

**IN THE MATTER OF FACT FINDING**

**BETWEEN**

**WAYNE COUNTY BOARD OF DD**

**AND**

**THE ASSOCIATION OF PUBLIC SCHOOL EMPLOYEES/AMERICAN  
FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCAL  
4, AFL-CIO AND ITS LOCAL 072**

**SERB CASE # 2009-MED-08-0825**

**Robert G. Stein, Fact Finder**

**ADVOCATE FOR THE UNION:**

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**ADVOCATE FOR THE EMPLOYER:**

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## INTRODUCTION

The issues in dispute that were initially brought before the fact-finder involved **wages, health care benefits, employee assistance program and life insurance**. The bargaining unit is represented by the Ohio Association of Public School Employees, AFSCME, Local 4 and 072 (hereinafter referred to as "Union" or "OAPSE") and consists of approximately sixty-two (62) employees in such classifications as Bus Driver, Bus Aide, Bus Aide/Driver, Vehicle Operator 1 and 2. The employer in this matter is the Wayne County Board of Developmental Disabilities (hereinafter "Employer" or "DD Board"). There is currently no collective bargaining agreement between the parties.

Following several months of negotiations, the parties reached impasse in negotiations for an inaugural agreement and proceeded to fact-finding as outlined in O.R.C. 4117. Mediation/fact-finding sessions were held on April 30, May 4, and May 19, 2010. Initially, sixteen (16) issues were brought to mediation/fact-finding and as result of the professional efforts of the experienced advocates and their bargaining teams the undersigned fact-finder was successful in assisting the parties in resolving all but four (4) issues. During the fact-finding hearing held May 19, 2010, the Union agreed to the Employer's position with regard to wages resulting in the parties reaching tentative agreement on this issue. The parties then proceeded with the fact-finding hearing on the issues of health care benefits, employee assistance program, and life insurance. The demeanor and conduct of the advocates from both

bargaining teams exemplify the responsibility with which the parties view their roles.

## **CRITERIA**

### OHIO REVISED CODE

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

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

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

## **OVERALL RATIONALE FOR DETERMINATIONS (Recommendations)**

The economy in Ohio, and in particular north central Ohio, where the Employer is located, is still experiencing the effects of a national recession. While officially considered to have reached an end, the impact of the recession upon the County's and Ohio's revenue stream is clear. Unlike many other states, in Ohio there has historically been a lag time between a declared end to a recession and recovery from it. Yet, the current decline in revenue, caused by what many call the "Great Recession" is arguably far deeper and broader than those of the past, and it is severely testing even the most resilient of Ohio's public employers. Ohio's path and timetable to recovery remain, in the main, unclear. Job losses in Ohio particularly related to high paying skilled jobs, number in the tens of thousands and underscore the existing structural problems of unemployment in areas such as manufacturing and construction. Moreover, conventional wisdom indicates that many of the losses of high paying manufacturing jobs are permanent, requiring a recovery in Ohio to take a very different path than it has in the past. The stimulus funds, while controversial with many Americans, are a temporary fix that buys public employers a little time. Recently, news of added jobs to the economy indicates Ohio appears to be once again adding jobs in the state. However, the state of Ohio continues to struggle to find ways to fund the many obligations it shoulders such as Medicaid costs, education, job growth, and a myriad of other pressing economic

demands. Looming on the horizon is a projected state budget deficit for the next biennium that is currently estimated to be between 5 and 8 billion dollars. To their credit, public employee unions and employees have responded. State employees and many public employees in and outside of Ohio continue to make unprecedented financial sacrifices in the form of wage freezes, benefit givebacks, furlough days and layoffs. The story is no different in north central Ohio and in Wayne County, where many bargaining units through negotiations have already agreed to terms that reflect recognition of the current economic conditions. OAPSE took a statesman like approach in the instant matter and agreed to the Employer's wage proposal in spite of the fact that the Employer increased wages for administrators and non bargaining unit employees by two percent (2%) on January 1, 2010. In this proceeding, both parties presented testimony and arguments in support of their positions on the remaining issue in dispute.

<b>Issue:</b>	<b>Health Insurance</b>
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**Union Position:**

Union position is status quo on insurance; it proposes that the bargaining unit, in spite of their twenty (20) hour workweek, be permitted to retain their health benefit coverage. According to the Union employees in the transportation department of the Employer have been able to be covered by

health insurance and health related benefits for over thirty (30) years. Moreover, approximately eighty-five percent (85%) of its members are enrolled in the health insurance plan and related insurance benefits. These claims were not refuted by the Employer. The Union asserts that employees in the bargaining unit, many of which have several years of loyal service to the Employer, have had the benefit of health care coverage while they fulfilled their twenty (20) hours per week schedule, which the Union argues is simply the operational schedule that its members must conform to in order to provide needed transportation services to the consumers of the DD Board's services. Initially the Union sought to improve the dental benefit offered by the Employer, but at the hearing the Union modified its position on dental coverage to reflect the status quo. The Union strongly argues that many of its bargaining unit members have come to rely upon the Employer's health insurance plan to provide coverage for themselves and their families.

