

STATE OF OHIO  
STATE EMPLOYMENT REATIONS BOARD

In the matter of  
Fact-Finding between

|                             |   |                           |
|-----------------------------|---|---------------------------|
| ORANGE CITY SCHOOL DISTRICT | ) |                           |
| BOARD OF EDUCATION,         | ) | Case No. 2012-MED-06-0648 |
| Employer                    | ) |                           |
|                             | ) |                           |
| -and-                       | ) | JEFFREY A. BELKIN         |
|                             | ) | FACT-FINDER               |
| OAPSE/AFSCME, LOCAL 4       | ) |                           |
| AFL-CIO,                    | ) |                           |
| Union                       | ) |                           |

REPORT AND RECOMMENDATIONS

This matter was heard on March 11, 2013 at Pepper Pike, Ohio. The parties' representatives are listed below:

For the Employer:

DAVID MILLSTONE  
LAURA GUENTNER  
SALLY-JO HIRSCH  
PAULA SNYDER

ATTORNEY  
DIRECTOR, OCER  
EARLY CHILDHOOD COORDINATOR  
ORANGE SCHOOLS HR DIRECTOR

NANETTE FOLSOM  
DIANE AVERY  
BETSY KOONS  
SUSAN CAHEN  
ANN TANNER

UNION REPRESENTATIVE  
LOCAL 560 PRESIDENT (TEACHER)  
UNION NEGOTIATOR  
UNION REPRESENTATIVE RETIRED  
UNION REPRESENTATIVE (OBSERVER)

I. BACKGROUND

The following recitation is derived from the Employer's pre-hearing statement, which was not disputed by the Union:

The Ohio Association of Public School Employees/AFSCME Local 4, AFL-CIO (the "Union") received recognition to represent a unit of all regular full-time and regular part-time preschool teachers and preschool assistant teachers of the Orange Community Education and Recreation Early Childhood Program under the Orange City School District Board of Education from the State Employment Relations Board on November 17, 2011. The parties commenced bargaining on March 12, 2012 and while reaching tentative agreement on numerous issues, there are still ten issues that remain unsolved.

The Orange Community Education and Recreation Department ("OCER") was founded in 1973 with \$30,000 with seed money from the communities of Hunting Valley, Moreland Hills, Orange, Pepper Pike and Woodmere. A citizen community concept committee worked with the Orange City School District and the communities to develop the community education and recreation program concept. The program was formally established with the passage of a five-year, non-continuing, .5 mill levy in June, 1975.

The Orange Community Education and Recreation Early Childhood Program ("ECP") is one of eleven programs operated by the OCER. The OCER is funded by a five-year community education and recreation levy (separate from any levy supporting the Orange City School District general education operations) and through user fees. The current five-year, non-continuing, .95 mill recreation levy provides approximately one-quarter of the funds needed to support the OCER. The various services and programs are required to be financially self-sufficient with the bulk of revenues coming from participant fees. The Orange City School District Board of Education ("Board") serves as fiscal agent for the OCER. Therefore, the Board takes actions to hire and fire OCER employees based upon the recommendations of the Director of the OCER. However, no funds may be used [by] the General Education Fund of the Board to operate OCER.

## II. FACT-FINDERS REPORT

In reaching the Findings and Recommendation on the issues at impasse, the undersigned has considered the parties' prehearing statements, oral statements and exhibits.

Also taken into account were the factors mandated by statute:

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

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;

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;

The lawful authority of the public employer;

Any stipulations of the parties;

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.

## III. UNRESOLVED ISSUES

### A. Introduction

The most important factor in this proceeding is that this is the first contract between the parties, and therefore, no established language or history of a bargaining relationship. Moreover the fact-finding represented the culmination of the Union's attempt to obtain bargaining representation for the unit over a period of at least 18 months. Going into fact-finding the parties had resolved some of the major issues for a first contract, but several fundamental issues remained. However, both parties approached fact-finding in the spirit of compromise and cooperation, and were able to reach tentative agreements on most of the remaining unresolved issues.

