

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding	:	SERB Case Number: 2013-MED-08-0930
Between the	:	
	:	
ERIE COUNTY CARE FACILITY DBA	:	
THE MEADOWS AT OSBORN PARK,	:	
Employer	:	
	:	Date of Fact Finding Hearing:
and the	:	January 14, 2014
	:	
	:	
AMERICAN FEDERATION OF STATE,	:	
COUNTY AND MUNICIPAL	:	
EMPLOYEES LOCAL #3358,	:	
OHIO COUNCIL 8, AFL-CIO,	:	Howard D. Silver, Esquire
Union	:	Fact Finder

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: Erie County Care Facility DBA The Meadows at Osborn Park,
Employer

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PROCEDURAL BACKGROUND

This matter came on for a fact-finding hearing at 11:00 a.m. on January 14, 2014 within a conference room at the Erie County Services Building, 2900 Columbus Avenue, Sandusky, Ohio 44870. 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 4:00 p.m. on January 14, 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 issue that remained unresolved.

This matter is properly before the fact finder for review, to prepare 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 Erie County Care Facility DBA The Meadows at Osborn Park, the Employer, and the American Federation of State, County and Municipal Employees Local #3358, Ohio Council 8, AFL-CIO, the Union, were parties to a collective bargaining agreement in effect from November 1, 2010 through October 31, 2013.
2. The parties' successor collective bargaining agreement will cover a bargaining unit comprised of full-time and part-time Account Clerks III, Activities Aides, Licensed Practical Nurses, Cooks, Custodial Workers I and II, Dietary Aides, Laundry Aides, Maintenance Workers 1 and 2,

Nurse Aides, Stenographers III, Housekeeping Aides, Van Drivers, and Medical Records Technicians.

3. The bargaining unit is comprised of sixty-six members – forty-one Nurse Aides, nineteen Licensed Practical Nurses, two Account Clerks, one Activities Aide, one Maintenance Worker 2, one Van Driver, and one Medical Records Technician.

4. The Erie County Care Facility DBA The Meadows at Osborn Park employs fourteen non-bargaining unit employees.

5. The Erie County Care Facility was constructed in 1978 and until 2010 offered 160 licensed long-term care beds.

6. In 2010, thirty licensed long-term care beds at the Erie County Care Facility were sold for \$542,500, leaving 130 licensed long-term care beds at the Erie County Care Facility.

7. The Erie County Care Facility now operating as The Meadows at Osborn Park is intended by the Erie County Commissioners to operate through the fees and charges generated by the operation of this nursing home and rehabilitative facility, in large part through Medicaid and Medicare reimbursement.

8. The Erie County Care Facility DBA The Meadows at Osborn Park receives no Erie County General Fund appropriation.

9. In 2002, the Erie County Care Facility served an average of 150 residents daily; at the time of the fact-finding hearing in January, 2014, the Erie County Care Facility had a resident census of 110, served by sixty-six bargaining unit members and fourteen non-bargaining unit employees.

10. The licensed long-term care beds at the Erie County Care Facility DBA The Meadows at Osborn Park are dual certified, available for use under the Medicare and Medicaid programs.

11. In 2004, the facility generated revenues of \$8,230,630 and expenses of \$8,424,322, for a net loss of \$193,692; in 2005, the facility generated revenues of \$8,403,852 and expenses of \$8,691,041, for a net loss of \$287,189; in 2006, the facility generated revenues of \$7,819,277 and expenses of \$8,041,579, for a net loss of \$222,302; in 2007, the facility generated revenues of \$7,753,089 and expenses of \$8,129,947, for a net loss of \$376,858; in 2008, the facility generated revenues of \$7,637,857 and expenses of \$8,125,989, for a net loss of \$488,138, but in 2008 the Erie County Commissioners advanced to the facility a loan of \$520,000.

