The State of Ohio
STATE EMPLOYMENT RELATIONS BOARD

	)	
Medina Metropolitan Housing Authority	)	SERB Case Nos:
Public Employer	)	11-MED-01-0007 and11-MED-01-0008
	)	
	)	
and	)	FACT FINDER: GREGORY P. SZUTER
	)	
AFSCME, Ohio Council 8	)	
Labor Organization	)	**Fact Finder's**
	)	**REPORT AND RECOMMENDATIONS**
	)	

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Hearing : February 20, and 29, 2012
Report Issued : March 29, 2012

INTRODUCTION

The Medina Metropolitan Housing Authority (herein also "Employer" or "Authority") and AFSCME, Ohio Council 8, (herein "Union") have been negotiating their first collective bargaining agreement. (herein "CBA" or "Agreement") The parties entered negotiations in February, 2011 and concluded a number of Tentative Agreements ("TA"). The open issues were submitted to mediation with the assistance of mediators of the State Employment Relations Board ("SERB" or "Board") upon the filing of these two factfinding cases in September 2011. No additional TA's were reached in that mediation.

On September 23, 2011 pursuant to Ohio Revised Code 4117.14(C)(3) SERB appointed the Fact Finder to conduct a hearing as required by Ohio Administrative Code, OAC 4117-9-05 (G) for Fact-Finding and recommendations on open issues for the Agreement. The Parties agreed to extend the date of the hearing to February 20 and 29, 2012. By the time of the fact-finding referral there were several open issues.

THE BARGAINING UNITS

The Union was certified the bargaining agent of two units by SERB on September 9, 2010. The CBA being negotiated covers both units, a total of 25 persons. The certified units are as follows.

Unit A: All full time and regular part time clerical and technical employees.

Unit B: All full time and regular part time maintenance and service employees.

Both units have the same exclusions for supervisory, managerial and clerical positions and list them by title. The job titles of the Units are not listed. Of the 25 employees of the Authority, 13 are bargaining unit members. In the organizational structure five of the bargaining unit members are in the maintenance department under the Maintenance Director. Their job titles are "Maintenance Mechanic" for four of them, and one "Inspector." The balance are in the department under the

Deputy Director.[1] By job title there are one Receptionist, three Case Workers and four Management Assistants. The employees of the legal/fiscal department are excluded.

MEDIATION

There had been agreement by the Parties to extend the fact-finding hearing date to a mutually agreed date as provided under Ohio Administrative Code, Rule 4117-9-05(G). The Parties and the Fact Finder scheduled a session on for February 20, 2012. That fact finding session was devoted to mediation that would precede the evidentiary hearing on the record so that no position paper would be immediately necessary. In the mediation process with the Fact Finder a series of TA's were reached which are incorporated in this report along with all prior issues that were Tentatively Agreed in negotiations and bargaining.

HEARING

Pre- hearing statements of the issues were submitted by February 28, 2012, with proposals and exhibits in conformity with OAC 4117-9-05(F). The Fact-Finding evidentiary hearing commenced on February 29, 2012, at the Employer's headquarters in Medina, Ohio.

Both Parties attended all the sessions and elaborated upon their positions regarding the issues remaining at impasse through their witnesses and representatives. The Labor Organization was represented by Louis J. Maholic in both sessions. The Employer was represented at both sessions by George S. Crisci Esq. At the second session, the evidentiary hearing, Mr. Crisci was joined by Gillian Laribee Reid, Esq., in house counsel to the Authority.

In addition attending on behalf of the Parties were the following. On February 20, 2012 for the Union: Bob Grady and Larry Holmer (maintenance unit) and Lynn Tegowski and Jennifer

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[1] The chart does not name the organization reporting to the Deputy Director but it was referred to in testimony as "Properties and Programs." However, that term also described the general operation of the entire entity. The context makes it clear enough so that use will continue to be interchangeable herein.

Brown (office unit). All were members of the negotiation committee. For the Employer: James "Skip" Sipos, Director, and Debbie Kubena-Yatsko, Deputy Director.

In attendance for the Union on February 29 were: Daniel Doonan, AFSCME Labor Economist, Bob Grady and Larry Holmer (maintenance unit), and Jennifer Brown (office unit). All were members of the negotiation committee. For the Employer in attendance were: James "Skip" Sipos, Director, and Debbie Kubena-Yatsko, Deputy Director.

Evidence was presented by Mr. Doonan for the Union and by Director Sipos on behalf of the Employer. The Union presented exhibits that were received into evidence. (UX 1-12)[2] In addition, the Authority presented exhibits that were received into evidence. (EX 1-8).[3] The record

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2 The Union's position statement in a notebook that consisted of "Union Position Statement," and indexed subparts identified as follows:

UX 1	Certification of Mail Ballot Election Results of Exclusive Representative" dated Sept. 9, 2010.
UX 2	Budget Worksheet for Medina Metropolitan Housing Authority
UX 3	Ohio Unemployment Rates (Ohio Dept. Job and Fam.,Services, December 2011)
UX 4	Medina County, Ohio, Quickfacts from the US Census Bureau 8/31/2011
UX 5	Resolution 10-42, Medina Metropolitan Housing Authority, Executive Director Employment Contract. December 28, 2010.
UX 6	2009 OHAC Wage Salary Survey, 12/10/2009
UX 7	[withdrawn]
UX 8	"Financial Condition of the Medina Metropolitan Housing Authority" by Dan Doonan, Labor Economist, February 29, 2012,
UX 9	Medina Metropolitan Housing Authority Wage Scale (all employees by name, and job for 2008, 2009, 2010 and 2011)
UX 10	State Employment Relations Board Clearinghouse Benchmark Report, August 19, 2011.
UX 11	Medina Metropolitan Housing Authority Job Descriptions (all employees).
UX 12	Medina Metropolitan Housing Authority Organizational Chart, January 2009.

