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AFSCME OHIO COUNCIL 8, LOCAL 1992	)	
(UNION)	)	
- and -	)	**CASE 10-MED-05-0737**
TRUMBULL COUNTY BOARD OF DEVELOPMENTAL DISABILITIES	)	
(EMPLOYER)	)	

FACT-FINDER'S REPORT

February 22, 2011

Proceedings before Jared D. Simmer, Fact-Finder. The undersigned was selected by the Parties to serve in the role of Fact-Finder in the above-captioned case pursuant to the provisions of Section 4117-9-05 of the Ohio Administrative Code.

I. APPEARANCES

For the Union:

Jaladah Aslam of AFSCME, and Sheryl A. Polta, Lana Beerw, Jennifer Romer, James Fellows and Denver Lovejoy.

For the Board:

David Blaugrund, Esq., and Richard Bourgault, Cynthia L. Totten, Ed Stark, Douglas Burkhardt, Ph.D., and Thomas F. Stanko.

II. BACKGROUND

This proceeding involves collective bargaining for a successor agreement between AFSCME Local 1992 ("Union") and the Trumbull County Board of Developmental Disabilities ("Board"). The current collective bargaining agreement ("Contract") expired on August 31, 2010.

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The Local 1992 bargaining unit includes all of the Board's employees except for management, confidential, supervisory, part-time, temporary, seasonal, casuals, and employees in the unclassified service. This local has approximately 230 members, or approximately ten (10) fewer employees than it did back in 2008 when the last contract was signed.

The Parties seem to enjoy a mature and stable relationship, and prior to the hearing they were able to meet and settle most open contract items. However, a limited number of issues remained unresolved, primarily economic, and the Parties declared impasse on August 20, 2010.

An informational session with the Parties took place on November 18, 2010, and after that, a fact-finding hearing was scheduled and held on January 14, 2011 in the Board's administration building.

In advance of the January 14 hearing, both parties filed pre-hearing position statements which were duly received and considered. Prior to swearing in witnesses, and with the assistance of the Fact-Finder, the Parties attempted to negotiate resolution of the remaining issues. And, while both Parties should be commended for what turned out to be an open and ultimately productive discussion which led to settlement of a number of issues, certain economic and political realities complicated a global settlement and the Parties requested a fact-finding Report.

It should be noted that the agreements the Parties negotiated and tentatively agreed to prior to this fact-finding hearing are adopted without discussion. Further, any current contract provisions that are neither addressed in this Report nor part of the Parties' earlier T.A.'s are carried over from the last contract and incorporated by reference.

FACT-FINDER'S FINDINGS AND RECOMMENDATIONS

Setting the Stage - An Unprecedented Era of Economic Austerity

The Board receives its funding from three sources; federal, state, and local tax revenues. Therefore, it's important to review the finances of each.

At the national level, as we enter 2011, the U.S. continues to face unsettled economic conditions. Precipitated by the near collapse in 2008 of the financial system and dramatic contraction in the credit markets, the economy finds itself worse off than at any time since the great depression. Tax revenues are stagnant or falling, there is a dramatic and stubborn increase in structural long-term unemployment, and costs (particularly of public sector health care and

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pensions) are soaring. And, reducing the size of the federal deficit has led to calls for immediate action, primarily through cuts in money transfers to the states and a reduction in entitlements.

At the state level, this double whammy of rising costs and declining revenues has led to an unprecedented number of states facing severe budget difficulties, with Ohio no exception. To quote a recent Associated Press article titled, "States poised for deep cutbacks",

> States that have raided their reserve funds, relied on borrowing or accounting gimmicks, and imposed deep cuts on schools, parks and public transit systems no longer can protect key services in the face of another round of multi-billion-dollar deficits…they do so amid a sputtering economic recovery and predictions of slow growth for years to come. State and local governments face lackluster revenue projections, worries from Wall Street over looming debt and the end of federal stimulus spending…governors alike have begun detailing across-the-board pain for education, health care, transportation, public safety and other programs. Some say the year of reckoning for state and local governments is at hand, with calls for structural changes that could radically shift expectations of what services government provides. Many believe the months ahead will be the most challenging in memory, with consequences for millions who depend on government funding.

