FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
November 15, 2010

In the Matter of:

Warren County Children Services

and

Professionals Guild of Ohio

10-MED-03-0326

REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN

APPEARANCES

For the Employer:

Kelly Babcock, Consultant
Dave Gully, County Administrator
Patti Jacobs, Director
Tiffany Zindel, Director of OMB
Anne Juergens, Business Manager
Jackie Roth, Consultant

For the Union:

John Campbell-Orde, General Counsel
Tracey Turley, President
Sarah Vargo, Secretary
Amelia Woodward, Field Representative

INTRODUCTION

The undersigned was duly appointed by SERB by letter dated September 23, 2010 to serve as Fact-Finder in the matter of the Warren County Children Services (hereinafter referred to as "Employer") and Professionals Guild of Ohio (hereinafter referred to as "Union") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact-Finder's Report until November 15, 2010. The parties further agreed to waive service of this Report and Recommendations via overnight delivery, and have agreed to service of the Report and Recommendations via email. Hearing was held at the offices of Warren County in Lebanon, Ohio on October 18, 2010, October 25, 2010 and November 8, 2010 The Union was represented by John Campbell-Orde, General Counsel, and the Employer was represented by Kelly Babcock, Consultant. The parties engaged in mediation on the first two days of hearing, and resolved a number of issues. The parties were permitted to present testimony and exhibits concerning each of the remaining outstanding provisions on which agreement had not been reached. Pursuant to Ohio Revised Code §4117.14, the Fact-Finder has considered, to the extent submitted by the parties, previously bargained collective bargaining agreements, the comparison of the issues submitted relative to other public employees doing comparable work, the interests and welfare of the public, the ability of the Employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service, the lawful authority of the Employer, and other factors traditionally considered in the determination of issues submitted.

FACTUAL BACKGROUND

The Employer operates the Children Services Department for Warren County, Ohio and employs approximately twenty-seven employees in the classifications of Caseworker, Case Aide, Administrative Assistant, Compliance Coordinator and Clerical Specialist. It is a department of Warren County, Ohio, and is governed by the Warren County Board of Commissioners. Warren

County is party to six other collective bargaining agreements including the agreements with the Warren County Dispatch Association for Emergency Communications Officers, OAPSE Local 302 for the Board of MR/DD, Warren County Highway Employee's Association for employees of the Engineer's Office, and three separate agreements with the Warren County Deputy Sheriff's Benevolent Association for sworn and non-sworn employees of the Sheriff's Office. The Union was certified by SERB as the exclusive bargaining representative for the employees in the classifications referenced above on November 19, 2009. This is the initial collective bargaining agreement between the parties.

The parties met in bargaining on fourteen occasions from May through January, 2010 and reached agreement on a substantial number of contractual provisions. The Articles agreed upon, either in whole or in part, are referenced in the attached Exhibit A, and are incorporated herein by reference and adopted as part of the parties' final agreement. Additionally, the parties were able to reach agreement on or withdrawal of a number items in the course of mediation at the time of hearing, and those agreements are additionally adopted as part of the parties' final agreement. Those items are also referenced in Exhibit A.

The remaining unresolved issues are as follows:

Article 2 - Management's Rights - Section 2.1(E)

Article 3 - Nondiscrimination - Section 3.1 (proposed first sentence)

Article 4 - Fair Share

Article 8 - Grievance Procedure - Section 8.5 Step 4

Article 9 - Discipline - Sections 9.1 and 9.9

Article 10 - Work Rules

Article 13 - Layoff and Recall - Section 13.6

Article 15 - Hours of Work and Overtime - scheduling and pay for on call duties

Article 16 - Wages

Article 17 - Insurance

Article 19 - Vacation - Section 19.1

Article 11 - Duration - Section 26.3

Personal Leave

Promotion

ISSUES

ARTICLE 2- MANAGEMENT RIGHTS

Employer Position: The Employer proposes a standard management rights provision which provides standard management rights to control the operations of the department subject to the remaining provisions of the Agreement. The Employer has proposed a provision at Section (E) which permits the Employer to contract with any public or private entity to provide services. Although there are no current plans to contract the services provided by the Children Services Department, in the current economic environment, the Employer desires to retain flexibility to consider that option should it either necessary or advantageous. In the event that the State of Ohio makes changes in the funding or organization of the services of this Department, the Employer desires the flexibility to act upon those changes

Union Position: While the Union is willing to agree to most of the standard management rights language proposed by the Employer, the language of Section E goes beyond typical management rights language and allows the Employer to subcontract all of the work of the bargaining unit without limitation. This language is beyond the standard retained management rights. There has been no evidence that subcontracting is either necessary or imminent, and the language should therefore not be accepted.

Discussion: The language proposed by the Employer in essence seeks carte blanche to permit the Employer to subcontract the work of the bargaining unit. While these are indeed uncertain economic times, the Employer did not present any evidence at hearing that would

suggest that a need to subcontract is imminent, or indeed that subcontracting of the work of this bargaining unit would be desirable or economically advantageous. In the event that changes are in the future mandated by the State, clearly the Union and Employer would be obligated to bargain concerning those mandates, and the Union would be compelled to accept changes required by State law. Additionally, a review of the six other collective bargaining agreements with the Employer reveals that none of them contains the proposed language. The Employer has failed to demonstrate why this bargaining unit should be treated differently in respect to this issue.

