

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding	:	SERB Case Number: 2013-MED-07-0851
Between the	:	
	:	
LUCAS METROPOLITAN HOUSING	:	
AUTHORITY,	:	
Employer	:	
and	:	Date of Fact Finding Hearing:
	:	April 9, 2014
	:	
	:	
LOCAL #2916, COUNCIL 8,	:	
AMERICAN FEDERATION OF STATE,	:	
COUNTY AND MUNICIPAL	:	
EMPLOYEES, AFL-CIO,	:	Howard D. Silver, Esquire
Union	:	Fact Finder

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: Lucas Metropolitan Housing Authority, Employer

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PROCEDURAL BACKGROUND

This matter came on for a fact-finding hearing at 10:00 a.m. on April 9, 2014 within the offices of the Lucas Metropolitan Housing Authority at 435 Nebraska Avenue, Toledo, Ohio 43697-0477. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. Following the presentation of evidence and arguments, the hearing record was closed at 12:45 p.m. on April 9, 2014.

This matter proceeds under the authority of Ohio Revised Code section 4117.14(C) and in accordance with Ohio Administrative Code section 4117-9-05. Prior to the day of the fact-finding hearing each party delivered to the fact finder and the other party the party's position on each unresolved issue.

This matter is properly before the fact finder for review, for the preparation of a fact-finding report, and to recommend language to be included in the parties' successor Agreement.

FINDINGS OF FACT

1. The parties to this fact-finding procedure, the Lucas Metropolitan Housing Authority, the Employer, and Local #2916, Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, the Union, were parties to a collective bargaining agreement in effect from December 1, 2010 to December 1, 2013.
2. The parties' successor collective bargaining agreement will cover a bargaining unit comprised of two Accounting Specialists, three Clerical Specialists, one Clerk Aide, one Clerk Receptionist, four FSS Specialists,

three Family Service Representatives, eleven Housing Specialists, three H.V.A.C./R. Technicians, one Inspection Technician, two Inspectors, five Janitors, six Laborers, four Maintenance Mechanics I, three Maintenance Mechanics II, eleven Maintenance Mechanics III, eleven Management Aides, two Management Secretaries, four Renovation Specialists, and five Senior Service Representatives.

3. The bargaining unit to be covered by the parties' successor Agreement is comprised of eighty-two members.

4. All funds available to the Lucas Metropolitan Housing Authority come from the United States Department of Housing and Urban Development (HUD).

5. All of the HUD funds received by the Lucas Metropolitan Housing Authority are designated for one of three purposes: administrative costs, property management costs, or providing low income rent assistance.

6. The funds allocated for administrative costs, property management costs, and low income rent assistance are not transferrable between these three distinct, separate budget accounts.

7. HUD determines annually the funds to be made available to the Lucas Metropolitan Housing Authority for administrative operations, property management operations, and low income rent assistance.

8. The unencumbered reserves available to the Lucas Metropolitan Housing Authority have been decreasing in recent years.

TENTATIVELY AGREED ARTICLES

The parties reached tentative agreement on a number of Articles to be included in the parties' successor Agreement. The fact finder recommends the inclusion of the parties' tentatively agreed Articles in their successor Agreement.

The Articles tentatively agreed by the parties are:

Preamble

Article 1 – Recognition

Article 2 – Union Dues Checkoff and Security

Article 3 – Pledge Against Discrimination and Coercion

Article 6 – Union Stewards

Article 7 – Grievance Procedure

Article 8 – Discipline Procedure

Article 9 – Insurance

Article 11 – Military Leave

Article 12 – Funeral Leave

Article 14 – Injury Leave

Article 15 – Sick Leave

Article 18 – Disability Separation

Article 19 – Sick Leave Conversion Benefits

Article 21 – Vacation Leave

Article 22 – Seniority

Article 23 – Layoff and Recall

Article 27 – Workday/Workweek

Article 31 – Working Out of Classification

Article 33 – Part Time and Temporary Employees

Article 34 – Permanent Part Time Employees

Article 35 – Probationary Period

Article 38 – Miscellaneous Provisions

Article 42 – Safety/Health

Article 44 – Special Overtime

Article 48 – Governmental Approval

Article 52 – Duration/Termination

Guidelines for Negotiations

UNOPENED ARTICLES

A number of Articles in the parties' predecessor Agreement were not opened during bargaining. The fact finder recommends these unopened Articles be included in the parties' successor Agreement unchanged. These unopened Articles are:

Article 4 – Management Rights

Article 5 – Visits by Union Representatives

Article 10 – Union Leave

Article 13 – Jury Duty Leave

Article 17 – Leave of Absence

Article 24 – Bid Procedure

Article 25 – Transfer Procedure

Article 26 – Wages

Article 29 – Longevity Plan

Article 30 – Call In Pay

Article 36 – Labor Management Meetings

Article 37 – Contract Administration Training

Article 39 – Savings Clause

Article 40 – Modification

Article 43 – Work Rules

Article 45 – Union Bulletin Boards

Article 46 – Employee Evaluation

Article 47 – Uniforms

Article 49 – No Strike/Lock Out

Article 50 – Drug and Alcohol Testing

Article 51 – OPERS Pickup

UNRESOLVED ARTICLES

The following Articles remained unresolved between the parties:

Appendix A - Wages

Article 16 – Attendance Time

Article 20 – Holidays

Article 28 – Overtime Rates/Equalization

Article 32 – Subcontracting

Article 41 – Maintenance of Standards

DISCUSSION OF UNRESOLVED ARTICLES AND RECOMMENDED LANGUAGE

Appendix A, Wages

The Union has recommended three percent (3%) annual wage increases to be effective January 2, 2014; December 1, 2015; and December 1, 2016. In support of its proposal on wages the Union points out that a bargaining unit that used to be comprised of 121 members is now comprised of eighty-two members. The Union argues that the loss of one-third of the bargaining unit members has left the work to be done to a work force that is only two-thirds of its former size. This reduction in the work force provides the savings that allow the wage increases proposed by the Union and provides the reason the wage increases proposed by the Union are merited. The Union argues that the Employer possesses the monetary reserves needed to fund the wage increases proposed by the Union.

The Employer proposes a \$450.00 lump sum payment to all bargaining unit members upon ratification of the parties' successor Agreement. The Employer does not propose a wage increase for 2014, 2015, or 2016. The Employer proposes wage reopeners for 2015 and 2016. The Employer explains that the \$450 lump sum is available through a one-time rebate from the Ohio Bureau of Workers' Compensation in the amount of \$126,000.

The Employer argues that if the wage increases proposed by the Union were to be effected, layoffs from the bargaining unit would occur. The Employer notes that the \$450 lump sum payments to eighty-two bargaining unit members amounts to \$36,900. The Employer claims that the difference between the wage proposals from the Employer and the Union amounts to \$453,725. The Employer points out that it is spending \$951,761 for

health insurance coverage, with bargaining unit members enjoying an 8% cap on monthly premium contributions for this health care coverage.

The fact finder recommends the wage proposal from the Employer. The funds available to the Employer are determined by the United States Department of Housing and Urban Development, with rigid requirements as to how the money allocated to the LMHA is to be spent. A preponderance of evidence in the hearing record reflects a substantial reduction in funds in recent years and a substantial reduction in the unencumbered reserves available to the Employer for the continued operation of the agency.

One of the express factors to be considered by the fact finder is the ability of the public employer to fund the wage proposals from the parties. The fact finder finds no flaw in the Union's reasoning about the bargaining unit deserving an increase in compensation for the bargaining unit's work but the fact finder is not persuaded that this public employer, at this time, possesses the resources necessary to fund the wage increases proposed by the Union. The fact finder finds that there are sufficient funds for a \$450 lump sum payment to bargaining unit members based on the rebate from the Ohio Bureau of Workers' Compensation. The fact finder recommends the wage reopeners proposed by the Employer for 2015 and 2016 in the hope that changed circumstances will make wage increases possible.

RECOMMENDED LANGUAGE: Appendix A – Wages

Effective December 1, 2013, there shall be a wage freeze for the duration of the Agreement.

Upon signing the Agreement, each bargaining unit employee employed by LMHA on or before December 1, 2013, shall receive a one (1) time lump sum payment of \$450.00.

On or about December 1, 2014 and December 1, 2015, the Employer agrees to meet with three (3) members of the Union for the purpose of reviewing the financial status of the LMHA. As a result of this meeting, the Employer may, at the sole discretion of the LMHA, increase the wages of bargaining unit employees or issue a non-discretionary lump sum. The meeting described herein, shall not be construed as requiring the LMHA to bargain or require the LMHA to modify the labor agreement in any manner.

Article 16 – Attendance Time

Article 16, Attendance Time, presents two options intended to provide an incentive to minimize the use of sick leave, leave without pay, and FMLA leave. Option one offers additional time off as a bonus. Option two offers cash as a bonus.

The Employer has proposed the deletion of option one in Article 16, the option offering days off as an incentive. The Employer’s proposal would retain option two in Article 16, the incentive offering a cash bonus.

The Union does not oppose the Employer’s proposal as to Article 16.

