchen for instruction or community service. This is a safety measure. In addition, the Union proposes that additional compensation be paid to cooks when the kitchen is understaffed for more than 14 days. This will ensure proper staffing and remove the added burden these workers face when forced to work short-handed. Fourteen days should be long enough for management to make arrangements to fill openings.

**Employer's Proposal** – The Employer rejects this proposal as a permissive topic of bargaining and an attempt to erode management's rights.

**Recommendation** – The Union's proposal is not recommended. Although the Union argues that these are working conditions and matters of compensation, they are an attempt to determine staffing levels, both in numbers and in personnel. As such, they are not a mandatory subject of bargaining.

**6. NON-DISCRIMINATION**

**Union's Proposal** – The Union proposes that, in addition to the categories cited by the Employer, the Non-Discrimination clause also prohibit discrimination on the basis of sexual orientation. The Union believes that this has been a problem in the past and argues that all individuals should be protected from discrimination in the workplace.

The Union also proposes that the Employer be required to discuss reasonable

accommodations under the ADA with the Union, if the accommodation would adversely affect the rights established under this agreement.

**Employer's Proposal** – The Employer rejects the Union's proposal. It argues that its proposed Non-Discrimination clause contains a gender clause; an agreement to comply with the applicable provisions of the Americans with Disability Act; and a mutual pledge that neither party will discriminate in accordance with Title VII criteria. These are all the areas covered by law and the Employer should not be required to go beyond the law.

**Recommendation** – The Employer's proposal is recommended. The Union's did not provide any evidence of the alleged past problems encountered by employees due to discrimination based on sexual orientation. Therefore, the Fact-finder is reluctant to require the Employer to go beyond the statutory protections listed in the Employer's proposal.

In addition, the Union's requirement to discuss the reasonable accommodations provided to an employee based on the employee's disability has the possibility of violating the employee's privacy rights. If the Union feels that the Employer is violating the parties' agreement, the Union can file a grievance.

### **Recommended Contract Language**

#### **NON-DISCRIMINATION**

**Section 1.** No person or persons responsible to the Employer, nor the Union and its officers, shall unlawfully discriminate for or against any employee on the basis of membership or non-membership in the Union.

**Section 2.** All references to employees in this agreement designate both sexes, and wherever the male gender is used, it shall be construed to include male and female employees.

**Section 3.** The Employer agrees not to interfere with the rights of employees to become members of the Union, and there shall be no discrimination, interference, restraint, or coercion by the Employer or any Employer representative against any employee because of Union membership or because of any legal employee activity in an official capacity on behalf of the Union.

**Section 4.** The Union recognizes its responsibility as bargaining agent and agrees to represent all employees in the bargaining unit without discrimination, interference, restraint, or coercion.

**Section 5.** The Union agrees not to interfere with the rights of employees to not become members of the Union, and there shall be no discrimination, interference, restraint, or coercion by the Union or its representatives against any employee exercising the right to abstain from membership in the Union or involvement in Union activities.

**Section 6.** The Employer and the Union agree not to discriminate against any bargaining unit employee with respect to compensation or terms or conditions of employment because of such individual's race, color, religion, gender, age, national origin, disability, ancestry of any person, or AFSCME membership or non-membership. Management's use of bona fide occupational qualifications in accordance with job characteristics shall not be construed as discrimination, and therefore not subject to the grievance procedure article.

**Section 7.** The Employer agrees to comply with the applicable provisions of the Americans with Disability Act (ADA).

**7. OPERS**

**Union's Proposal** – The Union proposes to have the Employer pay 4.25% of the employee's contribution to OPERS. Currently, the Employer only pays 4.25% for employees hired before November 23, 2003.

**Employer's Proposal** – The Employer proposes to keep the current scheme of contributing only for employees hired before November 23, 2003. The Employer argues that the contribution was made in lieu of raises for employees. Those hired after 2003 are not entitled to the contribution.

**Recommendation** – The Employer's proposal is recommended. The Union could not provide sufficient reason why the current scheme should not be continued.

