



THE STATE EMPLOYMENT RELATIONS BOARD  
August 6, 2012

STATE EMPLOYMENT  
RELATIONS BOARD

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<b>SERVICE EMPLOYEES</b>	)	
<b>INTERNATIONAL, DISTRICT 1199,</b>	)	CASE NO. 2012-MED-04-0466
<b>UNION</b>	)	
	)	
and	)	FACT FINDER: <b>JOSEPH W. GARDNER</b>
	)	
<b>AUGLAIZE ACRES,</b>	)	
<b>AUGLAIZE COUNTY, OH,</b>	)	FACT FINDING REPORT
<b>EMPLOYER</b>	)	

APPEARANCES

For the **UNION:**

For the **EMPLOYER:**

**Brenda Millhouse,**  
Union Representative

**Patrick Hire,**  
Employer Representative

**Susan Elliott,**  
E-Board; Employee

**Connie S. Pierce,** Administrator, Auglaize Acres

**Michelle Brown,**  
Employee

**Aaron Weare,**  
Senior Consultant, Clemans, Wilson & Assoc.

**Pat Reynolds,**  
Employee

**Gary Denig,** Administrator In Training

**Kim Sudhoff,** Business Office Manager

**Michael Hensley,** Auglaize County Administrator

INTRODUCTION

On June 12, 2012, the State Employment Relations Board appointed the undersigned to conduct a fact finding hearing and serve the parties with a written, Fact Finding report. By agreement of the parties, the hearing was set for July 30, 2012.

All of the below factors set forth in section 4117.14 of the Revised Code were reviewed and considered:

1. Past collectively bargained agreements, if any, between the parties;

2. Comparison of issues submitted to final offer settlement relative to the employees in the bargaining unit involved, that those issues related to other public and private employers 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. The lawful authority of the public employer;
5. The stipulations of the parties; and
6. Such other factors, not confined to those listed in this rule, which are normally or traditionally taken into consideration and the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or private employment.

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**PRE-HEARING MOTION**

On July 19, 2012, the Union sent, via electronic mail, to the Employer's representative, a document titled "Fact Finding Proposals." This document contained the Union's proposed language for the Collective Bargaining Agreement. This document contained the Union's position regarding unresolved issues between the parties.

On July 25, 2012, the Union forwarded to me, via electronic mail, another document. This July 25 document was entitled "Union's Position Statement Regarding Unresolved Issue"

(sic). This July 25, 2012 document sent to me on July 25, 2012 contained the same language regarding the unresolved issues, as the July 19, 2012 document.

The certification of the July 25, 2012 document says that this document was sent to the Employer's representative and this fact finder.

Although the July 25, 2012 Union document was sent to me, it was not sent to the Employer or the Employer's representative. It was unclear why the July 25, 2012 document was not sent to the Employer or to the Employer's representative at fact finding. The Union's representative, however, immediately took responsibility for not sending the document to the Employer.

On Friday, July 27, 2012 at 3:07 p.m., the Employer Representative sent, via electronic mail, its position statement to the Union representative and to this fact finder.

On Sunday, July 29, 2012, the Employer's representative notified both this fact finder and the Employee's representative that the Union violated OAC 4117-9-05(F). The Employer's representative charged that by failing to send the Union's document titled "Union's Position Statement Regarding Unresolved Issue (sic)," to the Employer, the Union failed to timely send to the Employer, Union's position statement, contrary to OAC 4117-9-05(F).

The Employer moved that the fact finder take evidence only in support of matters raised in the written statement that was submitted prior to the hearing. The sanction for a violation of 4117-9-05(F) is as follows:

“...a failure to submit via electronic mail such a position statement to the fact finder and the other party no later than five p.m. on the last business day prior to the hearing, shall cause the fact finding panel to take evidence only in support of matters raised in the written statement

that was submitted prior to the hearing....”

The sanction for failure to provide a timely position statement is severe. At fact-finding, parties can only present relevant evidence in support of proposals made by that party. Unless a party timely presents a position statement, that party has no proposals. Therefore, that party cannot present any evidence in support of its proposals because it has no proposals. The violating party is limited to presenting evidence against the other party’s proposals.

