

**State of Ohio  
State Employment Relations Board**

**In the matter of Fact Finding between**

<b>PORTAGE COUNTY COMMISSIONERS</b>	)	
<b>(PORTAGE COUNTY NURSING HOME,</b>	)	<b>CASE NO. 12-MED-04-0429</b>
<b>THE WOODLANDS AT ROBINSON)</b>	)	
	)	
<b>AND</b>	)	
	)	
<b>AMERICAN FEDERATION OF STATE,</b>	)	<b>FINDINGS AND</b>
<b>COUNTY AND MUNICIPAL</b>	)	<b>RECOMMENDATIONS</b>
<b>EMPLOYEES, OHIO COUNCIL 8,</b>	)	
<b>AFL-CIO, LOCAL 3630</b>	)	

**MELVIN E. FEINBERG, FACT FINDER**

**APPEARANCES**

**FOR THE EMPLOYER:**

Ronald J. Habowski	Attorney at Law, Christley, Herington & Pierce
Sue Doherty	Administrator
Jena Dickman	Administrator

**FOR THE UNION:**

Louis J. Maholic	Staff Representative, Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, Local 3630
------------------	---

## **SUBMISSION**

This matter concerns the fact-finding proceeding between the Portage County Commissioners (Portage County Nursing Home, The Woodlands at Robinson) and American Federation of State, County and Municipal Employees, Ohio Council 8, AFL-CIO, Local 3630, also collectively known as the Parties. The State Employment Relations Board, in accordance with Ohio Revised Code §4117.14(C)(3), duly appointed the undersigned as Fact Finder in this matter by letter sent via e-mail dated September 26, 2012.<sup>1</sup>

Pursuant to mutual agreement, the Parties met for a fact-finding hearing on October 4, 2012 in Ravenna, Ohio. Prior to that fact-finding hearing, in accordance with SERB rules, the Parties filed timely position statements with the Fact Finder. The proceeding was conducted pursuant to the rules and regulations of SERB. The hearing closed on October 4, 2012 and the Parties agreed in writing that the Fact Finder would be permitted to issue his report containing his Findings and Recommendations on October 15, 2012.

## **BACKGROUND**

The Union, pursuant to SERB certification and/or recognition, is the sole and exclusive bargaining representative for the purpose of collective bargaining in any and all

---

<sup>1</sup> Terms used in Fact Finder's Report are also as follows:

a) Portage County Commissioners (Portage County Nursing Home, The Woodlands at Robinson) is also referred to herein as the Employer;

b) American Federation of State, County, and Municipal Employees, Ohio Council 8, AFL-CIO, Local 3630 is also referred to herein as the Union and/or AFSCME;

c) State Employment Relations Board of Ohio is also referred to herein as SERB;

d) Ohio Revised Code is also referred to herein as ORC.

matters relating to wages, hours, benefits, terms and all other conditions of employment and has been and is now so recognized by the Employer in the following classifications of the approximately seventy-five (75) employees:<sup>2</sup>

**Included:**

All full-time and part-time employees of the Portage County Nursing Home, The Woodlands at Robinson including Activity and Social Service Assistant, Assistant Activity Director, Clinical Record Coordinator, Cook 2, Custodial Worker, Environmental Aide, Environmental Services Worker, Food Service Worker, Housekeepers, Laundry Worker, Licensed Practical Nurses, Maintenance Repair Worker 1, Nursing Assistant, Typist 2.

**Excluded:**

All management level employees, professional employees, confidential employees, and supervisors as defined in the Act, all seasonal and casual employees as defined by the State Employment Relations Board, including Activity Director, Administrator, Building Maintenance Supervisor, Personnel Coordinator (one confidential employee), Director of Nursing, Food Service Supervisor, Environmental Supervisor, Medical Director, Nurse, Nurse Supervisor, Office Manager, Director of Social Services.

The Parties engaged in productive negotiations well before the actual day of fact-finding and reached tentative agreement regarding substantial portions of the proposed Collective Bargaining Agreement. Tentative agreement with some mediation was also reached at the fact-finding hearing regarding additional proposals. A summary of the proposals tentatively agreed to by the Parties are as follows:<sup>3</sup>

- Article 1: Preamble
- Article 2: Purpose and Intent
- Article 3: Management Rights
- Article 4: Recognition
- Article 5: Non-discrimination
- Article 6: Dues Deduction
- Article 7: No Strike-No Lockout
- Article 8: Employee Representation
- Article 9: Union Bulletin Boards

---

<sup>2</sup> The employees so represented by the Union are also hereinafter known collectively as the Unit or the bargaining unit employees.