B. The Unresolved Issues

1. Article II – Definitions

At the hearing the parties tentatively agreed to the following language:

The terms listed below, when used in the Collective bargaining Agreement, shall be defined as follows:

- a. Board: Orange City School District Board of Education.
- b. OAPSE: Ohio Association of Public School Employees/AFSCME Local 4, AFL-CIO.
- c. Local 560: OAPSE: Ohio Association of Public School Employees/AFSCME Local 4, AFL/CIO, Local 560.
- d. Union: OAPSE: Ohio Association of Public School Employees/AFSCME Local 4, AFL-CIO and OAPSE: Ohio Association of Public School Employees/AFSCME Local 4, AFL-CIO, Local 560.
- e. OCER: Orange Community Education and Recreation.
- f. EC: Early Childhood Preschool Program of Orange Community Education and Recreation.
- g. Agreement: this Collective Bargaining Agreement.

- h. Member or Bargaining Unit Member: Any employee in the Bargaining Unit defined in Section 1.02 of this Agreement.
  - i. Director of OCER: Director of Orange Community Education and Recreation Department or designee.
  - j. Coordinator of EC: Coordinator of the Early Childhood Program of Orange Community Education and Recreation.
  - k. Day: Calendar Day.
  - l. Workday: A day on which an employee is scheduled to report to work during the regular school year; during summer break or any Monday through Friday when the EC is open for regular business.
  - m. Immediate Supervisor: The person directly responsible for the supervision and direction of bargaining unit employees: the Coordinator of the Early Childhood Preschool Program of Orange Community Education and Recreation.
  - n. Seniority:
    - 1. System Seniority: an employee's uninterrupted service in the bargaining unit of the Early Childhood Preschool Program as determined by original date of hire.
    - 2. Classification Seniority: an employee's uninterrupted service in the particular job classification in the bargaining unit within the Early Childhood Preschool Program. The two current classifications are:
      - a. Preschool Teacher
      - b. Preschool Assistant Teacher
  - o. Full Time Employee: An employee assigned to work eight (8) or more hours per day and forty (40) hours per week.
  - p. Part-Time Employee: an employee assigned to work less than eight (8) hours per day or forty (40) hours per week.
2. Article V - Association Dues

The Union proposal Article V – Association Dues, that includes provisions for Association Membership, Dues Reporting, Remission of Dues and Fair Share Fee. At the fact-

finding the Union proposed changing the dates of the dues withdrawal period from 10 days prior to August 15, in the year prior to contract expiration, to the 10-day period from May 21-31 annually.

With that single change, the Employer and the Union tentatively agreed to Article V, as proposed.

3. Article VIII - Grievance Procedure

The Union proposed Article VIII – Grievance Procedures, that includes sections covering Purpose; Grievance [definition]; Time Limits; Grievance Procedure [with three steps]; and miscellaneous.

At the hearing the Employer and the Union tentatively agreed to the proposed Article VIII, with the following changes:

- (a) In Step 1, the time period for Employer written response to a grievance from “five workdays of the meeting” to “ten (10) workdays of the meeting.”
- (b) Replacement of American Arbitration Association as provider of arbitration panels, with a permanent panel of “three mutually acceptable arbitrators” to be established within thirty (30) days following ratification of the agreement.
- (c) Rotation of arbitrators amongst the three permanent panel members on an alphabetical basis.

(d) Addition of grievance mediation by mutual agreement, according to the following provision:

“Nothing in this Agreement shall prevent the parties from attempting to mediate any grievance through FM&CS at any time.”

4. Article IX - Employment Contracts

The Union presented the following proposal:

**A. Probationary Employment Period**

New employees covered by this Agreement shall serve probationary period of (90) workdays before becoming permanent employees. “Days” for purposes of this paragraph means those days in which school is in session and the employee actually works. During such probationary periods, new employees shall have no seniority status and shall have no right to the bidding procedures provided herein. They may be laid off or discharged at the sole discretion of the Board and such layoff, discharge may not be made the basis of any claim or grievance against the Board. When the probationary employee completes the probationary period, the Union shall be notified and furnished with his/her seniority dates within a reasonable period of time. To the extent a probationary employee is still employed, he/she will be reviewed by his/her immediate supervisor on or about the 30<sup>th</sup> workday, on or about the 60<sup>th</sup> workday, and again prior to the conclusion of the probationary period. The Board will not discriminate against any probationary employee on the basis of race, age, color, creed, national origin, sex, disability or because of membership in the Union.