Failure to timely present a position statement prohibits the violator from presenting any evidence in support of proposals because there are no proposals properly before the Fact Finder. As set forth above, this sanction is severe.

According to the Employer, since the Union did not present a timely position statement, the Union could not now make any proposals or submit any evidence in support of any proposals.

However, on July 19, 2012, the Union provided to the Employer, proposals of contract language to be in the collective bargaining agreement. These proposals, sent on July 19, 2012 are the same proposals timely sent to me, on July 25, 2012. There exists nothing in the rule where the proposals, i.e., the position statement, need to be sent to the opposing party and the fact finder at the same time.

Since the July 19, 2012 submission was a “timely” submission under OAC 4117-9-05(F), the Employer’s motion to exclude this evidence is denied.

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## FACTS

The Employer is a nursing home owned and operated by the County of Auglaize, Ohio. The formal name is "Auglaize Acres." The funding source of "Auglaize Acres" is the Board of County Commissioners of Auglaize County, Ohio.

The bargaining unit is the Service Employees International Union, District 1199, WV/KY/OH (SEIU). Included in the bargaining unit are all full time and regular part time service employees, including certified nursing assistants, rehabilitation aides and transportation aides. Also included are activity aides, dietary aides, laundry aides, janitorial aides, housekeeping aides, social services aides and maintenance employees. Almost all of the Licensed Practical Nurses are also included.

There are approximately 52 members of the bargaining unit.

A part of the building that houses the nursing home has been constructed approximately one hundred fifty (150) years ago. The parties have at least one prior collective bargaining agreement that was effective July 1, 2009 to June 30, 2012. The parties were negotiating a new collective bargaining agreement (CBA), and met with an impasse.

Auglaize County, Ohio and Auglaize Acres have suffered the same financial hardships facing local governments in Ohio and generally experienced in the Nation. Since 2006, Auglaize Acres' revenues dropped from \$5,841,948.89 to \$5,040,048.88 and expenses dropped from \$5,758,231.54 to \$5,015,335.49. In 2007 and 2008 carryover was in the "red" for \$314,994 and \$101,550.23, respectively. There was virtually no carryover from 2009 through 2011.

Since 2007, Auglaize Acres was unable to completely pay back "loans" from the County Commissioners. Although reimbursements have been made on these "loans," the total balance due the County Commissioners, currently, is \$189,456.96.

Government and State funds have decreased. In 2008, \$865,884.12 was received from Medicare, but in 2011 only \$754,086.60 was received from Medicare. The amount received from Medicaid has also declined.

Both parties recognize state and federal funding is not to the same levels it was several years ago. Neither the Employer nor the Union, are now proposing a raise in wages or increases in benefits. Concessions, not increases in pay and/or benefits, dominate the issues of this fact finding.

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**ISSUE NO. 1**

Article 3, Hours and Overtime

*Section 3.1*

*Section 3.2*

*Section 3.5*

**Discussion**

**Section 3.1.** The Employer seeks to reduce the hours of the Union Members from 40 hrs. /wk. to 36 hrs. /week. The Employer states that the four hour reduction would save the employer over \$225,000.00 per year. The Employer states that this bargaining unit is not the only group of employees who gave concessions. The Employer says that Management employees have taken furlough days.

The Union states that this is less time to do the same amount of work. Not only will this reduction in hours increase job stress for the bargaining unit members, the care given the patients at Auglaize Acres will be compromised.

Directing your attention to another clause in **Section 3.1**, the Employer proposes that the bargaining unit members *must* clock-in and clock out at all starting and quitting times with an ID badge. Failure to properly clock in would be an “occasion.” The accumulation of “occasions”

will eventually result in discipline. The purpose of “clocking in and out” appears to be an attempt by the Employer to make sure that the bargaining unit members arrive on time and that they do not leave work early. If payment is based upon hours worked, a time clock easily and fairly proves when an employee arrives and when an employee leaves.

The Employer has presented, at fact finding, approximately 35 pages of “excuses” for failure to clock in. The Union states that the entire bargaining unit is being punished for a few who do not follow the rules. There was testimony of one witness who is called in to work at times when she is not at home. Because she was not at home, she and did not have her badge when she clocked in. The Union states that the proposal will cause a hardship for the employees.