According to the Sunshine Review, a non-profit organization dedicated to state and local government transparency, Ohio is faring relatively poorly relative to other states, and is expected to project a structural budget shortfall that could exceed $8 billion for the next budget cycle beginning July 1, 2011. To deal with the expected shortfall, it's estimated that Ohio lawmakers will have to adjust inflow and outflow by at least 15% this year, as illustrated by one sector of the state economy (education) that was recently put on notice to expect cuts of up to 20% in state aid. What challenges does Ohio face? An aging population, the 3rd slowest population growth in the U.S. over the past ten years , the recent loss of two congressional seats, a third of the state's college graduates leaving Ohio within three years of graduation, 19% of all state residents on Medicaid (representing some 30% of the state's budget) and a projected 2010 deficit of 11% of the state's total budget. The Review's website illustrates the magnitude of Ohio's deficit problems, particularly at the local level:

2010 Ohio – state level	
Total spending	**Budget gap**
$52.2 billion	*-$3.6 billion*

2010 Ohio – local level	
Total spending	**Deficit**
$56.1 billion	*-$42.9 billion*

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Even though the dire condition of national and state economies are well known, there is no consensus between the two political parties regarding what needs to be done. The Democrats would argue that government has not done enough and needs to engage in more deficit spending and in turn pass out more federal stimulus dollars to combat the recession. This view would suggest that non-profits (such as the Board) could hold reasonable expectation that over the next few years ways would be found to continue guaranteeing its current funding levels. However, at both the state and federal levels Democrats were turned out of office in record numbers in the last election cycle.

In apparent response to concerns that taxes are too high and government too large, the GOP, which picked up almost all of the contested statehouses and took control of the U.S. House of Representatives, proposes cutting spending, including reducing or eliminating funding for a variety of programs, including state and local grants. And this, in turn, sends a very different signal to non-profits like the Board; current funding levels are threatened. And, in Ohio, it's that party that now controls all statewide elected offices, and both houses of the general assembly.

In total, these factors strongly suggest a diminution at least in the short-term of the Board's expected local[1] and state level of funding support which finances its budget. This is, of course, relevant to a determination of ability to pay, which in turn informs the Fact-finder's recommendations for a new contract.

The sobering reality is that the Board relies on multiple funding sources, all of which can be expected to face budget exigencies of their own. In addition, the lion's share of the Board's budget, a local tax levy which provides 70% of its funding, will be coming up for renewal during the life of this new contract, and with high unemployment voter approval of higher taxes is far from assured.

This all points in the direction of an impending budgetary crisis for the Board, it should be clear that it will be necessary for it to control costs as much as possible in the new contract as a hedge against expected funding deficiencies down the road. Since, to a large extent, the revenue side of the equation (grants, subsidies and pay-for-services) lie largely outside of the Board's control, it must, therefore, focus its efforts on managing the cost side of the equation in this next contract.

[1] Approximately 70% of the Board's budget is funded by local tax revenues, with the remainder by federal and state grants.

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Recently, the Board has enacted a number of cost-cutting measures including reducing the number of budgeted positions[2] and freezing certain discretionary costs such as administrative and non-bargaining unit staff salaries. And, while it would appear that perhaps the easiest way to cut costs further would be to simply reduce staffing levels even more, the Board testified that staffing has already been reduced to the bare minimum, and any further reductions would compromise its ability to carry out its legal mandates.

And, it's also important to note that in addition to the projected decrease in revenues, the Board faces an additional constraint since unlike many providers in the non-profit sector it faces for-profit competitors that provide many of the same services and compete with the Board for clients.[3]

In light of the Board's current and anticipated financial constraints, and the precarious nature of its finances, the Fact-finder concludes that it would be irresponsible to recommend changes to the Contract that would increase operating costs further. To the contrary, the following recommendations in this Report are predicated upon the assumption that their needs to be changes to the Contract that actually *reduce* costs. So, on that basis, the Fact-finder makes the following Findings and Recommendations:

Article 11 – Hours of Work

Union's Position

The Union proposes changing the Employment Specialist position to an eight (8) hour shift, and providing the Workshop Specialists at the Champion Workshop a $3,000 lump sum payment to make up for the loss of 130 hours annually that resulted from the reduction in their work hours that occurred during this last contract.

