

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of:	:	
	:	
The United Steel, Paper and Forestry Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 8845	:	09-MED-09-0866
	:	
and	:	FACT FINDING REPORT
	:	FINDINGS AND RECOMMENDATIONS
	:	
	:	December 28, 2009
	:	
Lorain County Board of Commissioners	:	
	:	

APPEARANCES

For the Union:

Chris Martinez, Staff Representative
Patrick Gallagher, Sub-District Director
Jeffrey Blackstone, President
Donald Kovacs, Vice President
Boyd Weber, Bargaining Committee

For the County Board of Commissioners:

Howard Heffelfinger, Attorney
Martin A. Bramlett, Attorney
James Cordes, County Administrator

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Fact Finder
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I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on November 18, 2009, pursuant to Ohio Revised Code Section 4117.14(C)(3). The parties mutually agreed to extend the fact-finding period as provided under Ohio Administrative Code Rule 4117-9-05(G). They also agreed to extend the Fact Finder's report deadline until December 29, 2009. The parties are the United Steel, Paper and Forestry, Rubber and Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 8845 (Union) and the Lorain County Board of Commissioners (Employer or County). Lorain County is located in north central Ohio, immediately west of Cuyahoga County and Cleveland, along Lake Erie. Founded in 1822 from parts of Cuyahoga, Medina, and Huron counties, it was named for the Lorraine region in France. Its population is approximately 300,000, making it the 9th largest county, in population, in Ohio. Elyria is the county seat, while Lorain is the largest city.

The bargaining unit consists of fifty-eight (58) employees, thirty-six (36) of whom are currently working. The unit is a mixed one, consisting of a deemed certified unit and a SERB certified unit. There are a number of various job classifications across several departments under the Lorain County Board of Commissioners. Custodial workers make up the largest group of employees in the unit. Most employees are full time, but some are part time.

The parties met several times to negotiate without much success. The Union desired to continue bargaining, but the County pushed for a hearing and the Fact Finder's report to be issue prior to the end of the year. The County's budget meeting took place on the same day as the fact finding hearing and the County wanted to know what its financial

obligations might be prior to the new year. The parties agreed to engage in mediation prior to the hearing with a little success. The parties were not able to reach agreement on many issues and the hearing was held so this Report could be issued prior to the end of the year.

II. THE HEARING

The fact-finding hearing was held on Thursday, December 17, 2009 at the County's Administration Building, 226 Middle Avenue, Elyria. Each party provided a pre-hearing statement. The hearing began at 10:00 a.m and adjourned at approximately 9:30 p.m. The Fact Finder attempted mediation of the issues without success, although some progress was made. The matter was then heard on the record. The parties introduced evidence and presented their positions regarding the issues at impasse. The parties jointly introduced the following exhibit into evidence:

1. Agreement between Local 8845 of the United Steel, Paper and Forestry, Rubber and Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) and the Lorain County Board of Commissioners effective upon execution through December 31, 2009.

Additionally, the parties introduced the following exhibits into evidence:

Union Exhibits

1. Seniority List.
2. Payroll sheets, 2007, for bargaining unit employees.
3. Payroll sheets, 2008, for bargaining unit employees.
4. Payroll sheets, 2009, for bargaining unit employees.
5. Agreement between the Lorain County Children's Services Board and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local #2192.
6. List of Lorain County Labor Agreements.

Employer Exhibits

1. Email from Lisa Hobart, Lorain County Budget Director, to Sandra Strohsack re General Fund Budget figures for 2007, 2008, and 2009.
2. December 17, 2009 article from The Morning Journal.
3. SERB 2008-9 17th Annual Report on the Cost of Health Insurance in Ohio's Public Sector.
4. Costing of Union's Wage Proposal.
5. ORC §124.393.
6. Total Estimated Savings of Employer's Proposals.

The issues remaining at impasse for the fact-finding included:

1. Union Representation.
2. Grievance Procedure.
3. Disciplinary Procedures.
4. Seniority.
5. Job Posting.
6. Layoff and Recall.
7. Hours of Work/Overtime.
8. Vacation.
9. Holidays.
10. Bereavement Leave.
11. Disability Leave.
12. Sick Leave/Personal Days/Sick Leave Donation.
13. Health Care Coverage
14. Wages.
15. Duration of Agreement.
16. Furlough Time.
17. Side Agreement, Uniforms.
18. Side Agreement, Uniforms Deputy Dog Warden.
19. Side Agreement, Work Boots.
20. Side Agreement, Uniform Discussions.
21. Side Agreement, One Time Payment.
22. Side Agreement, Wage Reopener.
23. Side Agreement, Maintenance Workers I and II.
24. Side Agreement, Bilingual Pay Supplement.
25. Side Agreement, Beeper Pay.
26. Side Agreement, Funeral Leave.
27. Side Agreement, Laborer Classification.

28. Side Agreement, Printing of Contract.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (1) Past collectively 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 interests 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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

III. ISSUES AND RECOMMENDATIONS

Introduction

Like many public employers in Ohio recently, Lorain County is experiencing financial difficulties. The Union does not dispute this. In the past several years, the County has seen revenues diminish and has had to take drastic action to cut costs, including layoffs. A number of years ago, the County recognized the need for a new justice center. It saved money over a period of approximately ten (10) years until it built up a reserve of approximately \$50 million. Once construction on the justice center began, the reserve was tapped and has been exhausted.

The County requires a carryover of approximately \$9 million to pay its bills for the first two (2) months of the year until revenues are collected. Given the reduction in revenues, the carryover has fallen in recent years. For example, at the end of 2006, the carryover was \$15 million. The 2007 carryover was \$13 million and the 2008 carryover \$9 million. Currently, the County is estimating a \$4 million deficit. As a result, the County has done what good government does, that is, cut costs. It has slashed non-essential services to the public and rationed those services deemed essential to the public. For instance, it has cut its subsidies to the County airport and transit system. However, those expenses are not as significant as labor costs, typically the greatest expense for any governmental unit.