<sup>3</sup> Unless otherwise noted, the language of all the agreed upon Articles listed below will remain as in the Current Contract Language.

Article 10: Union Activity

Article 11: Union Conventions and Conferences

§11.01 At the request of the Union, the Union President and one and only one other employee shall be permitted time off without pay to attend a Union related activity not to exceed three (3) days.

Article 12: Employee Organization

Article 13: Labor-Management Committee

Article 14: Job Description

Article 15: Work Rules

§15.01 The Union and employees shall be notified in writing of any new work rules or revisions of rules not less than seven (7) calendar days prior to the effective date of such rules. Copies of new or revised rule shall be available for inspection by employees at the time of notification. Upon request of the Union, the Employer shall meet with the Union and discuss such rules.

§15.02 Current Contract Language

Article 16: Employee Liability

Article 17: Employee Evaluation

§17.01 Current Contract Language

§17.02 Any additional comments, statements or objections by the employees to the evaluation, may be submitted on an attached memorandum. Employees will receive a copy of all of evaluations and memorandums. Such memorandums must be signed by the employee. An employee's signature does not mean concurrence with the evaluation, only that the employee has seen and received a copy of the memorandum and evaluation.

Article 18: Personnel Record

Article 19: Probationary Period

Article 20: Seniority

Article 23: Holidays

Article 24: Vacations

Article 25: Sick Leave

§25.01, 02, 03, 04, 06, 07, 08, 09, 10 Current Contract Language

§25.05 Before an absence may be charged against accumulated sick leave, the Department Head may require such proof of illness, injury or death as may be satisfactory to him/her, or may require the employee to be examined by a physician designated by the Department Head and paid for by the Employer. In any event, an employee absence for more than two (2) consecutively scheduled work days, or for any patterned weekend day call-off may be required to supply an original physician's report to be eligible for paid sick leave. (Photocopies of physician's reports are not acceptable.) Any employee required to present a physician's report must do so before they will be permitted to work for his/her next shift.

Article 27: Unpaid Leaves of Absence

Article 28: Pregnancy, Childbirth and Related Medical Conditions Leave

Article 31: Uniform Allowance

Article 32: Call Back Pay

Article 33: Report In Pay

- Article 34: Training
- Article 35: Subcontracting
- Article 35 (A): Welfare To Work Participants
- Article 36: Safety and Health
- Article 37: Contagious Disease
- Article 38: Medically Restricted Employee
- Article 39: Vacancies and Job Postings

§39.01 When the Employer determines that a job vacancy or vacancies occur within the bargaining unit and the Employer intends to fill the vacancy, the Employer will post an announcement of such vacancy or vacancies on all Union bulletin boards and for a period of five (5) calendar days. The announcement shall contain the job title of the vacancy, a brief job description and the rate of pay, the date of the posting and the bid deadline date, hours of work, shift assignment and minimum qualifications. The Employer shall only be required to post each vacancy one (1) time per job opening.

§39.02 through §39.14 Current Contract Language

- Article 40: Layoff and Recall
- Article 42: Conformity to Law
- Article 43: Agreement
- Article 44: Obligation to Negotiate
- Article 45: Gender and Plural
- Article 46: Drug/Alcohol Testing
- Article 47: Legislative Approval
- Article 49: Discipline
- Article 50: Grievance Procedure
- Article 51: Arbitration Procedure
- Article 52: Execution

APPENDIX:

- A Employee Rights
- B Notice of Discipline
- C Appeal/Acceptance of Discipline
- D Attendance Monitoring Program (Current Contract Language except:  
RE: First No Call-No Show, increase suspension from 3 days to 5.  
RE: Second No Call-No Show, increase suspension from 10 days to  
employment termination.