12. In 2009, the facility generated revenues of \$7,273,145 and expenses of \$7,407,336, for a net loss of \$134,191; in 2010, the facility generated revenues of \$6,652,233 and expenses of \$7,253,767, for a net loss of \$601,534.

13. In 2011, the Erie County Commissioners advanced to the Erie County Care Facility a loan of \$410,000, and during this calendar year, 2011, \$120,000 were paid toward the \$520,000 loaned to the facility in 2008, leaving a balance on the 2008 loan of \$400,000.

14. In 2011, the facility generated revenues of \$6,601,975 and expenses of \$6,724,131, for a net loss of \$532,156 (includes the \$410,000 2011 loan).

15. In 2012, the facility generated revenues of \$5,986,656 and expenses of \$6,125,146, for a net loss of \$138,490.

16. In 2013, the facility generated revenues of \$6,183,060 and expenses of \$6,841,841 that included an unpaid cost allocation for 2013 amounting to \$261,397, a cost allocation that was forgiven by the Erie County Commissioners.

17. Each year since 2007 has given rise to cost allocations owed by the Erie County Care Facility for shared services - \$168,594 in 2007; \$168,043 in 2008; \$168,828 in 2009; \$309,891 in 2010; \$261,731 in 2011; and \$261,397 in 2013, each forgiven by the Erie County Commissioners.

18. Even with the unpaid cost allocation forgiven by the Erie County Commissioners in 2013, the Erie County Care Facility was still required to defer paying \$447,482 in accounts payable until after the conclusion of calendar year 2013 so as to be able to meet the facility's payroll at the end of calendar year 2013.

19. The proceeds from the sale of thirty licensed long-term care beds at the Erie County Care Facility in 2010, \$542,500, were used to pay a \$325 lump sum to each employee of the facility, totaling \$31,971, with most of the remaining proceeds used to make capital improvements at the facility, leaving an unspent balance from the 2010 sale of beds, as of December 31, 2013, of \$7,120.

20. A majority of residents at the facility use Medicaid as their payor.

21. The Erie County Care Facility DBA The Meadows at Osborn Park is an Ohio Department of Job and Family Services (ODJFS) peer group 3 facility, the lowest reimbursement category in the Medicaid program.

22. In recent years Medicaid reimbursement rates have declined.

23. In 2010, thirty employees at the facility were laid off.

24. In 2011, five employees at the facility were laid off - three non-bargaining unit members and two bargaining unit members – due to a low resident census at the facility.

25. In 2013, the facility was operated by a management company, CHS Erie Management LLC, under a contract with the Erie County Commissioners, with CHS Erie Management, LLC providing a licensed nursing home administrator to oversee the operation of the facility.

26. In late June, 2012 the Union entered into a Memorandum of Understanding with the Employer that agreed to a two-week, eighty-hour work period for determining overtime eligibility, and agreed to twelve-hour-shifts on the weekend paid at straight time.

UNOPENED ARTICLES

The parties presented to the fact finder no tentatively agreed Articles for inclusion in the parties' successor Agreement. The parties did agree on the particular Articles in the parties' predecessor collective bargaining agreement that are proposed to be changed by one or both parties. The fact finder recommends that each and every Article in the parties' predecessor Agreement that was not opened for purposes of bargaining be included, unchanged, in the parties' successor Agreement. These unopened Articles are as follows:

