

FACT-FINDING REPORT

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

March 13, 2010

In the Matter of:

Cuyahoga County Board of County)	
Commissioners, Dept. of Employment)	
and Family Services, Investigations Unit)	.
)	Case No. 09-MED-04-0489
and)	
)	
Teamsters Union, Local No. 407)	

APPEARANCES

For the County:

Ed Morales, Labor Relations Administrator
Rodney Harris, Labor Relations Specialist
Matt Rubino, Interim Director, Office of Budget & Management
Lester Lagatta, Chief Investigation Manager

For the Union:

Susan Jansen, Attorney
Dennis Roberts, Business Agent
Danielle A. Thomas, Steward

Fact Finder:

Nels E. Nelson

BACKGROUND

The instant dispute involves the Investigations Unit in the Department of Employment and Family Services in Cuyahoga County and Teamsters Union, Local No. 407. The Investigations Unit investigates complaints, the financial and insurance resources of clients, service provider claims, and possible criminal activity. The union represents approximately 22 Investigators and four Investigator Assistants who work in the unit.

The parties have been engaged in negotiations for a collective bargaining agreement to replace the one that expired on June 30, 2009. They reached tentative agreements on many issues but when they were unable to reach an overall agreement, the fact-finding process was invoked. The Fact Finder was informed of his selection on January 22, 2010, and the fact-finding hearing took place on February 19, 2010.

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

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues

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

ABILITY TO PAY

The ability to pay is one of the statutory criteria governing a Fact Finder's recommendations. This criterion is particularly important because it is a relevant consideration for all of the parties' economic demands. Assessing an employer's ability to pay is complicated by the fact that the employer and the union frequently disagree regarding the employer's financial circumstances as well as the economic outlook. The instant case is no exception to the usual situation.

County Position - The county argues that it is facing a severe fiscal crisis. It indicates that in 2010, the revenue for the total general fund, which includes the general fund and the health and human services fund, has declined substantially and is projected to continue to shrink in 2010. The county reports that inflation-adjusted revenue exhibits a significant downward trend from 2002 through 2010. It notes that its 2010 budget figures include five furlough days in the first half of 2010 and assume modest 2% increases in expenditures for commodities and contractual services.

The county contends that reports prepared by George Zeller, an economic research analyst, reveal the problems facing the county. It points out that his February 2010 report shows that sales tax collections have declined from 1991 to 2010 and that the current level of collections is down by 8.5% from one year earlier. The county notes that in another report, Zeller revealed that job and earning losses, which had been concentrated in the City of Cleveland, have spread to the suburbs. It claims that his reports show that the region never recovered from the 2001-2002 recession.

Union Position - The union offers a somewhat different perspective on the county's financial status. It observes that revenue is projected to decline less in 2010 than in 2009. The union reports that in 2010 the county is projecting a \$500,000 operating surplus in the total general fund.

The union suggests that the county did not consider the role of the Investigation Unit. It indicates that the bargaining unit generates revenue for the county. The union complains that the county failed to consider whether employees in the unit generate more revenue than they are paid.

ISSUES

The parties submitted 11 issues to the Fact Finder. For each issue, the Fact Finder will set forth the positions of the parties and summarize the arguments and evidence presented by them in support of their positions. He will then offer his analysis for each issue, followed by his recommendation.

1) Article 2 - Management Rights, Section 2 - Subcontracting - The current contract requires the county to give the union two weeks notice prior to subcontracting or transferring bargaining unit work so that the parties can negotiate over the effects on the bargaining unit. The union proposes to replace this provision with one that bans subcontracting or any other removal of bargaining unit work. The county opposes the union's demand.

Union Position - The union argues that its demand should be adopted. It indicates that work preservation is particularly important in an era when employers are trying to cut costs. The union claims that in Teamsters Local 407 and Cuyahoga County

Department of Employment and Family Services; Grievance Nos. 1043, 1052, and 1060; March 16, 2009, where it charged that an increasing amount of internal investigation work was being performed by non-bargaining unit employees, Arbitrator Robert Stein advised it to address the issue in negotiations.