The fact finder recommends the Employer’s proposal for Article 16 be included in the parties’ successor Agreement.

RECOMMENDED LANGUAGE: Article 16 – Attendance Time

Section 16.1. An employee may receive payment for sick leave performance incentive when he limits his use of sick leave, leave without pay, and/or Family and Medical Leave (effective January 1, 2012) during an LMHA funding year (January 1 – December 31).

<u>Sick Leave Used (calendar year)</u>	<u>Attendance Incentive</u>
0 days	\$ 500.00
1 day	\$ 400.00

2 days	\$ 300.00
3 days	\$ 200.00
4 days	\$ 100.00
5 days or more	- 0 -

Attendance incentive will be paid in a direct deposit to the employee's primary financial institution during the first pay period in February.

Section 16.2 – Delete current language.

Article 20, Holidays

Article 20, Holidays, specifies twelve annual holidays in section 20.1, and in section 20.4 provides that an employee is to earn double time (2X) for hours worked on a holiday.

The Union proposes the addition of Christmas Eve Day and New Year's Eve Day as holidays. The current language of Article 20, section 20.1 authorizes employees to choose the day before Christmas Day or the day before New Year's Day as a holiday. The Union's proposal would make both days holidays.

The Employer proposes that the double time (2X) specified in Article 20, section 20.4 be reduced to one and one-half (1½) times the regular rate of pay.

The fact finder recommends that Article 20, Holidays, be included unchanged within the parties' successor Agreement. The financial limitations under which the Employer must operate leaves the fact finder reluctant to recommend additional paid time off at this time.

The fact finder does not recommend a change to Article 20, section 20.4. The fact finder understands that the Employer's proposal for this section would result in a savings

to the Employer but it would also reduce the compensation paid to bargaining unit members who are required to be away from their families during a holiday.

The fact finder recommends the retention of current language in Article 20, Holidays, in the parties' successor Agreement.

RECOMMENDED LANGUAGE: Article 20 – Holidays

Sections 20.1 – 20.4 – Retain current language.

Article 28, Overtime Rates/Equalization

Article 28, Overtime Rates/Equalization, in section 28.1 presents overtime rates that include one and one-half (1½) times the regular rate of pay for hours in a day worked that exceed eight hours, one and one-half (1½) times the regular rate of pay for work on Saturday, and double (2X) the regular rate of pay for work performed on Sunday.

The Employer proposes the double time (2X) rate for Sunday work be reduced to one and one-half (1½) times the regular rate of pay .

Because the equalization of overtime can be complicated and time consuming, the fact finding is recommending the inclusion of language in Article 28, section 28.2 that would allow the parties to modify its system of overtime equalization as long as both parties agree to the changes in writing.

The fact finder also recommends additional language for section 28.2 that would specify that call outs shall not affect the equalization of overtime.

Because Article 16 has, in effect, been tentatively agreed by the parties for inclusion in the parties' successor Agreement, and the parties' tentative agreement on Article 16 includes the deletion of days off as an attendance incentive, leaving only a

cash bonus as an incentive for annually using less than five days of sick leave, leave without pay, or FMLA leave, the fact finder recommends the deletion of “or attendance bonus (sick leave performance incentive)” from the current language in Article 28, section 28.3.

RECOMMENDED LANGUAGE: Article 28 – Overtime Rates/Equalization

Section 28.1 – Retain current language.

Section 28.2. **Equalization of Overtime.** Overtime shall be offered on a departmental basis. Authority-wide seniority shall be the basis of determining who shall work overtime in each department. Each Department area shall post a list of all employees and worked overtime and turned down overtime shall be logged on a continued basis. Supervision recognizing that certain employees shall be called out for specific jobs shall attempt to equalize the opportunity for overtime as much as is possible.

Call outs shall not be considered in the equalization of overtime.

Employees who refuse overtime, however, where it is imperative that overtime be worked, then a sufficient number of employees on the overtime list shall be required to work the required overtime. When it is necessary to require employees to work overtime, the employees with the least seniority shall be required to work.

Where this section mentions “departmental” or “department,” it shall have the same meaning as “AMP.”

This section shall be applied unless the parties agree, in writing, to an alteration of this section’s language.

Section 28.3. Employees on vacation leave or discretionary holidays will be eligible for scheduled overtime and call out. The employee is responsible for notifying his supervisor in writing of his availability to work such scheduled overtime or his availability for call-out while on vacation or discretionary holiday.

An employee calling off sick for the day is not eligible for scheduled overtime or call-out until that employee reports back to work for his regularly scheduled workday.