Article 1 – Union Recognition

Article 2 – Management Rights

Article 3 – Stewards/Representatives/Officers

Article 4 – Non-Discrimination

Article 5 – Progressive Discipline

Article 6 – Grievance Procedure/Arbitration

Article 7 – Work Rules, Policies and Directives

Article 8 – Seniority

Article 9 – Probation Period

Article 10 – Vacancy, Promotions & Lateral Transfers

Article 12 – Military Leave

Article 13 – Court Leave/Jury Duty

Article 14 – Personal Leave of Absence

Article 15 – Union Delegate Leave

Article 16 – Vacation

Article 17 – Holidays

Article 18 – Sick Leave

Article 19 – Personal Days

Article 20 – Supervisory Employees

Article 21 – Attendance

Article 25 – Health and Safety

Article 26 – Labor-Management Meetings

Article 27 – Bulletin Boards

Article 29 – Salary Reduction Plan: PERS

Article 30 – No Strike/No Lockout

Article 33 – Legal Counsel/Liability Insurance

Article 34 – Severability/Conformance at Law

Article 35 – Dues Deduction

Article 36 – Fair-Share Fee

Appendix A – Grievance Form

Appendix C – Dues Deduction Card

Appendix D – Transitional Work Program

Appendix F – Erie County Care Facility Dress Code Policy

Appendix G – Ten Commandments of Customer Service

Appendix H – Department of Labor – FMLA Poster

UNRESOLVED ARTICLES

The following Articles remained unresolved between the parties at the conclusion of the fact-finding hearing:

Article 11 – Layoff/Recall

Article 22 – Sick Leave Conversion

Article 23 – Hours of Work/Overtime Scheduling

Article 24 – Schedules

Article 28 – Miscellaneous

Article 31 – Hospitalization/Major Med

Article 32 – Wages

Article 37 – Duration/Termination

Article 38 – Successor Clause

Appendix B – Wages

DISCUSSION OF UNRESOLVED ARTICLES AND RECOMMENDED LANGUAGE

Article 11 – Layoff/Recall

Section 11.01

Article 11, section 11.01 provides that when a layoff of bargaining unit members is anticipated, the Employer is to notify the Union of the impending layoff and the parties are to meet to discuss alternatives and the impact of the layoff on the bargaining unit, with this discussion to occur prior to the layoff.

The Union proposes adding the following language to Article 11, section 11.01:

...No agency staff or non-bargaining unit staff will be used to replace laid off employees. By seniority, any laid off bargaining unit employee will be offered any available hours prior to the use of any non-bargaining unit or agency employee.

The Union points out that the Employer already possesses the capability to bring back laid off bargaining unit employees for whatever work hours are available. The Union understands that there is no layoff anticipated at present, rather the Employer is currently short on staff, requiring employees to work excessive overtime while using non-bargaining unit agency staff. The Union argues that neither of these methods is cost effective and neither method should be used in the event of a layoff.

The Employer has proposed language for Article 11, section 11.05 that paraphrases the language suggested by the Union for Article 11, section 11.01.

The fact finder recommends that both proposals from the parties, the Union's proposal for section 11.01 and the Employer's proposal for section 11.05, be included in the parties' successor Agreement.

Section 11.02

The Employer proposes adding a subsection, subsection (H), to Article 11, section 11.02 that reads as follows:

(H) In the case of layoffs, the Employer may maintain a ratio of up to fifty percent (50%) of part-time employees in the affected classification(s). If necessary to maintain a proper ratio, full-time employee shall be offered the opportunity to displace a part-time employee based on seniority.

The Employer points out that under current contract language, in the event of a layoff, all part-time employees must be laid off before the first full-time employee is laid off. The Employer contends that this limitation reduces the Employer's flexibility to meet the needs of the facility through part-time employees. The Employer contends that to become operationally viable the facility must be allowed to use additional part-time employees, primarily in the Nurse Aide classification (STNA). The Employer notes that these part-time employees would be bargaining unit members.

The Union shares the Employer's interest in increasing efficiency at the facility but the Union opposes the language suggested by the Employer for Article 11, section 11.02(H).

Both parties to this fact finding proceeding have stated that one aspect of the solution to continuing the operation of the Erie County Care Facility DBA The Meadows at Osborn Park is a greater use of part-time employees at the facility. The Employer makes this claim at page seven of its pre-hearing statement. At page three of the Union's pre-hearing statement the following appears:

The Union maintains their position that the Employer needs to hire both full-time and part-time employees. This position has remained the same since first Session, October 1 2013 and has been reduced to writing in contract language form. The Employer has yet to post any additional part-time lines and continues to be fiscally irresponsible by continuing to force overtime on employees in addition to using Staffing Agencies.