3 The Employer's exhibits were included in a notebook consisting of "Pre-Hearing Statement of Medina Metropolitan Housing Authority," and indexed subparts identified as follows:

EX 1	Unresolved Items as of February 29, 2012.
EX 2	Sweep Account - First Merit Interest
EX 3	Year to Year Funding Stream Comparative Analysis, 2009-2012.
EX 4	Medina Metropolitan Housing Authority Health Care Cost Comparisons, Monthly Invoice Amounts 2008-2012.
EX 5	Pay Adjustments by Fiscal Year End Compared with Consumer Price Index, 2007-2010
EX 6	[withdrawn]
EX 7	Email from George Crisci to Lou Maholic , December 16, 2011.
EX 8	Audited Basis Financial Statements of the Medina Metropolitan Housing Authority, July 1, 2010 - June 30, 2011

remained open for the purpose of receiving evidence in the form of the Parties' memorandum listing of the TA's reached before and during the Fact Finding session. It was received as a joint exhibit (JX)[4]. The Fact Finding Report and Recommendation was agreed by the Parties to be issued by March 29, 2010.

ISSUES

All TA's as of September 1, 2011 were agreed to remain unchanged. The following open issues were presented for consideration by the Fact Finder on February 20, 2012:

Article 13 Hours of Work and Overtime, Sec. 4. (compensatory time off)
Article 15 Holidays
Article 17 Sick Leave, Sec. 1(b) (4)-(5); 2(b); 10(b) and (d) (definition of immediate family)
Article 18 Leaves of Absence
Article 22 Wages
Article 32 Entire Agreement
Article 33 Duration

At the first fact finding session, the Parties reached TA's on the open issues of Article 13, Article 15, Article 17 and Article 18 noted above during the mediation of February 20, 2012. The issues remaining for report and recommendation are Article 22, 32 and 33 as noted above.

CRITERIA

In compliance with Ohio Revised Code § 4117.14C(4)(e) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact Finder considered the following in making the findings and recommendations contained in this report:

1. Past collective bargaining agreements 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 interest 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] JX 1 TA'd Items as of Fact Finding (final).docx at Attachment B.

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

Among the factors, the first is irrelevant in a new agreement but can be supplanted by the former non-negotiated terms and conditions of employment. Comparison was made by both Parties to other workers doing similar work. The interest of the public is the third element and is put forth as a the balance of equities.[5] The ability to finance and administer the changes is placed in context of the effect of the changes on service. The Authority emphasized this element in its testimony and the Union responded likewise. The lawful Authority of the Employer was another focus with evidence on the structure and mission of the Authority.

For issues that became agreed by mediation and otherwise, any stipulations of the Parties, are the operative issue.

In as much as this proceeding is an advisory interest arbitration, the general standards of interest arbitration are part of what the sixth criteria refers to.

> ". . .[interest arbitration] calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations – they have left it to this board to determine what they should, by negotiation, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to?"[6]

Except as may be stated otherwise below, the criterion is chiefly operative is this, the sixth.

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5 ELKOURI & ELKOURI HOW ARBITRATION WORKS (6th Edition, Ruben, Ed. BNA, 2003) at p. 1361.

6 ELKOURI , at pp. 1359 quoting *Twin City Rapid Transit Co.* 7 LA 845 (McCoy, 1947) at 848.

SUMMARY OF THE EVIDENCE ON THE EMPLOYER'S STRUCTURE, FINANCES AND THE PARTIES' COMPARABLE WAGE EVIDENCE

This section summarizes the evidence presented by both Parties, on the third and fourth factors. These are the mission, structure, financing and services of the Authority and in particular, and metropolitan housing authorities in general.[7] The second factor, comparables, is at the end.

1. Mission and Structure of the Authority

The Authority was founded in 1953 pursuant to chapter 3735 of the Ohio Revised Code. Its mission is the creation, development and management of properties and programs that provide affordable housing for Medina County residents with low to moderate incomes. It is not a jurisdiction under Medina County or its County Commissioners but a separate body politic. It's governing body is a five-member publicly appointed non-compensated Board of Commissioners. The Commissioners sets the Authority's policy, appropriates funds, authorizes budgets, evaluates its performance, and hires the Executive Director.

Organizationally it is divided into three units with the maintenance department and legal/audit department supporting the operational (property and programs) mission. There is a total of 25 employees 13 of which are in the bargaining unit. Its mission to provide affordable housing is generally defined as supplying rental units to eligible persons based on a number of criteria chiefly the client's income. The rent charged to clients cannot exceed, depending on the funding source, 30 to 80% of the median household income of the county. Few if any at the upper end of the range are provided the assistance. Currently the Authority is serving about 1000 households, and has an inventory of 333 housing units.

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7 "MMHA" where it is used refers to the Employer. The universe of metropolitan housing Authority's in general are referred to as "MHA's."

The Authority is unique compared to other MHA's is in the State of Ohio and even nationally in that it provides additional services beyond housing subsidy, and it has a variety of atypical income streams. The Authority's activities were categorized in the YE2011 audit as (1) conventional public housing which includes both a federally subsidized operating fund and a federally subsidized capital fund, (2) HUD Section 8 (Housing Choice Voucher Program) which includes a component referred to as "administrative equity," a fund from which the majority of salaries are taken, and (3) business type activities. The latter consist of several lines of business activities: (1) leases from non-profit affiliates, (2) service contracts with local governments (eg. with the ADAMH Board), (3) interest income (4) grants and (4) miscellaneous rental units owned by the Authority.

The funding for the properties and programs of the Authority comes from two major sources, U.S. Department of Housing and Urban Development (HUD) and it's own business activities. The allocation between these two are about 2/3 - 1/3. The state and local government funding of the Authority amounts to only 2% of the total revenue. Private donors such as the United Way, offer negligible additions. Rents and fees charged clients are another minor revenue source.