County Position - The county vigorously opposes the union's demand. It contends that in a time of financial crisis, it might need to subcontract work in order to cut costs but notes that it has not eroded the bargaining unit through contracting out and has no plans to do so. The county asserts that "the Union's proposal is particularly inappropriate in light of the fact that the citizens of Cuyahoga County voted to restructure county government and the transition committees are currently studying ways to promote efficiency in the delivery of government services." (County Pre-Hearing Statement, page 4)

Analysis - The Fact Finder cannot recommend the union's demand. There is no indication that the restrictive language which it seeks is found in any other county contract. Furthermore, the nature of the work and the record belies any suggestion that the county is contemplating taking work away from bargaining unit members. This conclusion is supported by the decision of Arbitrator Stein who found that there was "insufficient evidence that the Employer is using non-bargaining unit personnel for the purposed of eroding the bargaining unit." (Stein, page 5)

Recommendation - The Fact Finder recommends that the current contract language be retained.

2) Article 2 - Management Rights, Section 3 - Obligation to Bargain - The current contract states that the county is not required to bargain "on subjects reserved

to the management and direction of this governmental unit.” The county seeks to modify the existing language to state that it is not required to bargain “on subjects not covered by the terms of this Agreement.” The union opposes the county’s demand.

County Position - The county contends that its demand should be accepted. It states that its proposal removes an inconsistency in the contract because the existing language implies that it must bargain over issues that are reserved rights in Section 1. The county adds that the language it seeks is consistent with the management rights clauses in its other contracts.

Union Position - The union opposes the county’s proposal. It claims that the current language guarantees it the right to negotiate over matters that affect wages, hours, and the terms and conditions of employment. The union acknowledges that these rights are guaranteed under Section 4117.08 of the Ohio Revised Code but indicates the current contract provision gives it the right to file a grievance to enforce its rights rather than filing an unfair labor practice. It indicates that there have been very few, if any, arbitrations involving the language at issue.

Analysis - The Fact Finder believes that the present contract language ought to be retained. The county offered no evidence of any problems with the current language. The Fact Finder believes that any change in the current provision should be left to the parties.

Recommendation - The Fact Finder recommends the current contract language be retained.

3) Article 24 - Job Vacancies, Section 2 - Filling Vacancies - The current contract requires the county to award jobs based on “skill, experience, education,

attendance, work and disciplinary record, past performance, and seniority” and where the qualifications are “substantially equal,” to the senior applicant. The union seeks to require the county to award jobs to the most senior bidder. The county rejects the union’s demand.

Union Position - The union argues that its demand is justified. It claims that “the present language tends itself to too much subjectivity” and that its proposal “will eliminate favoritism and ensure the most senior qualified employee is selected to fill the vacancy.” (Union Pre-Hearing Statement, page 5)

County Position - The county rejects the union’s demand. It observes that the Investigator position, which is the only promotional opportunity in the bargaining unit, requires the consideration of more than seniority. The county adds that the language sought by the union is inconsistent with the language of all of its other contracts.

Analysis - The Fact Finder cannot recommend the union’s demand for strict seniority in promotions. Such arrangements are not often seen in either private or public sector contracts. In the instant case, the nature of an Investigator’s job makes reliance on strict seniority inappropriate. If the union wishes to make more modest changes in the current language, it can address its desired changes in the next round of bargaining.

Recommendation - The Fact Finder recommends the current contract language be retained.

4) Article 31 - Wages, Section 1 - Wage Schedule - The current contract includes a six-step wage schedule for Investigators with rates ranging from \$15.90 per hour to \$20.50 per hour and a four-step schedule for Investigator Assistants, which ranges from \$12.11 per hour to \$15.73 per hour. The union demands a \$1,000 signing

bonus effective July 1, 2009, and 3% wage increases effective July 1 of 2010 and 2011. In addition, it seeks a classification upgrade for the Investigator Assistants. The county proposes a wage freeze for 2009 and 2010 with a re-opener for wages for 2011.