Employer's Position

Citing the need to limit any cost increases for the duration of the Contract, the Board proposes that current practice remain unchanged, and that no lump sum payment be made.

The Board has also suggested some proposed language that in their words more accurately reflect the actual practices of regularly-scheduled hours for some categories of employees, and

[2] The Board recently laid off 19 employees, of which 17 have not been called back.
[3] The ICMFR, a nursing home for people with disabilities, recently concluded that the services of the Board had become too expensive and so transferred clients to the Nicholson Center, a local competitor.

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changes to references to certain positions of employment that apparently no longer exist. Since the Union concurred with these suggestions, the Fact-finder finds the Board's suggested language appropriate and recommends its adoption.

Finding and Recommendation

As to the Union's proposal, and consistent with this Fact-finder's stated objective to find a way to reduce costs in the new contract, it is recommended that the Employment Specialists current number of hours per week remain unchanged, and that no lump sum payment to the Employment Specialists at the Champion Workshop is warranted.

Article 18 – Layoff and Recall

Union's Position

The Union proposes that employees who are laid off be allowed to bump employees in the same or similar positions, provided that employee who wish to exercise their bumping rights be able to perform the minimum qualifications of the job into which they wish to bump.

Board's Position

The Board adamantly opposes granting employees bumping rights, emphasizing that such a provision would limit its ability to efficiently manage its workforce during the current economic crisis, and pointing out the potential disruption and ripple effect to the organization that would occur should a layoff be necessary and employees begin bumping employees out of existing positions, both within and across departments.

Finding and Recommendation

Consistent with this Fact-finder's stated objective to find a way to reduce costs in the new contract, and in recognition of the fact that such an expansion of bumping rights would not only lead to the opposite effect, but be disruptive to efficient operations at a time when the organization is in survival mode, it is not recommended that bumping rights be expanded at this time.

Article 19 – Grievance Procedure

Union's Position

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The current Contract[4] provides that when hearing a suspension or discharge grievance, the arbitrator only has the authority to "recommended modifications of said discipline". The Union proposes changing this language to grant the arbitrator the authority to modify discipline in a suspension or discharge case.

Board's Position

The Board proposes maintaining current language.

Finding and Recommendation

In industrial relations, the recognized purpose of the grievance procedure is to provide a forum for an independent, unbiased review of the actions of management to ensure that principles of due process and just cause are respected in cases where a bargaining unit employee has been disciplined.

This Fact-finder is not aware of another contract where the role of an arbitrator in suspension/discharge cases is limited to "recommending" modifications which management is then free to ignore. The reason that such language is rare is clear – it frustrates the very purpose of a a grievance procedure, and removes the outside review of potentially arbitrary and capricious actions by management.

While this Fact-finder has stated his intention to recommend language that would allow further cost savings, and leaving the rest of the Contract unchanged to the extent practicable (status quo), and certainly appreciates that the Board would wish to maintain a grievance process that doesn't threaten its absolute authority in disciplinary matters, he believes that it would be in both parties best interests to recommend adoption of the Union's proposed enhancement of the arbitrator's authority. First, it would help bring finality to this type of severe discipline. Two, it would minimize the potential for management to mete out discipline that violates fundamental principles of fairness. Three, by permitting the adjustment of discipline where it is shown that such would be appropriate under the circumstances, it provides a "lessons learned" opportunity for management to identify and rectify any supervisory deficiencies. And, four, it helps ensure that any unresolved differences surrounding whether or not the discipline was fair doesn't fester and harm the relationship between management and labor.

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[4] Article 19, Section 4,B. Step 2. Arbitration, C.

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For these reasons it is recommended that the Union's proposal be adopted.

Proposed New Article

Union's Position

The Union proposed a new article that would ensure that bargaining unit employees were provided CPR, CPI and first aid training on their in-service days.