Recommendation: The proposed language should not be included in the Agreement.

ARTICLE 3- NONDISCRIMINATION

Union Position: The Union proposes language which provides that "[e]mployees will be treated differently with respect to compensation, terms or conditions of employment only where legitimate job-related grounds exist". The Union had initially proposed language which prohibited discrimination based upon sexual orientation. It has dropped that proposal and replaced it with the more generic language which prohibits discrimination of any kind among employees except that based upon legitimate job related grounds.

Employer Position: The Employer argues the proposed language seeks an overly broad limitation on the Employer to which it is unwilling to agree. The Employer will of course agree to language which prohibits discrimination upon grounds which are prohibited by applicable federal or state law, but the Union seeks to place additional limitations on the Employer without sufficient basis.

Discussion: The parties have agreed upon the nondiscrimination language in substantial part, but disagree upon this single sentence. While the language proposed by the Union is now generic, it is admittedly calculated to prohibit discrimination based upon sexual orientation without explicitly so stating. The inclusion of sexual orientation as a prohibited form of

discrimination has become more common in nondiscrimination clauses in collective bargaining agreements. Of the eight collective bargaining agreements supplied by the Union as comparable to this one, one half contain such a prohibition. None of the Employer's other six agreements, however, contains language prohibiting discrimination on the basis of sexual orientation.

It is clear in any event, that the subject remains one which is fraught with controversy and disagreement. While the Fact-Finder has her own strong personal feelings on the subject, those personal feelings cannot form the basis for a recommendation here. Since none of the Employer's other agreements contain the language, since the form of discrimination which the Union seeks to prohibit is not at this time unlawful under either federal or state law, and since the subject is rife with controversy, the proposed language should be rejected at this time.

Recommendation: The Nondiscrimination clause should not include the first sentence as proposed by the Union.

ARTICLE 4 - FAIR SHARE FEE

Union Position: The argument for fair share is not a new one. The Union is obligated to represent all members of the bargaining unit whether they become members or not, and it is only fair and equitable that non-members contribute a fair fee for that representation. The Union further notes that the Employer's objection to fair share here is clearly not philosophical since all of its other six collective bargaining agreements include fair share provisions. Further, although as the Employer notes that the election itself was close, since that time the Union's membership in the bargaining unit has increased. Currently twenty-one employees within the bargaining unit are members and seven are not.

Employer Position: Fair Share fee is not mandatory. Further, the election in this bargaining unit was extremely close, with a vote of thirteen to twelve. Under these circumstances, the Employer should not impose an additional financial obligation on those employees. The Union can obtain its desired result of financial contribution by all bargaining

unit members by convincing those employees to join the Union. The Employer further cites the Fact Finding Recommendation of William C. Heekin a 1998 case involving the Hamilton County Commissioners and AFSCME Ohio Council 8 as supporting its position here.

Discussion: As the Union notes, the philosophical debate concerning fair share fee is not new, and as noted in the Heekin Recommendation, the two competing interests, fair contribution for benefits reaped and freedom of choice, are of relative equal merit and weight. The salient difference between this case and the Heekin case, however, is that the Employer has not expressed a strongly held philosophical objection to fair share fee as indicated by its presence in its six other collective bargaining agreements. Further, the Employer's argument that the closely divided election militates against the fair share fee must fall in view of the changed status of the Union's membership since the election with the vast majority of the bargaining unit having joined the Union.

Recommendation: The fair share language as proposed by the Union should be included in the agreement. Section 4.3 should read as follows:

> Employees in the bargaining unit who are not members of the Union, and who have completed sixty (60) days of employment, including employees who resign from membership in the Union after the effective date of this Article, shall pay to the Union through payroll deduction a fair share fee. This fair share fee is automatic and does not require the employee to remain a member of the Union, nor shall the fair share fee exceed the dues paid by the members of the Union in the same bargaining unit. The fair share fee shall not be used to finance political and/or ideological activity. The fair share fee is strictly to finance the proportionate share of collective bargaining contract administration, and pursuing matters affecting wages, hours and other terms and conditions of employment of bargaining unit members. The Union shall certify the amount of fair share fee to the Employer in writing during January of each calendar year. It is expressly understood that this provision is contingent upon the Union presenting the Employer with a rebate and challenge procedure and an independent audit procedure that complies with applicable state and federal law.

ARTICLE 8 - GRIEVANCE PROCEDURE

Union Position: The Union proposes that the grievance procedure culminate in final and binding arbitration. It is clear that binding arbitration for the resolution of grievances is the norm and is included in all of the Employer's other six collective bargaining agreements. It provides a

well established, inexpensive and expedient method of resolving disputes. In its absence, all contractual disputes would be have to be pursued in the courts or before the State Personnel Board of Review (SPBR). This would result in far more lengthy and expensive proceedings decided by judges who have far less knowledge of labor issues than arbitrators who decide such cases regularly. The Union is open to an agreed upon permanent panel to alleviate the Employer's concern regarding the credentials of arbitrators.