Union Position - The union argues that the Fact Finder should recommend its wage offer. It points out that the current wage scale is the result of a fact-finding report where Fact Finder Robert Stein recommended adding two steps to the wage schedule for the Investigators. The union notes that he also recommended that the wage scale for Investigators and Investigator Assistants be increased by 2% on July 1, 2006; 2.5% effective July 1, 2007; and 2% effective July 1, 2008.

The union contends that its demand for wage increases is supported by external comparisons. It acknowledges that the increase that the Investigators received in the last contract boosted their earnings. The union notes, however, that in 2010, the average increase for the four largest departments of job and family services is 2% compared to the county's demand for a wage freeze.

The union maintains that the Investigator Assistants are entitled to a classification upgrade. It points out that in a re-opener for wages to be effective July 1, 2005, the parties agreed to a 2% wage increase and executed a side letter calling for a consultant to consider a wage adjustment for Investigators and Investigator Assistants. The county notes that the consultant recommended adding two steps to the Investigator's schedule, resulting in a 7.3% increase in the maximum wage but recommended no adjustment for the Investigator Assistants. The union charges that "the Consultant's Report was flawed and that the survey performed for the Senior Clerk/Investigator Assistant position did not

fully take into consideration all the various tasks performed by the employees in Cuyahoga County.” (Union Pre-Hearing Statement, page 7)

The union argues that a comparison to wages in other counties demonstrates that the Investigator Assistants are entitled to a wage adjustment. It acknowledges that there are no identical classifications in the other counties but indicates that job titles can be identified which involve similar job duties. The union claims that a comparison to these jobs show that the Investigator Assistants are underpaid.

The union contends that a comparison to AFSCME Local 1746 supports its wage demand. It points out that employees in that bargaining unit received a \$700 bonus in 2008 and 2% wage increases effective July 1 of 2009 and 2010.

County Position - The county argues that its proposal should be adopted. It asserts that with expenditures rising and revenue flat or declining, “a conservative, fiscally prudent approach” to wage increases is necessary. The county observes that budgets cuts were made in 2008, 2009, and 2010 and an early retirement incentive plan was implemented.

The county contends that its position is supported by the increases received by other bargaining units. It points out that in 2008 many bargaining units received no wage increases while this bargaining unit got a 2% increase and Investigators received an additional 3.5% step increase. The county notes that in 2009 no bargaining unit received a wage increase except where a continuing contract called for one. It reports that in 2010, there are a number of wage re-openers and that some have already been settled for a wage freeze.

The county maintains that the AFSCME Local 1746 bargaining unit is the most relevant comparison. It acknowledges that Local 1746 received scheduled 2% wage increases in 2009 and 2010. The county indicates that Ed Morales, its Labor Relations Administrator, met with the union seeking a wage freeze and the implementation of cost saving days. It stresses that when the members of Local 1746 voted down the wage freeze and the cost savings days, it laid off employees to generate the cost savings it was demanding.

The county argues that members of the bargaining unit have received significant wage increases in the past. It points out that in 2003 the wages for Investigators ranged from \$14.20 per hour to \$16.39 per hour and Investigator Assistants received from \$10.82 per hour to \$14.04 per hour. The county notes that by 2008 the rates for Investigators were \$15.90 per hour to \$20.50 per hour and \$12.11 per hour to \$15.73 per hour for Investigator Assistants. It stresses that ten of 16 Investigators received a 37% increase from 2006 to 2008.

The county contends that Local 1746 is the appropriate internal comparison for the Investigator Assistants. It claims that pay ranges 6 and 7 include jobs that are similar to the Investigator Assistants. The county reports that the maximum for pay range 6 as of July 1, 2010, will be \$14.90 per hour and the maximum for pay range 7 will be \$15.61 per hour compared to the \$15.73 per hour maximum for the Investigator Assistants. It claims that the union's proposal would have the Investigators paid like pay range 9, which includes jobs such as Contract Evaluator/Negotiator, LPN, and Statistician 1.

