

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
FACT FINDER'S REPORT**

<b>In the matter of Fact Finding</b>	)	<b>SERB No. 09-MED-01-0015</b>
	)	
<b>-between-</b>	)	
	)	
<b>Seneca East Local School District</b>	)	
	)	
<b>The Employer</b>	)	<b>Daniel L. Merritt, Esq.</b>
	)	<b>Fact Finder</b>
<b>-and-</b>	)	
	)	
<b>O.A.P.S.E., A.F.S.C.M.E. Local 14</b>	)	
	)	
<b>And Local #0042</b>	)	
	)	
<b>The Union</b>	)	<b>14 September 2010</b>
_____)		

**BACKGROUND**

The Seneca East Local School District (herein called the “Board” or “Employer”) and the Ohio Association of Public School Employees/The American Federation of State, County and Municipal Employees Local 4 and its Local #0042 (herein called the “Union”) are the parties involved in the current labor dispute.

The bargaining unit consists of approximately 37 employees in the following positions: para-educators, maintenance workers, food service employees, secretarial staff, transportation workers and accountant clerks.

The contract being negotiated is the first contract between the Employer and Union. The parties met a number of times to resolve their bargaining issue differences but were unable to reach agreement on five issues. On 12 July 2010 the State Employment Relations Board

appointed Daniel L. Merritt, Esq. as the impartial Fact Finder in compliance with Ohio Revised Code Section 4117.14 (c)(3).

A fact finding hearing was scheduled and held on Thursday 26 August 2010. The parties reached a Tentative Agreement (TA) on a number of issues before the fact finding hearing. These TA's are to be incorporated into the final agreement.

The following issues remain to be resolved: New Article, Fair Share Fee, New Article, Payroll Deductions, New Article, CDL License and BC, Check, New Article, Payment in Lieu of Medical Insurance, and New Article, Wages.

The Fact Finder in making recommendations shall take into consideration all reliable information relevant to the issues including, but not limited to:

- (1) Past collective bargained 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, and the ability of the public employer to finance and administer the issues proposed and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) The stipulation of the parties;
- (6) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

**APPEARANCES**

For the Employer

Kenneth S. Stumphauzer Esq.

Board Attorney  
Stumphauzer, O Toole, McLaughlin,  
McGlanery & Loughman Co. LPA

Ashleigh B. Elcesser Esq.

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Michael Wank

Superintendent  
Seneca East Local School District

For the Union

Butch Wick

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Jean Schauts

Local 0042  
Negotiation Committee

Jackye Puffing

Local 0042  
Negotiation Committee

Jay Mason

Local 0042  
Negotiation Committee

## **ISSUES AND CONSIDERATIONS**

### **NEW ARTICLE**

### **FAIR SHARE FEE**

#### **Union Position**

The Union proposed that all members of the bargaining unit who are not “members in good standing of the Union shall pay a fair share fee.”

#### **Employer Position**

The Board noted that the Union was not created by election ballots cast by the bargaining unit members. The Board does not want to force unit members, who chose not to belong to the Union, to pay a fair share fee.

The Board cited Child Support Enforcement Agency and Communication Workers of America Local 4319 No. 02-MED-07-0644 (D. Merritt) p4 (Feb 4, 2003) to support their opposition to a fair share fee provision. In essence the Board noted that the “fair share fee” was a permissive subject not a mandatory subject of bargaining. The Fact Finder had no authority to force this provision upon the parties.

#### **Discussion**

The Fact Finder noted that this is a first Collective Bargaining Agreement for the parties. The Board also noted that for about two decades the Board resisted the inclusion of a fair share provision in their contract with the teachers union.

No evidence was presented to establish that the parties engaged in negotiations about this issue. The Fact Finder has maintained the position that the fair share provision is a permissive subject of negotiations. The Board has consistently refused to entertain such negotiations.

Therefore, the Fact Finder does not support the imposition of a fair share provision upon the Employer.

#### Recommendation

The Fact Finder recommends that the New Article: Fair Share Fee not be included in the Collective Bargaining Agreement between the parties.

#### NEW ARTICLE

#### PAYROLL DEDUCTION

#### Union Position

The Union proposed that payroll deduction for local dues be made in late September. Association dues would be deducted twice a month beginning in October and ending in May. The Union also included a PEOPLE Deduction provision.

#### Employer Position

The Board proposed that local and Association dues would be deducted at the first full pay period of each month. The Board included several Sections that control and restrict deductions. Finally, two Sections were included to protect the Board from liability.

#### Discussion

The proposals submitted by the parties are similar with the exception of the liability protection systems. The Fact Finder shall recommend language from both parties.

#### Recommendation

The Fact Finder recommends that the following language be incorporated into the contract as a new Article.

New Article

PAYROLL DEDUCTION

The Board provides payroll deductions for the following:

Section 1.

- a. All deductions required by Federal, State, and Local laws.
- b. Deductions when requested will be provided if adequate technology exists for these deductions.

As technology becomes available the Board reserves the right to use this technology to make and transmit all deductions.

Section 2

The Board agrees to a one-time a year deduction of the local dues to be deducted in the last pay in September.