**B. Continuing Contract**

Upon successful completion of ninety (90) workday probationary period, the appointment becomes permanent. The employee may not be suspended or terminated, except for incompetency, inefficiency, dishonesty, drunkenness,

immoral conduct, insubordination, discourteous treatment to the public, neglect of duty or any other failure of good behavior or other acts of misfeasance, malfeasance, or nonfeasance.

As of the effective date of this contract, all current employees who have completed ninety (90) days of employment shall have continuing contracts.

The Employer has proposed the following Sections 7.01 (Limited Contracts) and 7.02 (Continuing Contracts):

#### 7.01 LIMITED CONTRACTS

All bargaining unit members shall be placed on one year limited contracts which are subject to annual consideration for renewal. If re-employment for the successive school year may not occur, notice of non-reemployment must be given by the director of OCER to the bargaining unit member by June 20.

#### 7.02 CONTINUING CONTRACTS

Bargaining unit members are not eligible for continuing contracts.

The competing proposals offered by the parties essentially cover two subjects: the status of probationary employees, and the contract status of employees after 90 days of employment. They will be discussed in that order.

##### a. Probationary period

##### Union Position

Article IX (A) proposed by the Union is standard probationary language defining the status of new employees during their first 90 days. Regarding the last sentence of the proposal

(non-discrimination), such language is typically found in collective bargaining agreements and mirrors the employees' statutory legal protections.

#### Employer Position

The proposal is unnecessary. A 90-day probationary period for new employees is already contained in the employment contracts as well as the General Staff Guidelines, Procedures and Policies. As for the non-discrimination language, the Employer objects to the inclusion of superfluous protections that already exist outside the Agreement.

#### FINDING AND RECOMMENDATION

The Union's proposal (except for the last sentence) represents a sensible explanation of probationary status. It essentially gives the Employer complete discretion regarding continued employment, while mandating periodic performance appraisals. Just because a 90-day probationary period is already contained in extraneous documents does not mean that it should not appear in the Agreement. Thus the proposal is a balanced approach to probationary status and deserves to be recommended for inclusion in the Agreement.

Regarding the last sentence, the Employer is correct in pointing out that the protections against discrimination already exist. Also, to put such protections in the Agreement (even for probationary employees) could give rise later to situations in which statutory claims could be arguably raised in contract grievances, raising serious legal issues. For these reasons, the Employer's position on that provision should be adopted.

Therefore the undersigned recommends that Article IX (A) be included in the Agreement as follows:

**A. Probationary Employment Period**

New employees covered by this Agreement shall serve a probationary period of (90) workdays before becoming permanent employees. "Days" for purposes of this paragraph means those days in which school is in session and the employee actually works. During such probationary periods, new employees shall have no seniority status and shall have no right to the bidding procedures provided herein. They may be laid off or discharged at the sole discretion of the Board and such layoff, discharge may not be made the basis of any claim or grievance against the Board. When the probationary employee completes the probationary period, the Union shall be notified and furnished with his/her seniority dates within a reasonable period of time. To the extent a probationary employee is still employed, he/she will be reviewed by his/her immediate supervisor on or about the 30<sup>th</sup> workday, on or about the 60<sup>th</sup> workday, and again prior to the conclusion of the probationary period.

b. Continuing contract

Union Position

The Union's pre-hearing statement includes a well-stated "rationale" for continuing contract status, the first paragraph of which bears quoting:

**A. Continuing Contract**

Upon successful completion of ninety (90) workday probationary period, the appointment becomes permanent. The employee may not be suspended or terminated, except for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment to the public, neglect of duty or any other failure of good

behavior or other acts of misfeasance, malfeasance, or nonfeasance.