Analysis - The Fact Finder must reject the union's demand for an overall wage increase. First, it is undeniable that the county faces significant budgetary difficulties.

While the rate at which revenues are falling may have decreased, revenues are projected to continue to fall and it may be some time before they begin to rise. The wage increases sought by the union are not compatible with the county's financial situation and its outlook for the immediate future.

Second, the Fact Finder believes that the pattern the county has established in bargaining with other units is entitled to significant weight. He can find no reason why this bargaining unit should receive increases that other units have not been able to negotiate. This is especially the case where the majority of the bargaining unit has received large wage increases in the last few years.

The Fact Finder must also reject the union's demand for an upward adjustment in the wage classification for the Investigator Assistants. First, as indicated above, the county faces a difficult economic situation. Periods such as the current circumstances are not an appropriate time to address wage inequities. Second, while the union questions the consultant's recommendation that the wage scale for the Investigator Assistants should not be increased, there is no reason to believe that it was not done in good faith, given the recommendation that the Investigator wage scale should be significantly increased. Finally, the wage scales for equivalent job classifications in the Local 1746 bargaining unit, suggest that the Investigator Assistants are not underpaid.

Recommendation - The Fact Finder recommends the following contract language:

Effective July 1, 2009 the pay range is as follows:

<u>Classifications</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>
Investigator	15.90	17.21	18.16	19.12	19.80	20.50
Investigator Assistant	12.11	14.16	14.94	15.73		

There shall be zero (0) increase to the pay schedule for the first two (2) years of this agreement. There shall be no step increases in calendar year 2010. Wage rates for the third year of the agreement and 2011 step increases shall be determined through wage re-opener negotiations.

5) Article 31 - Wages, Sections 2 - Step Advancement - The current contract provides for employees to advance one step on the wage schedule each year on the anniversary of the date of hire until they reach the maximum for their classification. The county seeks to tie step advancement to the date an employee was appointed to a classification and to freeze employees on their current step until the parties agree to resume step movement. The union opposes the county's demand.

County Position - The county argues that employees should be frozen on their current wage step. It indicates that most of its contracts do not have steps and that the bargaining units with steps have agreed to its proposal to freeze steps. The county acknowledges that AFSCME Local 1746 refused to accept the freeze but emphasizes that the result was the layoff of employees in the bargaining unit.

Union Position - The union opposes the county's demand.

Analysis - The Fact Finder must recommend part of the county's proposal. He believes that employees must be frozen on their current wage step and resumption of step movement should be left to the wage re-opener for wages to be effective July 1, 2011. This conclusion is based on the budgetary challenges facing the county and the fact that nearly all of its other bargaining units have accepted the freeze.

The Fact Finder rejects the county's proposal to tie step advancement to an employee's date of appointment to a classification rather than his or her date of hire. Since he has recommended that step movement be included in the re-opener for wages to

be effective July 1, 2011, the parties can address changing the step advancement process at that time.

Recommendation - The Fact Finder recommends the following contract language:

New employees shall be employed at Step 1 of the wage schedule for their classification and remain at this step for one year from the date of hire. Contingent on agreement between the parties to resume step movement in a future year, their rates shall be adjusted effective on the first date of the pay period in which their twelve (12) month anniversary falls and so on at annual intervals until the maximum rate of pay is reached for their classification.

6) Article 31 - Wages, Section 3 - Promotion - The current contract provides that an employee who is promoted shall be placed at the nearest step which reflects at least a 5% wage increase, provided the wage is not more than the “scale rate for the position.” The county proposes to alter the language by stating the new wage cannot exceed the “maximum for the position.”

Analysis - The union indicated that it was not opposed to the county’s proposal.