Clocking in with badges meets two goals: 1) Hours worked are easily calculated and 2) the badge helps to secure the workplace. The badge protects both the patients and the employees. Failure to comply with the “badge for clock in/out” policy increases the cost of operations and decreases security for everyone. If there are only a few who do not comply with this policy, perhaps it is the responsibility of the Union to help enforce this policy for the protection of those in the bargaining unit who support and comply with those policies.

According to the parties, the reduction of the work week to 36 hours amounts to a 10% decrease in labor costs. In other words, there will be a 10% reduction in the amount of money paid to the Bargaining Unit Members.

This will definitely result in a lower amount of expenditures of funds. However, the amount of services needed to be performed will stay the same and there will be less time to perform these services. In other words, the employees will have less time to perform the same amount of services.

Although the rate of pay is the same, the bargaining unit members will receive less in income. In other words, their income is decreasing because they work less hours. This reduction is a difficult recommendation to make when the cost of living has at least stayed the same or even increased in some areas. For instance, the cost of gasoline is still very high, but the distance to drive to work is still the same. The employees will have less money to purchase fuel to get them to work.

In reviewing the factors set forth in 4117.14 we must view the “interest and welfare of the public (and) the ability of the public employer to finance and administer the issues proposed...” This public nursing home is a crucial service to the mentally and physically challenged and those who are elderly and unable to care for themselves. There was no evidence presented that this facility is a mandated service. If this is not a mandated service, the Commissioners could close this service if the funds are needed for other mandated services. This would be a devastating loss for those in society who need these services. The County must have the financial elasticity to keep this institution from failing financially.

Reluctantly and cautiously, this fact finder recommends that the collective bargaining agreement contain the language reducing the hours of the bargaining unit members from 40hrs/wk. to 36hrs./wk., and the policies and rules regarding the ID badge and clock in/out procedures *as proposed by the Employer.*

### **Recommendation**

#### Article 3, Hours and Overtime

[This recommendation includes the issue regarding the reduction of hours and the policy regarding the clock in and out with the ID badge]

#### *Section 3.1*

*The undersigned recommends that the language in the Employer’s statement shall be the contract language for Article 3, Section 3.1.*

## Discussion

### Article 3, Hours and Overtime

#### *Section 3.2*

The Employer has argued, and this fact finder has recommended, to reduce the work week by four hours (from 40 to 36 hours). However, the Employer proposes to maintain 40 hours/week as the amount of hours required for overtime to start. This position is not consistent and is not fair. If the "full time" work week is 36 hours, overtime must start at 36 hours and not 40 hours.

Vacation time should not be considered for computing overtime. Overtime is the reward for working more than what is expected. It is expected that the bargaining unit members shall work 36 hours/week. If the bargaining unit members work more than their full time obligation, they should be compensated with overtime.

## Recommendation

### Article 3, Hours and Overtime

#### *Section 3.2*

It is recommended that article 3, section 3.2 shall be put in the CBA as follows:

*Section 3.2: Employees shall be paid time and one-half their base rate of pay for all hours actually worked in excess of 36 hours or 40 hours in a week, depending upon their classification as a full time employee working 36 hours or a full time employee working 40 hours as set forth in the first sentence of section 3.1 above. This section is intended to be used as the basis for computing of overtime and shall not be construed as a guarantee of work per day, per week or per work period.*

*Only hours actually worked shall be considered time worked for computing overtime. Overtime hours shall be distributed as equitably as possible. There shall be no mandatory overtime other than in emergency situations. However, when it is deemed necessary, the least senior employee in the affected classification may be forced to stay over to the next shift. The Employer will attempt to find a replacement for the forced employee. Employees' schedules shall not be altered to avoid the payment of overtime. Overtime*

*shall be authorized after the fact in an emergency situation. A procedure for finding replacements during emergency situations will be that part-timers are asked to fill in first; Then full-timers on a rotating basis. In emergencies, the least senior full-time employee may be required to report.*

**Discussion**

Article 3, Hours and Overtime

*Section 3.5*

The Union proposes that training may be done at home, at no cost to the employer. The Union states that this is another way to save money and still have trained employees.

Although the Union's proposal may save some funds, the Employer must make sure that the continuing education and training be done on site. Supervision of training is an integral part of the training.