Board's Position

The Board counters by pointing out that that it assists staff to meet the mandatory training requirements set by the Ohio Department of Developmental Disabilities. Towards that end, it provides two scheduled in-service days each program year to complete this mandatory training. It asserts that because each of the two full days is needed to complete the training, there would be no time to accommodate the Union's proposal to add CPR, CPI and first aid training without threatening the ability of employees to complete their required Ohio Department of DD training. And, it points out that it already provides after-hour CPR, CPI and first aid training, just not on an in-service basis. For these reasons, it recommends rejecting this proposal.

Finding and Recommendation

Again, consistent with the stated objective to find a way to reduce costs in the new contract, the Fact-finder can not recommend adoption of the Union's proposal at this time, since to do so would either threaten the credentialing of staff, and/or require the scheduling of additional, paid in-service days which would, of course, lead to an unnecessary and unaffordable increase in staffing and overtime costs.

Article 21 – Holidays

Union's Position

The Union would like to change the Contract so that employees who are called in to work on a designated holiday would be paid double time and ½. Current Contract language provides that in lieu of additional pay that employees receive a vacation day for each holiday day worked instead.

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Board's Position

As expected, the Board objects, pointing out adopting such a premium pay provision would add unnecessary and unaffordable costs to the Contract. It proposes leaving current Contract language unchanged.

Finding and Recommendation

The Union's proposal would clearly add additional wage costs to the Boards' already tight budget. For that reason alone, the Fact-finder cannot recommend adoption of the Union's proposal at this time.

Article 27 – Salary Schedules

Union's Position

The Union's initial proposal was to grant each employee in the unit 3% wage increases during each year of the 3-year Contract. It subsequently revised its proposal to grant a 3% in the first year, and a wage reopener in the second year (9-1-11). And, in either case, employees would continue to receive their scheduled step increases based on time in grade.

Board's Position

The Board proposed a two-tier pay system for new hires, a 3-year wage freeze, and a 3-year freeze in step increases. It was calculated that the freeze in steps would result in cost savings of $83,000 if full-time employees were affected, and a cost savings of $90,000 if he part-timers were included.

Finding and Recommendation

While no bargaining unit likes to entertain such a recommendation, if the Fact-finder's stated objective is to try and achieve cost reductions in the new Contract to help stabilize the Board's budget, a recommended pay increase would directly threaten that objective, for there would be no surer way to add to costs than to increase base rates of pay. In addition, it should be pointed out that this bargaining unit received both step increases, and a 3% wage increase in 2008, while the non-bargaining unit employees of the Board received less than 2%. And all non-bargaining unit employees have already learned that this year their pay would be frozen for 2011.

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For these reasons, the Fact-finder cannot recommend increases in base pay for the first two years of the Contract. But, because the Board should have a better understanding of funding some time down the road after the new administration in Ohio settles in and Washington sorts out their budget mess, it is recommended that current rates of pay, as well as scheduled step increases for full-time employees only, be frozen for the first two years of the Contract[5]. It is further recommended, however, that a "me-too" clause be in effect at the start of the third year of the Contract with the provision that if the Board's non-bargaining unit employees receive an increase in base pay, and/or reinstitution of step increases[6] during that time, then the Union would be entitled to receive a similar increase. This suggestion is made out of a concern for fundamental fairness, and in recognition of the fact that a freeze in wage/step increases should be a shared sacrifice among all of the Board's employees.

Article 28 – Health Insurance and Related Benefits

Union's Position

The Union asks that, in all regards, the current Board-provided health insurance, in coverage, scope and cost to bargaining unit employees, remain unchanged, including the full family coverage that has traditionally been offered to part-time employees.

Board's Position

The Board points out that the only way to achieve the magnitude of cost savings that its approaching budget crisis suggest it needs to achieve to remain solvent is reducing the costs of health care, and more equitably share in the remaining costs with employees.

First, it proposes to drop the AFSCME prescription drug plan and put bargaining unit employees under the Board's umbrella policy, but permit those employees who wish to continue AFSCME coverage to opt in if they wish and pay the difference.

Second, it suggests pulling these bargaining unit employees out of the AFSCME health care plan and placing them under the single policy that covers every other Board employee. Placing all

[5] The Arbitrator is cognizant of the fact that non-bargaining unit employees as well as administration have already experienced such a freeze.
[6] The Fact-finder is unsure if non-bargaining unit employees of the Board are even eligible to receive step increases.