Recommendation - The Fact Finder recommends the following contract language:

Cuyahoga County employees who are promoted to a position in the bargaining unit shall be placed at the nearest step which reflects at least a five percent (5%) promotional increase in wages. However, in no case will the employee’s wage rate be set higher than the maximum rate for the position. If a promoted employee’s wage rate is not increased at least five percent (5%), the employee shall receive a one-time lump sum payment equal to the difference between the employee’s former annual salary multiplied by 1.05 and the employee’s new annual salary. If the promoted employee’s prior wage rate is equal to or higher than the maximum rate for the new position, the employee’s wage rate shall remain the same and the employee shall receive a one time lump sum payment of five percent (5%) of the employee’s base salary. Promoted employees shall be eligible for lump sum payments pursuant to this section only upon successful completion of their probationary periods.

7) Article 31 - Wages, Sections 4 - Demotion - The current contract provides that employees who are demoted are to be placed at the wage on the scale for the position based on their experience in the lower classification. Employees with little or no experience in the lower classification are to be reduced in pay at least 5% in accordance with county policy. If an employee's wage is higher than the scale rate, in successive years, the employee shall not be increased over the scale rate and the employee shall receive a lump sum payment equal to the difference up to the increase that all other employees receive for that year. The county proposes to place a demoted employee at a step that reflects at least a 5% reduction or the maximum of the pay range, whichever is a greater reduction. The union seeks to maintain the current contract language.

County Position - The county offered no rationale for its proposal.

Union Position - The union provided no discussion regarding its opposition to the proposal.

Analysis - The Fact Finder cannot recommend the county's proposal. Nothing in the record suggests that the wage following a demotion has been an issue in the bargaining unit. Without more information, the Fact Finder is uncomfortable recommending a change in the current agreement.

Recommendation - The Fact Finder recommends that the current contract language be retained.

8) Article 32 - Health Insurance - The current contract requires the county to pay 95% of the premium for medical and prescription drug insurance, subject to bi-

weekly caps of \$20 for single coverage and \$35 for family coverage, and to pay 95% of the premiums for vision and dental insurance. The contract also offers a bi-weekly opt-out payment of \$35.

The county seeks a number of changes in the health insurance article. First, it proposes that it pay 92.5% of the premiums for single and family medical and prescription drug coverage for the high cost provider and the same percentage for the other providers with no caps under the high cost plan but with bi-weekly caps of \$30 and \$45 effective one month after the contract is effective and \$35 and \$50 effective January 1, 2011, for the other plans with the stipulation that there will be one single and one family plan with no employee contribution. The county proposes that the terms to be effective be set in bargaining with AFSCME Local 1746. Second, the county proposes to pay 92.5% of the cost of dental and vision insurance. Third, the county offers three opt-out payment options. An employee without dependents or an employee with an eligible spouse can opt for a bi-weekly payment of \$50 and an employee with eligible dependents can get a payment of \$100. Fourth, the county proposes that it be granted the discretion to implement or discontinue incentives for employees to participate in wellness programs. Fifth, the county seeks the authority to offer or discontinue incentives to encourage the use of low cost plans, including HSA plans. Sixth, it wishes to establish a waiting period of up to 120 calendar days before new employees are eligible for health insurance.

The union wishes to retain the current health insurance provision.

County Position - The county argues its proposal should be adopted. It points out that its offer is consistent with the provisions in its other collective bargaining

agreements. The county states that there is no reason that this bargaining unit should pay less than other units.

The county contends that its proposal represents an attempt to control healthcare costs. It indicates that uncapping the high cost plan while retaining caps on the other plans will encourage employees to move to the lower cost plans. The county emphasizes that it will continue to offer at least one single and one family plan with no employee contribution.

The county suggests that its proposal includes a number of enhancements. It points out that it calls for bi-weekly payments of up to \$100 for employees who opt out of health insurance coverage; allows for wellness programs; permits incentives for HSA plans or cash payment to enroll in MetroHealth plans; and adds to the contract a decades-old practice of allowing it to require employees to purchase health insurance during their 120 waiting period prior to enrollment in its health insurance plans.