### **Recommended Contract Language**

#### **OPERS**

**The Employer shall contribute four and one quarter percent (4.25%) of the employee's contribution to OPERS for those bargaining unit employees who were hired prior to November 24, 2003. Said employees shall be responsible for the remaining percentage of their contribution. Bargaining unit employees hired on/after November 24, 2003, shall continue to pay the mandated share of their gross wages, as determined by OPERS.**

**The Employer agrees to continue to contribute the Employer's mandated contribution of an employee's gross pay as determined by OPERS.**

#### **8. SHIFT DIFFERENTIALS**

**Union's Proposal** – The Union proposes that employees who work between the hours of 11:30 p.m. and 7:30 a.m. receive a shift premium of \$.50 per hour for all hours worked. Day shift employees who work after or before their regularly scheduled shift should receive also receive \$.50 per hour for all hours worked in addition to any overtime pay they may be entitled to.

**Employer's Proposal** – The Employer rejects the Union's proposal because of the Employer's poor financial position.

**Recommendation** – The Union’s proposal is not recommended. Although shift differentials are often paid to workers on the second and third shifts, it is not financially feasible at this time for the Employer to take on this added financial burden.

## **9. SICK LEAVE**

**Union’s Proposal** – The Union’s and the Employer’s proposals on Sick Leave have many elements in common. There are three provisions that the Union proposes that are not in the Employer’s proposal. The Union proposes to add “significant other” to the list of immediate family members cited in this Article. The Union proposes to allow employees who are physically incapable of performing their job because of illness or accident to request to be placed on Medical Leave then Family and Medical Leave. Lastly, the Union’s proposal specifically mentions regular part-time employees accumulating sick leave hours and using them.

**Employer’s Proposal** – The Employer’s proposal rejects the inclusion of “significant other” as a member of the employee’s immediate family. The Employer argues that this relationship may be tenuous and variable and should not be recommended.

The Employer’s proposal contains many issues not discussed in the Union’s proposal that are of administrative importance. It requires employees to notify the Employer one hour prior to the time he is scheduled to report to work on each day of absences and 72 hours advance notice of pre-scheduled appointments, including the type, location and time. The proposal warns that employees intentionally failing to comply with the regulations will not be paid. Intentional fraud will be grounds for discipline as well as excessive use of sick leave.

**Recommendation** – The Union’s proposal to add “significant other” is not recommended. A “significant other” is not a readily identifiable person. For some, a significant other may change from month to month, while for others a significant other may represent a relationship of many years. How long is long enough to qualify as a significant other? A spouse, on the other hand, is easy to identify no matter how short term the relationship. Perhaps this is a topic that is better discussed in the Labor-Management Committee to ascertain how much of a problem this is for employees and to set parameters for who is a significant other.

The Union’s other proposals are implied by the language proposed by the Employer. The Employer’s language states sick leave will be earned at a rate of 4.6 hours for every eighty hours of service. This would automatically include part-time employees, because they are party of the bargaining unit covered by the Agreement and are not specifically excluded from earning and using sick leave.

The Union proposal that employees who are incapable of performing their job due to illness or injury be permitted to request medical leave or FMLA is already granted in the Article on Leaves of Absences to which the parties have already agreed.

The Employer’s proposal contains many details on the use, abuse and regulation of sick leave to which the Union did not voice any significant objection. Therefore, the Employer’s proposal is recommended.

### **Recommended Contract Language**

#### **SICK LEAVE**

**Section 1. Sick leave credit shall be earned at the rate of four and six tenths (4.6) hours for each eighty (80) hours of service in active pay status, including paid vacation and sick leave, but not during a leave of absence or layoff, to a limit of**

**fifteen (15) days, or one hundred and twenty (120) hours per year. Unused sick leave shall accumulate without limit.**

**Section 2. Sick leave shall be charged in minimum units of one (1) hour. Employees shall be charged for sick leave only for days upon which they would otherwise have been scheduled to work. Sick leave payment shall not exceed the normal scheduled work day or work week earnings.**