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employees under one plan would, in theory, permit the Board to enjoy better premiums from the insurance company[7].

At the present time bargaining unit employees pay 10% towards the cost of health insurance, with the Board paying the remaining 90%. What this means is that the Board assumes the lion's share of the risk for increases in annual premiums. Therefore, it proposes that bargaining unit employees be asked to contribute 20% of the cost of coverage which is what all other Board employees currently contribute.

Lastly, the Board would like to drop the full family health care coverage that part-time employees[8] currently enjoy. They emphasize that it is absurd that the cost of providing part-time employees with full family health care coverage is rapidly approaching these employees' gross annual earnings![9]

Finding and Recommendation

As the Board proposed, the Fact-Finder recommends that the AFSCME prescription drug plan be dropped, and that employees be folded in to the Board's plan. But, in addition, these employees should be provided the option of electing to continue under the current AFSMCE plan provided they're willing to assume responsibility for paying any cost differential. In terms of the other changes to health care that are necessary to help rein in costs, this would be the proverbial "low hanging fruit". The other recommended changes to follow are much more substantive.

The Fact-finder is aware of the fact that just last contract this bargaining unit's share of health care costs increased significantly, from 1% of premium costs to 10%. Notwithstanding, he finds that, while painful, the Board's proposal to increase that contribution from 10% to 20% is still within the range of what the average U.S. employee is asked to contribute. In 2007, workers with employer-sponsored insurance contributed on average 16% for single coverage and 28% for family coverage.[10] And, employee contributions are voluntary and not mandatory in that employees may opt out of health care coverage entirely if they wish. While this proposal is significant and painful, the Fact-finder is not aware of a practical alternative; if the Board's costs continue to increase beyond what revenue it takes in, it will have no choice but to cut the size of its work force which

[7] Although the Board testified that this would not produce any savings for 2011 since the current plan is locked in through August.
[8] Primarily van drivers who work approximately 6 hours/day.
[9] They earn about $18,000/year and receive family coverage that costs the Board $15,000/year.
[10] http://en.wikipedia.org/wiki/Health_care_in_the_United_States.

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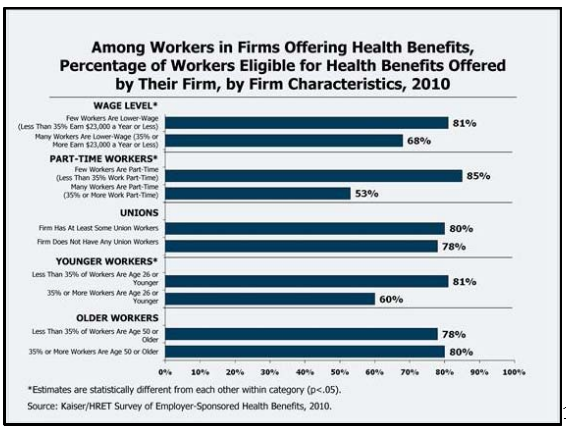
would lead to either scaled back services, and/or loss of its license to provide services entirely, neither of which would seem to be the preferable alternative. And, in any event, the 20% share of coverage costs is already being borne by all other Board employees.

The final proposed change to current health care practices involves the Board's proposal to drop the provision of full family coverage to part-time employees[11]. While the Fact-finder recognizes that this holds the potential to have the most dramatic impact on that particular population of bargaining unit employees, it also makes the most economic sense. First, it seems absurd that an employer would be expected to provide employees a benefit that approaches their gross annual income. Second, as the following chart illustrates, only about 80% of part-time employees are even offered any sort of health care coverage by their employers:



[12]

That said, it is this Fact-finder's experience that it is even more rare to offer full-time coverage to part-timers. So, reluctantly, since he is aware of the impact on families that such a policy change of this magnitude would entail, he finds that the Board's current practice of offering and paying 90% of the cost of full family health insurance coverage to part-time bargaining unit employees is a luxury that is no longer defensible under current economic conditions. For this reason, he recommends that offering employer-paid (80%-20%) family coverage no longer be offered to part-time bargaining employees (but he does recommend continuing to provide individual coverage).