Employer Position: The Employer opposes final and binding arbitration as the means to resolve grievances. Although understanding that its position that grievances should be resolved either through the courts or SPBR is not the norm, the Employer's experience with final and binding arbitration has resulted in several decisions in other bargaining units with which it does not agree. It appealed one of those decisions, with the end result of a determination by the Common Pleas Magistrate finding that while the Magistrate may not have reached the same result as the Arbitrator, there was no basis for overturning the Award under the applicable Ohio law. The Employer vehemently disagreed with the factual and legal findings of the Arbitrator in that case, and the Employer simply no longer desires to agree in the first instance to submit disagreements to binding arbitration.

Discussion: There is no question but that final and binding arbitration is, and has been for some time, the norm in resolving deputes between the parties regarding contract interpretation and discipline. It is favored by the law, and is clearly a more efficient and inexpensive method of resolving contractual disputes. While there still exist agreements in which disciplinary matters of more than three days are submitted to the applicable civil service authority in some jurisdictions, the Fact-Finder has not seen, and the parties have not provided, any agreements in which the contractual grievance procedure for all grievances ends in a decision by the Employer with the Union left to either accept the answer or pursue the matter in court as is proposed by the Employer here. The 2007 of Fact-Finder Margaret Nancy Johnson in Athens County, Ohio cited by the Employer does not support its contention that a contractual grievance

procedure ending without a binding grievance resolution process has been accepted by other Fact-Finders. In fact, in Johnson's Recommendations, she notes that the Union has agreed to the resolution of disciplinary matters of more than three days before the SPBR, but her recommendation clearly provides that all other grievances, including discipline of less than three days will continue to be subject to final and binding arbitration.

The Fact-Finder has carefully reviewed the decision of Arbitrator Mollie Bowers which the Employer cites as evidence of the risk of final and binding arbitration. The Bowers award is based upon credibility findings in which she notes that a key Employer witness was not credible, and upon findings that the Employer had engaged in disparate treatment among employees in its discipline of the Grievant. Under these circumstances, the Fact-Finder simply cannot agree that the award represents an unreasonable and rogue decision as it is portrayed by the Employer. Further, it seems to be an overreaction to conclude that because the Employer disagreed with the decision of one arbitrator, all arbitrators are to be distrusted. Since however, there is a system in place for the review of employee discipline of more than three days, under these circumstances wherein the Employer has developed a concern regarding arbitration in the disciplinary context, a grievance procedure wherein discipline of more than three days is determined by the SPBR rather than through arbitration is appropriate. It is not acceptable, however, for the Employer to determine all other contractual interpretation grievances and lesser disciplinary matters as the final decider so that the Union, if it does not agree, is left with no alternative but the expensive and protracted option of suing for breach of contract in court. In order to limit the potential list of Arbitrators to those with experience, those who are more likely to be known to the parties and their counsel, and who are within the geographic area, the Fact-Finder recommends that the smaller panel of the Arbitration and Mediation Service (AMS) be utilized rather than FMCS as proposed by the Union.

Recommendation: Step 4 of Article 8 should read as follows:

> If a grievance concerning discipline of three days or less or other alleged contractual violation is not satisfactorily resolved, the Union may appeal the

grievance to arbitration. The Union may appeal to arbitration by notifying the Executive Director of Job and Family Services/ County Administrator or his or her previously specified designee, in writing within thirty calendar days after receiving the Step 3 answer. After a grievance has been appealed to arbitration, the Union will request the Arbitration and Mediation Service (AMS) to provide a list of seven arbitrators. The Employer and Union will alternately strike names from the list provided by AMS. The arbitrator remaining after the others on the list have been struck will be used to arbitrate the grievance. Notwithstanding the foregoing, the Union and Employer each has the right prior to striking arbitrator names to reject one list provided by AMS in its entirety and to request an alternate list of seven arbitrators from AMS. All arbitration hearings shall be held in Lebanon, Ohio unless the parties agree otherwise.

The arbitrator will have no authority to amend, modify, nullify, ignore, add to or subtract from the provisions of this Agreement. The arbitrator shall only consider and make a decision with respect to the issue(s) submitted to arbitration, and shall have no authority to make a decision on any issue not submitted. The arbitrator shall submit his or her opinion and award in writing within thirty calendar days after the close of hearing or after submission of post hearing briefs. The decision of the arbitrator shall be final and binding upon the parties.

The fees and expenses of the arbitrator shall be divided equally between the Employer and Union. Each party shall be responsible for compensating its own representatives and non-employee witnesses.

Grievances regarding discipline of more than three days or termination will be appealed to and heard by the State Personnel Board of Review (SPBR) pursuant to the rules and procedures of the SPBR.

ARTICLE 9 - DISCIPLINE

Union Position: The Union has proposed a standard discipline article which incorporates a just cause standard for discipline. This Employer's proposal on the same subject, however, is tied to the Employer's grievance procedure proposal which excludes final and binding arbitration. The Union additionally objects to the Employer's proposed final sentence of Section 9.98 which is an open ended provision permitting an suspension without pay in the event that an employee is charged with a serious violation of the law until such time as the charges are resolved. The language does not define either what constitutes an serious violation of law or resolution of the charges, and is simply to vague and open ended. The proposed language could place the employee in an unchallengeable limbo for an indeterminate time. The issue should be addressed on a case by case basis.