The County also sought to increase revenues. In 2007, the County placed a sales tax levy on the ballot. It was defeated by a margin of about four (4) to one (1). In early 2009, the Commissioners declared a fiscal emergency and voted a sales tax increase. State law provides that the measure had to be voted upon by County residents. The

County and its workers campaigned tirelessly to educate the public that more money was needed to maintain staffing and services. Although by a closer margin, the increase was soundly defeated. The County sees the rejections as the voters telling it to do more with less.

At the end of 2008, the County cut every department by ten percent (10%). The various departments cut costs in different ways. Some chose to furlough employees while others chose to lay off. For example, the Prosecutor's Office furloughed employees eight (8) hours each week. Currently, this bargaining unit has twenty-two (22) of its fifty-eight (58) members on layoff. At the Commissioners' budget meeting held the same day as this fact finding, the Commissioners voted to cut another three percent (3%) from each department for 2010. Further personnel cuts, however, will greatly affect the County's ability to provide services. In short, the County is seeking relief so that it can avoid further layoffs or keep them to a minimum.

During negotiations, the Employer made proposals that would save money without directly reducing an employee's pay. It does not want to reduce employees' earnings necessary to pay a mortgage, feed a family, pay bills, etc. Rather, it has sought to increase productivity from employees. The Union understands the County's need to reduce costs. It seeks to provide the County some relief while preserving as much of its members' pay and benefits as possible.

Tentative Agreements Reached During Hearing

The Union withdrew the following proposals:

1. **Article 22, Disability Leave**, proposing new provisions for injury on the job, wage continuation, and a work return transition program. The Union believes this is a worthwhile

program and will save the Employer money. The Employer is willing to further discuss it, but believes now is not the appropriate time to implement such a program.

2. **Article 23, Sick Leave Donation**, proposing a plan whereby employees can donate sick leave to another employee without sick leave.

3. **Article 29, Health Care Coverage** limitations.

During the hearing, the parties agreed to the following:

1. **Article 7, Grievance Procedure.**

2. **Side Agreement, Uniforms Deputy Dog Wardens:** The side agreement shall read:

The Employer shall make available replacement uniform components deemed necessary by the Employer for bargaining unit employees in the Deputy Dog Warden classification.

3. **Side Agreement, One-Time Payment.** The parties agreed the delete this side agreement, as it is no longer applicable.

4. **Side Agreement, Bilingual Pay Supplement.** The parties agreed to delete this side agreement as it is not necessary.

5. **Side Agreement, Funeral Leave.** The parties agreed to delete this side agreement as a cost saving measure.

Unresolved Issues

Issue: Article 6, Union Representation

County Position: The County proposes to limit the number of Union officials who can take time off for Union business to stewards or alternates only.

Union Position: The Union proposes to limit those taking time off to stewards and alternates and a committee of three (3) employees.

Findings: The County is seeking to gain productivity. Limiting the number of employees who can take time off for Union business would limit work time that is unproductive for the County and save money. Over the life of a three (3) year contract, the County projects it would save \$3,612.00 by eliminating it for all but stewards or an alternate. However, there is no dispute that there is a certain amount of time needed on a regular basis for Union business, such as a steward representing a fellow Union member in a grievance. The County is not seeking to limit that time, but the time other Union officials need time off. The Union understands that limiting the number of employees would save the County money and proposes some limits, but contends that certain officials need time off.

Limiting the number of Union officials who can take time off would save some money. However, the Fact Finder concludes that eliminating time off for all officials except stewards would not be appropriate. There are certain matters that arise on a regular basis relating to the collective bargaining agreement. Work time is the most appropriate time to deal with many of these, as they involve fellow members who are in the unit and may need to be dealt with during business hours. Indeed, some may need to be addressed with the County since they impact the County.

Recommendation: Article 6 is to be amended as follows, with changes underlined:

The last sentence of Section 3 is to be changed to:

The Union Steward or alternate shall be permitted reasonable time off with pay to conduct representative's business as defined above.

Section 4. In addition to the time allowed in Section 3 above, the steward or alternate and the three (3) employee representatives identified in Section 6 shall be allowed time off to conduct up to four (4) hours of Union activity per calendar month for matters related to the administration of the collective bargaining agreement. Such additional time off shall be provided on an

unpaid basis and shall be subject to the restrictions identified in Section 5 of this article. Whenever possible, the Union shall provide seventy-two (72) hours notification prior to being authorized to conduct Union activity.

The first sentence of Article 5 is to be changed to “Rules governing the activities of the Union officials identified in Section 4 are as follows: ...”

Section 6. The Union will designate three (3) employee representatives who will be responsible for conducting Union negotiations. Each so designated representative shall be allowed a maximum of eighty (80) hours time off with pay per contract period to conduct contract negotiations, attend meetings preliminary to the formal negotiation process, prepare proposals, and conduct research. If necessary, time off in excess of the eighty (80) hour maximum shall be provided on an unpaid basis.

Section 7. Prior to leaving the assigned work area, the Union steward or alternate, and/or the three (3) employee representatives identified in Section 6 shall be required to complete the Union Representative Time Form. Authorization to commence Union activity shall not be unreasonably denied by supervisory personnel. Said form shall be furnished by the Employer and shall be issued by the supervisor upon a request from the steward.

Issue: Article 8, Disciplinary Procedures

County Position: The County proposes to define discipline as used in Section 4 to clarify that a pre-disciplinary conference is necessary only when an employee is subject to certain discipline consistent with *Cleveland Board of Education v. Loudermill*. It also proposes that there be twenty-four (24) hours notice of the conference.

Union Position: The Union does not dispute that *Loudermill* requires pre-disciplinary conferences only in certain circumstances. It proposes language that the employee’s supervisor not conduct the conference and who may attend the conference for the Union.

Findings: There is no real dispute as to this section. Each party understands the needs of the other. The only concern is the language to be used. Each side proposed language covering each issue raised.