Union Position - The union opposes the county's proposal. It states that the county's healthcare costs are not significantly higher than the five other large counties in Ohio (Unions Exhibit 1, Tab 2) or other public employers in the Cleveland area. (17th Annual Report on the cost of Health Insurance in Ohio's Public Sector) The union charges, however, that the county's proposal "requires its employees to bear a greater burden of health care expenses than do other employees in other comparably sized counties."¹ (Union Pre-Hearing Statement, page 10)

The union complains that the county's health insurance proposal, coupled with its wage demand and cost saving days, results in a significant decrease in earnings for

¹ The union's comments are based on the county's position prior to the fact-finding hearing, which required higher employee premium contributions.

employees. It reports that a wage freeze in addition to increased health insurance premium contributions would result in Investigators experiencing a 4.4% annual reduction and Investigator Assistants an 8.7% reduction. The union indicates that if the proposed ten cost savings days are included, Investigators will experience an 8.2% reduction and Investigators Assistants a 9.6% cut.

Analysis - The Fact Finder appreciates the concern of the union regarding the higher healthcare costs under the county's proposal. However, the other bargaining units in the county have agreed to what the county is seeking. It would be inappropriate for the Fact Finder to recommend that the employees in the Investigation Unit, which consists of approximately 26 employees, have a different health insurance program.

Recommendation - The Fact Finder recommends the following contract language:

Section 1. An eligible employee is defined as a full time employee covered by this Agreement. The Flex Count Plan (the plan) is defined as the section 125 or cafeteria plan, which is provided by the Employer for health insurance benefits for county employees. The Employer shall be responsible for enrolling all eligible employees in the plan once during each plan year at its annual open enrollment period. The plan year commences on January 1, and ends on December 31 of the calendar year, but is subject to change.

Section 2. Effective the first day of the first month following ratification of the Collective Bargaining Agreement by the parties, bi-weekly employee contributions for medical and prescription drug benefits shall be determined as follows:

a) Highest Cost Provider - Effective the first day of the first month following ratification of the Collective Bargaining Agreement by the parties, the Employer shall contribute ninety-two and one-half percent (92.5%) of plan costs and employees shall contribute seven and one-half percent (7.5%) for plans offered through the highest cost provider with no biweekly cap. Effective January 1, 2011, the Employer shall contribute ninety percent (90%) of plan costs and employees shall contribute ten percent (10%) for plans offered through the highest cost provider with no biweekly cap. Effective January 1, 2012, the terms

shall be set at those negotiated for that year between the Employer and the American Federation of State County and Municipal Employees, Ohio Council 8 Local 1746.

b) Other Providers - Effective the first day of the first month following ratification of the Collective Bargaining Agreement by the parties, the Employer shall contribute ninety-two and one-half percent (92.5%) of plan costs and employees shall contribute seven and one-half percent (7.5%) with biweekly caps of thirty dollars (\$30) for single coverage and forty-five dollars (\$45.00) for family coverage. Effective January 1, 2011, the Employer shall contribute ninety-two and one-half percent (92.5%) of plan costs and employees shall contribute seven and one-half percent (7.5%) with biweekly caps of thirty-five dollars (\$35.00) for single coverage and fifty dollars (\$50.00) for family coverage. However, the Employer shall offer at least one single and one family plan free of biweekly contributions to bargaining unit members for the duration of this Agreement. Selection of free plan(s) offered shall be at the discretion of the Employer and may be HMO or other plan types. Effective January 1, 2012, the terms shall be set at those negotiated for that plan year between the Employer and the American Federation of State County and Municipal Employees, Ohio Council 8 Local 1746.