**CRITERIA**

The Fact Finder, in making his Findings and Recommendations, has been guided by the Parties' oral and written presentations on the issues, by the testimony, by documentary evidence presented during the proceedings, by the record as a whole, by the various Ohio Revised Code provisions, including ORC §4117.14(C)(4)(e) and (G)(6)(7)

(a)-(f) and Ohio Administrative Code §4117.9-05(J)(K). Consideration has also been given to the following criteria:

- (1) Past collective-bargaining agreements, if any, between the Parties;
- (2) Comparison of unresolved issues relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

Additionally, the Fact Finder, in making the foregoing recommendations, has not been unmindful of the fact that the Portage County Commissioners has been attempting to sell and/or has agreed to sell the Portage County Nursing Home, The Woodlands at Robinson to a private entity. The Employer believes that the sale will be finalized by November 1, 2012 or no later than November 15, 2012.

## ISSUES

The only contractual issues which the Parties could not resolve are the following:<sup>4</sup>

1. Article 21: Hours of Work
2. Article 22: Overtime
3. Article 26: Funeral Leave
4. Article 29: Insurance
5. Article 30: Wages
6. Article 41: Successorship
7. Article 48: Duration

### 1. **ARTICLE 21: HOURS OF WORK**

#### **The Employer's Position:**

The Employer proposes to alter the current language of §21.01 to read as follows:

§21.01 The normal work schedule period for all full-time employees shall be forty (40) hours, inclusive of time allotted for lunch periods during the seven (7) day period starting Sunday 12:01 a.m. and ending at Midnight the following Saturday. An employee's normal work schedule may be altered when a holiday falls within that schedule if necessary.

The Employer proposes new language for §21.09 to read as follows:

§21.09 The Employer will attempt to schedule every other weekend off in a fair and equitable manner, providing that such attempts do not impair the orderly and efficient operation of the affected Department.

The Employer proposes that the Current Contract Language of all remaining sections of Article 21 be retained (§ 21.02, .03, .04, .05, .06, .07, and .08).

---

<sup>4</sup> The Parties raised certain significant procedural matters either at the fact-finding hearing or in post-hearing communications to the Fact Finder regarding the consideration, receipt and admission into the record of all or some of their respective positions, arguments and evidence on all outstanding issues. They were both permitted to fully present and argue evidence in behalf of all of their positions in issue at the hearing. The Fact Finder, in writing to the Parties, set out their respective arguments and invited them to consider withdrawing their procedural objections so that this case might be decided solely on the merits. After due consideration the Parties by e-mail withdrew all of their procedural objections.

**The Union's Position:**

During the fact-finding hearing, the Union requested that the Current Contract Language of Article 21 be retained in its entirety.

**FINDINGS AND RECOMMENDATIONS**

There was no evidence introduced by the Employer that persuaded me that it at this time required more restrictive scheduling authority than it already possessed over the hours of work of its employees. There was no evidence that it had insufficient resources to ensure that gaps in coverage would be filled. Consequently, after examining the Current Contract Language of Article 21, I recommend in agreement with the Union that the Current Contract Language for that Article be retained in its entirety.

**2. ARTICLE 22: OVERTIME**

**The Employer's Position:**

The Employer took no position on this matter in its written position statement.

**The Union's Position:**

The Union requests that the Current Contract Language of §22.01, §22.02, §22.03, §22.05 and §22.06 be retained in its entirety. It asks that §22.04 be changed to read as follows:

§22.04 The Employer shall maintain two (2) overtime rosters; one (1) roster for those employees not wanting to be called for casual overtime and one (1) roster for those employees wanting to be called for overtime. The Employer shall attempt to fill its overtime needs from the voluntary overtime roster first. In the event an insufficient number of employees accept the overtime work or the employees accepting the overtime work are, at the Employer's discretion, unable to either efficiently or adequately perform the work, the Employer may mandate the overtime work in all departments to those individuals who are in the Building it determines are necessary to adequately and



efficiently perform the work. Overtime shall be equalized separately, per classification. The Employer shall make a good faith effort to exhaust all available resources prior to mandating overtime. The Employer shall attempt to give advance notice of mandatory overtime as soon as possible under the circumstances. Employees cannot be mandated more than once during any pay cycle.

§22.07 A weekend bonus of \$2.00 per hour will be paid for all weekend hours worked. In order to receive the weekend bonus, employees must have no occurrences of clocking in late, clocking out early, nor any absences during the two-week pay period within which weekend hours are worked. Both scheduled time and other time worked that is in addition to regularly scheduled time are eligible for the bonus.

Weekend hours are defined as follows:

11:00 a.m. Friday through 11:00 p.m. Sunday for LPN's

7:00 a.m. Saturday through 7:00 a.m. Monday for Nursing Assistants and Environmental Aides.