Recommendation: Section 4 of Article 8 is to be amended as follows:

Whenever the Employer or his designee determines that an employee may be subject to discipline for just cause, i.e., suspended, removed, reduced in pay or position, or discharged, a pre-disciplinary conference will be scheduled to afford the employee an opportunity to offer an explanation of the alleged conduct, inclusive of oral and/or written testimony. The Employer's hearing officer shall be a supervisor other than the employee's immediate supervisor. The Employer shall notify the affected employee and the Union President or his designee at least twenty-four (24) hours prior to the date and time of the conference. The twenty-four (24) hours notice can be extended by the Employer upon request of the Union President or his designee and will not be unreasonably denied. The Union's representative shall be present at the pre-disciplinary conference unless agreed otherwise between the employee and representative. Any such agreement shall be reduced to writing, signed by both parties, and submitted to the Employer for the record. An employee may also elect, in writing, to waive the opportunity to participate in a pre-disciplinary conference. The Union President or his designee shall participate in a pre-disciplinary conference. The Union Staff Representative may attend at his or her discretion.

Issue: Article 9, Seniority

County Position: The County proposes reducing the period of seniority retention from two (2) years to one (1), to be consistent with its proposal on Article 12, below. Currently, Article 12 provides seniority retention for two (2) years and recall rights for four (4). In response to a Union request, the County proposes annual posting of a list of employees and their classification by seniority order. It further proposes a tie breaker in cases of employees with the same hire date.

Union Position: The Union responds that seniority retention and recall rights should be two (2) years for each, in line with the other County collective bargaining agreements. The Union proposes that the seniority list be posted in two (2) separate locations and that the Union President be provided with a copy.

Findings: Currently, an employee on layoff retains seniority for two (2) years while having

recall rights for four (4). Given the County's current situation, with the number of layoffs in this unit and the possibility of more, it is not likely that all employees currently on layoff will be recalled. County voters have clearly told the County that it must do with less. Reducing the four (4) year recall period will make administering any recalls easier. The County's proposal of one (1) year is consistent with the definition of layoff in Ohio Administrative Code 124-1-02(K).

However, one (1) year of recall rights is a drastic change. Given the number of employees on layoff, some, if not all, could lose their recall rights and any seniority with the County. The most senior employee on layoff has nine (9) years of seniority and several have five (5) years. The Fact Finder concludes this would be too harsh a result.

The proposal regarding posting of the seniority list is not in dispute.

Recommendation: Sections 4 will be amended and a new Section 5 added as follows:

Section 4. In the event of a layoff, employees will continue to retain seniority for a period of two (2) years. Employees shall accrue seniority while on layoff.

Section 5. The Employer shall maintain a list of all employees by seniority and this list shall be updated and posted annually no later than January 30th. The seniority list shall identify the employee's hire date and classification at the time the list is prepared. In the event two (2) or more employees have the same hire date, seniority shall be determined by the employee having the highest number found in the last four (4) digits of the employee's social security number (i.e., 3201 is higher than 1905, etc.). A copy of the seniority list shall be posted on the Employer's bulletin boards in the Personnel Office and by the time clock in the Maintenance Department and a copy placed in the Union mailbox.

Issue: Article 10, Job Posting

Union Position: The Union originally requested several changes to Article 10, including that lower level positions be awarded by seniority only. At the hearing, it dropped all of the

suggested changes save one (1), that involving the locations of jobs posted. It proposes the locations to be the same as those for the seniority list in Article 9.

County Position: The County opposed the changes proposed by the Union, but did not object to the Union's language as to the locations for posting of jobs.

Findings: There is no dispute as to the remaining proposal of the Union.

Recommendation: A sentence will be added to the end of Section 3 as follows:

The job posting shall be posted on the Employer's bulletin boards in the Personnel Office and by the time clock in the Maintenance Department and a copy placed in the Union mailbox.

Issue: Article 12, Layoff and Recall

County Position: In Section 1, the County proposes language clarifying that the article applies only to employees in this bargaining unit, deleting the requirement that part time employees are laid off prior to full time employees, and clarifying that the order of employee layoffs is to be confined solely within the classification. In Section 3, the Employer proposes recognizing its ability to lay off part time employees prior to full time. In Section 4, it proposes identifying the Board of Commissioners as the Employer. In Section 5, the County proposes adding language allowing the bumping of part time employees by more senior employees, consistent with Section 1, without losing recall rights to their full time position, and clarifying that part time employees may only bump other part time employees. The County proposes amending Section 6 to allow it to offer full time employees recall to part time positions and, if all full time employees refuse the part time position, to allow it to fill the position in a manner of its choosing. It also proposes reducing recall rights to one (1) year from the current four (4). In Section 7, it proposes making the

use of certified or registered mail consistent. Finally, in Section 9, it proposes eliminating super-seniority for Union Executive Board members.

Union Position: The Union opposes allowing the Employer to layoff full time employees and keep part timers. It proposes language allowing the bumping of the least senior employee in classifications of pay grade 6 and below, and language providing for pay rates of employees bumping into a different pay grade.

Findings: The County believes that it can save a great deal of money by relying more and more on part time employees. This would be consistent with the voters mandate of increasing fiscal efficiency and service to its residents. It argues that the Union has interpreted the current language to mean that part time employees must be laid off before full time employees, even if the part time employee in an unaffected classification is paid by a different funding source. The County contends that the bargaining unit is largely custodial. With salary and benefits, a full time custodial employee costs the County, on average, \$48,000 annually. It believes it can hire part time workers at much less cost. It further believes that custodial work should not necessarily be a career with the County and it can fill positions with college students and others looking for part time work only. Allowing it to lay off full time employees while keeping part time employees may be the most fiscally responsible action. To allow the most senior employees to continue working, it proposes to allow more senior full time employees to bump into part time positions or be recalled into them and keep their recall rights. If all full time employees decline recall into a part time position, it argues it should be able to fill the position in any manner it deems necessary. Finally, it argues only stewards should have super-seniority.

The Union claims that the County believes it can eliminate full time positions and create part time ones. Providing for it in the agreement would effectively decimate the unit and it cannot agree to it. It also fears that the County will contract out the custodial work, so it seeks to protect those employees by providing for certain bumping rights. The language it proposes as to pay rates would govern when employees bump into different positions.