Authorization for deductions of dues for the Association shall be filed by October 15 and the deductions shall be sixteen (16) equal installments (October, November, December, January, February, March, April, May) and sent to the state office.

Section 3

The employer agrees to deduct from the wages of any employee who is a member of the union a PEOPLE deduction as provided for in a written authorization. Such authorization must be executed by the employee and may be revoked by the employee at any time by giving written notice to both the employer and union. The employer agrees to remit any deductions made pursuant to this provision promptly to the union together with an itemized statement showing the name of each employee from whose pay such deductions have been made and the amount deducted during the period covered by the remittance.

#### Section 4

It is agreed that neither the employees not OPASE/AFSCME shall have any claim against the Board for errors in the processing of deductions unless a claim of error is made to the Board, in writing, within 90 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.

#### Section 5

It is specifically agreed that the Board assumes no obligation, financial or otherwise, arising out of its compliance with the provisions of this Article, and OPASE/AFSMCE shall indemnify, defend, and hold harmless, the Board, its officers, officials, agents and employees harmless against any claim, demand, suit or liability (monetary or otherwise) and for all legal costs arising from any action taken or not taken by the Board, its officers, officials, agents or employees in complying with this Article. Once the funds are remitted to OPASE/AFSCME, their disposition thereafter shall be the sole and exclusive obligation and responsibility of OPASE/AFSCME.

#### New Article

#### CDL LICENSE AND BC II CHECK

##### Union Position

The Union proposed that the Board pay for expenses incurred by employees who must secure a CDL license and undergo a BC II check and be fingerprinted.

##### Employer Position

The Board rejected the Union proposal and currently does not reimburse any employees for such expenses. The Board wants to maintain consistency among employees and does not support such reimbursement.

## Discussion

Major carriers such as Fed Ex required applicants to secure their own CDL before they were hired. The applicants paid their own expenses related to CDL. Most schools do not pay for CDL nor the BC II check and Fingerprinting.

## Recommendation

The Fact Finder does not recommend inclusion of their proposed New Article CDL License and BC II check into the new contract.

## New Article

### WAGES

## Union Position

The Union supports a three year contract with a first year contract wage of \$0.45 which makes up for the lack of any wage increase in 2008. Other employees received a one percent (1%) wage increase.

A second and third contract wage increase would be \$0.30 per year.

## Employer Position

The Board proposed an increase of \$0.30 the first year and an additional \$0.20 for para-professionals. The Board also proposed a second year contract increase of \$0.30 and third year increase of \$0.30.

## Discussion

The wage proposals for the second and third year of the contract are the same for both parties. The Board's wage proposal for the first year would be \$.50 for para-professionals and \$.30 for the other members of the unit.

The Union proposal of \$.45 would cover all members of the unit who received no increase in 2008. This reasonable increase supports the consistency among all members of the unit.

Recommendation

The Fact Finder recommends the inclusion of the following:

New Article

WAGES

First Contract Year:	\$0.45
Second Contract Year:	\$0.30
Third Contract Year:	\$0.30

New Article

PAYMENT IN LIEU OF MEDICAL INSURANCE

Union Position

The Union proposed that each eligible employee who declines Board medical insurance would receive \$1,200.00 for every complete year the employee opts out of coverage. The employee would receive the payment on the 26<sup>th</sup> pay of the insurance contract.

Employer Position

The Board proposed that each eligible employee who declines Board offered medical insurance would receive \$1,200.00 for every complete year in which the employee opts out. The employee would receive the payment on the 26<sup>th</sup> pay of the insurance contract. The Board also included a prorated payment stipulation for new employees.

Discussion

The difference between the two proposals is the inclusion of the prorated stipulation for new employees. This is a sensible addition to the provision and will be recommended.

Recommendation

The Fact Finder recommends that the following language be incorporated into the new contract.

New Article

PAYMENT IN LIEU OF MEDICAL INSURANCE

An employee eligible for medical insurance, through the Board, may decline medical insurance and in lieu thereof shall be paid a lump sum of \$1,200 for each complete year in which the employee opts out of the Board's insurance coverage. The employee shall receive said payment on the 26<sup>th</sup> pay of the insurance contract. New employees opting out of the Board's medical insurance shall have the payment prorated from the date of employment during the year they opt out.

Respectfully Submitted,

14 September 2010  
Sylvania, Ohio

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Daniel L. Merritt, Esq.  
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Fact Finder's Report in the Matter of Fact Finding between Seneca East Local School District and O.A.P.S.E/A.F.S.C.M.E Local 4 and Local #0042 has been sent via electronic mail to the following parties on 14<sup>th</sup> day of September 2010:

1. Mr. Butch Wick at [sandradoapse@toast.net](mailto:sandradoapse@toast.net)
2. Mr. Kenneth Stumphauzer at [kstumphauzer@sheffieldlaw.com](mailto:kstumphauzer@sheffieldlaw.com)
3. Mr. J. Russell Keith at [RussellKeith@serb.state.oh.us](mailto:RussellKeith@serb.state.oh.us)

Respectfully submitted,

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Daniel L. Merritt, Esq.  
Fact Finder