The programs supported by HUD are: 1. Section 8 Housing Choice Voucher, 2. Public Housing Operating Subsidy, 3. Public Housing Capital Fund, 4 Shelter plus Care Program, 5 Emergency Food and Shelter Program. Of these Section 8 is the largest source of revenue. It provides housing vouchers to supplement to the rental payments of the Authority's clients. The other three are smaller federal programs. Public Housing Operating Subsidy is an amount received by the Authority for the operation of its wholly owned property, Northview Manor. The federal government also provides contribution to the capital expenses for that property. Shelter plus Care provides rental subsidies for disabled homeless persons and Emergency Food and Shelter is a federally funded program for households facing housing crises. These last two are very small in comparison. One other source of federal funds was provided under the American Recovery and

Reinvestment Act of 2009 (ARRA) for homeless prevention and re-housing the homeless. Because the revenues received are small and even smaller as a contribution to administrative costs, and since it is expiring in 2012 it will be ignored.

Current revenues[8] received for Section 8 programs is 3.4 million. The total federal program revenues is 4.1 million. Under the terms of each of the federal programs, a portion of the revenues is designated for administrative fees and expenses, reserving the balance for the program purpose. That is to say that of the 4.1 million far less is permitted to be used for salaries and other administrative costs with the vast majority of the revenues being devoted to its mission such as rent subsidy, capital programs etc. The "administration" portion is the basis from which all salaries of all personnel are paid. Testimony puts it at about 10% of the federal payments. To comply with federal program guidelines, and the Authority must have an allocation plan approved by the Office of Management and Budget based on time studies to determine how salaries of may be charged back to a particular program's administrative costs.

The overall revenue received from federal sources, follows the "political cycle" rather than the economic cycle. Both the decline in the local economy that presents great needs, or a robust local economy that mitigates those needs are fairly irrelevant to the funding of the Authority. The funding is dependent on the national political cycle of whether the federal government is inclined to increase or decrease contributions to public housing out of the federal budget (or continuing resolutions) due to its own budget considerations.

The state and local government sources, as well as private donations, are presented mostly for the purpose of demonstrating their similar trend of erosion. State of Ohio Department of Development limits government contributions to identifiable programs. The Medina County

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8 All recent financial data is based on the FY2011 Audit (June 30, 2011) unless noted as from the draft 2012 audit.

Commissioners, City of Wadsworth, City of Medina, United Way and Operation HOMES are other contributors. These generally fall into the EHAP[9] program. It is a hodgepodge of programs that became administered by the Authority by consensus within the county over time. Essentially any state/local program that involved shelter even tangentially was historically assigned to the Authority although it might not have been so in other counties. For example, one program provides properties and programs to the ADAMH Board associated with housing for persons with severe mental illness and alcohol and drug addiction. The Authority receives the income for services provided. Others are the County Commissioners' Housing Homeless Fund, the Community Housing Improvement Plans by cities, and grants. The Authority also receives maintenance fees for properties of the County such as the battered women's shelter.

These extra, non-federal programs are unusual in their on right for any MHA. However, the most distinct revenues of the Authority have to do with its "business activities." These primarily have to do with properties leased by the Authority and provided to clients who receive HUD vouchers under Section 8. The properties are owned by not-for-profit affiliates of the Authority, which the Authority leases from the affiliate and and then subleases to clients who are eligible for federal rent subsidy which in turn is administered by the Authority. These properties are distinct from Northview Manor, which is a property owned by the Authority and funded as conventional public housing by the federal government under a separate program.

To a minor extent, "business activities" also includes interest income and small housing units owned by the Authority to provide housing services for persons with certain disabilities in collaboration with units of state or local government. That is generally distinguished from the major business activities as "miscellaneous rental property." The affiliate leases are also distinct from state and local programs on properties owned by other government entities. As minor factors, these

[9] The translation of the acronyms is dispensed with as not contributing to clarity.

owned properties will not be addressed further.

The revenue streams related to leasing from affiliates involve the Brunswick Housing Development Corp. and the Wadsworth Housing Development Corp. These are non-profitt organizations with section 501(c)(3) designations and their own tax EIN's. Brunswick owns four properties and Wadsworth one. Both non-profits have a board separate from the Authority's board consisting of persons that had been formerly members of the Authority's board. The board members are the same for both Brunswick and Wadsworth. They have no employees and no administrative offices. The Authority provides administrative services in the form of budgets, financial, and eligibility services under the lease agreements on each property of these two entities. The books and records of the non-profits are maintained at the Authority's offices. The Authority's accounting services for each of the separate properties is compiled by an outside auditor into an annual audit provided to the respective boards of the non-profits.

The business activity program was established to separate the federally funded programs from a non-federally funded programs, to operate independently from the HUD contributions. This arrangement developed in Medina County in the 1970's, with one property and expanded to the present constellation by the 1990s before the current Executive Director arrived. In addition to clear delineation with respect to the HUD subsidy, by leasing the properties owned by the not-for-profit the Authority creates additional inventory of units for low income tenants. By not owning the property it avoids having the risk of loss or the obligation for the payment of its debt. There are other small benefits to that arrangement. For example, the properties owned by the not-for-profit's are not subject to the payment in lieu of taxes (PIT). This is a payment that housing Authority's make to local government alleviate the loss of its property from local tax rolls. The not-for-profit owned properties are not subject to property tax or to the PIT.

The Authority leases the properties from the affiliated non-profits and receives all the revenues from the tenants and pays only expenses related to the operation of the particular property. It receives fees for operating the property. Each property receives Section 8 rent subsidies, as well as rent and miscellaneous funds like vending fees from clients. The fees the Authority receives from the non-profit are administrative fees, fees for making eligibility determinations, maintenance reimbursements and interest from the loans.