There is no question that the County needs some financial relief. Allowing it to use part time employees in lieu of full timers would provide some relief. However, it would go further than just providing relief. It would change the character of the work force and the bargaining unit. The Fact Finder is reluctant to impose such changes, even more so when the Union is vehemently opposed to it. This subject is better resolved by the parties themselves in the give and take of bargaining, when a party is willing to give up something in exchange for this, rather than having it foisted upon them. The County contends that it has the right under Ohio law and it may be correct. Perhaps the issue is better resolved by having a court interpret Ohio law or, at least, through the arbitration process interpreting the collective bargaining agreement. That is not the Fact Finder's role. The financial relief sought by the County can be found elsewhere without changing the character of the work force and the bargaining unit.

Recommendation: The current language should remain.

Issue: Article 15, Hours of Work/Overtime

County Position: The County proposes four (4) cost saving measures. The first is to eliminate the paid one-half ($\frac{1}{2}$) hour paid lunch. Second is to eliminate the two (2) paid

fifteen (15) minute breaks and substitute two (2) unpaid twenty (20) minute breaks. Third is to delete language providing for overtime for work more than eight (8) hours a day. The last is to require employees to work forty (40) hours in a calendar week before earning overtime instead of the current language that provides an employee only need be in “active pay status” for more than forty (40) hours to earn overtime.

Union Position: During mediation, the Union agreed to eliminate the unpaid lunch to provide the County relief. It rejected eliminating the paid break time, deleting the language regarding overtime, and changing the “active duty status” language. It proposed the two (2) breaks should be scheduled at the employee’s discretion rather than the supervisor.

Findings: Each of the Employer proposals would save money. The County estimates eliminating the paid lunch would save approximately \$60,000 per year and \$180,000 over a three (3) year period. Eliminating the two (2) paid breaks would save the same amounts. It further believes that providing for overtime when in “active pay status” rather than actually working forty (40) hours is not fiscally responsible in these times. However, it did not provide estimated savings for this change.

The Union recognizes the County’s need to save money. Eliminating the paid lunch would save the Employer significant money. However, it believes eliminating the paid lunch and the paid breaks is asking too much and that overtime should continue to be paid for working more than eight (8) hours a day. The Union wishes to keep the overtime language as is.

The Fact Finder concludes that accepting the Union’s position on the unpaid lunch while continuing paid breaks scheduled at the employees’ discretion is reasonable. It

provides the County with significant relief without eliminating all paid time off during the day. Continuing to pay overtime after eight (8) hours in a day is recommended. The Union provided evidence that the unit does not work overtime consistently. A handful of employees work the vast majority of it. Overtime is generally not regularly worked and the total amount is not great. Working overtime can be inconvenient and disrupt an employee's personal and family time, so there should be a concomitant benefit. However, the Fact Finder concludes that changing the language from "active pay status" to working more than forty (40) hours in a week provides the County some relief without harming employees. They would still receive overtime for time actually worked.

Recommendation: Sections 1 and 2 of Article 15 are to be amended as follows (changes underlined):

Section 1. The standard work week for all full-time employees covered by the terms of this agreement shall be forty (40) hours and the standard work day shall be eight (8) hours, exclusive of an unpaid one-half (½) hour meal period, and shall commence at 12:01 a.m. on Sunday of each calendar week and end at 12:00 midnight the following Saturday. Employees shall be allowed two (2) fifteen (15) minute paid breaks per eight (8) hour shift scheduled at the employees' discretion. Any time worked prior to and after the normal scheduled eight (8) hour shift shall be paid at one and one-half (1 ½) times his or her rate of pay.

Section 2. When an employee is required by the Employer to work for more than forty (40) hours in any calendar week, he/she shall be compensated for such time over forty (40) hours at one and one-half (1 ½) times his/her regular rate of pay.

Issue: Article 17, Vacation

County Position: The County proposes changing the vacation accrual from one based on years of service to one based on pay grade level. Employees in pay grades 1-7 would be able to accrue a maximum of two (2) weeks of vacation after twenty (20) years.

Employees in pay grades 8-17 would be able to earn one (1) week of vacation after one (1) year, two (2) weeks after ten (10) years, and three (3) weeks after twenty (20) years. For new employees, it also proposes to eliminate vacation credit for prior service with an appointing authority other than Lorain County.

Union Position: The Union opposes any changes and seeks to retain current language.

Findings: The County claims that its proposal would save a little over \$25,000 per year and more than \$77,000 over three (3) years. However, seniority is one of the main benefits a bargaining unit member attains. Most companies, Union or non-Union, provide vacation benefits based on years of service. Pay grade may play a part, but years of service generally are more important when it comes to vacation accrual. In the Fact Finder's experience working in the private sector, years of service or seniority was the main factor in vacation accrual.

There is no question that the County's proposal would save money. Eliminating seniority as the factor for vacation accrual, though, may cause more problems than the money it saves is worth. Creating a two (2) tier vacation schedule could cause resentment among the bargaining unit. Depriving current members of vacation already earned would likely also cause friction. From the seniority list submitted by the Union (Un. Ex. 1), it appears that nine (9) custodial workers would lose at least one (1) week of vacation, while two (2) dog kennel workers and an office service employee may also lose some vacation time. The Fact Finder is reluctant to take away vacation that employees have already earned. He concludes that the only fair way to change the vacation schedule would be to grandfather current employees and recommend the changes to new hires, but that would

not save the County money currently. Depending on when new employees were hired, it may be some time before the County would save money, defeating the purpose of the proposal.