Employer Position: The Employer proposes a disciplinary standard that comports with the language of O.R.C. §124.34 which dovetails with its proposal that disciplinary matters will be heard before the SPBR. The Employer further proposes language which will permit the placement of an employee on leave of absence without pay during the pendency of serious criminal charges. This proposal will allow the employer to remove an employee who may be charged with criminal violations which would potentially inhibit their ability to work either legally or for liability reasons until such time as there is a resolution of those charges by the appropriate authorities.

Discussion: Having determined that the grievance procedure will terminate before the SPBR for disciplinary matters of more than three days, the standard for discipline in this agreement should mirror the language of the statute pursuant to which the SPBR adjudicates cases. SPBR would not have jurisdiction to determine just cause pursuant to any other than the statutory standard, and its use is therefore appropriate in this case.

The proposed language of Section 9.98, while appropriately intentioned, is somewhat overbroad in its sweep since it does not lend sufficient definition to give notice to employees as to the circumstances under which an employee will be suspended as a result of criminal charges or the circumstances which constitute resolution of the charges. While there may well be a need to remove an employee while criminal charges are pending, the language as proposed is simply too vague and broad. The Fact-Finder is therefore recommending somewhat more tailored language to reach the Employer's stated intent.

Recommendation: Section 9.1 should read as follows:

> The tenure of all bargaining unit employees shall be during good behavior and efficient service. No employee shall be disciplined except as provided for in O.R.C. §124.34.

Section 9.98 (last sentence) should read as follows:

> In the event that any employee is criminally charged with an offense which, if convicted, would render the employee ineligible to continue in employment or which, if convicted, could reasonably subject the Employer to liability if the employee were continued in employment, the employee may be placed on an

unpaid leave of absence until resolution of the charges either through dismissal, a finding of not guilty, or conviction.

ARTICLE 10 - WORK RULES

Employer Position: The Employer proposes language which permits the Employer to promulgate rules, regulations and procedures for employee conduct and operations. The language requires notice to the Union and bargaining for thirty days prior to implementation by the Employer once it has bargained to impasse. The language provides that if agreement cannot be reached and the Employer implements the changes the Union may file a grievance if the changes are in conflict with existing contractual language or may file an unfair labor practice charge with SERB if it believes impasse has not been reached. The purpose of this language is provide the Employer with flexibility in making changes pursuant to SERB's decision in the Toledo City School District Board of Education case, 2000-ULP-05-0274 which held that an employer cannot modify an existing agreement without negotiation and agreement midterm.

Union Position: The Employer's proposed language permits the Employer to alter terms and conditions of employment after engaging in minimal bargaining and declaring an impasse. The provision in essence gives the Employer carte blanche to implement changes which it does not believe it can obtain in bargaining merely by remaining silent during bargaining and waiting to implement those changes without a meaningful impasse procedure. The Union's only recourse is to a grievance procedure which, pursuant to the Employer's proposal, ends with a decision by the Employer, or to file an unfair labor practice charge. The Union remains willing to bargain on changes midterm, but believes that the bargaining must be balanced.

Discussion: While the Fact-Finder clearly understands that the Employer would prefer flexibility to change terms and conditions of employment during the term of the Collective Bargaining Agreement without being required to bargain to agreement with the Union as required by the Toledo City School District case, its proposal here seeks to in essence take all bargaining power from the Union in the event that the Employer seeks to make changes in mandatory

subjects of bargaining. The proposal requires that the Employer do nothing more than bargain for a period of thirty days before implementing a change, and leaves the Union with little recourse but to file an unfair labor practice charge, a procedure which often takes more than a year to complete. The language does not appear to exist in any of the Employer's other collective bargaining agreements, and the Employer has not presented any arguments which are sufficiently compelling to dictate the inclusion of the language which permits changes at any time after completion of bargaining without providing an equitable impasse procedure.

Recommendation: Proposed Article 10 should not be included in the Agreement.

ARTICLE 13 - LAYOFF AND RECALL

Employer Position: The only remaining area of dispute between the parties regarding the Layoff and Recall Article is Section 13.6 proposed by the Employer which would permit the Employer to implement a furlough or short term layoff of 80 or fewer work hours upon provision of 14 days notice to the affected employees. As with many of the Employer's proposals, this proposal is to permit flexibility on the part of the Employer to furlough rather than layoff employees should it become necessary to make this sort of decision in these difficult economic times.

Union Position: The Union does not object to furloughs in principle, but clearly would expect an opportunity to bargain about the issue of furloughs versus layoffs as well as the length and timing of any furloughs. Clearly this is a mandatory subject of bargaining, and it is unreasonable for the Employer to expect to have unbridled discretion to mandate furloughs without any bargaining with the Union as proposed.

Discussion: The Fact-Finder is hard pressed to agree with the Employer that unbridled discretion to implement furloughs is necessary without some evidence of that necessity beyond the mere desire for flexibility expressed at hearing. It is not unreasonable to seek agreement with the Union on any proposed short term layoffs, and bargaining on a subject which has a significant

impact on employees working hours and wages is not only appropriate but expected.