The Union's statement goes on to claim that with annual renewal of contracts (the current system) "wages and benefits go up and down, hours vary year to year, there is no rhyme or reason." Also new hires may receive higher wages than long term employees. Even with continuing contracts employees must still adhere to rules and policies, and are subject to disciplinary action. Regarding the Employer's argument that unit employees are "professional employees" not entitled to continuing contracts under RC §3319 or §124, the Union cites the definition of "professional employees" under §4117 to show that the bargaining unit does not meet the tests.

Citing other bargaining units both in the Orange City Schools and neighboring or nearby communities, the Union established that the existence of continuing contracts is common for OAPSE-represented groups.

#### Employer Position

A core argument presented by the employer is that the Early Childhood Program – the bargaining unit involved herein – is separate and distinct from the "general education program" of the Orange City School District. Although administered by the District (which maintains a separate preschool program mandated by law) the Early Childhood Program is essentially self-sustaining. Stated another way, the Employer is asserting that a comparison between this bargaining unit and the other OAPSE-represented units cited by the Union, is not

appropriate. Furthermore, because of “changes in enrollment, structure and operations of the Early Childhood Program, it is programmatically difficult to have employees with long-term contracts or continuing employment rights.”

#### FINDING AND RECOMMENDATION

The unresolved issue of continuing contracts goes to the essence of the employment relationship. Currently the bargaining unit consists of essentially at-will employees, at least in terms of contract renewal or nonrenewal. During the life of their contracts, however, they cannot be disciplined or discharged without just cause {RC § 3319.16}.

A review of the parties’ respective positions indicates that both have made effective arguments. If this were a debating society, the undersigned would have to give the edge to the Union. But fact-finding is a process designed to facilitate contract settlements; and there is little to be gained by determining “facts” that would surely drive a rejection by one of the parties.

As pointed out above, this is a first contract, essentially an “empty slate.” In view of the achievements otherwise obtained by the Union in negotiations and in the tentative agreements reached during factfinding, the undersigned is very reluctant to recommend such a fundamental change in the employment relationship. That change ought to be achieved through negotiations, if at all, and not through outside intervention. This is just the first contract, and there will be future opportunities for the Union to achieve its objective.

The foregoing should not be taken to mean that the bargaining unit should be precluded from any additional job security. That result may be accomplished by lengthening the limited contract term from one year to two years following successive one-year renewals.

Accordingly, the undersigned recommends the following:

(1) That the Union's proposed Article IX (B) not be included in the Agreement.

(2) That the Employer's proposed Section 7.01 be included in the Agreement, modified as follows:

7.01 LIMITED CONTRACTS

All bargaining unit members shall be placed on one-year limited contracts which are subject to annual consideration for renewal. After two (2) subsequent one (1) year renewals, any future limited contracts shall be for periods of two (2) years. If reemployment for the successive school year may not occur, notice of non-reemployment must be given by the Director of OCER to the bargaining unit member by June 30.

(3) That the Employer's proposed Section 7.02 be included in the Agreement.

5. Article XIV - Reduction in Force and Recall

The parties have agreed on the following contract language:

#### 14.01 Reduction of Contracts

When in the judgment of the Board it is necessary to reduce the number of positions in the bargaining unit because of decreased enrollment, lack of work, lack of funds, elimination of classes or return to work of regular bargaining unit members after leaves of absences, a reduction may occur and the following procedures shall apply:

They sharply disagree, however, on the language of the second subsection of 14.01. Thus the

Union proposes:

Attrition: Where known and where possible, the number of persons affected by such reduction will be kept to a minimum by not employing replacements insofar as practicable for unit members who retire or resign or leave employment with the Board.

The Employer proposes the following language for that subsection:

Reduction Other Than by Attrition: In reducing staff, consideration will be given for retention based upon job performance, attendance record, discipline record and program needs as determined by the OCER Director. Where all other factors are substantially equal, preference for retention will be given to the most senior employee.

#### Union position

The Union correctly identified the main area of dispute as being the question of continuing employment contracts. It states that "Once the language is resolved on continuing contracts and probationary period this article [XIV] should reflect these part[ies] mutual agreement to recall rights."