The Authority also provides part of the financing for the non-profits for the purchasing and development of the properties. The role of the Authority varies by each property. For example Wadsworth was funded by a mortgage revenue bond under which a trustee, Mellon Bank, acts as the clearinghouse for payments of obligations. HUD had oversight of the development and controls rent increases. While arrangements vary, in general, the Authority is a subordinate financier of the debt of the properties of these two non-profits. A first mortgage or other senior debt is in place in all the properties. The Authority provided loans secured with a second or other subordinate mortgage. From the borrower's perspective the terms are generous. The interest rates are low and the repayment schedule, lenient. However, the loans are designed to minimize the cost of the development, which in turn reduces the amortization of development costs as a portion of the rent to be paid by Section 8 clients. The Authority can anticipate the clients' rental payments based upon eligibility formulas of the federal programs. The terms of the Authority's loan, are then structured to bring the costs low enough to be in the range where Section 8 clients can afford the rent. Consequently most loans have a 2% interest, and one of 4%.[10]

In summary, the Authority assists, with loans and administrative services, the two non-profits. The public receives more Section 8 units than it might otherwise. The Authority is able to

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[10] The Union notes at the time given, these loans were under the standard mortgage interest rates. The Director justifies the rates by the structure noted above and also with reference to prevailing CD rates. The interest income of the Authority has declined with the depression of bank rates to near zero making 2% and 4% attractive proxies for interest on savings instruments.

provide units that are not on its balance sheet and administer voucher program for which the government pays. Lease arrangements may occur occasionally around the country in other MHA's but not are typically with affiliates. Rather local property owners having surplus units lease them for operation by an MHA. Both parties agreed that although affiliate leases are unusual there is nothing illegal about the arrangement. The Auditor of State conducts audits of the Authority annually. In the state audit, the not-for-profits were identified as affiliates of the Authority. The 2011 audit resulted in the Authority receiving an award for its reporting of its fiscal practices.

2. The Current Financial Environment

The three significant parts of the funding/operational structure have been referred to in the testimony as being comprised of: 1) conventional public housing, 2) HUD Section 8, 3) business activities. In the four years of 2009 through 2012, the latter being annualized on six months to data, there has been a decline in federal sources of revenue. The Section 8 program continually eroded since 2009 while the conventional public housing funds were steadier into 2010 followed by a precipitous drop. While each source had its own peculiar experience curve, the net result for each is about an 6% to 8% average annual reduction in revenue over that time.

The projections for 2012 include six months of data and the projected allocations from a national industry survey as to the expected HUD allocation. The result is that conventional public housing operating subsidy will decline slightly. The Section 8 and the public housing capital funds are projected to have significant declines. The Section 8 allocation is anticipating a reduction of about a 15% and the public housing capital fund is expecting about 30% reduction. In addition, the Authority has already determined that one Section 8 program, (FSS) will be eliminated. That program subsidized one employee's position. Since the subsidy is $5,000 less than the cost it is being terminated at the end of 2012.

The local government sources of funds tracked this in the non-federal programs except that the amounts of their stipends to the Authority were so low that in several cases they became zero or virtually so. Interest income also followed that trend except that the loan interest from the business activities has replaced that loss.

The business activity is the exception to this trend with respect to the statement of the net assets. In regard to the business activity revenues and expenditures, there is a small deficit.[11] No reason has been demonstrated to expect that the revenues of the business sector these would be strongly impacted by any reduction of the federal subsidies. It could certainly be reduced by the voucher program allocation thus indirectly affecting the Authority's leases. That would be marginal, unless the support were entirely abolished. The business activities are anticipated to continue to fund their expenses sufficiently.

Entity wide for the year ended the 2011 revenues decreased $300,000 while expenses declined $400,000, both on bases of approximately $6 million. Of that $2 million of the revenue/expenses are related to the business activities. However, there are significant reserves in the program carried on the Authority's books.

2011	Overall	Public Housing	Section 8	Business Activities
Surplus (Deficit)	124,055	(45,225)	200,305	(32,513)
Unrestricted Net Assets	4,757,418	110,954	184,537	4,460,204

In FY2010 there were no deficits but the amounts were in a similar relation.

11 The small size of the deficit in relation to revenues and to the assets suggest that the timing, whether of the audit or of receivables or payables, may be a greater factor in producing it than cash flow trends.

On a income statement (P&L) basis the Authority is being managed close to the "nut." Its surplus/deficit line in each segment is small in dollars. The Public Housing deficit however does represent about 10% of revenues which is not large but concerning. That is the smallest activity segment of the three.

In relation to the balance sheet the Authority is indeed healthy. There are modest reserves in the federal sectors and tremendous reserves in the business sector. That is the fact that brought the parties to impasse.[12]

Most of the reserves for both Wadsworth and Brunswick (96%) are related to the loans and promissory notes and illiquid. A considerable amount of the business activities reserves are related to obligations imposed by the trust arrangement at Wadsworth. They are essentially unreachable by the Authority. The Union argues there is a market for the loans. The Director's testimony responded that he had not thought of selling the notes since they are subordinate notes on the properties and would need to be discounted. The terms that might cause them to be strongly discounted are liberal repayment schedules and low interest rates in relation to their subordinate position. Risk of non-performance is not a factor unless the government substantially changes or eliminates the programs.

The testimony of the Director and the Audit Report state that the other reserves (i.e. 4%) in the business activity program are also governed by the lease terms at each property. While they may not be restricted, they are also unreachable except as to expenses that relate to the specific permitted purposes of the leases.

Very little in the way of salaries except for maintenance are attributed to the business type

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[12] The Union also refers to the employment contract between the Executive Director and the Authority entered December 2010, and as an indication of the Authority's ability to pay increases to the bargaining unit. The testimony of the Director rebutted that in his explanation that it replaced the earlier contract that would have instituted an increase sooner which in the new agreement deferred.

activities according to the year-end audit of the Authority. (Audit p. 29) Most of the salary/benefit expense related to the business activities are administrative. Although that is not further parsed into whether it includes or excludes the bargaining unit, based on the testimony that administration and accounting amount to major services to the not-for-profits, most of it would be non-bargaining unit. Salaries and benefits for tenant services appear only as to Section 8. Maintenance salary and benefits appear with respect to all sources a revenue with most attributable to business activities which is where most of the units are.