**Recommendation**

Article 3, Hours and Overtime

*Section 3.5*

*This fact finder recommends that Article 3, Section 3.5 maintain current contract language.*

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**ISSUE NO. 2**

Article 13, Employment Categories

*Section 13.1*

*Section 13.2*

**Discussion**

Because of the above reasons set forth in Issue No. 2, this fact finder recommends that a Full time employee is one who works more than 36 hours and a part time employee works less

than 36 hours. Overtime, is required to *those* who work in excess of 36 hours/week, if 36 hrs./wk. is that employee's full time work week. If the employee has a full time week of 40 hours, then overtime begins when an employee works over 40 hours.

**Recommendation**

Article 13, Employment Categories

*Section 13.1*

*Section 13.2*

*This fact finder recommends that the following language be the language in Article 13,*

*Sections 13.1 and 13.2 of the CBA:*

*Section 13.1. Subject to the exceptions set forth in Article 2, Section 3.1 above, A Full Time Employee is an employee who regularly works a minimum of thirty-six (36) hours each seven (7) day time period, Thursday through Wednesday.*

*Section 13.2. Subject to the exceptions set forth in Article 3, Section 3.1 above, A Part Time Employee is an employee who regularly works less than thirty-six (36) hours in each seven (7) day time period, Thursday through Wednesday.*

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**ISSUE NO. 3**

Article 19, Discipline

*Section 19.5*

*Section 19.7*

### **Discussion**

The Union desires to shorten the time for issuing disciplines. In reviewing Section 19.5 of the Union's position statement, the Union proposes, disciplinary action must be taken within 21 days of the incident as opposed to 21 days after the investigation.

The Employer objects to this this Union proposal.

Twenty-One days after the investigation is a fair time period to decide whether to issue discipline.

The Union proposes to shorten the time period for consideration in future disciplinary matters from a twenty four month period to a twelve month period.

The employer argues that the twenty four month period is a reasonable time frame for consideration of future discipline. Also, the Employer argues that the creation of an "inactive" file will cause confusion under current law. The Union counters this Employer argument regarding the creation of other files. The Union presented evidence that the employer has created other files used by supervision.

This fact finder believes that disciplinary action 21 days after an investigation is reasonable and 24 months for future discipline consideration is also a reasonable amount of time for future discipline. Creating an "inactive file" will only cause confusion in a complicated legal area.

### **Recommendation**

Article 19, Discipline

*Section 19.5*

*Section 19.7*

*This fact finder recommends that the current language of the Collective Bargaining Agreement under sections 19.5 and 19.7 shall remain the contract language in this new contract.*

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**ISSUE NO.4**

Article 22, Miscellaneous

*Section 22.2*

**DISCUSSION**

Currently, the bargaining unit members are permitted to request and the Employer is required to provide updated sick day, vacation and personal time balances. Currently, this information is updated each pay period. The bargaining unit members desire the same information for occasions and tardies.

The Employer states that it can produce this information regarding occasions and tardies, but it is difficult to obtain that information. Furthermore, the Employer states that knowing this information is the responsibility of the employee. The Employer is concerned that certain irresponsible employees want to know the exact numbers of occasions and tardies before said employees plan activities that could or could not financially hurt the said employees. In other words, the Employer claims that the certain employees will knowingly engage in activities detrimental to the Employer, but beneficial to the employee based on information provided the Employee by the Employer.

Most employees, both in management and in the Bargaining Unit, are good employees and are acting in the best interest of the county and the patients of Auglaize Acres. There are always a few employees who will use information for nefarious purposes. However, the vast majority of employees are responsible people who are concerned about caring for patients, concerned about their fellow employees and concerned about Auglaize County. These employees

are entitled to be promptly provided this information simply because this information affects them and it is their business.

We live in a working environment where items can be placed on or taken off of a record with the touch of a key on the keyboard. Inserting and accessing this information is not difficult. This information should be updated every pay period and all employees including the bargaining unit members should have access to this information to make sure this information is accurate.