Recommendation: Section 13.6 should read as follows:

> In the event that the Employer determines that it is desirable to implement a short term layoff of eighty (80) work hours or less per fiscal year, the Employer will notify the Union of its intention thirty (30) days prior to the proposed short term layoff. The Union and Employer will bargain concerning the short term layoff to impasse utilizing the procedures of O.R.C. 4117.14.

ARTICLE 15 - HOURS OF WORK AND OVERTIME

Union Position: The Union proposes that employees who are assigned to on-call responsibilities on week nights be paid a flat rate of $50.00 per week day on call and $75.00 per day for on-call duty on Saturday, Sunday or holidays. While employees are currently paid for duties when they are actually called out while serving on call, they are not paid for week night on call availability and are paid $250.00 for weekend on call availability. On call duty, however, requires that employees take phone calls and enter information into the Employer data base for which they are not currently paid on week nights. Not all of these calls will result in an actual call out, but do require that the employee remain in the area so that he can respond if necessary within one hour, remain accessible by phone, and spend time on the phone and computer. There is currently no compensation for week night on call duties or duties on holidays which do not happen to occur on weekends. Clearly employees should be compensated for both week night and weekend on call duties which may not necessarily require that they leave their home. The Union additionally seeks language which would provide that caseworkers eligible for on call duties be permitted to volunteer for dates one month at a time. In the event there are no volunteers, employees should be assigned in inverse order of seniority in rotation.

Employer Position: The Employer acknowledges that employees should be paid for time spent on call both on week nights and weekends. To that end, it proposes that employees be paid $30.00 per day for week night and $50.00 per day for on call duty on weekends and holidays. The Employer proposes no language regarding scheduling, but rather seeks that employees volunteer

pursuant to their current procedure. There are a limited number of individuals who are eligible for this duty since they must have forensic interviewing training. The current scheduling policy permits the employees to schedule themselves on a monthly basis. The current scheduling policy was designed several years ago by the employees who perform the on call duties, and it appears to be working. There is no apparent reason to change the scheduling system at this time.

Discussion: There is no question but that the employees who are assigned on call duties must be compensated for time spent on call. While they are compensated at overtime rates when actually called out, there are limitations on activities which result from being on call as well as work duties which must be performed which may or may not culminate in a call out. Clearly employees are entitled to be paid for that work. The work itself, however, is unpredictable. On some nights there may be several calls, while on others there are none. The Employer's proposal would decrease the amount currently paid for weekend on call duty, which is currently defined as Friday through Sunday, substantially from $250.00 to $100.00. Although the elimination of Friday in the definition of weekend justifies some decrease in the rate, no clear explanation was provided for this substantial decrease of more than half. The Fact-Finder believes that inconvenience to personal life as well as the actual work duties performed at home required while on-call dictate that employees be paid an amount sufficient to fairly compensate for that inconvenience and time spent working when there is no actual call out. The Union's proposal provides a more equitable compensation.

With regard to scheduling, the Employer argues that the system was created by the employees and is currently working well. However, since employees are currently compensated only for on call duties on the weekend, the addition of week night and holiday compensation may alter the current scheduling dynamic. A system for scheduling on call duties equitably will avoid potential disputes and disagreements between employees as to scheduling.

Recommendation: Articles 15.7, 15.8 and 15.9 should read as follows:

Section 15.7 Employees assigned after hour Hotline responsibility Monday through

Friday shall be paid $50.00 per day on-call pay. If an employee is called out, the employee shall be paid at the rate of one and on-half (1 ½) times the employee's regular hourly rate for each call-out, with a minium of two (2) hours, except when additional call-outs are received within the two (2) hours of the prior call-out, the employee will receive one and one-half (1 ½) times the employee's regular hourly rate of pay for the actual time spent on the call-outs or a minimum of two (2) hours for all call-outs within that original time period.

Section 15.8 Employees assigned after hour Hotline responsibility Saturday, Sunday or contractually defined holidays shall be paid $750.00 per day on-call pay. If an employee is called out, the employee shall be paid at the rate of one and one-half (1 ½) times the employee's regular hourly rate for each call-out, with a minimum of two (2) hours, except when additional call-outs are received within the two (2) hours of the prior call-out, the employee will receive one and one-half (1 ½) times the employee's regular hourly rate of pay for the actual time spent on the call-outs or a minimum of two (2) hours for all call-outs within that original time period.

Section 15.9 Caseworkers may volunteer for on-call dates on a monthly basis. In the event that insufficient employees volunteer for all dates in any given month, the least senior caseworker will be selected who does not have an approved application for paid leave that would conflict with being on call. A caseworker who is involuntarily assigned will be temporarily placed last in the rotation, and the next date on which there are no volunteers, the next caseworker in inverse order of seniority will be assigned subject to the paid leave exception referenced above. This rotation shall be followed until all dates are assigned in any given month.