The evidence of the financial structure, mission and the current economic environment of the Authority has demonstrated is that the Authority as an extremely strong balance sheet, particularly for the kind of entity that it is. Its income statement is steady with signs of erosion. This shows exceptional and careful financial management. It has developed assets for the future of its mission (reserves) and has managed to keep its head above water notwithstanding the adversity of the political cycle. This does not demonstrate an inability to " finance and administer" any proposed changes in the labor agreement.

The Union mistakes a strong balance sheet as a funding source for wages and benefits. While balance sheets are denominated in dollars, that does not automatically make the figures available for current liabilities like salaries. What it shows is that entity really has an ability to meet those current liabilities by management and planning, but not (normally) money.

The Authority's argument based on "ability to pay" is not well taken. While its P&L challenges are real, they are occurring in the context of an extremely strong balance sheet. Adverse P&L projections can be indicator of inability to pay but that cannot be sustained with an entity having significant assets. What the Authority is really saying is that it is a finely tuned chamber music ensemble that could not possibly fit a jazz lick into its repertoire. The Fact Finder has more confidence in its conductor than that.

3. Historic and Comparable Compensation

This is a newly organized bargaining unit. Among the challenges that presents to the bargaining parties is that the job classifications used in an unorganized entity are difficult to compare even to similar entities elsewhere that are organized. The parties have overcome this by including all conceivable comparable job classifications from other sources while continuously drawing distinctions.

In the four calendar years ending with 2010 the Authority gave pay adjustments annually. They generally tracked the rate of the consumer price index with small, if any, variances. Over the four year period, the Authority's annual adjustments averaged 2.31% while the consumer price index averaged 1.95%, a 36 basis points difference. Most of this variance was attributable to 2009 when the CPI declined (0.40%) while the Authority gave a 2% pay adjustment. There have been no pay adjustments since FY2010.[13] The Authority continued the longevity payment of $500 and $1000 based on two brackets of length of service even when there was a freeze otherwise. More recently, furlough days have become common in government employment but the Authority has not sought to implement that form of pay reduction.

The share of the employees' monthly premium payment towards healthcare did not change in that period in terms of percentage (13%).[14] That was in contrast to other governmental agencies. Since 2008 the Authority's share of the premium increased 14.25%. The employee share increased 15.5% without a change in the allocation as between the two shares. In 2012, there was a reduction in the employee cost in 2012 by (1%) while the Employer's cost increased that year by 8.14% .

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13 Offset in the CPI and pay adjustment comparisons are due to the Authority making adjustments by the FY but the CPI data was presented for calendar years. For calendar 2011 the CPI was 2.9% (February 2012). BLS News Release UDL 12-0452 (March 16,2012) http://www.bls.gov/news.release/pdf/cpi.pdf

14 The contractual formula is a 90/10 split. The 13% employee cost is an artifact of blending data of all the employees.

The evidence explains the difference as an effort to maintain the employee share at 13%. Other lesser factors were the new costs mandated by the Affordable Healthcare Act for dependent coverage to age 26 and coverage for pre-existing conditions.

The Authority both management and the bargaining unit, have a tendency to make comparisons to the Medina, JFS. That is not a related entity but it is perceived to having similar office functions and most importantly it is across the street. The employee making eligibility determinations at JFS requires a college degree starts at $13.81 with no maximum stated. A similar position at the Authority does not require college and the pay ranges from $12.50 to $12.92. However, JFS, most recently instituted a complete wage freeze, both no increase and no step increase. They also stopped providing longevity to employees not eligible in the past.

As to maintenance the Employer resists comparison to school districts which employ skilled trade personnel. The Authority emphasizes that its maintenance workers are generalists, doing everything from landscape, custodial services to home repair and remodeling.

The comparative evidence presented was the 2011 SERB benchmark report of housing authorities, a 2009 industry survey of small housing authorities, and the testimony of the Director with respect to local employers other than housing authorities, both public and public. The industry survey defines small housing authorities as having under 1000 units. To test the validity of that definition being applied to the Authority which has 1000 households and 333 units, Union referred to the compensation level of the Executive Director. Compensation for the Director per his contract from 2010 to 2015 ranged from $81,000-$85,000. The survey showed that level of compensation for executive directors of small housing authorities encompassed that range while the other definitions did not. For both surveys, any information relating to management positions, accounting, social services, and positions not identifiable with those of the Authority were ignored.

To summarize the evidence of comparable compensation a chart at Attachment A was developed from the exhibits and testimony. It compares the *average (mean)* minimum annual compensation from the surveys to the *median* of the rates paid by the Authority based on 2080 hours.[15] The wage ranges for the classifications of the Authority are:

Receptionist	10.27	median 10.27	21,361 annual
Management Assistant	12.55-12.12	median 12.73	26,478 annual
Case Manager	13.00-13.99	median 13.50	28,080 annual
Maintenance Mechanic	12.75-13.13	median 12.94	26,950 annual
Inspector	13.99	median 13.99	29,099 annual

The outliers in this scheme are the Inspector and the FSS Case Manager. The Inspector's functions are building inspection, but without state certification which makes it difficult to find comparisons. The FSS Case Manager is the highest compensated Case Manager. That position is being eliminated at the end of 2012 due to funding deficiency. The compensation is $.30 above the next highest rate thus slightly skewing the median. The industry survey had an FSS Coordinator position whose minimum rate will be a stand-in for all Case Manager positions generally.

Because of the variance in job titles there is some difficulty in comparing the office complement without knowing the details of the job functions from the surveys. The Receptionist performs functions as an applications screener. Eligibility determinations are made by Management Assistants. Testimony supported the industry survey HVC Occupational Specialist as comparable to the Management Assistant position.

While the Authority is a small agency by the industry definition, the comparison to the counties represented in the SERB benchmark report presents certain challenges. Medina County is clearly one of the more affluent among the state's 88 counties. Is a suburban/exurban county to two large cities. The median income is about $75,000 and its population is above the state average in high school and college degrees. Home ownership is also much higher than the state average.

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15 The definitional difference in the statistical measurements as between mean and median are being ignored because of the small sample. The time adjustments are ignored (ie 2009 rates compared to 2011 rates) due to the wage freeze of the Authority.