Further, the County provided no evidence as to cost savings if vacation credit for prior service were limited to Lorain County only. During the hearing, the parties concentrated on the vacation accrual schedule and spent no time on the issue of limiting vacation credit for prior service, so the Fact Finder has little evidence or argument on which to base a decision. Contrary to the vacation accrual issue, it does make some sense to grandfather current employees while limiting vacation credit for prior service for new hires. In the private sector, employees who are hired by a new employer do not get credit for years of service with previous employers. Changing the vacation accrual schedule would take away vacation time earned with the Employer, while limiting vacation credit takes no benefit earned with this Employer. Since new hires would be credited with prior service with Lorain County, they would still receive the benefit they earned with the Employer. Adopting the proposal would likely save the County some money, though it would not be right away. For these reasons, the Fact Finder rejects the Employer's proposal as to the vacation accrual schedule and accepts the Employer's proposal regarding vacation credit for prior service with Lorain County only.

Recommendation: The first paragraph of Article 17, Section 2 is modified to read:

New employees shall be entitled to vacation credit or prior service credit for tenure with another Lorain County appointing authority.

Issue: Article 18, Holidays

County Position: The County proposes reducing the number of paid holidays from thirteen

(13) to ten (10), eliminating the day after Thanksgiving, Christmas Eve, and New Year's Eve. It also proposes making part time employees ineligible for holiday pay. Further, it seeks to do away with the current entitlement to pay at time and a half for holiday hours worked. Instead, an employee would receive non-FLSA compensatory time off to be used within one hundred eighty (180) days. The County's proposal would also require employees to actually work a holiday as well as the day before and after the holiday to get paid for the holiday, rather than the current pay for being on "active pay status." Finally, the County seeks to eliminate language providing that bargaining unit employees receive all holidays that the Lorain County Board of Commissioners recognizes as a paid holiday.

Union Position: During mediation, the Union was receptive to giving up Columbus Day and New Year's Eve for 2010 and 2011. They would resume in 2012, when the Union believes the economy will have rebounded and the County can afford to reinstate them.

Findings: The Employer projects that eliminating three (3) paid holidays would save over \$11,000 per year, based on thirty-one (31) current full time employees. Doing away with time and a half for holidays and replacing it with non-FLSA compensatory time would save about \$60.20 per employee per occasion, using an averaged hourly wage of \$15.05, but it is difficult to accurately estimate the savings. The County contends that its facilities are closed on holidays and the bargaining unit rarely works them, another reason the proposal should be implemented. Requiring employees to work the holiday, rather than being paid if on "active pay status," as well as the day before and after would save \$120.40 per occasion. The County seeks to eliminate holiday pay for part time employees. It believes that the judicious use of part time employees can save it significant dollars. It can do so

by having part time employees receive no benefits. Finally, removing the language in Section 7 regarding holidays recognized by the Lorain County Board of Commissioners eliminates any conflicts and extra expense for the County. Holidays are negotiated and set forth in the Agreement and should be the only holidays that are paid.

The Union understands the County's need for relief. It believes, however, that any concessions made as to holidays should not be permanent. By 2012, the last year of the proposed contract, the economy should have rebounded and the County's financial status improved. The Union has already negotiated these holidays and should not have to negotiate for them again. It is willing to work with the County during these difficult years, but the County should recognize its efforts by making any concession on holidays temporary while the County is struggling financially.

The Fact Finder recognizes that these are difficult and almost unprecedented times for public employers. Tax receipts have fallen off substantially; state aid, where provided, has been cut; the private sector is also suffering layoffs and business closings, affecting income tax revenues; and property values have dropped dramatically, lowering property tax collections. In his experience as a Fact Finder and Conciliator in 2009, public employers of all types have been looking to cut costs and save money wherever possible. He also recognizes that these difficult times are likely to last a while. Once the economy improves, it will take at least a year for tax receipts to rebound and be collected. One must also factor in that voters more and more are asking or requiring public employers to do more with less. It is extremely difficult to get any tax increase approved, particularly when residents are being laid off and fighting foreclosures on their houses. The County could not get an increase improved in 2007 when the economy was still doing well. It cannot

impose another tax until 2011. Even if it does, it is not likely that the voters will approve it. All in all, it appears that the County's financial troubles will continue for some time.

Having written this, the Fact Finder understands the Union's reluctance to make any concession permanent. Having attained the holidays through the give and take of bargaining, it does not want to have to give something a second time to regain the holidays surrendered. In a normal economic downturn, this would be appropriate. However, this is not a normal economic downturn. The County is in difficult straits and needs relief to prevent further drastic action. Reducing holidays from thirteen (13) to ten (10) does not significantly harm the bargaining unit. Ten (10) holidays, particularly when taken with other paid time off provided, is not an insignificant benefit.

Still, working a holiday is inconvenient and should be offset. The County estimates as to cost savings for time and a half for working a holiday is \$60.20. It concedes that working holidays is rare. Paying time and a half does not cost it a great deal of money. Eliminating three (3) holidays will save some of this. As noted in Article 15, requiring pay only when an employee works a holiday, rather than being paid if on "active pay status," provides some relief while only affecting employees minimally. So does the requirement that an employee work the day before and after the holiday to get paid.

As to eliminating holiday pay for part time employees, the Fact Finder recommends against this. The County is asking for relief. The Union and the Fact Finder are attempting to find and recommend ways to provide relief. While extinguishing benefits to part time employees would save money, it also changes the character of the working force and bargaining unit. While currently there are only two (2) part time employees working, another eleven (11) are on call. There was no evidence whether, or how much, these

individuals work. Eliminating all benefits for them would significantly affect their jobs and paychecks, something the County contends it does not want to do.

The County argues that certain jobs, particularly the custodial work, could be adequately done by a part time work force. This may be true. Redundantly, it would dramatically change the unit to a largely part time work force. The Fact Finder concludes that the County can wait until it sees how the relief provided it affects its ability to provide essential services at a cost it can afford. The Union has made some significant steps and the Fact Finder recommends additional savings. If the County's financial difficulties continue and it determines further action is needed, further action can be taken. This may include the greater use of part time employees. That is something the parties can address in further negotiations.

Recommendation: Three (3) holidays should be eliminated from Section 1: Columbus Day, Christmas Eve, and New Year's Eve. No other change to Section 1 is recommended.

The second paragraph of Section 6 should be amended to read:

In order to be eligible for holiday pay, the employee must actually work on the scheduled day prior to and following the holiday. Employees who fail to work as scheduled on a holiday shall not receive holiday pay.