ARTICLE 16 - WAGES

Union Position: The Union proposes a three percent wage increase in each year of a proposed three year Agreement. These employees received a two percent lump sum increase in 2009. There was no increase on the wage rates at that time, and employees are still being paid at the 2008 rates. In 2010, there has been no wage increase or lump sum payment, with the net effect that the employees of this bargaining unit are being paid less than they were in 2009. While the Employer is not flush with cash, Warren County is one of the counties still growing in Ohio and it can afford the proposed wage increase. The comparables submitted by the Union show that other children services agencies are receiving wage increases. Further the Dispatch Collective Bargaining Agreement negotiated by the Employer in 2009 provides those employees with a one percent wage increase, indicating that the Employer has an acknowledged ability to pay a wage increase.

Employer Position: The Employer proposes no wage increase with a wage reopener in the second and third years of the Agreement. The non-bargaining unit employees in the County have, like these employees, not received any wage increases since 2008. The Employer has established a county wide wage freeze because revenues have been declining. Local Government Funds are not yet established by the State for next year, and may well be eliminated. While the Employer is not in the throes of a fiscal crisis, that is only the case because of good conservative fiscal management. The Employer has focused on retention of employees, and to date has been able to do so because it has not provided wage increases. A wage increase for this group is not prudent at this time.

Discussion: While the Union's proposal of three percent wage increases in each year of a three year Agreement is simply not realistic in the current economic environment, neither is the Employer's proposed zero percent increase fair or realistic. While it is clear that the Employer's revenues have been shrinking over the last two years, there is no evidence that the Employer cannot afford a modest increase for this small group. The Employer has agreed to wage increases in every other bargaining unit in 2009 of up to three percent. Thus, while this bargaining unit got a 2% lump sum payment not added to their base wage rate, all other bargaining units got an increase in the base wage rate. Further, several of the other bargaining units will receive three percent increases in the current year, and the Employer has agreed to a one percent increase in the Dispatch bargaining unit for 2010. There is no question but that future incomes from the State Local Government Fund in 2011 are uncertain and that there has been a clear downward trend in the Employer's receipts. The Employer is not, however, in fiscal jeopardy. The cost for a one percent wage increase in this bargaining unit is approximately $8,519.00. The evidence presented at hearing, while indicating that the Employer is not in financial circumstances which permit it to spend with abandon, demonstrates that this sum is not beyond the realm of reasonableness for this bargaining unit which has not received a wage increase since 2008.

Recommendation: Article 16 should provide for the following wages:

one percent increase upon effective date of the Agreement; wage reopeners in the second and third years of the Agreement.

ARTICLE 17 - INSURANCES

Union Position: While the Union agrees to take the same insurances as are offered to all other employees throughout the County, it disagrees with the Employer's proposal which reserves the exclusive right to alter benefits, carriers or plans without bargaining with the Union regarding the effects of those alterations. Clearly such changes could have a significant economic impact on employees, and their effects would be a mandatory subject of bargaining. The Union believes that retaining the right to bargain about the effects of Employer instituted changes is crucial to the employees in this bargaining unit. The Union in turn proposes a waiver incentive to be paid annually to employees who opt to waive medical coverage. The Union argues that this provides a small benefit to those employees who have coverage elsewhere to opt out of the Employer's plan, thus saving the Employer the cost of insurance.

Employer Position: The Employer is self insured. The Employer only provides one option for insurance which is an HSA plan which requires no premium contribution from employees. Since the Employer is self-insured and this unit is only a small portion of a larger 1,000 member insurance group, the Employer must maintain flexibility to make changes without being hampered by one small group of employees. The Employer opposes the Union's waiver incentive. No other group on the County has the opt out incentive option at this time, and the Employer is unclear as to how this could potentially affect costs and premiums. While the Employer is willing to explore this possibility in its insurance committee to determine if the benefit could be of benefit to all employees, its potential affect on premium rates is unknown at this time. Although the Employer would indeed save the cost of coverage for those employees who opt out, administration of such a provision is difficult without careful consideration first being given to issues such as an employee having opted out seeking to opt in mid plan year due to changed circumstances and other potential issues which have not been thoroughly considered.

Discussion: As the Union notes, insurance is a mandatory subject of bargaining, and changes in insurance coverages or premiums can have significant impacts on employee wages. While the Employer requires flexibility to keep costs within reasonable bounds for all of the Employer's employees, there must still be some consideration given to the impact of changes on employee's incomes and circumstances, and the Union must be permitted to bargain about those impacts in the event of changes in the plan. In fact, among the Employer's other bargaining units, three place a cap on potential employee contributions, two are silent concerning mid term changes, although one of those agrees to accept changes to employee payments as are implemented for other employees, and one requires bargaining regarding the effects of changes. The Employer has not articulated any reason beyond a desire for flexibility in seeking to require that this bargaining unit alone be required to accept any and all changes in insurance without limitation or effects bargaining. Since the Employer is already bound to bargain with other bargaining units, its flexibility is already somewhat limited, and there does not appear to be sufficient rationale for eliminating effects bargaining on an issue as substantial as health insurance benefits for this bargaining unit.

The Union's proposal for an opt out incentive must be rejected. As the Employer noted at hearing, currently only one bargaining unit employee opts out of the Employer's insurance, and it is therefore not a benefit which would be of general value to the bargaining unit at this time. More importantly, however, the Employer does not have a clear understanding as to the impact of an opt out provision, and until its potential effects if it were offered county wide are considered, it is simply unwise to implement such a benefit. Finally, the Employer's point concerning the difficulty in administering such a benefit are well taken, and until the issues of opting back in due to a change in circumstances are fully considered, such a benefit should not be implemented.