Persons below the poverty level are less than half the state average. December 2011 unemployment rates, an inefficient proxy for the labor market, does present some stark data. Medina County with 5.9% unemployment is well below state and national averages both above 8%. On the other hand, the community housing authorities in the state benchmark report have unemployment rates higher than state and national averages. Ashtabula County (Jefferson Ashtabula) is 9.9%, Coshocton is 10%, Clark (Springfield) is 8%, and Scioto (Portsmouth) is 11.5%. On a gross application of the law of supply and demand, counties with high unemployment have a larger labor supply, which cannot demand higher rates. Thus the communities in the SERB benchmark would be expected to have lower compensation that the MMHA. Because it is a gross analysis, the degree of difference cannot be predicted, only the trend.

Based on the positions compared, the SERB benchmark is useful only for the Maintenance Mechanic and Receptionist positions. In every case Portsmouth has a $5,000 or more positive variance in comparable positions making it a clear outlier that requires more explanation than the bare data. It has to be ignored. Outliers at the other extreme below $20,000 have to be ignored also. Of the remainder following facts can be found when also considering the industry survey.

The Receptionist is paid at the average of the industry survey and in line with the benchmark. employers. Other than Portsmouth, the other exception higher than the Authority's Receptionist is also well above the industry top range suggesting possible other duties. The average rate in the industry survey of eight employers is the same as the Authority's.

The Maintenance Mechanic is paid more than the SERB benchmark employers with one exception other than Portsmouth. That exception is "storekeeper," not representative of the majority of the mechanic's essential functions. On the other hand, in the industry survey of 13 industry employers the average is higher than the Authority's. The suggestion is that the Maintenance Mechanic is paid lower than expected. The Inspector position defies comparison and must simply be considered a case unto itself.

The comparable data for the Management Assistant position shows that the median pay by the Authority is above the average for the HCV Occupational Specialist in the survey of four Employers in the industry and above the application screeners among the local Employers mentioned. Among the other HCV occupations, two had lower averages and two higher. The two higher are not apparently applicable, one being the FSS Coordinator (see below), and the HQS Inspector for HCV Programs. The latter by title alone does not identify the essential functions of the Authority's management assistants and cannot be comparable.

The median compensation of the Case Managers is also at the average of the six Employers surveyed in the industry data for the FSS Coordinator. In the survey that is the highest compensated HCV position. Hence, the Case Managers are not paid under the industry average for small MHA's.

Conclusion that must be reached on the comparables is that compensation of the bargaining unit is generally in line with industry data and in accord with the SERB benchmark cases, exclusive of Portsmouth. The maintenance department presents some exception to that.

DISCUSSION AND RECOMMENDATIONS

ISSUE: Tentative Agreements

CONTRACT SECTIONS: various (Attachment B)

POSITIONS: The Employer: The Employer has agreed in separate documents to tentative agreements on several of the issues before the start of hearing on the merits. Others were mutually withdrawn.

POSITIONS: The Union: The Union has agreed has agreed in separate documents to tentative agreements on several of the issues before the start of hearing o the merits. Others were mutually withdrawn.

FINDINGS AND RECOMMENDATION: The Tentative Agreements reported are those listed at Attachment B. The Fact-Finder recommends those agreements and changes. Those open terms that were not subject to tentative agreements but that were placed before the Fact Finder are subject to fact finding herein

ISSUE: WAGES

CONTRACT SECTIONS: Article 22 Wages, Section (TBD)

POSITIONS: The Union: The Union proposes a wage increase including the effective date of the Agreement representing an equity increase of about 5.9% in the first year of the Agreement. Other than equity adjustments, it proposes a general wage freeze in the first year with reopeners on wages in each year thereafter in the three years. The pattern of past annual longevity payments are proposed to continue unchanged.

The basis for the proposal is the comparative data suggesting to the Union that the unit is under paid with respect to its peers in the state and nation. The position statement proposed an equity increase amounting to about 11% per year which when arithmetically weighted by the rates and number of employees, amounts to increased costs to the employer of just over 10% per year. That was necessary to put the employees at the midrange of the MHA employees statewide. The Union also recognizes the fact that the employees have not had a wage increase in the past two FY.

At the hearing with the agreement of the Employer the Union amended its proposal to half its original proposed increase which was described as a 5.9% adjustment.[16]

POSITIONS: The Employer: The Employer argued its inability to finance and administer the proposed equity changes and cited expected declining income. It claims the inability to pay made consideration of comparables unnecessary. Notwithstanding, the Authority proposed to provide a "signing bonus" of $350 per employee for the first year of the agreement. In the second year it proposed to have the wages subject to reopener. It would continue the longevity payments. It proposed a two year agreement.

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16 See Attachment C.

FINDINGS AND RECOMMENDATION:

The first consideration is that the Employer's argument on inability to finance or administer the proposed changes (criteria #3) is not proven. It has such a strong balance sheet that simply cannot be the case. That being said, it is confronting declining revenue in the current political cycle. That must be factored below. Initially, the resistance to considering comparisons (criteria #2) because of inability to pay is not accepted.

The Union has persistently argued in its pre-hearing statement and through its expert that significant equity increases are necessary to bring the employees of the bargaining unit in line with statewide and national averages. To that end, it had proposed an 11% annual increase over three years modified to a 5.9% annual increase.

For the office unit, that such an increase is necessary to reach an average of statewide rates and average national rates is simply not supported by the data presented. Given, the affluence of Medina County the rates would have been predicted to have been slightly higher than the SERB benchmark cases, but how much higher cannot be determined from the evidence presented. The national survey blends out that problem and suggest the compensation is close to predicted levels.

The Case Managers and the Management Assistant are earning the national average, not 5% or 11% less. Arguably the Receptionist position is slightly lower than the median statewide data but it is paid the national average. Without more information on the duties, it appears that the closest comparator statewide is the Coschocton authority which is also not 5% to 11% more.