Employer position

Contrary to the Union, which advocates reductions in force based solely on seniority, the Board believes that “its program is here to serve the children.” Accordingly, “the most effective teachers” (rather than the most senior) should be maintained in the event that a layoff is necessary. Further, under RC § 3319.17, seniority can only be considered to “break ties where evaluations are the same.”

Finding and Recommendation

Two factors impact this issue. First, the Union’s proposal for continuing contracts has not been recommended. Second, as the Employer pointed out, RC § 3319.17 requires that in reductions of force, the respective seniority of the affected personnel may not be considered unless evaluations are “comparable.” In view of these factors the following language is recommended:

14.01 (b)

Reduction other than by attrition.

In implementing layoffs the Board will give preference to employees with greater seniority only if the evaluations of the affected employees are comparable.

#### 14.02 Recall

The parties have agreed on the final two subsections of this provision (“c” and “d”), but have not agreed on the first two subsections (“a” and “b”).

#### Union proposal

##### 14.02 Recall

- a. Bargaining unit members who lose employment because of a reduction other than by attrition shall be placed on a Recall List for a period of twenty-four (24) months from the last date of active employment prior to the effective date of the reduction. The Recall List shall be comprised of employees with suspended continuing contracts (or, those on probation) in seniority order first, followed by employees with suspended limited contracts (or, those on probation) in seniority order second.
- b. A bargaining unit member whose name appears on the Seniority RIF list shall be offered reemployment when a position becomes available for which he/she is certified. Continuing contract bargaining unit members shall be returned to active employment in order of seniority to fill vacancies for which they are certified, followed by limited contract bargaining unit members in order of seniority to fill vacancies for which they are certified.

#### Employer Proposal

##### 14.02 Recall

- a. Bargaining unit members who lose employment because of a reduction other than by attrition shall be placed on a Recall List for a period of twenty-four (24) months from the last date of active employment prior to the effective date of the reduction.
- b. A bargaining unit member whose name appears on the Seniority RIF list shall be offered reemployment in the reverse order in which they were laid off when a position

becomes available unless it is necessary to deviate from the order of lay off to meet curricular need or the educational goals of the EC.

Finding and Recommendation

As with Section 14.01, above, the major difference between the parties' positions relates to the matter of continuing contracts.

Because this provision, covering recall from layoffs, is essentially the obverse of Section 14.01, and because continuing contracts have not been recommended, the undersigned hereby recommends the Employer's proposal.

6. Article V - Classifications and Wage Rates

At the hearing the parties agreed on the following classifications and wage rates for the duration of the contract:

9.1 There shall be the following classifications and annual base rates of pay for full-time Pre-School Teaching positions:

|   |                  |
|---|------------------|
| Pre-School Teacher with a Bachelor's Degree:            |                  |
| 1 <sup>st</sup> year of employment                      | \$11.50 per hour |
| 2 <sup>nd</sup> year of employment                      | \$11.75 per hour |
| 3 <sup>rd</sup> year of employment                      | \$12.00 per hour |
| Experienced Pre-School Teacher with a Bachelor's Degree | \$12.80 per hour |
| Pre-School Teacher with a Master's Degree               |                  |
| 1 <sup>st</sup> year of employment                      | \$11.75 per hour |
| 2 <sup>nd</sup> year of employment                      | \$12.00 per hour |
| 3 <sup>rd</sup> year of employment                      | \$12.25 per hour |
| Experienced Pre-School Teacher with a Master's Degree   | \$13.30 per hour |

9.2 Assistant Pre-School Teachers shall be paid, as follows:

|  |                  |
|--|------------------|
| 1 <sup>st</sup> year of employment       | \$11.00 per hour |
| 2 <sup>nd</sup> year of employment       | \$11.25 per hour |
| 3 <sup>rd</sup> year of employment       | \$11.40 per hour |
| Experienced Pre-School Assistant Teacher | \$12.00 per hour |

9.3 Movement from one step to another will only occur for those employees who are eligible at the beginning of the school year.

9.4 An experienced Pre-School Teacher or an Experienced Pre-School Assistant Teacher is one who has completed at least three years of full employment in their classification.