The Fact Finder recommends eliminating Section 7.

Issue: Article 19, Bereavement Leave

County Position: The County seeks to charge any bereavement leave to an employee's sick leave time.

Union Position: The Union opposes any change.

Findings: The Employer estimates that its proposal would save \$120.40 per occasion,

based on the \$15.05 averaged hourly wage, although it is difficult to estimate the number of days of bereavement leave that would be taken. There would be no change in the amount of time employees could take, only the manner in which it would be funded. The Union submits that sick leave should not be used for bereavement leave.

Although on its face the County's proposal seems reasonable, when taken with its sick leave proposal it significantly reduces the current leave available. The County's sick leave proposal, see below, limits employees to six (6) days of sick leave annually. If an employee were to take three (3) days of bereavement leave charged to his or her sick leave, the employee would have only three (3) days of sick leave left. The Fact Finder concludes this is not reasonable.

Recommendation: Retain current language.

Issue: Article 23, Sick Leave/Personal Days

County Position: The County wishes to change the manner in which employees earn sick leave. Instead of allowing employees to earn sick leave for paid time away from work, the County suggests that employees accrue sick leave based upon straight time hours worked only. It also proposes to reduce sick leave from eleven (11) days per year to six (6), with employees earning one-half (½) day per month. Further, the County wants to reduce personal leave from forty (40) to thirty-two (32) hours per year and change it from an unearned leave period to an entitlement earned by accrual based upon straight time hours worked, at the same rate sick leave is earned. It also proposes conditioning an employee's ability to cash out accrued but unused sick leave upon his or her being in good standing at the time.

Union Position: The Union proposes to keep the current language with one (1) change. It proposes that, instead of being credited with all forty (40) hours of personal leave, employees be credited with twenty (20) hours effective January 1 and another twenty (20) hours effective July 1.

Findings: The County projects that its changes will save just over \$3,700 per year and a little over \$11,000 in three (3) years. It believes it can no longer afford for employees to accrue sick leave based on hours for which they are compensated, which includes hours of paid leaves. Permitting employees to earn sick leave for paid time off is no longer fiscally responsible. Part of this proposal is based on the Union's proposed sick leave donation program, which was withdrawn. The Employer contends that any donation program will increase the use of sick leave. The County submits that personal leave should also be earned based on straight time hours worked rather than hours compensated, including paid leave time. Finally, the Employer claims that the Union's other agreements with it include the requirement that employees be in good standing when they cash out accrued but unused sick leave upon retirement or separation.

The Union opposes the County's changes. It suggests that employees be eligible for one-half ($\frac{1}{2}$), i.e., twenty (20) hours, of personal leave each January 1 and the other half, twenty (20) hours, each July 1. This would save the County some money and unproductive time by preventing employees from using all the time early in the year. Its proposal mirrors the contract between the Union and the Auditor's office.

Sick leave in the public sector traditionally serves several purposes. The first is to provide time off when an employee is ill. More important, though, public employers

typically do not have disability programs that provide time off for extended illnesses or injuries. As a result, employees save accrued sick time in case they suffer an illness or accident requiring extended time away from work. Further, employees use accrued sick leave as an additional retirement benefit, cashing out accrued leave upon retirement and receiving significant sums in some cases.

The Fact Finder concludes that accepting the County's proposal, while saving money, goes too far. Six (6) days of sick leave annually is, by itself, not unreasonable. However, when there is no paid disability program to protect employees for extended illnesses or injuries, reducing sick leave this significantly can harm employees economically, which the County indicates it does not want. It is certainly reasonable for an employee to use six (6) sick days per year. This would leave no time accrued to use for an extended illness or injury. An employee injured in an automobile accident or having a heart attack, for instance, could be out of work for weeks and would have no earnings during this time. Personal leave is available, but only forty (40) hours, which cannot be carried over year to year as sick leave can. The County does have a disability leave program, but it is unpaid. In short, without the current sick leave benefit, employees are exposed to extended illnesses or injuries without the likelihood of having earnings during that time.

Having concluded that the County's entire proposal is unreasonable, the Fact Finder concludes that some relief is warranted. Thus, he recommends the number of sick days be reduced from eleven (11) to ten (10). This provides some savings without drastically affecting employees' ability to accrue sick leave for extended absences. Additionally, the Union's proposal as to personal leave is recommended, so that employees receive twenty

(20) hours of personal leave each January 1 and another twenty (20) hours each July 1. Finally, given that the Union's other contracts with the County contain language that employees can cash out accrued sick leave only if they are in good standing, that change is recommended.

Recommendation: Section 1 is to be amended to reflect that "Each full-time employee shall accumulate ten (10) days of sick leave per year." The second sentence is to be modified to reflect the appropriate hourly calculation. Section 2 shall be changed to read:

Each full-time employee with at least one (1) year of full-time service with the Employer shall be credited with twenty (20) hours of personal leave effective each January 1 and an additional twenty (20) hours of personal leave effective each July 1.

Alternatively, the parties can adopt the language used in the contract between the Union and the Auditor's office if they prefer. The phrase "in good standing" is to be added in the two (2) places proposed by the Employer.

Issue: Article 30, Wages

Union Position: The Union's initial request was for a three percent (3%) increase in each year of the contract in addition to a \$1,000.00 lump sum each year. During mediation, the Union modified its request to no increase in 2010, a one and a half percent (1.5%) increase in 2011, and a two and a half percent (2.5%) increase in 2012.

County Position: The County proposes no wage increase for the duration of the Agreement. It also seeks to eliminate longevity pay and add a new section permitting it to designate a lead worker in any classification, who would receive an additional \$.50 per hour. It further suggests the removal of language that is no longer necessary.

Findings: Redundantly, any wage increase directly affects the County's financial situation.

It is seeking relief from the Union, though it is not asking for wage concessions. Rather, it asks for a wage freeze for the proposed three (3) year duration. It seeks relief from unproductive time provided for by the Agreement. The Union is to be commended for reducing its wage demands during mediation along with the other concessions it was willing to make. Its proposals would save the County significant money.