## **FINDINGS AND RECOMMENDATIONS**

Although the Employer did not address this issue in its Position Statement, in making my recommendations on this matter I considered the possibility of recommending the retention of the Current Contract Language on this issue.<sup>5</sup>

However, the Union presented sufficient evidence that its suggested changes would result in fewer difficulties for employees who would otherwise be mandated to work overtime more frequently thereby causing them familial hardships. Furthermore, the Union convincingly argued that the additional compensation and newly defined weekend hours mandated for employees working weekends by the new §22.07 would

---

<sup>5</sup> The Employer had originally made a procedural objection at hearing to the Fact Finder's consideration of any of either Parties' positions if those positions were not set forth in their respective Position Statements. It was consistent and applied that objection to itself. However, as was noted previously, those procedural objections were withdrawn.

result in fewer staffing problems for the Employer as it would encourage bargaining unit employees to work those hours.

Consequently, I recommend, in accordance with the Union's request, that the Current Contract Language of Article 22: Overtime §22.01, .02, .03, .05, and .06 be retained in the future contract. I also recommend that the language of §22.04 and §22.07 appear in the new contract exactly as it is set forth above in the Union's position on Article 22 for those sections.

### **3. ARTICLE 26: FUNERAL LEAVE**

#### **The Employer's Position:**

The Employer proposed that §26.01 be changed to read as follows:

§26.01 An employee shall be granted time off without pay (to be deducted from the employees sick leave) the purpose of attending the funeral of a member of the employees immediate family. The employee shall be entitled to a maximum of three (3) workdays for each death in his/her immediate family, one of which must be the day of the funeral.

The Employer asked for the retention of the Current Contract Language in §26.02 of Article 26.

#### **The Union's Position:**

The Union at the fact-finding hearing argued for no change in the Current Contract Language of Article 26.

### **FINDINGS AND RECOMMENDATIONS**

There was no evidence in the record that employees were excessively utilizing or otherwise misusing funeral leave under this Article. Moreover, there was no evidence that their use of funeral leave was a financial hardship on the Employer. Under the circumstances, I find no merit to the Employer's position and recommend, as the Union

argued, that the Current Contract Language regarding Article 26: Funeral Leave be retained.

#### **4. ARTICLE 29: INSURANCE**

##### **The Employer's Position:**

The Employer proposes that the Article's Current Contract Language be retained.

##### **The Union's Position:**

The Union proposes that Article 29 be changed to read as follows:

§29.01 The Employer will provide to employees the same medical insurance coverage, and upon the same terms and conditions, if any, as that provided by the Portage County Commissioners for their other County employees, effective July 1, 2005.

§29.02 Effective July 1, 2012, the Employer will pay \$42.00 per month for each bargaining unit employee to the AFSCME Care Plan for dental level II-A (\$34.00), life insurance (\$7.50) and hearing aid benefits (\$.50) for each full time bargaining unit member regularly scheduled 40 hours/week and each LPN regularly scheduled 32 hours/week.

#### **FINDINGS AND RECOMMENDATIONS**

It would appear that with the exception of the effective dates of the insurance coverage set out in Article 29 §29.02, the language in the Union's proposal and that in the Current Contract Language of that Article is the same. The Employer's proposal was recommended, the effective dates of all insurance coverage would remain July 1, 2005. In view of discussions on this Article at the fact-finding hearing and of the Union's proposal concerning the effective date of coverage in §29.02, I recommend that the Union's proposal regarding Article 29: Insurance is meritorious. It is recommended that the Article should read as follows:

**Article 29: Insurance**

§29.01 The Employer will provide to employees the same medical insurance coverage, and upon the same terms and conditions, if any, as that provided by the Portage County Commissioners for their other County employees, effective July 1, 2005.

§29.02 Effective July 1, 2012, the Employer will pay \$42.00 per month for each bargaining unit employee to the AFSCME Care Plan for dental level II-A (\$34.00), life insurance (\$7.50) and hearing aid benefits (\$.50) for each full time bargaining unit member regularly scheduled 40 hours/week and each LPN regularly scheduled 32 hours/week.

**5. ARTICLE 30: WAGES**

**The Employer's Position:**

The Employer proposes that Article 30 read as follows:

§ 30.01 Effective the first full pay after July 1, 2012 through October 31, 2012 employee shall receive wages in accordance with the current schedule.