9.5 Effective dates for Adjustments:

- a. The schedules set forth in Section shall be implemented retroactive to January 1, 2013.
- b. Effective July 1, 2014, those Pre-School Teachers and Pre-School Assistant Teachers who were experienced teachers during the prior school year will receive a 1.5% increase in their hourly rate.

9.6 Bargaining unit members above the Base Rate

- a. Pre-School Teachers whose hourly rates are above the base rates set forth in Section 9.1 shall be entitled to receive a 1.5% increase effective January 1, 2013 and an additional 1.5% increase July 1, 2014.
- b. Pre-School Assistant Teachers [who] hourly rates are above the base rates set forth in Section 9.2 shall be entitled to a lump sum payment of \$250 to be paid within thirty (30) days of the execution of this agreement.

## 7. Article XVIII – Holidays

At the hearing the Union presented a proposal for 11 paid holidays. That proposal was ultimately withdrawn. Therefore, the employer's proposal for nine (plus potentially two Jewish holidays) shall be included in the contract; with the typographical correction in Section 18.02, noted below.

18.01 Employees are entitled to the following unpaid holidays:

|                             |                 |
|-----------------------------|-----------------|
| Labor Day                   | New Year's Day  |
| Martin Luther King, Jr. Day | President's Day |
| Thanksgiving                | Good Friday     |
| Day after Thanksgiving      | Memorial Day    |
| Christmas Day               |                 |

In addition, when Rosh Hashanah and Yom Kippur are included as holidays in the OCER Pre-School Calendar, employees shall also be entitled to those days as unpaid holidays.

18.02 When a holiday falls on a Saturday or Sunday, but which [is] observed on Friday or Monday [the day of observance] will be considered the holiday.

## 8. Article XX – Fringe Benefits

At the hearing the parties tentatively agreed on the following language:

### 20.01 Health Insurance

- a. Full-time bargaining unit members shall be eligible for the insurance coverage listed on the terms listed. Enrollment in the insurance programs is not automatic and it shall be the responsibility of each employee to initiate enrollment within thirty (30) days of the beginning of the employment contract except a new employee is not eligible for insurance coverage until they have been employed after their initial employment for ninety (90) days.
- b. The Board may change carrier(s) or coverage of any of the insurance programs contained in this Agreement. The Union shall be notified in writing at least thirty (30) calendar days in advance of any change in carriers or coverage.
- c. Hospitalization Medical-Surgical/Major Medical; Prescription Drug; Dental; Vision Care
  - i. Full-time employees electing to enroll in the Hospitalization Medical-Surgical/Major Medical; Prescription Drug; Dental; or Vision Care insurance programs will contribute 10% of the

monthly premium retroactive to January 1, 2013 and 12% of the monthly premium effective July 1, 2014.

ii. Spousal Coverage

1. If an employee's spouse is eligible to participate, as a current employee or in their current enterprise or retiree, in group health insurance and/or prescription drug insurance sponsored by his/her employer, enterprise or any public or private retirement plan, the spouse must enroll in such group coverage.
2. The requirement does not apply to any spouse who works less than 30 hours per week and is required to pay more than 50% of the single premium to participate in the employer's group health insurance coverage and/or prescription drug insurance coverage. This requirement also does not apply to any spouse who is a retiree under a public retirement plan and enrolled in Medicare coverage.
3. Upon the spouses enrollment in any such employer (or public retirement plan) sponsored group insurance coverage, that coverage will become the primary payor of benefits and the coverage sponsored by the Board will become the secondary payor of benefits. In other words, as secondary payor, the Orange medical plan will cover eligible expenses not covered by the primary coverage of the spouse.
4. Any spouse who fails to enroll in any group insurance coverage sponsored by the spouse's employer, enterprise or any public or private retirement plan, as required by this Section, shall be ineligible for benefits under the group insurance coverage sponsored by the Board of Education.
5. Every employee whose spouse participates in the Board's group health insurance coverage and/or prescription drug insurance coverage shall complete and submit to the board, upon request, a written certification verifying whether his/her spouse is eligible to participate in group health insurance coverage and/or prescription drug insurance coverage

sponsored by the spouse's employer, enterprise or public or private health plan. If any employee fails to complete and submit the certification form by the required date, such employee's spouse will be removed immediately from all health and prescription drug insurance coverage sponsored by the Board. Additional documentation may be required.