The fact finder does not recommend the language proposed by the Employer for Article 11, section 11.02(H). The language proposed by the Employer would provide the Employer with a power not presently possessed under the parties' collective bargaining agreement, the power to force up to one-half of the facility's employees into part-time positions in the event of layoffs.

The parties agree that additional part-time employees are needed if the facility is to continue to operate, and the fact finder finds nothing in the current language of the parties' Agreement that would limit the Employer in this regard. The fact finder finds specific language proposed by the Union for Article 32, section 32.07(E) that allows unfilled full-time positions as of December 31, 2013 to be posted as part-time positions, the same proposal made by the Employer. The fact finder declines, however, to recommend the additional language suggested by the Employer for inclusion in Article 11, section 11.02(H) because the changes effected by this proposed language would significantly alter the nature of the bargaining unit and the relationship between the parties. The fact finder does not find a sufficiently compelling reason to recommend this change at this time.

Section 11.05

The Employer has proposed the inclusion of language in Article 11, section 11.05 that, by seniority, would call for a laid off bargaining unit employee, during the employee's recall period, to be offered available hours of work at the facility prior to the use of non-bargaining unit members. The fact finder believes this language is included in the language proposed by the Union for Article 11, section 11.01 that has been recommended by the fact finder for inclusion in the parties' successor Agreement. The fact finder has no problem with reiterating this promise and therefore recommends the Employer's additional language proposed for Article 11, section 11.05.

RECOMMENDED LANGUAGE: ARTICLE 11 – SICK LEAVE CONVERSION

Section 11.01 – In case of any layoff of bargaining unit employees is anticipated, the Employer shall notify the Union of any impending layoff. The parties will meet to discuss possible alternatives and the impact of any such layoff of bargaining unit employees prior to any layoffs occurring. No agency staff or non-bargaining unit staff will be used to replace laid off employees. By seniority, any laid off bargaining unit employee will be offered any available hours prior to the use of any non-bargaining unit or agency employee.

Sections 11.02, 11.03, and 11.04 – Retain current language.

Section 11.05 – Employees eligible for recall shall be given a fourteen (14) calendar day notice of recall and the notice shall be sent to the employee by certified mail, with a copy sent to the Union. The affected employee must notify the Employer of his intention to return within three (3) calendar days after receipt of a notice of recall. By seniority, any laid off bargaining unit employee during his/her recall period will be offered any available hours prior to the use of non-bargaining unit employees.

Article 22 – Sick Leave Conversion

The Employer proposes the deletion of Article 22, Sick Leave Conversion, from the parties' successor Agreement. The Employer proposes that the deletion of this Article

be made retroactive to the expiration date of the parties' predecessor collective bargaining agreement, October 31, 2013.

The Union opposes the deletion of Article 22, Sick Leave Conversion, from the parties' successor Agreement but has proposed a reduction of this earned benefit, starting the benefit at six years of service under the successor Agreement rather than the one year of service required in the parties' predecessor Agreement. The Union also proposes a reduction in the conversion rates for bargaining unit members who have provided less than twenty-one (21) years of service.

The Employer argues that sick leave conversion is an expensive bonus that can no longer be afforded. The Employer notes that the implementation of Article 32 under the parties' predecessor Agreement for annual sick leave conversion for calendar year 2013 is the subject of a grievance now pending between the parties.

The fact finder does not recommend the deletion of Article 22. The benefit described in Article 22 is an earned benefit through superior attendance, encouraging a continuity of service among residents at the facility through regular, familiar, constant care givers. The fact finder is not unmindful of the costs of this benefit and therefore recommends the reduction of the conversion rates and the elimination of the benefit for those with less than six years of service as proposed by the Union.