§ 30.02 Current Contract Language

§ 30.03 Current Contract Language

**The Union's Position:**

The Union proposes that the pay rates for all job classifications contained in Article 30 be revised to reflect an across-the-board 3% wage increase for the first year of the proposed new contract for all classifications retroactive to July 1, 2012.

The Union also asks for wage reopener language in the second and third year of the proposed new contract.

**FINDINGS AND RECOMMENDATIONS**

According to the Parties, the Employer's bargaining unit employees have not received an across-the-board wage increase in four years. The Employer argued that, thus far, fire and/or safety forces employed by Portage County have tentatively agreed in negotiations to three-year wage packages of 0%-2%-2%.

The Union presented evidence dated June 27, 2012 from the Portage County Budget Commission that indicated that "... A 3% across-the-board cost-of-living increase for ALL county employees would total approximately \$300,000.00, well within the funds currently available to the Commissioners...."

However, the Union also presented an exhibit dated June 26, 2012 from the President of the Portage County Board of Commissioners which indicated that while the Commissioners "... fully expected to provide some sort of wage adjustments to most County employees this summer...", the Budget Commission had tabled the wage request.

Neither the Employer nor the Union presented evidence at the hearing of comparable wages paid to employees working in the same occupations in the nursing home industry or in other county-owned nursing homes located in Ohio. Nevertheless, the aforementioned Budget Commission letter dated June 27 influences my recommendation.

The Union noted that the Portage County Commissioners have been discussing the sale of the Portage County Nursing Home for approximately the last two years. Bargaining unit employees and the Union have been informed by the Employer on a number of occasions during contract negotiations this past summer of the nursing home's pending sale. The Union notes that the announced date of the finalization of such a sale has continued to change. The Union invoked fact-finding to protect employees' rights.

It seems clear from the evidence that the Employer has expressed its desire to grant County employees a raise and it can afford the across-the-board 3% raise requested for all bargaining unit employees. Since the final sale date of the nursing home keeps shifting and insufficient evidence was presented at the hearing of the fact that the home

has been sold, I recommend that, pursuant to the Union’s request, an across-the-board 3% wage increase immediately be granted to all bargaining unit employees retroactive to July 1, 2012. In accordance with my recommendations, Article 30: Wages §30.01 should read as follows:

**ARTICLE 30: WAGES**

**§30.01** Effective immediately and retroactively to the first full pay period after July 1, 2012, for the duration of the Contract and continuously thereafter until new wage rates are negotiated, bargaining unit employees shall receive wages in accordance with the following schedule according to their time in service:<sup>6</sup>

<b>CLASSIFICATION</b>	<b>START</b>	<b>90 DAYS</b>	<b>2 YEARS</b>	<b>4 YEARS</b>
LPN	16.89	17.40	17.92	18.46
Maintenance Repair	11.10	11.43	11.77	12.12
Typists 2	10.22	10.53	10.85	11.18
Cook 2	10.17	10.48	10.79	11.11
Nursing Assistant	9.80	10.09	10.39	10.70
Environmental Aide	9.13	9.40	9.68	9.97
Assistant Activity Director	9.53	9.82	10.12	10.42
Custodian & Laundry/Housekeeper Environmental Aide	9.13	9.40	9.68	9.97
Food Service Worker	8.86	9.13	9.40	9.68
Clinical Record Coordinator	11.44	11.78	12.13	12.49

I recommend, however, in agreement with the Employer’s proposal regarding §30.02 and §30.03 that the Current Contract Language contained in those sections of Article 30: Wages be retained.

<sup>6</sup> Should there be any discrepancies between the pay raises contained in the above table and a mathematically calculated 3% across-the-board raise recommended herein, the correctly calculated 3% raise for each rate shall be controlling.

## **6. ARTICLE 41: SUCCESSORSHIP**

### **The Employer's Position:**

The Employer proposes that the language of Article 41: Successorship as it appears in the current Contract be deleted in its entirety and that no successorship language be recommended to appear in a new collective bargaining agreement.

### **The Union's Position:**

The Union proposes that the successorship language contained in Article 41 of the current Contract be replaced with an extensive five section successorship article which it apparently believes would provide greater protections for bargaining unit employees facing a potential sale, transfer or lease of their work facility.