Section 3. The costs of the medical and prescription drug plans will be determined through an actuarially certified process that is verified through an outside party and that includes reserves necessary to sustain the plans. In successive plan years, the Employer may add to or delete plans/providers offered. Replacement of the standard benefit plan shall not result in a reduction of benefit levels. However, employees may be offered additional plans with reduced benefit levels.

Section 4. Effective the first day of the first month following ratification of the Collective Bargaining Agreement by the parties, the Employer will contribute 92.5% of the costs for the ancillary benefit plans (i.e., vision and dental) and the employees will contribute 7.5% of the costs for the ancillary benefit plans.

Section 5. The Employer shall be entitled to increase the cost containment features of the Flex Count Plan.

Section 6. Eligible employees with alternative coverage may choose to opt out of health insurance coverage and select one of the opt-out options listed in sub-sections A, B or C below if acceptable documentation of alternative coverage is provided to the Employer. For each option, the decision to opt-out must be made during open enrollment and is irrevocable for the plan year unless the employee provides acceptable documentation of a qualifying event.

Employees who are participating in a BOCC plan through a spouse who is also a BOCC plan participant shall not be eligible for an opt-out payment.

An employee without eligible dependents may elect to opt out of health care coverage and receive a gross opt-out payment of fifty dollars (\$50) bi-weekly.

If an employee with an eligible spouse provides documentation acceptable to the Employer that the spouse has alternative coverage available, the employee may elect to opt out of coverage for the spouse and receive an opt-out credit of fifty dollars (\$50) which shall be applied to the employee's bi-weekly contributions for single or family coverage for remaining eligible dependents.

An employee with eligible dependents may elect to opt-out of coverage for the employee and all dependents and receive a gross opt-out payment of one hundred dollars (\$100) biweekly.

Section 7. The Employer may implement or discontinue incentives for employees to participate in Employer sponsored wellness programs.

Section 8. The Employer may offer incentives to encourage use of low cost providers/plans (including HSA plans) which may be discontinued or modified by the Employer in future plans years with notification to the Union.

Section 9. A waiting period of no more than 120 calendar days may be required before new employees are eligible to receive health and/or other insurance benefits. During the waiting period, the Employer may require employees who desire coverage to purchase it through a third party vendor instead of participating in the BOCC plans that are offered to regular full-time employees. New employees shall be eligible to participate in the BOCC plans on the first date of the first month following completion of the waiting period.

9) Article 33 - Mileage - The current contract requires the county to reimburse employees who are required to use their automobiles at the rate specified in the county's travel policy. The union proposes that employees be reimbursed at the IRS mileage rate and that they be paid \$100 per year toward the cost of automobile insurance. The county rejects both of the union's proposals.

Union Position - The union argues that its demand should be implemented. It indicates that employees are required to use their vehicles to serve subpoenas, investigate households, inquire at stores regarding the use of food stamps, and travel to court. The

union complains that the county rate is 44.5 cents per mile while the IRS rate is 50 cents per mile.

The union contends that its position is supported by the county's contract between the Department of Human Services and AFSCME Local 1746. It points out that Article 67 of that agreement establishes a mileage rate of 52.5 cents per mile and provides employees in three job classifications with \$100 per year toward the cost of automobile insurance.

County Position - The county rejects the union's demand due to the current financial crisis.

Analysis - The Fact Finder recommends the union's demand for the use of the IRS mileage rate. He believes that the IRS rate is a more appropriate way to reimburse employees who are required to use their vehicles for county business. It better reflects the cost of operating an automobile than the county's rate, which unfairly results in employees who are required to drive subsidizing the county. Furthermore, the IRS adjusts its rate as the cost of operating an automobile changes.

The Fact Finder cannot recommend the \$100 per year payment for insurance. The AFSCME contract restricts the payment to employees "who transport children or other clients in their own vehicles" while the testimony provided by the union does not suggest that bargaining unit members transport clients in their personal vehicles. In addition, the AFSCME agreement requires employees seeking reimbursement to provide a receipt showing the cost of "an appropriate automobile liability policy/rider" which presumably reflects the fact the employees transport clients or children as part of their job.