6. An employee who submits false information or fails to advise the board of a change in the spouse's eligibility for employer, enterprise or retirement plan sponsored group health insurance and prescription drug insurance and such false information, or such failure results in the Board providing benefits to which the spouse is not entitled, the employee will be personally liable to the Board for reimbursement of benefits and expenses, including attorneys' fees and costs, incurred by the board. Any amount to be reimbursed by the employee may be deducted from the benefits to which the employee would be otherwise entitled. In addition, the employee's spouse will be terminated immediately from group health insurance and/or prescription drug coverage under the plan. If the employee submits false information, the employee may be subject to disciplinary action by the Board, up to and including termination of employment.

d. 125 Flexible Benefits Plan

- i. Bargaining unit members have the option to participate in the 125 Flexible Benefits Plan offered by the Board. The Plan includes Premium Pass Through of employee premium contributions; medical reimbursement of up to \$2000; and dependent care reimbursement of up to \$5000.
- ii. There is an open enrollment period and adjustment period on the calendar year. Information is available in the Board's benefits office.

9. Article XXIII – Contract Maintenance

This article contains several provisions that were unresolved as of the fact-finding:

A. WAIVER OF NEGOTIATIONS

The Union proposed the following language:

WAIVER OF NEGOTIATIONS

This contract constitutes the entire contract between the parties and supersedes all prior and contemporaneous understandings (written or oral) not specifically incorporated herein. No change in a specific term of this contract shall be made during the life of this contract except by mutual agreement.

The employer had presented a counter-proposal prior to fact-finding but withdrew it at the hearing.

B. NO STRIKE CLAUSE

The Union had proposed the following language prior to fact-finding to which the Employer was prepared to agree:

NO STRIKE CLAUSE

The Association and any and all of its members shall not cause, engage in, or sanction any strike, slowdown, or any such concerted action from the term of the Agreement.

At the hearing the Union proposed additional language prohibiting lockouts during the life of the contract. The Employer did not state an objection to that addition.

## FINDING AND RECOMMENDATION

Because “no lockout” provisions are commonly included in collective bargaining agreements as being reciprocal to “no strike” provisions, the following language is recommended:

### NO STRIKE/NO LOCKOUT CLAUSE

The Association and any and all of its members shall not cause, engage in, or sanction any strike, slowdown, or any other such concerted action nor shall the Employer engage in a lockout, during the terms of the Agreement.

## C. ENTIRE AGREEMENT CLAUSE

The Employer had proposed the following language:

### ENTIRE AGREEMENT CLAUSE

This contract supersedes and cancels all previous agreements, verbal or written or based [on] alleged past practices between the Board and the Association, and constitutes the entire Agreement between the parties. Any amendment or agreement supplemental hereto shall not be binding upon either party unless executed in writing by the parties thereto.

This provision was agreed to at the hearing.

## D. CONFLICT WITH LAW

The Employer had proposed the following language:

### CONFLICT WITH LAW

If any provision of this Agreement is found to be in violation of law by final order of a court of competent jurisdiction, or the Association and OCER agree that said provision is in violation of federal or state law, or regulation, then said provision shall be considered void and the other provisions of this Agreement shall remain in effect during the term of this Agreement. Upon

the request of either party, negotiations shall commence with respect to any provision(s) of this Agreement determined to be void within thirty (30) working days of the request.

This provision was agreed to at the hearing.

E. DURATION

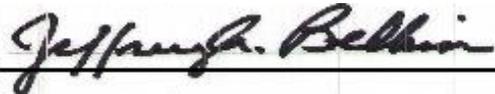
The parties tentatively agreed to the length of the contract:

DURATION OF CONTRACT

Except as specifically provided herein, this contract shall become effective upon ratification by the Association membership and approval of the Board, and shall continue in full force and effect through December 31, 2015.

Report and Recommendations issued this 5<sup>th</sup> day of April 2013.

Respectfully submitted,



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Jeffrey A. Belkin  
Fact-Finder

Shaker Heights, Ohio