The Union's proposed new successorship provision requires, among other things, that the Portage County Commissioners inform any purchaser, transferee or lessee of the existence of the collective bargaining agreement between the Employer and the Union; provide a copy of said agreement to said purchaser, transferee or lessee; and require as a contingency of sale, transfer or lease that said purchaser, transferee or lessee agree to be bound by the terms of any collective bargaining agreement in effect between the Employer and the Union as of the effective date of such sale, transfer or lease. Furthermore, the new employer, as a condition of sale, transfer or lease would be required to hire all unit employees. Additionally, the Portage County Commissioners would, as a condition of sale, transfer or lease, require any purchaser, transferee or lessee to offer recognition to the Union of the retained bargaining unit employees. Finally, as a condition of sale, transfer or lease, the Portage County Commissioners, in the event that the collective bargaining agreement between the Union and the Employer had expired,

would require that the purchaser, transferee or lessee maintain all wage rates, benefits, and other terms and conditions of employment of the bargaining unit employees which were in existence at the time of the sale, transfer, or lease until such time as a new contract has been negotiated and ratified between the Union and the purchaser, transferee or lessee.

### **FINDINGS AND RECOMMENDATIONS**

The Parties most current collective bargaining agreement contains a successorship clause that bound successors and assigns which became the new employer through consolidation, merger, sale, transfer, or assignment to the “Agreement.”

A public entity such as the Employer in this case should have and does have the authority to make entrepreneurial decisions that impact on its budget. There are budgetary considerations, which currently make operating the nursing home more financially difficult. Medicaid and Medicare revenues have declined and the Portage County Commissioners have had to extend loans to the Portage County Nursing Home to assist it in its operations. If the Portage County Commissioners wish to cease owning and operating a nursing home that is their legal prerogative. Most counties in the State of Ohio have long ago determined to cease owning and/or operating such facilities. Furthermore, the Employer seems well along the path toward exiting its ownership and/or operation of this business.

Nevertheless, the jobs of a great many dedicated employees are at stake. The inclusion of a successorship provision in the future contract would demonstrate that the Employer is grateful for their years of service and is concerned with their future economic well-being. Consequently, I believe that the Union’s proposal for a



successorship clause has merit. I recommend that the following article of successorship be included in the contract:

**Article 41: Successorship**

**§41.01** In the event that the Portage County Commissioners (Portage County Nursing Home, The Woodlands at Robinson), herein also known as the Employer, enter into a definitive Agreement to sell, transfer, or lease all or a substantial portion of the assets necessary to the operation of business conducted at the nursing home, and Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, Local 3680 (AFSCME) represent certain bargaining unit positions at the location of such assets, the Portage County Commissioners will inform such purchaser, transferee, or lessee of the existence of the collective bargaining agreement between the Portage County Commissioners (Portage County Nursing Home, The Woodlands at Robinson) and AFSCME that covers positions and locations of such assets and will provide such purchaser, transferee, or lessee a copy of such a collective bargaining agreement.

**§41.02** In the event that the Portage County Commissioners enter into an Agreement to sell, transfer, or lease, all or a substantial portion of the assets of Portage County Nursing Home, The Woodlands at Robinson, it will require as a condition of that Agreement that the purchaser, transferee, or lessee of such assets offer employment to all of the Employer's currently employed employees in the AFSCME represented bargaining unit positions at the Portage County Nursing Home whether on active payroll and/or approved leave of absence on the effective date of the affirmation sale, transfer, or lease.

**§41.03** The Employer, as a condition of any Agreement of sale, transfer, or lease, as is referred to above in §41.01 and §41.02, will require any purchaser, transferee, or

lessee to extend an offer of recognition to AFSCME, as exclusive collective bargaining representative of no less than the same bargaining unit employees employed at the same location and in the same positions, classifications, and work which AFSCME is currently recognized and/ or certified to represent , or was recognized and/or certified to represent, on or prior to the effective date of the Agreement of sale, lease or transfer. Nothing contained in this Article shall prohibit any purchaser, transferee, or lessee from voluntarily recognizing AFSCME as the exclusive representative of additional positions, work, job classifications for bargaining units that may be created by the purchaser, transferee, or lessee which are now not part of AFSCME's bargaining unit.