Given this economic climate and the County's current financial situation, however, the Fact Finder believes that giving a wage increase would simply defeat the savings the Union has agreed to provide or the Fact Finder has recommended. The evidence shows, and there is no dispute, that the County has fallen on difficult times financially. Any wage increase would only add to its fiscal burden, making further cutbacks, including layoffs, likely. The County is caught between providing services to its residents and balancing its budget. Further layoffs would affect its ability to provide services. In short, the County is caught between a rock and a hard place.

A wage freeze for all three (3) years appears too drastic, though. The economic data indicate that the nation is slowly coming out of the recession. It will likely be several more months before it is clear that the economy has rebounded. There is always the danger of another slowdown. Additionally, it typically takes a year or longer for the County's tax receipts to increase following a rebounding economy. Given all this, it appears that the County will continue to struggle into 2011. By 2012, if the economic rebound continues, the County's coffers should be recovering, if they have not already done so. The Fact Finder determines that the bargaining unit should not be tied to a third year of a wage freeze. Awarding some type of increase for the third year may appear to be judicious. However, if the rebound falters or the County's situation does not improve,

an increase in the third year may impose a burden it cannot meet.

The Fact Finder has given much thought to somehow providing the bargaining unit with some money later in the contract period. For instance, a one time payment, while costing the County, would not add to the wage structure in future years as would a wage increase. With thirty-one (31) current full time and several part time employees, though, even a \$1,000.00 one time payment, as the Union initially requested, would drastically cut into the cost savings the Union and Fact Finder are attempting to provide the County. Therefore, the Fact Finder concludes that a wage reopener in the third year is the most reasonable way to meet each party's needs. If the County continues to have financial difficulties, it can ask to continue the wage freeze. If its situation improves, employees can be given something in return for helping the County.

As to longevity pay, the County spent little time on its need to cut this, other than to save money. The Union has provided cost savings and the Fact Finder has recommended other cuts. The Fact Finder determines it is not necessary to cut longevity pay at this time. Regarding the new section to designate lead workers in a classification, there was little discussion or evidence as to this measure. The proposed language provides that the County would have sole discretion to determine who fills the lead worker positions. This could award the position, and more money, to anyone regardless of seniority, one of the major benefits of seniority. While the Fact Finder understands and acknowledges the need to assign such positions based on ability, without more information, he is reluctant to recommend this language.

Recommendation: No wage increase for 2010 and 2011. A wage reopener is recommended for year three (3), 2012. The provision regarding longevity pay is to remain.

The Fact Finder recommends against adding the lead worker position. Finally, the language the Employer recommends to clean up various sections is adopted. The first sentence of Section 2 shall read “For 2010 and 2011, the following pay ranges will be effective...” Sections 3 and 4 are to be eliminated. Section 5 is to be renumbered Section 3 and shall read, “Employees shall receive no wage increase for 2010 and 2011. The Union shall have the right to request the Employer to reopen the Agreement for the purposes of wages only in 2012.” Sections 6 and 7 are to be deleted. Section 8 is to be renumbered Section 4 and remain the same. Section 9 is to be deleted. Sections 10 and 11 are to be renumbered Sections 5 and 6 and remain the same.

Issue: Article 39, Duration of Agreement

Union Position: The Union seeks a three (3) year contract.

County Position: The County proposed a three (3) year agreement, dependent on other proposals and agreements.

Findings: Both sides used three (3) years as the presumed contract length.

Recommendation: A three (3) year term is recommended.

Issue: New Article, Furloughs

County Position: The County asks for a new provision giving it the unilateral authority to place employees on unpaid leave or “furlough” for up to eighty (80) hours per year upon five (5) calendar days notice.

Union: The Union opposes furloughs.

Findings: The Employer contends that it must possess the authority to take drastic, last ditch action short of layoff to maintain employment for as many employees as possible and

continue to provide as much service to the public as possible. Ohio has recently passed ORC 124.393 allowing counties to furlough non-exempt employees, the Employer has adopted procedures to furlough non-bargaining unit employees, it has furloughed employees in various departments, and the Employer seeks this same right with this bargaining unit. Based on thirty-one (31) full time employees, the Employer projects savings of more than \$37,000 for one (1) year and approximately \$112,000 over three (3) years.

The Union rejects the Employer's proposal. This issue is important to the Union. Furloughing employees would directly affect employee wages, in effect cutting wages by almost four percent (4%). Additionally, the proposal gives too much discretion to the Employer, with no protections for employees.

Even though the Employer advocates no wage concessions, its proposal essentially requests one. Two (2) weeks of unpaid leave, as mentioned above, is almost a four percent (4%) cut. The Fact Finder acknowledges the Employer's assertion that this would be used as a last ditch effort to avoid layoffs, but this does not circumvent that it is in effect a request to decrease wages unilaterally by the stated amount. ORC 124.393 is irrelevant, since by its terms it exempts employees covered by collective bargaining units. It is understandable that the Employer wants to treat all employees similarly and has already adopted procedures to furlough non-bargaining unit employees. However, collective bargaining gives employees certain rights and protections while placing them at a disadvantage to non-organized employees at times. The employees in this unit have accepted those rights and protections as well as the disadvantages. This allows them to reject some terms and conditions of employment and sometimes requires the Employer

to make difficult choices, such as further layoffs. The Union and its employees understand this. The Fact Finder is reluctant to circumvent the process on this issue. Furthermore, if drastic action becomes necessary, the Employer can request to bargain with the Union as to any necessary measures.

Recommendation: The Fact Finder recommends against the Employer's proposal.

Issue: Side Agreement, Uniforms

County Position: The County proposes to change from providing uniforms to contracting out the provision of them and deducting the cost from employees.

Union Position: Current language.

Findings: This is another cost saving measure proposed by the County. Based on the County's projections, the Fact Finder estimates that the cost saving measures agreed to by the Union and recommended by the Fact Finder will save the County approximately \$75,000 per year, closer to \$100,000 when factoring in no wage increase. The savings proposed by the County here are small in comparison and not needed in light of the others.