**Section 3. Sick leave may be granted to an employee upon approval of the Employer and for the following reasons:**

- A. illness or injury of the employee or a member of the employee's immediate family, when the employee's presence is required. Immediate family is defined as an employee's spouse, child, grandchildren, mother, father, sibling, grandparents or stepchildren, foster child, adopted child, stepparents, stepmother, stepfather, stepsister-in-law, stepbrother-in-law, great grandparents, stepsiblings or *loco parentis* who reside with the Employer;
  - 1. Sick leave may be granted to care for an employee's children/parents regardless whether these individuals reside with the employee.****
- B. medical, dental, or optical examination or treatment of employee and/or immediate family members, defined in "A," which cannot be scheduled during non-working hours;**
- C. a member of the immediate family, defined in "A" above, is afflicted with a contagious disease, and due to exposure to the contagious disease, the presence of the employee at his job would jeopardize the health of others; and**
- D. pregnancy and/or childbirth and other conditions related thereto;**
- E. death of a member of the employee's immediate family, as described in Section 6 herein.**

**Section 4. Evidence Required For Sick Leave Usage.** The Employer shall require an employee to furnish a standard written and signed statement explaining the nature of the illness to justify the use of sick leave immediately upon return to work. If medical attention is required, the employee shall be required to furnish a statement from a licensed physician notifying the Employer that the employee was unable to perform his/her duties. Where sick leave is requested to care for a member of the immediate family, the Employer may require a physician's certificate to the effect that the presence of the employee is necessary to care for the ill person, or in the case of childbirth and other conditions relating thereto, during the post-natal period. Falsification of either a written, signed statement or a physician's certificate shall be grounds for disciplinary action.

**Section 5.** When an employee is unable to report to work, he shall notify the supervisor or other designated person no less than one (1) hour prior to the time he is scheduled to report to work on each day of absence, unless emergency conditions make it impossible, or unless the employee has made other reporting arrangements with the supervisor. Employees shall provide the Employer at least a seventy-two (72) hour advance notice of pre-scheduled appointments described in Section 3 (B) herein. The employee shall provide his administrator/designee with a statement describing the type of appointment (i.e., routine checkup or treatment), the location of the appointment, and the scheduled time of the appointment.

**Section 6.** Up to five (5) work days of sick leave may be granted for funeral leave in the event of the death of the employee's immediate family, described as follows: spouse, parents, siblings, step-child, grandparents, grandchildren, mother, father, sister and brother-in-law, and/or a legal guardian or other person who stands in the place of a parent (in *loco parentis*).

**Section 7.** The Employer may require an employee to take an examination, conducted by a licensed physician or psychologist, to determine the employee's physical or mental capability to perform the duties of the employee's position. An employee who is required to submit a physical/psychological examination shall be

afforded the opportunity to select the name of a qualified physician from a list supplied by the Employer, subject to the availability of the qualified physicians. The cost of such examination shall be paid by the Employer. The Employer shall supply the examining physician with the job requirements of the employee's position, including physical and mental requirements of the position and the position description. Additional information may be provided upon the request of the examining physician. If found not qualified, the employee may be placed on sick leave with pay, leave without pay, or a disability separation.

**Section 8.** Employees intentionally failing to comply with sick leave rules and regulations shall not be paid. Application for sick leave with intent to defraud shall be grounds for disciplinary action, together with a refund by the employee of any salary or wages paid in connection with such non-compliance by the employee. Sick leave is to be used only for the reasons specified in Section 3 herein, and the excessive use of sick leave shall be cause for disciplinary action.

**Section 9.** If medical attention is required, the employee shall be required to furnish a statement from a licensed physician or psychologist notifying the Employer that the employee was unable to perform his duties and is now able to return to work. Such physician's statement shall be required for absence in excess of two (2) consecutive work days due to illness. Whenever the Employer suspects abuse of the use of sick leave, he may require proof of illness in the form of a physician's statement of disability to approve the use of such leave.

#### **10. STAFF COVERAGES IN EMERGENCIES**

**Union's Proposal** – The Union proposes an Article that governs the rules and regulations for staffing in the event of weather emergencies, security and control needs or communicable disease outbreaks that may prevent normal staffing patterns. This proposal reflects the current practice and is a necessary safety measure.