Article 30, Call In Pay

Article 30, Call In Pay, has a single section, section 30.1, that reads as follows: “When an employee is called out to work at times other than his or her regular work schedule, the employee shall be guaranteed two (2) hours pay at the appropriate rate of pay.”

The Union recommends increasing the guaranteed pay for a call out from two hours to three hours, and has also proposed that each employee who is on call be compensated with twenty-five dollars (\$25.00) for each day spent on call.

The Employer opposes the changes proposed by the Union for Article 30 and proposes the retention of the current language of Article 30 in the parties’ successor Agreement unchanged.

The fact finder understands the intrusion imposed by an unscheduled call in. The fact finder understands the minimum guaranteed call in pay is intended to compensate employees who have had to return to duty at an unscheduled time for even a short period at a level that reasonably compensates for even a minimal intrusion. This compensation is provided in current language at two hours of minimum guaranteed pay. The fact finder finds no compelling reason to increase this minimum compensation. If more than two hours are needed the time is compensated. If less than two hours are needed, the minimum of two hours is paid.

Call in status is an intrusion on an employee and his or her family as it restricts an employee’s options while on call. For example, taking the family to a movie while on call would require a second vehicle and a second driver in case the employee is called back to duty and must leave immediately.

The fact finder is sympathetic to the intrusion of on call status but is not persuaded to recommend a twenty-five dollar (\$25.00) per day payment for on call status. The fact finder is reluctant to order new compensation based on the potential for a call in. The fact finder recommends that the current language in Article 30 be retained unchanged in the parties' successor Agreement.

RECOMMENDED LANGUAGE: Article 30 – Call In Pay

Section 30.1 – Retain current language.

Article 32, Subcontracting

Article 32, Subcontracting, in section 32.4 empowers the Employer to subcontract out work. Article 32, section 32.1, however, provides that no bargaining unit employee shall be terminated or laid off as a result of subcontracting by the Employer. Section 32.1 prohibits the Employer from subcontracting which would shrink the work force or inhibit the natural growth of the work force.

The Employer proposes the deletion of Article 32 from the parties' successor Agreement.

The Union proposes that Article 32 be retained unchanged.

The fact finder understands that removing the protections expressed within Article 32 would directly affect the work assigned to the bargaining unit and the size of the bargaining unit. The fact finder does not find a sufficient basis upon which to recommend such a radical change to the parties' contractual working relationship.

The fact finder recommends the retention of current language in Article 32 in the parties' successor Agreement.

RECOMMENDED LANGUAGE: Article 32 – Subcontracting

Sections 32.1 - 32.4 – Retain current language.

Article 41, Maintenance of Standards

Article 41, Maintenance of Standards, contains a single section that provides that the Employer agrees that all conditions of employment relating to hours of work, overtime, and all working conditions shall be maintained at not less than the highest minimum standards in effect at the time of the signing of this Contract and the conditions of employment shall be improved wherever specific provisions or improvements are made in the parties' Agreement.

The Employer proposes the deletion of Article 41 from the parties' successor Agreement claiming that the language of Article 41 conflicts with other language in the parties' Agreement and the retention of the language would only confuse an arbitrator as to which contractual provision is to be enforced.

The Union proposes that Article 41 be retained in the parties' successor Agreement as a reasonable promise that does not conflict with other Contract language.

The fact finder recommends the retention of Article 41 in the parties' successor Agreement. The fact finder finds neither party has an interest in lowering minimum standards as to hours of work, overtime, and working conditions, and both parties have an interest in improving these standards when called for in their Agreement. The fact finder is not persuaded that the deletion of the language of Article 41 serves the interests of the parties. Accordingly, the fact finder recommends the retention of current language in Article 41 in the parties' successor Agreement.

RECOMMENDED LANGUAGE: Article 41 – Maintenance of Standards

Article 41 – Retain current language.

In making the recommendations presented in this report the fact finder has considered the factors listed in Ohio Revised Code section 4117.14(G)(7)(a) - (f) as required by Ohio Revised Code section 4117.14(C)(4)(e) and Ohio Administrative Code section 4117-9-05(K).

Finally, the fact finder reminds the parties that any mistakes made by the fact finder are correctable by agreement of the parties pursuant to Ohio Revised Code section 4117.14(C)(6)(a).

Howard D. Silver

Howard D. Silver, Esquire
Fact Finder

Columbus, Ohio
May 15, 2014

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder in the Matter of Fact-Finding between the Lucas Metropolitan Housing Authority and Local #2916, Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, SERB case number 2013-MED-07-0851, was filed electronically with the Ohio State Employment Relations Board at MED@serb.state.oh.us and served electronically upon the following this 15th day of May, 2014:

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