**Recommendation**

Article 22, Miscellaneous

*Section 22.2*

*This fact finder recommends that Article 22, Section 22.2 shall be the same language as the Union's proposal in the Union's position statement for section 22.2. That language should become part of the collective bargaining agreement:*

*Section 22.2. The Employer shall provide updated sick, vacation and personal time, as well as occasions and tardies to bargaining unit members on request. This information shall be updated every pay period.*

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**ISSUE NO. 5**

Article 23, Wages

*Section 23.1*

**Discussion**

Both the Employer and the Union have proposed a wage freeze with the freeze subject to conditions. The condition proposed by the Union is a "me-too" clause. If any employee receives a "raise, bonus or other incentive," then the Union demands the bargaining unit members in this

bargaining unit will receive the same raise, bonus or other incentive. The Employer criticizes this proposal because the “me-too” clause only applies to increases and not decreases in compensation. In other words, if Management Employees’ wages are reduced 10%, should not the members of this bargaining unit receive that same 10% reduction in wages? Or, if Management Employees are required to take furlough days, should Union employees also be required to take furlough days?

The Employer proposes that there is a wage freeze for the three year term of the contract, and the Employer agrees to meet with “three (3) members of the Union... for the purpose of reviewing the financial status of Auglaize Acres.” The meeting shall not require the Employer to bargain or modify the CBA in any manner. In other words, the Employer promises to talk with three members of the Union, nothing more.

These financial times are the most uncertain and troubling financial times this fact finder has seen since this Collective Bargaining Law was enacted. (This law was enacted in the mid-1980’s). This Collective Bargaining law allowed the legal existence of labor unions in the public sector. A main purpose of the law required public unions and public sector employees to collectively bargain on mandatory subjects and allowed bargaining on non-mandatory subjects. Bargaining pre-supposes direct communication between the parties on financial matters. Good faith bargaining also pre-supposes complete disclosure of financial matters. Since Auglaize Acres is a public institution, the public owns and operates Auglaize Acres. Since Auglaize Acres is a public institution all citizens should have access to all financial matters of Auglaize Acres. It would be financial suicide for the owners of a Private Business not to have full access to all financial matters of that private business.

All citizens have the right to a dialogue with those elected and appointed officials who are in charge of these public entities. It is not only a right for citizens to speak with their public officials about the financial condition of any public entity; responsible citizens have an obligation to speak about these matters of this situation.

The bargaining unit members are citizens. They already have the right to speak about this public entity and to speak with those who are in charge of Auglaize Acres about financial matters.

The Employer's proposal to meet with the Bargaining Unit members and talk about Auglaize Acres is an obligation the Employer already has and a right *that* the Bargaining Unit members already have. Because the Bargaining Unit Members are citizens and taxpayers, The Bargaining Unit members already have this right to speak with the Management of Auglaize Acres.

The Employer is "giving" something to the bargaining unit members that they already have. Those who own Auglaize Acres the citizens and taxpayers should have full access to all financial matters concerning Auglaize Acres. Since Auglaize Acres is publicly owned, all citizens have a right to those financial matters.

In these uncertain times, if either party, Employer or Union, believes that the Collective Bargaining Agreement is unfair because of changes in the financial climate; either party should be able to reopen the contract. Although one year Collective Bargaining Agreements are not the norm in our state, one year CBA's are not unheard of either.

Because of these uncertain times, this fact finder recommends that either side be able to reopen the CBA, on any issue or issues at the end of the 1<sup>st</sup> and 2<sup>nd</sup> year. The people, who work in this type of institution, being either a union or management employee, are responsible for

those who are the most vulnerable in our society. They are educated people. The employees of this institution, both labor and management can be trusted to do what is right when given the opportunity. Under these financial circumstances, either labor or management should be empowered to reopen the contract.

This recommendation is not made without concerns. It may be advantageous financially for either side not to reopen. However, as was stated above, with changing financial times, both labor and management must trust each other to work though these uncertain times.