**Employer's Proposal** – The Employer rejects the Union's proposal because it is a permissive topic of bargaining. The Employer argues that this topic should be addressed

by the Labor-Management Committee that the parties agreed to form and use. The topic is not one that is appropriate for a first contract.

**Recommendation** – The Union’s proposal is not recommended. This Fact-finder agrees that this topic is in many respects a permissive topic of bargaining because it restricts management rights and discretion. The Employer should not be required by a Fact-finder to relinquish its right to determine staffing levels and conditions. The policy on staffing coverage in emergencies could be developed by both parties in the Labor-Management Committee, as the Employer suggests.

#### 11. **SUCCESSOR**

**Union’s Proposal** – The Union proposes a successor article that binds this Agreement on the Employer, Joint Board of Trustees, Board of Commissions, Board of Trustees, Board of Judges and their successors, assigns or future purchasers and that the terms and obligations will not be affected or changed by consolidation, merger, sale, transfer or assignment of the MCJAS. It also covers future locations.

**Board’s Proposal** – The Employer rejects this proposal because the language would be considered unenforceable under Ohio Revised Code 4113.30.

**Recommendation** – The Union’s proposal is not recommended. A successor clause would not be binding under the Ohio Revised Code section cited by the Employer, because this section does not support the enforcement of successor clauses on public employers. The Union did not provide any other Code sections that allowed enforcement of a successor clause on public employers. In addition, because this is a first contract between the parties, the Union has not shown significant support and longevity.

## **12. VACATION**

**Union's Proposal** – The Union proposes to compress the number of service years an employee must have for earning vacation time. The Union proposes the employees with one but less than 5 years receive 10 working days; employees with 5 but less than 10 years receive 15 working days; employees with 10 but less than 15 years receive 20 working days; and employees with 15 but less than 20 years receive 25 working days of vacation. The Union argues that the stressful nature of the job requires more time off sooner.

**Employer's Proposal** - The Employer proposes that the current vacation schedule be maintained. After one year of service employees receive 10 working days; after 8 years they receive 15 working days; after 15 years they receive 20 working days and after 25 years employees receive 25 working days.

**Recommendation** – The Employer's proposal regarding the years of service required for vacation days is recommended. The remaining sections of the Employer's proposal are recommended with some modification based on the Union's concerns. The Union proposes that vacation requests not be denied unless the vacation would create a hardship on the facility. The Employer proposes language that states: "It is understood and agreed that no more than one employee per shift shall be granted similar time off for vacation leave." Because the Employer has many different kinds of facilities with varying staff levels, this proposal appears overly restrictive. It does not specify what classification of employees can be off or in what kind of facilities. The Employer's vacation language already states that vacation requests shall be subject to work load requirements and staffing levels. It is recommended that the next sentence read: "Vacation time requests shall not be unreasonably denied."

Another concern of the Union was that employees be notified before their maximum accumulated vacation time is eliminated and that such employees be given priority in being granted vacation. On this same subject, the Employer proposes that, upon written request, employee may be permitted to carry over accumulated, unused vacation time for three years, not to exceed 30 days.

The Employer's proposal appears to make such carry over available at the Employer's discretion. However, the right to carry over unused vacation time, within the parameters set by the Employer, should be guaranteed. It is also recommended that the employees have a deadline for requesting the carry-over, and if no such request is made, the employee will be paid for the vacation time. The priority status for those with unused accumulated vacation leave cannot be recommended merely because the employee has chosen to carry-over vacation. This is unfair to senior employees requesting vacation time. With a provision that prevents forfeiture of the vacation time, that should not be a problem.