More particularly, he further recommends that individual coverage on an 80-20 (employer-employee) cost sharing basis continue to be offered to all employees (full and part-time), and full family coverage offered on an 80-20 basis to full-time employees, and a 0-100% basis to part-time

[11] It appears that about 80 of the bargaining unit's 230 or so employees would be potentially affected.
[12] Kaiser Family Foundation: http://ehbs.kff.org/?page=charts&id=1&sn=7&ch=1526.

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employees, i.e., should a part-time employee elect to continue family coverage, s/he alone would be responsible for 100% of the premiums.

And, because the sooner this change in coverage goes in to effect the greater the cost savings realized, it is recommended that these changes to the health insurance program go into effect on April 1, 2011.[13]

Article 38 – Duration of Agreement

Union's Position

The Union's pre-hearing statement was silent on the matter, but the Union expressed general agreement that the traditional 3-year contract cycle be continued.

Board's Position

The Board proposed that the new agreement commence on January 1, 2011, except insofar as that date would grant a retroactive economic benefit to any bargaining unit member, and run through August 31, 2013.

Finding and Recommendations

The Fact-finder finds no reason to recommend changing the historical 3-year contract cycle between the Parties, and in fact both Parties seem to be in general accord on this. However, the Parties have been in negotiations for a successor agreement since before last August's expiration August 31 expiration date and now find themselves over five months past the expiration date of the old contract. Therefore, the Fact-finder recommends that the date of new agreement commence on January 1, 2011 and run through the traditional expiration date of August 31, 2013, with effective dates for any recommended changes to economic terms and conditions, if any, all as more fully described, supra. Further, in it is recommended that part-time bargaining unit employees receive their regularly scheduled step increases back to 1-1-11.

Conclusion

The Fact-Finder realizes that neither Party will be fully satisfied with this Report, none more than this bargaining unit which will feel a profound sense of disappointment that so much of what has been bargained for over the years is now at risk of being given back. However, to anyone

[13] If the current contracts with the insurance company permit such a change prior to expiration.

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who follows the news, it's clear that we have entered a new era of fiscal austerity that could last for many years. And, so, while the private sector has taken its turn at hemorrhaging tens of thousands of jobs and benefits, it now seems inevitable that the public and non-profit sector's must now share some of the pain.

This Board, like other non-profits, relies to an inordinate extent on local revenues (in this case, taxes), and state and federal funding to survive, and its ability to generate its own self-supporting revenues is limited. With that in mind, and because the Board has reasonably projected a $300,000+ deficit in for the upcoming fiscal year, it finds itself fighting for its very survival. So, in recognition of that reality, it would be foolish for this Fact-finder to recommend anything that would increase payroll costs, and, in fact, rather, it was imperative to find ways to cut costs which I believe my recommendations would accomplish. Hence, while this has led me to recommend a cost-conscious, and need I say unprecedented, concessionary agreement, it does increase the probability that further layoffs of bargaining unit employees will be minimized or eliminated and in this economy that's a good thing.

Lastly, as difficult as it was to recommend so many Union concessions, e.g. increasing the employee's share of premium costs, eliminating the AFSCME care plan, and dropping family (but not individual coverage for part-time employees, it must be pointed out that not only are these recommended changes not out of the ordinary in the private sector, but they mirror the sacrifices that the Board has already asked of its non-bargaining unit and administrative employees.

Issued: February 22, 2011.

Respectfully submitted,

Jared D. Simmer, Esq.
Fact-Finder

Attach.

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2011 the above Fact-Finder's Report and Recommendations were served upon the following parties, to wit, AFSCME, Ohio Council 8, Local 1992 (via Jaladah Aslam) and the Trumbull County Board of Mental Retardation and Developmental Disabilities (via David S. Blaugrund, Esq.) by electronic (e-mail) service[14], and upon the Ohio State Employment Relations Board (via the Administrator, SERB Bureau of Mediation) in like manner.

Jared D. Simmer, Esq.

Fact-finder

[14] The Parties mutually waived the need for delivery by USPS Overnight mail.