**Recommendation**

Article 23, Wages

Section 23.1

*This fact finder recommends the following language for Article 23:*

**Section 23.1- For the year July 1, 2012 through June 30, 2015, there shall be a wage freeze.**

*Either party may reopen this article and/or any other article or articles in the collective bargaining agreement for the time period of July 1, 2013 through June 30, 2014 or through June 30, 2015. Either party who decides to reopen this contract must give written notice to the other party of its decision to reopen, via e-mail or via certified mail return receipt requested. Notice to reopen shall be e-mailed or addressed to the Auglaize Acres Administrator and/or the Union Representative. The reopening occurs when the party or parties desiring to reopen successfully send(s) the e-mail to reopen or post(s) and mail(s) the correspondence to the opposing party Reopening must occur on or after May 15, 2013 but on or before June 15, 2013.*

*Either party may reopen this article and/or any other article or articles in the collective bargaining agreement for the time period of July 1, 2014 through June 30, 2015. Either party who decides to reopen this contract must give written notice to the other party of its decision to reopen, via e-mail or via certified mail return receipt requested. Notice to reopen shall be e-mailed and/or addressed to the Auglaize Acres Administrator or the Union Representative or both. The reopening occurs when the party or parties desiring to reopen successfully send(s) the e-mail to reopen or post(s) and mail(s) the correspondence to the opposing party Reopening must occur on or after May 15, 2014 but on or before June 15, 2014.*

*The fact finder recommends the current language for the rest of this article.*

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**ISSUE NO. 6**

Article 28, Holidays

*Section 28.4*

**Discussion**

The words of the current contract are as follows:

**Section 28.4** *In lieu of an additional holiday, any employee required to work and who actually works on Easter may take additional, equivalent hours off with pay at employee's regular hourly rate anytime during the remainder of the calendar year, subject to the approval of the employee's supervisor.* (Emphasis added).

Under this above clause, if the employee works twelve hours on Easter, that employee gets twelve hours off and regular hourly pay for 12 hours. This employer proposes limiting the "Holiday" pay to eight hours at the regular rate, even if the employee works twelve hours.

This benefit is exclusive to this bargaining unit. However, the following clause is in the current contract: "In lieu of an additional holiday,..." At some point in time, the bargaining unit was bargaining for an "additional holiday." It appears that the Employer agreed to this current language in lieu of an additional holiday. Because of the phrase: "In lieu of an additional holiday..." the bargaining unit were either promised an additional holiday and/or the bargaining unit gave up something to be considered for an additional holiday. The proposal by the Employer is a concession. There is no evidence that this benefit significantly damages the institution or damages its administration. There is no evidence that there is any significant financial damage to the institution.

**Recommendation**

*This fact finder recommends the current language of Article 28 be part of the CBA.*

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## **ISSUE NO. 7**

### Article 29, Vacation

#### *Section 29.2*

#### *Section 29.3*

#### *Section 29.4*

### **Discussion**

Both parties propose the same language for Section 29.3 and 29.4. The proposed language is fair.

The Employer proposes the current contract language for section 29.2. The current language states that vacation leave must be used in the year earned or the vacation time is forfeited subject to exceptions.

The Union states that many other counties permit three year carry over. The Union further states that forfeiture of vacation time is harsh, especially when employees do not put in for vacation because no one was available for coverage, as was the case with Auglaize Acres. The Union representative argues that vacations are earned benefits and it is not too much to ask for a one year carry over to preserve this benefit for the bargaining unit members.

The Union's argument is fair and reasonable. The external comparables are persuasive and a one year carryover is fair in light of the loyalty of the bargaining unit members not taking vacation because of no coverage.

### **Recommendation**

*This fact finder recommends the following language:*

*Section 29.2: The language set forth in the Union's position statement should be part of the CBA.*

*Section 29.3 and 29.4: The language proposed in both position statements should be part of the CBA.*

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**ISSUE NO. 8**

Article 30, Sick Leave

*Section 30.2C*

**Discussion**

**Section 30.2C.** The employer and the Union agree that proof of funeral leave shall not count as an occasion so long as the employee provides evidence of the funeral. The dispute between the parties is how much time the employee is given to provide proof of the funeral.

The Employer states that the Employee must provide evidence of funeral on the first day back to work. The Union does not have a time period for providing evidence of the funeral. Proof must be prompt; however, requiring proof on the first day back to work is unreasonable. A funeral is a disruption in one's life. It's understandable if a person forgets to provide proof of the funeral on the first day back to work. A short time period is necessary to permit an employee to start again. Three days is sufficient time to provide evidence of the funeral.