**Recommended Contract Language**

**VACATION**

**Section 1. Bargaining unit employees shall be entitled to vacation leave with pay after one (1) year of continuous service with the Employer. The amount of vacation leave to which an employee is entitled is based upon the length of continuous service as follows:**

| <b><u>Years Of Service</u></b>        | <b><u>Vacation Entitlement</u></b> | <b><u>Rate Of Accrual</u></b>   |
|---------------------------------------|------------------------------------|---------------------------------|
| <b>After 1 year of service period</b> | <b>80 hours vacation</b>           | <b>3.1 hours per pay</b>        |
| <b>After 8 years of service</b>       | <b>120 hours vacation</b>          | <b>4.6 hours per pay period</b> |
| <b>After 15 years of service</b>      | <b>160 hours vacation</b>          | <b>6.2 hours per pay period</b> |
| <b>After 25 years of service</b>      | <b>200 hours vacation</b>          | <b>7.7 hours per pay period</b> |

**Employees accrue paid vacation leave while in active pay status. Part-time employees shall earn paid vacation leave on a prorated basis.**

**An employee shall not be entitled to vacation leave until she has completed one (1) year of continuous service with the Employer.**

**Service time for the purpose of calculating vacation for all eligible employees is determined according to total service with the county, state, or any political subdivision thereof. Prior service credit need not be continuous.**

**An employee who has retired in accordance with the provisions of OPERS or any retirement plan offered by the state, and who is subsequently hired by the Employer on or after June 24, 1987, shall not have her prior service with the county, state, or any political subdivision thereof counted for purposes of computing vacation leave. Vacation accrual for such employee shall be based only upon the service he is currently accruing with the MCJAS.**

**Section 2. Vacation leave requests shall be subject to the work load requirements and staffing levels of the Employer. Vacation leave requests shall not be unreasonably be denied.**

**Vacation leave may be requested in increments of one (1) hour, provided such requests are submitted at least seven (7) calendar days prior to the date requested. The Employer or designee shall respond to the employee's request in a timely manner.**

**Vacation leave requests consisting of three (3) days or more and/or specific days (i.e., day before/after holidays) shall be submitted to the Administrator no later than April 1 of each calendar year. Such requests shall be granted on the basis of seniority, subject to the limitations described herein. Thereafter, such request of forty (40) hours or more may be granted on a first come/first served basis, provided**

**the written request is submitted to the Administrator/designee at least fourteen (14) calendar days in advance of the date requested.**

**The Employer shall have the right to deny any of the above-referenced requests should operational considerations require such action, or in the event the advance notice time periods are not met. Nothing contained herein shall prohibit the parties from mutually agreeing to waive the advance notice time periods described in this sections on a non- precedent/non-grievable basis.**

**Section 3. Vacation leave shall normally be taken by an employee between the year in which it was earned and the employee's next anniversary date of employment. Upon written request, an employee may carry over accumulated but unused vacation leave from one (1) year to the next. Such carryover vacation leave shall not exceed three (3) years and shall be limited to a maximum of thirty (30) days. If an employee does not make a written request to carry over any accumulated but unused vacation leave within two weeks of the employee's anniversary date, the employee will automatically receive compensation for the unused vacation leave.**

**Section 4. An employee is entitled to compensation, at her current rate of pay, for the pro-rated portion of any earned but unused vacation leave for the current year to her credit at time of separation, and in addition, shall be compensated for any unused vacation leave accrued to her credit, to the maximums set forth in this article. In the event a holiday falls within a week where an employee is granted vacation, such holiday shall not be counted as vacation leave.**

**Section 5. In the case of the death of an employee, the unused vacation leave to the credit of such employee shall be paid to the deceased employee's spouse, or to the estate of such employee. Employees shall be required to provide written documentation as to their beneficiary for the purposes of this section.**

### 13. WAGES

**Union's Proposal** – The Union proposes a general wage increase of 3% upon execution of this agreement and on the second and third anniversary of this agreement. In addition, the Union proposes that each employee receive a step increase on the anniversary date of their hire date based on their current years of service.

Also each employee with 10 years of service will receive a longevity wage increase of one-half of one percent for each year of service in excess of 10 years with the Employer.

Each employee who conducts training class for the MCJAS staff will receive time and one half their regular hourly rate for all hours worked on training days, up to 8 hours; hours worked over 8 hours will be at double their normal hourly rate.