The only position demonstrated to be significantly off the comparator data is the Maintenance Mechanic. The data shows that compensation to be most similar to custodians or maintenance helpers. While the Authorities employees may be "generalists," they are not strictly custodial or helpers. They must perform remodel and repair on the housing units which is not custodial. Of course, the highest levels of the comparators could be influenced by skilled trades credentials. The higher levels appear in the state data. Considering only the national average, the median Maintenance Mechanics pay is $1,600 below the industry mean, or 5.9%. The case has been made that they should have an equity adjustment. The Inspector has no true comparators but needs to be treated the same as the Maintenance Mechanics in order to maintain the integrity of the maintenance department scale.

The factor of the declining revenue needs be addressed. This is not strictly an inability to pay factor because of its uncertainty as to degree and, more important, the strength of the balance sheet. To illustrate, a home owner with no mortgage has a strong balance sheet. However, if he is laid off he will have a income (P&L) problem. However, he has the assets (ability) to weather the circumstance with planning and management as opposed to a foreclosed home owner who is laid off who has no resources.

With the headwind of declining revenue likely to some degree and perhaps continuing, is it prudent to make an equity increase? This more of a criteria #6 consideration. The projected HUD allocation for Section 8 is expected to be down significantly but not so Public Housing Operations. Thus even had there been a case made for equity to the office unit, that factor is enough to conclude no wage rate increase would be prudent. The Employer's position of signing bonus is better supported for the office.

However, that does not apply to the maintenance department. The federal capital fund allocation to public housing as a percentage is expected to decline 28%. However, that is the least source of maintenance salaries and benefits.

Audit p. 29	Business Activities	Public Housing	Total
Salary	155,505	52,819	
Benefits	46,804	15,728	
Total	202,309	68,547	270,856
	75%	25%	

The revenue of the business activities has appeared steady, even if there was a slight deficit in the past year. That segment is being managed to meet its expenses and support the reserves for the purposes required. There is no indication it will change. Since that is where the lion share of maintenance is chargeable, it can definitely afford an increase in a current income, not to mention balance sheet, basis. As a recognition of the federal revenue constraints, the equity adjustment will be 75% of the difference between the Authority's median rate and the national average.[17]

The final point is the Employer's proposal of a signing bonus of $350.00. A signing bonus arises from a variety of factors. It may be an incentive to obtain approval. It may be compensation for some missed payment opportunity from the past. It may be a gesture of good will that some non-recurring amount is offered in circumstances that preclude a general increase.

The latter is the spirit of the Employer's offer. In addition this is a first contract and it has taken the better part of two years to negotiate it which is not uncommon. Such a long delay for a first agreement is not likely to win approval if the settlement merely preserves the status quo before the agreement. It must also be recognized under criteria #6 that had it not been a first contract with every issue subject to discussion, it would have been expected to conclude earlier. Hence, it is also justified by missing a past settlement date.

The Employer's offer is 1.3% of the median Management Assistant salary (Attachment A). This requires testing against the purposes. The 2011 CPI was 2.9%. Since there had been a wage freeze for two years, the CPI represents 1.45% per year. The direct cost of health care increased for the Employer by 14.25% since 2008 while the employees's cost increased 15.5%, or a 1.25% difference. This is the reduction in the employees' compensation in order to maintain healthcare in excess of the ratio paid by the Employer.

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17 [(28578-26950= 1628) 75% = 1221]/2080 = 0.587 or $0.59/ hour. Obviously, the maintenance salaries and benefits cannot all be segregated to the business activities and some of the increase needs be paid by other segments. Some nuances of the wage sale simply too fine for a formula to accomoadate.

The CPI would produce $767.85, about twice the signing bonus amount, and the healthcare differential would be $330.98. [18] Assuming the $350.00 offer as ratification incentive, it could be combined with the healthcare differential to become $680.98. The expected signing bonus within the purposes of such a device would be between $680.98 and $767.85. With an aversion to odd numbers and in recognition that there are varying pay rates and varying withholdings among the employees, the recommendation will be a payment of $600.00 net of withholdings and statutory payments. This comports with all the rationale of a signing bonus.

[The balance of this page is blank]

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18 350/26478 = 1.32% ; 26478 x 2.9% = 767.85; 26478 x 1.25% = 330.98

Fact Finder's Recommendation:

Article 22 Wages

Section 1.a Equity Wage Adjustments

The following classifications shall receive a one time equity adjustment to their existing rates commencing with the first payroll of the agreement.

Maintenance Mechanic	0.59
Inspector	0.59

Section 1.b General Wage Adjustments

In addition to the equity increases applicable, if any, to particular classifications there shall be a 0% wage increase in the first year of the agreement. Beginning with the second year of the agreement the wages paid under this Article shall be adjusted by such amount, if any, as is agreed in the wage re-opener negotiations. Beginning with the third year of the agreement the wages paid under this Article shall be adjusted by such amount, if any, as is agreed in the wage re-opener negotiations.

Section 2 Longevity

All employees shall receive longevity payments commencing upon the completion of five years continuous service. Such amounts shall be payable to the employee pursuant to the following schedule:

Length of service	Amount
After five (5) years	$500.00
After ten (10) years	$1,000.00

Such above-listed longevity payments shall be paid to the eligible employee with the last payroll of December of each year. In order to be eligible for any such payments, the employee must have completed the necessary minimum length of service for the appropriate amount prior to December 1st of the respective year.

Section 3 One Time Payment

Upon ratification and with the second payroll thereafter, the Employer shall pay each employee a one time payment of $600.00 net of withholdings and statutory payments.

ISSUE: Entire Agreement

CONTRACT SECTIONS: Article 32 Section (TBD)

POSITIONS: The Union: The Union proposed a zipper clause whereby each party waives the right to bargain during the term of the Agreement.

POSITIONS: The Employer: The Employer agrees the proposal with the addition of an exception in the waiver language for legislation or "exigent circumstances."