Recommendation: No change is recommended.

Issue: Side Agreement, Work Boots

County Position: The Employer seeks to delete current language requiring it to provide two (2) pairs of work boots during the contract term at its expense and shift the cost to employees.

Union Position: It opposes any change.

Findings: The Employer argues that all bargaining unit employees are not required to wear OSHA compliant work boots and are thus receiving an economic benefit that it can no

longer afford. While there was no evidence presented as to work duties of employees, given the classifications, it is reasonable to assume that certain employees need safety boots. Additionally, for the reasons stated above as to the uniform side agreement, the Fact Finder recommends against this.

Recommendation: No change is recommended.

Issue: *Side Agreement, Uniform Discussions*

County Position: Delete this side agreement.

Union Position: Current language.

Findings: The County asserts that it will not require the wearing of tee shirts so this side agreement is no longer necessary and it can no longer justify the expense. Overall use has been discussed and labor management meetings continue to be a forum, if needed. The Union opposes the proposal.

Since the County no longer will require the wearing of tee shirts, it is reasonable to discontinue requiring the County to provide them. If further discussions are necessary as to the use of overalls, the labor management meetings provide an appropriate forum.

Recommendation: The Fact Finder recommends deleting this side agreement.

Issue: *Side Agreement, Wage Reopener*

County Position: The side agreement should be deleted.

Union Position: Keep the side agreement.

Findings: The Employer claims that non-bargaining unit employees are legally distinct from bargaining unit employees and should not be compared to the latter regarding wages. It should be able to provide wage increases to non-bargaining unit employees without

creating any obligations toward bargaining unit employees.

While there are distinctions between non-bargaining unit and bargaining unit employees with the same employer, they are often used as comparisons when negotiating wage increases. Indeed, employers often contend that comparing wage increases provided to other units, non-bargaining and bargaining units, within that employer have more value than looking to outside comparables. Employers understand that providing an increase to one (1) unit will be used by other units to obtain the same increase. In this situation, this bargaining unit is the first to negotiate with the Employer. Whatever concessions the Employer obtains from this unit will be used to obtain concessions from other units, including the non-bargaining units. Finally, the side agreement only provides that the Union can request the Employer to reopen the agreement. It is not a classic “me too” clause that requires the Employer to match any increases given to non-bargaining unit employees.

Recommendation: Retain the side agreement.

Issue: Side Agreement, Maintenance Workers I and II

County Position: Delete the side agreement.

Union Position: Retain the side agreement, but amend it so that a differential is paid when the work day is rescheduled in excess of one (1) hour instead of four (4) hours.

Findings: This is another cost saving measure proposed by the County. Additionally, it argues that shift rescheduling resulting in a differential is rare and should be discontinued. The Union seeks a change so that the differential is paid whenever the work day is rescheduled in excess of one (1) hour.

The parties did not spend much time on this issue as others were of greater importance. The Union's proposal appears to create a greater likelihood that the shift differential would be paid. Given the County's financial status, the Fact Finder is reluctant to increase its costs. Given that the differential is rarely used, according to the County, it should not be much of a burden, especially when it has achieved significant savings. Rescheduling the shift is an inconvenience to employees and should be compensated in some fashion.

Recommendation: The side agreement should be retained.

Issue: Side Agreement, Beeper Pay

County Position: Delete the side agreement.

Union Position: Keep the side agreement as is.

Findings: The County proposes that it will no longer require employees to be on call, but may offer on call status to employees interested in the possibility of earning overtime pay from a call in. Again, there was little discussion of this issue due to the greater importance of others. However, \$40 per week for an employee who is on call is not a great deal of money considering the other cost savings achieved. And it does provide employees some compensation for being on call. Given the other cost savings achieved, the Fact Finder concludes this is not necessary.

Recommendation: Retain current language.

Issue: Side Agreement, On Labor Classification

County Position: Revise the agreement by deleting the references in paragraph 3 to specific hourly wage rates, delete paragraph 5, and delete paragraph 6.

Union Position: The Union agrees to clean up the language, but seeks to retain paragraphs 5 and 6.

Findings: The County and Union agree that the rates in paragraph 3 may no longer be applicable and should be deleted. The County contends that paragraph 5 should be deleted to be consistent with its proposal on paying for holidays only if they are worked and paragraph 6 should be deleted to be consistent with its proposal that sick leave should no longer be extended to part time employees. The Union opposes the latter two (2) changes.

Since the Fact Finder has already recommended that employees be paid for holidays only when they are worked, paragraph 5 should be deleted. Furthermore, from the evidence submitted by the Union, there are only two (2) part time employees. One (1) is in the Maintenance classification and the other in the Dog & Kennel classification. There currently are no Laborers working part time and, given the County's finances, it is likely none will be recalled. Thus, paragraph 5 is not needed.

The Fact Finder recommended reducing sick leave to ten (10) days from eleven (11), so paragraph 6 should be modified to show the appropriate hourly classification. No other change in paragraph 6 is recommended. The parties specifically negotiated this side agreement to cover part time laborers and provide for sick leave, even though Article 23 provides that only full time employees are eligible for sick leave. The Fact Finder is reluctant to disturb this part of the agreement.

Recommendation: Remove the hourly wage references in paragraph 3 and delete paragraph 5. Modify paragraph 6 to reflect the proper hourly accrual based on ten (10) days of sick leave.

Side Agreement, Printing of Contract

County Position: Delete this provision.

Union Position: Keep the side agreement.

Findings: The Employer proposes to delete the side agreement because it is a cost, no matter how small, that it can no longer afford. The Employer is required by statute to file a copy with the State Employment Relations Board that the Union can then download free of charge or request from the Board. The Union argues that this is a cost the Employer must bear.

The Union and the Fact Finder have provided dramatic cost savings to the Employer. The cost of this provision is minuscule in comparison.

Recommendation: Retain the side agreement.

Dated: December 28, 2009

Daniel G. Zeiser

Fact Finder