Recommendation: The language of Article 17 should read as follows:

> Section 1. The Employer shall provide to bargaining unit employees the same medical, vision, dental, and life insurance plans and benefits that are provided to other General Fund County employees.

Section 2. The Employer maintains the right to change carriers, benefit levels, or plans. However, if changes in the medical insurance plan occur that are not required by law and would result in a substantial increase in costs to employees, the Employer shall provide notice to the Union and bargain the effects of such changes pursuant to a limited economic contract reopener in accordance with O.R.C. 4117.14. This does not prevent the Employer from implementing changes to the medical insurance plan prior to bargaining consistent with Section 1 above.

ARTICLE 19 - VACATION

Union Position: The Union proposes vacation accrual as follows: 1to 6 years of employment, 2 weeks; 6 to 12 years, 3 weeks; 12 to 25 years - 4 weeks, 25 or more years, 5 weeks. A review of the comparable jurisdictions submitted by the Union demonstrates that this bargaining unit accrues vacation at far lower rates than other comparable groups. This proposal decreases the years of service required from eight to six years for three weeks and from twenty-five to fifteen years at four weeks.

Employer Position: These employees currently accrue at the following rate: 1-8 years of service, 2 weeks; 8 to 15 years of service, 3 weeks; 15-25 years of service, 4 weeks; and over 25 years, 5 weeks. This is the same accrual as all other county employees including both organized and unrepresented employees. Clearly vacation is a costly economic benefit, and there is no reason to increase vacation for this particular group.

Discussion: All but one of the comparable agreements from other counties' children services agencies do in fact have faster vacation accrual than that of this bargaining unit at some point in the vacation accrual process. Those accruals, however, vary greatly, and some do not have greater accrual than this bargaining unit until later in employment. While many do accrue greater vacation, the picture presented by the comparable jurisdictions presented by the Union is inconsistent. On the other hand, the vacation accrual proposed by the Employer is consistent throughout the county for all other groups. The Union simply did not present any cogent argument which would convince the Fact-Finder that this group has a need or entitlement to substantially greater vacation accrual than all other groups.

Recommendation: Article 19.1 should read as follows:

Full-time bargaining unit employees shall earn vacation leave according to their number of years of service with the Employer as follows:
A. One (1) year of service but less than eight years completed: rate of accumulation: 3.1 hours per 80 hours worked; average total per year: 80 hours.
B. Eight (8) years of service but less than fifteen (15) completed: rate of accumulation: 4.6 hours per 80 hours worked; average total per year: 120 hours.
C. Fifteen (15) years of service but less than twenty-five (25)completed: rate of accumulation: 6.2 hours per 80 hours worked; average total per year: 160 hours.
D. Twenty-five (25) years or more of service completed: rate of accumulation: 7.7 hours per 80 hours worked; average total per year: 200 hours.

ARTICLE ___ - PERSONAL LEAVE

Union Position: The Union proposes language providing employees with two unrestricted personal leave days per year. Comparable collective bargaining agreements in other jurisdictions accrue vacation at a faster rate than these employees and have personal days available. The other collective bargaining agreements within Warren County have personal days in some form, although the Union does not desire to tie personal days to attendance as in several of those agreements. The Union further proposes that upon leaving employment, the employee would be paid for one year's unused personal days.

Employer Position: This is a new benefit which the Union is proposing. The non organized county employees do not have any personal days other than one which may be earned through the Employer's annual wellness day program. In those collective bargaining agreements which have personal days, they must be earned through attendance. This is a benefit which should not be given without something being provided in exchange.

Discussion: There are indeed occasions which necessitate an employee's absence which are not an appropriate use of sick leave, and the provision of personal days is generally considered appropriate for that purpose, as for example an emergency home repair situation. The Union's proposal, however seeks not only unlimited and unrestricted personal days, but a payout of unused days upon departing employment. Although one of the Employer's bargaining units, the agreement between OAPSE and the Board of MR/DD contains three unlimited personal leave days, the Dispatch and three Sheriff's Department agreements contain leave tied to sick leave

usage, while the Engineer's Office agreement does not appear to contain any personal leave, and non represented employees do not have personal leave days. While the Union objects to tying personal leave to attendance, it must be recognized that additional paid time off is, in the end, an economic benefit which creates additional personnel expense. The Union further argues that the required 180 days attendance with no absences is too difficult to meet. There was, however, no evidence presented regarding typical attendance or whether in fact employees are generally able to earn personal leave in the other bargaining units. The attendance requirement does not appear to be too onerous on its face, and provides the Employer with some benefit, that is excellent employee attendance, in exchange for the expense of providing personal days. The Fact-Finder is persuaded by the internal comparables that this bargaining unit should be provided with personal days on the same basis as other bargaining unit employees.

Recommendation: Personal leave language as follows:

> Employees who have completed their probationary period and who do not use any unscheduled sick leave during any one hundred eighty (180) consecutive calendar day period shall be granted one (1) personal leave day with pay. A maximum of two (2) personal leave days can be earned during any calendar year. The consecutive day period provided for in this Section can begin at any time, and shall end one hundred eighty (180) calendar days later.