Witnesses Jane Burkholder, and Sandy Grassman provided compelling testimony that supported the Union's argument to have the bargaining unit maintain their health insurance coverage for themselves and their families. Ms. Grassman also stated that when she started working for the Employer over fifteen (15) years ago, she was eligible for health insurance even though she was working only fifteen (15) hours per week.

**Employer Position:**

The Employer asserts that several months ago it discovered that the bargaining unit, which works an average of twenty (20) hours per week, was receiving health care benefits, even though the County's health care plan currently requires that employees work a minimum of thirty-two (32) hours per week to qualify for such benefits. The Employer points out that there are six (6) other bargaining units in Wayne County and all are provided the same insurance under the same terms. Additionally, the Employer avers that there are other employees in the County who are under the County's insurance plan (e.g. Orville Library, townships, etc). The Employer asserts that if it lowered the thirty-two (32) hours per week requirement for health benefit eligibility to twenty (20) hours that change could cost the County between \$725,000 and 1.4 million dollars in additional health care costs. Employer witness, Patrick C. Herron, Wayne County Administrator, Wayne County Commissioners, who has been administering the health care plan for over fifteen (15) years, provided convincing testimony regarding the County's obligations and extraordinary efforts to manage health care costs, while providing effective and enhanced coverage, when possible, for its employees. Mr. Herron stated that the County became self-insured in the 1990s and that until recently relied upon the various employers in the County to report the status of its employees (i.e. full or part-time) as it related to eligibility for benefits. The Employer did not dispute the fact that for decades the bus drivers and aides in the bargaining unit were receiving

full time health care benefits, in addition to dental, vision, EAP, and life insurance, prior to the County becoming aware of the hours worked by these employees.

## **Discussion**

The health coverage and health related issues are obviously extremely important issues for both parties. Based upon the evidence, testimony, and the undersigned fact-finder's experience with disputes over several years with Wayne County, it is clear that in spite of the seemingly persistent increasing costs of this benefit Wayne County has done an admiral job of providing and improving health insurance coverage and other health related benefits to employees of the County. The testimony of Administrator Herron was very persuasive in this regard. And, there is little question that continual vigilance regarding the delicate balance between coverage and costs needs to be practiced to meet the continuing challenges in this area to include the mandated health care changes required by federal legislation that are anticipated in the future. At the same time, the Union's position, supported by the moving testimony of Union members, made clear the reliance that a vast majority of bargaining unit employees have had on health related benefits provided to them by the Employer, through the offices of County. The evidence indicates these employees have worked a schedule that meets the distinctive operational requirements of the Employer. They work a four (4) hour split shift,

transporting consumers from their homes to various locations in the AM followed by period of unpaid downtime, and then transporting consumers back home in the PM. These employees were considered full time for benefit purposes for decades and only recently it was discovered that because of their hours of work, dictated by the unique nature this work, they are no longer eligible for health care and other related benefits.

In cases where a benefit has existed for many years and employees have accepted employment and maintained employment with the long-standing promise of such continued benefits, and for reasons such as those present in the instant matter it is determined that said benefits must be altered or eliminated, it is reasonable and customary to phase in the new benefit requirements over time, doing the least amount of harm to dedicated employees. It is uncommon in a collective bargaining setting and in many non-union employment settings for employees to be suddenly ineligible to receive long standing benefits that they have consistently relied upon as part of their household budget. The most commonly used and least detrimental approach in collective bargaining and for that matter in many other arenas (e.g. Ohio's mandatory licensure of professionals where none existed prior to a specific date) is a prospective approach, which includes grandfathering of current employees. The Union is proposing that the level of benefits and contributions remain frozen for the life of the Agreement. In labor settings this proposed provision is inconsistent with convention in the public sector in Ohio.

## DETERMINATION

### ARTICLE 39 HEALTH CARE BENEFITS

Section 1. For the duration of the Agreement bargaining unit members hired prior to May 26, 2010 shall remain eligible for health care benefits. For bargaining unit members hired on or after May 26, 2010, health, dental, and vision insurance will be provided under the same terms and conditions as is provided by the Wayne County Board of Commissioners to other Wayne County employees for those members who are regularly scheduled to work a minimum of thirty-two (32) hours per week.

### ARTICLE 42 LIFE INSURANCE

Section 1. For the duration of the Agreement bargaining unit members hired prior to May 26, 2010 shall remain eligible for life insurance benefits. Bargaining unit members hired on or after May 26, 2010 and who are normally scheduled to work at least thirty-two (32) hours per week shall receive a \$20,000 life insurance policy from the Wayne County Board of Commissioners and a \$5,000 life insurance policy from the Board of Developmental Disabilities.

### ARTICLE 40 EMPLOYEE ASSISTANCE PROGRAM

Section 1. For the duration of the Agreement bargaining unit members hired prior to May 26, 2010 shall remain eligible for Employee Assistance Program benefits. Bargaining unit members hired on or after May 26, 2010 and who are normally scheduled to work at least thirty-two (32) hours per week shall continue to be eligible to participate in the Employee Assistance Program so long as it is offered by the Wayne County Board of Commissioners.

## TENTATIVE AGREEMENT

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 24<sup>th</sup> day of May 2010 in Portage County, Ohio.



Robert G. Stein, Fact-finder