**Section 30.9.** It is the responsibility of the employee to arrive at work on time. As was stated earlier in this fact finding report, the requirement of an ID badge provides security not only to the patients but to the employees, also. Clocking in and out with a security badge is an accurate and cost effective way to make sure employees arrive on time. Failure to report to work on time not only damages the operation of the institution, it puts an additional burden on other bargaining unit members. The requirement that an employee gives one week advance notice of

planned sick leave is reasonable. However, the bargaining unit members should be permitted to provide a doctor's excuse within three days after the employee returns to work.

**Section 30.10.** The parties appear to be close to with each other's proposal under section 30.10. The employer again proposes that "Dr.'s excuses must be submitted to the employer on the first day returning to work to be considered an exemption."

The key to submitting a Doctors excuse is that it is promptly presented to the employer and that the excuse is in writing. Sometimes, it is difficult to have the Doctor provide an excuse. As long as the excuse is promptly submitted to the employer, it would not be an administrative burden. The parties disagree as to whether or not the time is required to be placed into the Doctor's excuse. There is no evidence presented that there is a need to put in the time. Being some-what familiar with the operations of visiting a doctor, long wait times may or may not play into whether the employee promptly returned back to work. There has been no evidence that this has caused a problem directing the workforce. This issue is not an unimportant issue, and is important because tax payer dollars are used to pay for people off on sick time. Again, there is no evidence presented that any of the bargaining unit members have misused doctor visits costing the taxpayers extra money for such abuse. With the expected difficulty in obtaining the time from the physician or the physician's staff and the absence of abuse of this benefit and wasting of taxpayer's money, the time on the doctor's excuse should not be necessary.

#### **Recommendation**

*This fact finder makes the following recommendations for the following sections under Article 30, Sick Leave:*

**Section 30.2C:** *Death of a member of the employee's immediate family. Such usage shall be limited to the time required to make funeral arrangements and attend the funeral, not to*

*exceed five (5) calendar days. Funeral leave shall not count as an occasion, provided the employee provides evidence of the funeral to the Employer on or before the ending of the employee's third day back to work, not counting days that the employee was off work and not scheduled to work.*

*Section 30.9: The language proposed by the Employer in their position statement is recommended as the language to be placed in the collective bargaining agreement.*

*Section 30.10: An "occasion" for purposes of Section 9 shall mean an individual utilization of sick leave as defined in Section 2 regardless of the number of hours involved. (e.g., one (1) day or five (5) consecutive workdays would all be one (1) occasion of sick leave.) Any time an employee reports back to work and begins working, ends an occasion of sick leave.*

*Where an employee has a doctor's excuse for absences of one (1) or more days said absences shall not be counted as an occasion. This exemption shall only be effective three (3) times in any 12 month period, as described in Section 3.9 above. All submitted doctor's excuses must be from a licensed physician, indicating the nature of the illness or injury preventing the employee from working pursuant to Section 30.2 above, a statement indicating whether or not the employee was seen by the physician for an examination, the expected duration of the illness or injury and the date the employee was examined by the physician, any applicable work restrictions, including the duration of said specific work restrictions and any medications prescribed which may impair work performance. Sick leave shall not count as an occasion, provided the employee provides to the Employer, a doctor's excuse before the ending of the employee's work day of the third workday back to work, not counting days the employee was not scheduled to work.*

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**ISSUE NO. 9**

Article 31, Personal Leave

**Discussion**

The Employer proposes the current language in the contract. The current language in the contract awards personal leave if the employee does not use approved sick leave or is otherwise absent from work without approved leave from January 1 to June 30 of each calendar year. In this situation the employee is entitled to 8 hours of personal leave.

The Union states that they want to incentivize people. The Union proposes that a quarterly basis will encourage people to participate more in earning this benefit.

This personal leave benefit appears fine as is. It is designed to reward people to come to work.

**Recommendation**

*This fact finder recommends the language in the Employer's position statement for article 31, personal leave.*



**ISSUE NO. 10**

Article 36, Duration

**Discussion**

The recommendation set forth in issue no. 5, article 23, wages, affects the duration of this agreement. Because of the uncertain times we live in, this article should be subject to the reopeners set forth in issue no. 5 of this fact finding report.