ARTICLE ___ - PROMOTIONS

Union Position: The Union proposes a system whereby employees can be advanced to the Caseworker II and Caseworker III positions. Once an employee is sufficiently trained and experienced, he is assigned a full caseload and should be advanced to the Caseworker II classification. While there are fewer Caseworker III's, employees should be permitted to request promotion to that position in the same manner. The procedure proposed is essentially the way the system is working now, and the language should therefore be incorporated into the Agreement.

Employer Position: While ideally the Employer would want that all Caseworkers be able to function at the level of the Caseworker II, the Employer desires to retain discretion as to the number of employees who will advance to the Caseworker II position. The Caseworker II must

possess sufficient training and experience to handle a full caseload independently. The decision regarding to Caseworker II is in part an economic decision due to the higher rated pay. The Caseworker III classification, however, is more limited. It includes some duties of a supervisory nature, and therefore requires additional skills not required of either a Caseworker I or II. Additionally, the need for employees in the Caseworker III classification is more limited, and the Employer simply neither needs nor can accommodate as many employees in this classification. Promotion to the position therefore cannot be considered an automatic progression and the Union's proposal is therefore unacceptable.

Discussion: The Union's proposal, insofar as it seeks to permit employees who are qualified for advancement to Caseworker II but who have not been advanced to request the promotion, is reasonable. In view of the fact that the Employer admittedly would prefer that all Caseworker I's be able to function at the level of a Caseworker II, it is appropriate that there be some system in place to allow these employees to advance. Under the language recommended by the Fact-Finder, the Employer after determining the qualifications for advancement, is expected to reasonably advance employees who request the promotion if they are qualified. While this is clearly in part an economic issue due to the pay increase, it is additionally an equitable issue to pay employees who are functioning at the level of a Caseworker II the pay that is commensurate with their skills and abilities. It is further appropriate that these employees should be appropriately promoted in view of the limited wage increase discussed above.

The promotion language as written is not, however recommended for advancement to the position of Caseworker III. There is a need for a more limited number of employees in this position, and it entails duties which are not required of either the Caseworker I or II. Promotions to this position should be made only in the event that the Employer determines that there are positions open to be filled, not upon employee request.

Recommendation: The promotion language should read as follows:

> Promotions of an existing Caseworker I to a Caseworker II will be contingent upon completion of core training, mentoring, experience, and satisfactory or better

performance evaluations for the previous two years.

The employee seeking to advance to the position of Caseworker II is responsible for requesting a review for eligibility for advancement from his Supervisor. If the Supervisor reasonably determines that the employee meets the established criteria, the Supervisor may recommend the employee for promotion to the Children Services Director who will make the final decision. Approval for promotion will not be unreasonably withheld. Promotional pay increases in accordance with this Article will be effective the pay period following the promotion.

ARTICLE 26 - DURATION

Employer Position: The Employer proposes a zipper clause which provides that the parties have had unlimited rights to make proposals and that the Agreement represents the entirety of their agreement. These types of provisions are common in collective bargaining agreements and allow the parties to know that once negotiations are completed, the terms of the agreement will not be altered.

Union Position: The Union argues that the zipper clause should not be included. While the result sought by the Employer is a laudable one, since this is a first Agreement, there is still much the parties are learning about the operation. There may be many practices on which the parties regularly rely which are not dealt with in the Agreement simply because the parties did not understand or realize their existence and impact.

Discussion: The Fact-Finder is persuaded by the Union's argument on this provision. Since this is an initial collective bargaining agreement between the parties, there may be practices and procedures on which the parties rely of which the Union is unaware and which were not raised by bargaining unit members in preparation for negotiations simply because they were not seen as issues at this time. Because of the potential that such matters which have not been discussed or even thought about are more likely to arise in a first time contract, the inclusion of a zipper clause as proposed by the Employer is less appropriate than it might otherwise be in the instance of a long term, stable and on-going bargaining relationship between parties.

Recommendation: The proposed section 26.3 should not be included in the Agreement.

Dated: November 15, 2010

Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report and Recommendations was delivered via email this 15th day of November, 2010 to Kelly Babcock, representative for the Employer at Kbabcock@clemansnelson.com, and to John Campbell-Orde, representative for the Union at jcampbellorde@professionalsguild.org.

Tobie Braverman

EXHIBIT A

	Preamble/Purpose
Article 1	Recognition
Article 2	Management Rights (in part)
Article 3	Nondiscrimination (in part)
Article 4	Union Security
Article 5	Union Representation
Article 7	Equipment
Article 8	Grievance Procedure (in part)
Article 9	Discipline (in part)
Article 11	Probationary Periods
Article 12	Seniority
Article 13	Layoff and Recall (in part)
Article 14	Personnel Files
Article 15	Hours of Work & Overtime (in part)
Article 18	Holidays
Article 19	Vacation (in part)
Article 20	Sick Leave
Article 21	Expenses
Article 23	Other Leaves of Absence
Article 24	Drug/Alcohol Testing
Article 25	Waiver in Case of Emergency
Article	Performance Evaluations
Article	Postings
Article	Job Audits
Article 26	Duration (in part)