**§41.04** In the event that the Portage County Commissioners enter into an Agreement, as defined in §41.01, concerning the sale, transfer, or lease of Portage County Nursing Home, The Woodlands at Robinson, it will require as a condition of such sale, transfer, or lease that any purchaser, transferee or lessee agree to be bound by the terms of any collective bargaining agreement in effect between AFSCME and the Portage County Commissioners (Portage County Nursing Home, The Woodlands at Robinson) on the effective date of such sale, transfer, or lease.

**§41.05** In the event that the collective bargaining agreement between AFSCME and the Portage County Commissioners (Portage County Nursing Home, The Woodlands at Robinson) has expired on the effective date of the Agreement, as defined above in §40.01, the Portage County Commissioners will require as a condition of such sale, transfer, or lease that any purchaser, transferee or lessee maintain all wage rates, benefits, benefit levels and other terms and conditions of employment of AFSCME bargaining unit employees in existence at that time of the sale, transfer, or lease until such time as a new

collective bargaining agreement has been negotiated and ratified between AFSCME and the purchaser, transferee, or lessee.

## **7. ARTICLE 48: DURATION**

### **The Employer's Position:**

The Employer proposes that the current duration language in Article 48 by which the current Contract was effective from July 1, 2010 through June 30, 2012 be changed to reflect that the new proposed contract would be effective from July 1, 2012 through October 31, 2012.

### **The Union's Position:**

The Union proposes the most current Article 48 language be changed as follows to reflect the new effective dates of the proposed collective bargaining agreement:

§48.01 This Agreement shall become effective at 12:01 a.m. on July 1, 2012, and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight, June 30, 2015.

## **FINDINGS AND RECOMMENDATIONS**

How long the Portage County Commissioners will continue to own and operate Portage County Nursing Home, The Woodlands at Robinson and to employ bargaining unit employees is in doubt. The time, however, appears to be short. Nevertheless, the Fact Finder was not presented at hearing with a contract of sale, lease or transfer that would have indicated within convincing finality that the Portage County Commissioners will soon cease owning and operating the nursing home. The evidence presented by the Employer still indicated the tentative nature of the Portage County Commissioners' negotiations with a private entity to take over the nursing home. Under the

circumstances, until the status regarding the ownership and/or operation of the nursing home becomes more apparent, it is appropriate to recommend that Article 48: Duration read as follows:

**ARTICLE 48: DURATION**

§48.01 This Agreement shall become effective at 12:01 A.M. on July 1, 2012, and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight, June 30, 2013.

**CONCLUSION**

In conclusion, the undersigned Fact Finder hereby submits the above recommendations on the outstanding issues presented in this matter and incorporates by reference into these recommendations all tentative agreements reached by the Parties for the proposed Contract.

Respectfully submitted an issue on the dates set forth below:

Richmond Heights  
Cuyahoga County  
Ohio  
October 15, 2012

*Melvin E. Feinberg*  
Melvin E. Feinberg, Fact Finder

## Certificate of Service

I hereby certify that one copy of my Fact-Finding Report in SERB Case Number 12-MED-04-0429 Portage County Commissioners (Portage County Nursing Home, The Woodlands at Robinson) and American Federation of State, County and Municipal Employees, Ohio Council 8, AFL-CIO, Local 3630 is being sent by e-mail to SERB and to each of the following Parties on the date set forth below:

For the Employer:

Ronald J. Habowski  
Attorney at Law  
Christley, Herington & Pierce  
215 West Garfield Road, Ste. 230  
Aurora, OH 44202  
E-mail: [rjh@chpohiolaw.com](mailto:rjh@chpohiolaw.com)

For the Union:

Louis J. Maholic  
Staff Representative  
AFSCME Ohio Council 8, AFL-CIO and its Local 3630  
1145 Massillon Road  
Akron, OH 44306-4161  
E-mail: [lmaholic@afscme8.org](mailto:lmaholic@afscme8.org) and  
[akregion@afscme8.org](mailto:akregion@afscme8.org)

For SERB:

Donald M. Collins, SERB General Counsel/ Assistant Executive Director and  
Administrator over Bureau of Mediation  
65 East State Street, 12<sup>th</sup> Floor  
Columbus, OH 43215-4213  
Email: [MED@serb.state.oh.us](mailto:MED@serb.state.oh.us)

October 15, 2012

*Melvin E. Feinberg*  
Melvin E. Feinberg, Fact Finder