FINDINGS AND RECOMMENDATION: The Employer's proposal incorporates the standard of *Toledo City School District Board of Education* SERB 2001-005, 2001-006 (10-1-01). Its concern is that absent such language, the waiver might be construed as a waiver of the right recognized in that case under R.C. Chapter 4117.

The Fact-Finder considers the Employer's point well taken and the Union was not vociferous in opposition. The Fact-Finder recommends the following:

> The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter of which the State Employment Relations Board imposes an obligation to bargain and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in its entirety in this Agreement. Therefore, the MMHA and the Union, for the life of this Agreement, each knowingly, unmistakably, voluntarily and unequivocally waives the right, and each agrees that the other shall not be obligated to bargain with respect to any subject matter covered or referred to in this Agreement, except in response to changes in law by a higher legislative body or exigent circumstances.

ISSUE: Duration

CONTRACT SECTIONS: Article 33 Section (TBD)

POSITIONS: The Union: The Union proposed a three year agreement with wage reopeners in the second and third year. The first year was a freeze except for equity adjustments.

POSITIONS: The Employer: The Authority proposed a two year agreement with a wage freeze and a wage re-opener in the second year but would agree to three years with two reopeners on its terms.

FINDINGS AND RECOMMENDATION: The Fact-Finder has recommended a three year agreement. (See Issue: Wages above) Three years is the typical length of bargaining agreements. In this case it is sufficient for the parties to evaluate this new bargaining relationship and the effect on the Employer's funding by the political cycle over more than one federal budget. The Employer's resistence to three year agreement with reopeners was predicated on the "extravagant" equity adjustments proposed by the Union. Those have not come to pass. Hence the three year agreement was recommended.

Gregory P. Szuter, Fact Finder
Made and entered at Cleveland, Ohio
March 29, 2012

PROOF OF SERVICE:

The foregoing has been sent by U.S. Mail (ordinary) on March 29, 2012, to AFSCME Region 8 c/o Louis J. Maholic and to the Medina Metropolitan Housing Authority c/o George S. Crisci, Esq. per addresses shown on the cover with advance copy via email on the same date to both.

MMHA Office Classification rates:

RECEPTIONIST 10.27 **MEDIAN ANNUAL 21,361**
MANAGEMENT ASST. 12.55 - 12.92 **MEDIAN ANNUAL 26,478**
CASE MANAGER 13.00 - 13.99 **MEDIAN ANNUAL 28,080**

Employers from key: Classifications (below):	1	2	3	4	5	6	7	Statewide Mid-range (#s 1-5)
clerk	21,523			21,523				20,050
application support, receptionist		24,169		17,932		21,247		22,500
telephone operator					25,272			25,850
eligibility screener							24,066, 24,586	No data
HCV occupation specialist						23,226		No data
HVC FSS Coordinator						28,193	No data	

MMHA Classification rates:

MAINTENANCE MECHANIC 12.75-13.13 **MEDIAN ANNUAL 26,950**
INSPECTOR 13.99 **MEDIAN ANNUAL 29,099**

Employers from key: Classifications (below):	1	2	3	4	5	6	7	Statewide Mid-range (#s 1-5)
maintenance mechanic		24,408			37,980	28,578	24,960	32,500
assistant maintenance mechanic maintenance repair worker			28,881	24,530		22,617		31,400
laborer				22,749				26,950
custodian				21,523	30,576			25,200
groundskeeper		14,994						14,994
storekeeper			27,404	26,780				31,600
crew leader / inspector	47,048		31,411				No data	

Table Key:
Housing Authorities 2011: 1) Ashtabula 2) Coshocton 3) Springfield 4) Jefferson, 5) Portsmouth
6) OHAC Survey 2099 7) Local Employers (office): Catholic Charities, Community Action Agency
7) Local Employers (Maint) : Hollock Properties, Town Centere Apartments

Attachment A

MMHA / AFSCME NEGOTIATIONS

Non-Economic / Economic Items

TENTATIVE AGREEMENTS

NON ECONOMIC		ECONOMIC	
	Preamble/Purpose		
1.	Management Rights	4.	Union Representative &
2.	Recognition	13.	Hours of work / Overtime
3.	Union Security	15.	Holidays
4.	Union Representation & Stewards	16.	Vacations
5.	Strikes, Work Stoppages &	17.	Sick Leave
6.	Non-Interference	18.	Leaves of Absence
7.	Grievance Procedure & Arbitration	19.	Court Appearances
8.	Seniority	**20.**	**Withdrawn**
9.	Probationary Periods	**22.**	**Before the Fact Finder**
10.	Work Rules	23.	Insurance
11.	Job Descriptions	26.	Emergency Weather
12.	Corrective Action Procedure	34	Uniforms
14.	Promotions & Transfers	New	Education Benefits
21.	Layoff & Recall		
24.	Bulletin Board		
25.	Legality		
27.	**Withdrawn**		
28.	**Withdrawn**		
29.	**Labor Management Committee**		
30.	**Withdrawn**		
31.	**Withdrawn**		
32.	**Before the Fact Finder**		
33.	**Before the Fact Finder**		

Attachment B

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF: MEDINA METROPOLITAN HOUSING AUTHORITY, Employer, -and- AFSCME, OHIO COUNCIL 8 and LOCAL 265, Employee Organization.	)	SERB CASE NO. 11-MED-05-0820 FACT-FINDER GREGORY P. SZUTER, ESQ. STIPULATION REGARDING THE UNION'S WAGE PROPOSAL DURING THE FACT-FINDING PROCEEDINGS

The parties, through their bargaining representatives, stipulate that the Union is permitted to introduce a modified wage proposal during the fact-finding hearing that differs from the wage proposal included in its Pre-Hearing Statement. This proposal is included in the financial report prepared and introduced during the hearing by the Union's Labor Economist.

FOR THE AUTHORITY:

Digitally signed by: Gregory P. Szuter
Date: 2012.03.29 09:10:32 -04'00'

Fact-Finder

FOR THE UNION:

Louis Maholic /gt

ATTACHMENT C