Recommendation - The Fact Finder recommends the following contract

language:

All employees required to use their automobile in the performance of their duties shall be reimbursed such actual mileage at the IRS rate.

10) Article 45 - Parking, Section 1 - Reimbursement - The current

contract requires the county to reimburse employees for parking at the office if they are not notified at least one day in advance that they will have to use their car for work. The union seeks to require the county to pay all employees \$5 per day for parking. The county wishes to continue the current arrangement.

Union Position - The union argues that its demand should be recommended. It states that all employees are required to drive. The union also cites AFSCME Local 1746's contract, which provides \$5 per day for parking.

County Position - The county opposes the union's demand based on the fiscal crisis.

Analysis - The Fact Finder believes that employees are entitled to be reimbursed for parking expenses resulting from a requirement to use their vehicles in performing their jobs. However, he must deny the union's proposal because it requires the county to pay for the parking for all employees even if they are not required to use their cars. This goes beyond what employees in the AFSCME Local 1746 unit receive and would amount to an increase in an employee's pay, which is inconsistent with the county's current fiscal situation.

Recommendation - The Fact Finder recommends the current contract language be retained.

11) New Article - Cost Savings Days - The current contract has no provision relating to cost savings days. The county demands all bargaining unit employees take up to ten unpaid cost saving days in 2010. It further seeks a re-opener to negotiate the number and terms of cost savings days, if any, in 2011. The union rejects the county's demand for cost saving days in 2010 and the re-opener for 2011.

County Position - The county argues that its proposal should be adopted. It states that it faces serious economic conditions. The county emphasizes that its proposal is consistent with the agreements reached with all of the other bargaining units, including the CSEA unit, which is also represented by Teamsters Local 407. It reports that the only exceptions are the AFSCME Local 1746 and the OPBA security officers' units where employees were laid off to achieve equivalent savings.

Union Position - The union rejects the county's demand. It points out that the Cost Savings Days result in a significant pay cut for employees and claims that it "is not warranted for this bargaining unit and under the County's economic circumstances."

(Union Pre-Hearing Statement, page 11)

Analysis - The Fact Finder recognizes the importance of the county's proposal for up to ten cost saving days in 2010 to both the county and the union. He understands that the county faces a very challenging financial situation where the future of the emerging economic recovery is not entirely clear. At the same time, the Fact Finder recognizes that ten unpaid days results in a significant loss of income for employees. In an attempt to balance the interests of both the county and the union and recognizing that other bargaining units have agreed to the cost savings days, the Fact Finder recommends that the county have the authority to impose up to five such days but that any additional

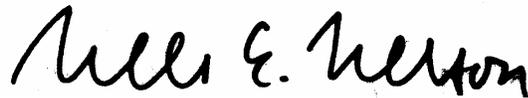
days should be subject to bargaining with the union. He believes that the principles included in the agreement between the county and SEIU District 1199 will protect the interests of the bargaining unit.

Recommendation - The Fact Finder recommends the following contract

language:

Section 1. During calendar year 2010, all bargaining unit employees shall be required to take up to five (5) unpaid cost savings days. In addition, the employer may implement up to five (5) additional cost savings days as long as it provides the union with a minimum of fourteen (14) calendar days notice prior to the day of the proposed implementation, including written rationale for the need for such days. The Union shall be afforded the opportunity to present cost saving options, including the alternative of layoffs in lieu of cost savings days. In case of an impasse, the Employer and the Union may invoke mediation as a mechanism to reach settlement. However, if the impasse remains following mediation, the employer retains the right to implement up to five additional (5) cost saving days for the remainder of 2010.

Section 2. For the calendar year 2011 through the end of the term of this Agreement, the parties shall engage in re-opener negotiations to determine the number and terms of cost savings days, if any, occurring during his period.



Nels E. Nelson
Fact Finder

March 13, 2010
Russell Township
Geauga County, Ohio