**Recommendation**

*This fact finder recommends the following language set forth in Article 36 of the Collective Bargaining Agreement:*

*Subject to the reopeners set forth in article 23 of this Collective Bargaining Agreement, this agreement will remain in full force and effect from July 1, 2012 through June 30, 2015. Either party shall notify the other in writing not more than 90 days, or less than 60 days prior to the expiration date set forth herein that it desires to modify this agreement. In the event such notice is given, negotiations shall commence not later than 60 days prior to the expiration date.*

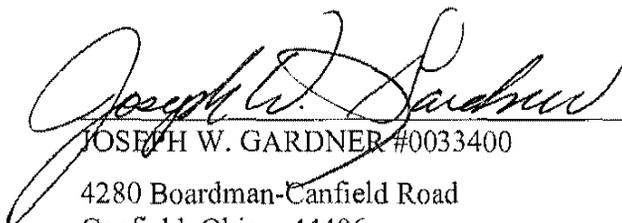
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**TENTATIVE AGREEMENTS**

The tentative agreements between the parties regarding Article 14-leave of absence, Article 16-probationary period and Article 5-health and safety are fair and meet the purpose and intent of this collective bargaining agreement.

This fact finder recommends that these tentative agreements as proposed by the employer and the union become part of the collective bargaining agreement.

Respectfully submitted,

  
JOSEPH W. GARDNER #0033400  
4280 Boardman-Canfield Road  
Canfield, Ohio 44406  
Phone: (330) 533-1118  
Fax: (330) 533-1025  
Fact-Finder

**CERTIFICATION**

I hereby certify that on Monday, August 6, 2012, a copy of the foregoing Fact Finder's Report was sent via e-mail or regular mail to the following:

Representative for the Union:

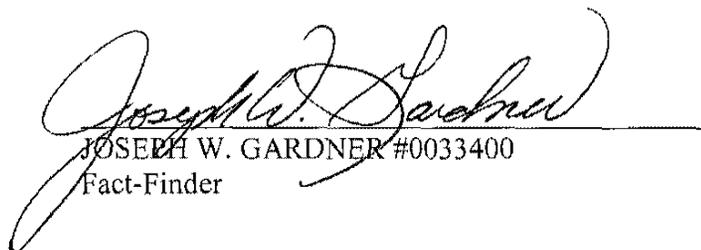
BRENDA MILLHOUSE  
bmillhouse@seiu1199.org

Representative for the Employer:

PATRICK HIRE  
PHire@clemansnelson.com

Bureau of Mediation:

EDWARD E. TURNER  
Administrator, Bureau of Mediation  
65 East State St., 12<sup>th</sup> Floor  
Columbus, Ohio 43215-4213

  
JOSEPH W. GARDNER #0033400  
Fact-Finder

**Joseph W. Gardner**  
ATTORNEY AT LAW  
4280 BOARDMAN-CANFIELD ROAD  
CANFIELD, OHIO 44406

STATE EMPLOYMENT  
RELATIONS BOARD

2012 AUG -8 P 2:47

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PHONE: (330) 533-1118  
FAX: (330) 533-1025  
JWG1118@sbcglobal.net

August 6, 2012

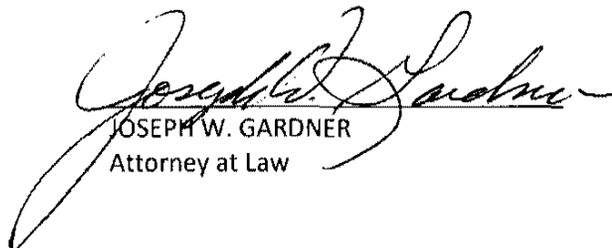
EDWARD TURNER  
Administrator, Bureau of Mediation  
65 East State St., 12<sup>th</sup> Floor  
Columbus, OH 43215-4213

**Re: AUGLAIZE ACRES and SERVICE EMPLOYEES INTERNATIONAL #1199**  
**CASE NO.: 2012-MED-04-0466**

Dear Mr. Turner:

Please find enclosed the Fact Finding Report for the above referenced case. If you should have any questions, please do not hesitate to contact me.

Very truly yours,

  
JOSEPH W. GARDNER  
Attorney at Law

JWG:jac  
Enclosure