Employees who have furthered their education will receive in addition to the regular hourly rate the following: Bachelor Degree- \$.40/hour; Masters Degree - \$.75/hour.

**Employer's Proposal** – The Employer has proposes a 2% wage increase each year of a 3 year agreement. When assembling the 2009 figures, the Employer had to consider increases of 10% towards health care; 14% increase in energy costs, capital improvements, including the cost of renovations to the Wastewater Treatment Plant and the Tobin Attention Center; a 10% increase in the cost of food for residents; and a projected increase of 6% in property, auto and general liability insurance.

In addition to the above-referenced costs, the Employer must also consider the increase in cost to Medicare, workers' compensation, and OPERS programs. Any general wage increases given will, in turn, increase funds to these mandated programs.

The Employer has made a fair wage offer that is within the projected budget and enables the Employer to maintain proper staffing levels.

**Recommendation** – It is recommended that employees receive a three percent (3%) increase each year of the three year agreement, beginning on the effective date of the agreement and on each anniversary date thereafter.

The Union's step increases, longevity payments, and education premiums are not recommended at this time. Although the Union provided evidence of step increases in effect for state workers in similar classifications, the funding sources and levels of the state are different from those for the counties. The Union did not provide data to support these counties' ability to fund step increases at this time. The Fact-finder is sympathetic to the Union's argument that employees with many years of experience are paid nearly the same as those with little or no experience, but the financial condition of the counties currently cannot sustain the implementation of step increases, longevity payments and education premiums.

The Employer's proposal of a 2% increase seems too little, however. The Employer listed all the cost increases that the Employer must absorb. The employees are no less immune to increase in health care costs, given that they pay a percentage of the cost. All other expenses have increased as well. Therefore, the Employer cannot expect the employee to absorb added costs without the ability to pay for them.

### **Recommended Contract Language**

#### **WAGES**

**Section 1. On the first full pay period following the execution of this agreement, bargaining unit employees shall receive a three percent (3%) increase added to their hourly rate of pay. This increase is retroactive to the effective date of the agreement.**

**Section 2.** Effective the first full pay period following the first anniversary of this agreement, bargaining unit employees shall receive a three percent (3%) increase added to their hourly rate of pay.

**Section 3.** Effective the first full pay period following the second anniversary of this agreement, bargaining unit employees shall receive a three percent (3%) increase added to their hourly rate of pay.

14. **WITNESS DUTY AND JURY DUTY**

**Union's Proposal** – The Union proposes that employees who are subpoenaed to appear before any court, commission, board or other legally constituted body should be granted leave with pay to appear for all work related business. For all non-work related court time, employees may elect to use available accrued leave and shall not be required to remit any fees received. Second and third shift employees, during the course of scheduled work hours, will be permitted an equivalent amount of time off from scheduled work on their preceding or succeeding shift for such appearance. The employees shall notify the Employer immediately upon receiving a subpoena.

**Employer's Proposal** – The Employer proposes to compensate an employee who has been subpoenaed at his regular rate of pay when testifying on behalf of the Employer. The proposal also addresses payment for jury duty during an individual's norm work hours; requires reporting to work if released from jury duty; and requires a remittance of any monies received from the court to the Employer within 7 work days following receipt of such money.

**Recommendation** – The Union's and the Employer's proposals are very similar. The Union's proposal makes it clearer that employees will be compensated for all court,

**Recommendation** – The Union’s and the Employer’s proposals are very similar. The Union’s proposal makes it clearer that employees will be compensated for all court, commission, board, etc. appearances for work related business. The Employer’s proposal is vague and appears not to compensate employees for actions in which the Employer is not the plaintiff. Therefore, the Union’s proposal is recommended in this respect.

As to the Union’s proposal for second and third shift employees, it is recommended that these employees be permitted an equivalent time off from their scheduled work on the preceding or succeeding shift for any court, commission or board appearance for MCJAS work related proceedings. For non-work related court proceedings, employees can use vacation or compensatory leave.

**Recommended Contract Language**

**WITNESS DUTY AND JURY DUTY**

**Section 1.** Employees subpoenaed to appear before any court, commission, board, or other legally constituted body authorized by law to compel the attendance of witnesses shall be granted leave with pay at the applicable rate for action(s) that are MCJAS work related. Second or third shift employees, who are subpoenaed to appear during the day, shall be permitted an equivalent amount of time off from scheduled work on their preceding or succeeding shift for such appearance. The employee shall notify the Agency designee immediately upon receiving a subpoena.

Employees subpoenaed to testify for personal or non-work related incidents, and who receive compensation for their testimony from other sources, shall not be eligible for paid leave as provided in this article, but may elect to use available vacation and/or, if applicable, compensatory time. Employees using such accrued leave shall not be required to remit any fees received. Employees shall provide prior notification to their immediate supervisor as soon as they are notified of such subpoena.

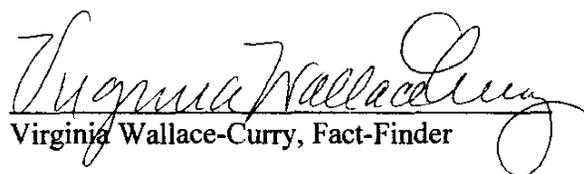
**Section 2. Jury Duty.** Leave with pay at the regular rate shall be granted for service upon a jury for time spent during an employee's work shift. When not impaneled for actual service and only on call, the employee shall report to work at this regularly scheduled time after notification that his/her services will not be needed. In cases where an employee is excused from jury duty, he/she shall report to work provided there is at least four (4) hours remaining on his/her shift. Employees shall provide written verification from the court specifying time/dates of attendance.

Any monies received from the court(s) must be forwarded to MCJAS Business Department within seven (7) work days following receipt.

**TENTATIVE AGREEMENTS**

All tentative agreements reached by the parties during the course of negotiations are recommended and incorporated into this report.

Submitted by:

  
Virginia Wallace-Curry, Fact-Finder

January 30, 2009  
Cuyahoga County, OH

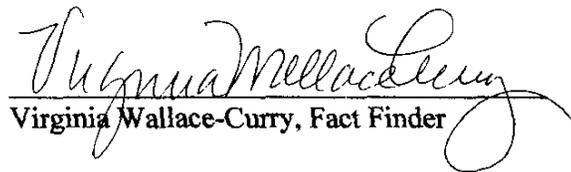
**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the Fact-Finding Report for the Multi-County Juvenile Attention System and AFSCME, Ohio Council 8, Local 3987 was sent to the parties by overnight mail and to the State Employment Relations Board by regular U.S. mail on this day, January 30, 2009. The Fact-Finding Report was served upon:

Mr. Louis Maholic  
Staff Representative  
AFSCME, Ohio Council 8  
1145 Massillon Rd.  
Akron, OH 44306

Michael L. Seyer, Esq.  
Clemans Nelson & Associates, Inc.  
2351 South Arlington Rd., Suite A  
Akron, OH 44319-4949

Mr. Edward E. Turner  
Administrator, Bureau of Mediation  
State Employment Relations Board  
65 East State Street  
Columbus, Ohio 43215-4213

  
Virginia Wallace-Curry, Fact Finder

**Virginia Wallace-Curry**

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STATE EMPLOYMENT  
RELATIONS BOARD

2009 FEB -2 P 2: 18

Arbitrator  
Mediator

Fax (440) 248-3252  
vwcurry@att.net

January 30, 2009

Mr. Louis Maholic  
Staff Representative  
AFSCME, Ohio Council 8  
1145 Massillon Rd.  
Akron, OH 44306

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Re: AFSCME, Ohio Council 8, Local 3987 and MCJAS  
SERB Case No. 2008-MED-03-0364; 2008-MED-03-0365

Gentlemen:

Enclosed is a copy of my Fact-Finding Award in the above captioned matter, along with the statement for my services and expenses rendered as Fact-Finder.

I enjoyed working with you and hope I will have the opportunity to do so again in the future.

*I will email  
the bill - vwc*

Sincerely,

  
Virginia Wallace-Curry

cc: Edward E. Turner, SERB