RECOMMENDED LANGUAGE: ARTICLE 22 – SICK LEAVE CONVERSION

Section 22.01(A), (B), and (C) – Retain current language.

Section 22.01(D) – Sick Leave Conversion Chart, 2014 - 2016

Years of Service	Conversion Rate
6 years	up to 50% at full hourly rate
11 years	up to 75% at full hourly rate
16 years	up to 80% at full hourly rate
21 years	up to 100% at full hourly rate

Section 22.02 – Retain current language.

Article 23 – Hours of Work/Overtime Scheduling

Section 23.01

Article 23, section 23.01, Normal Work Week, is comprised of four paragraphs - A, B, C, and D. The Employer proposes changes to paragraphs (A), (B), and (D); the Union proposes a change to paragraph (D).

Article 23, section 23.01(A) in current contract language defines a normal work period for all full-time employees as ten (10) days and eighty (80) hours per pay period. This language establishes the beginning of the work week and the end of the work week and presents a definition for the weekend for third shift employees.

The Employer proposes the deletion of the ten (10) days presented as part of the definition of a normal work period, leaving the eighty (80) hours per pay period as the normal work period. The Employer also proposes the deletion of the last sentence of paragraph (A) in section 23.01, the sentence that defines the weekend among third shift employees.

In section 23.01(B) current contract language describes a normal work day as consisting of eight (8) consecutive hours each day, exclusive of one thirty-minute unpaid lunch period. The Employer proposes that the language of paragraph (B) be changed

from a normal work day consisting of eight consecutive hours to a normal work day that shall “...be determined by work hours scheduled...”

Paragraph (D) of section 23.01 provides that the Employer agrees that an employee shall normally not be scheduled for more than five consecutive days of work in any given bi-weekly period without the employee’s consent. The Employer proposes adding the following to this language: “An employee who was required to work more than five consecutive days shall receive an adjusted day off during the same pay period if staffing requirements allow.”

The Union proposes adding the following language to paragraph (D) of section 23.01: “Employees shall receive an adjusted day off at their request.”

The fact finder recommends the changes proposed by the Employer for paragraphs (A) and (B) of section 23.01, and recommends the proposals from both parties as to paragraph (D) be included in the parties’ successor Agreement. The fact finder recommends that in paragraph (D) the additional language read:

...An employee who is required to work more than five consecutive days shall, at the employee’s request, receive an adjusted day off during the same pay period if staffing requirements allow.

Section 23.02

The Employer proposes that within Article 23, section 23.02, Overtime, changes be made to the language of paragraph (A) and that a new paragraph (C) be added to this section.

The current language of Article 23, section 23.02(A) describes an overtime threshold that authorizes time and one-half pay after working eight hours in a day.

The changes proposed by the Employer for Article 23, section 23.02(A) would alter the overtime threshold to hours actually worked in excess of forty hours in a work week. The Employer would add language to this paragraph that would make it clear that only hours actually worked are to count toward the overtime threshold, with hours of paid or unpaid time off not counted as hours actually worked.

The Union urges that the current language in Article 23, section 23.02 be retained in the parties' successor Agreement.

The changes proposed by the Employer for section 23.02(A) change overtime practices between the parties in two significant respects. First, overtime will change from a determination based on daily eight-hour increments to a weekly increment of forty hours. Such a system provides the Employer with greater flexibility in maintaining needed staffing levels at the facility but imposes greater uncertainty among employees as to when they will work and how they will be paid for that work.

The other significant change is that only actual hours are to be used in determining whether overtime levels are reached. The fact finder understands the premium pay offered by an overtime threshold to be based on actual hours of service provided to the facility rather than a combination of actual hours worked and some other paid or unpaid status. The fact finder recommends the changes proposed by the Employer for Article 23, section 23.02(A) and does so with the understanding that this calls for a significant concession by the bargaining unit.

The language proposed by the Employer to be added to paragraph (C) of section 23.02 reads as follows:

The parties recognize that the Employer may use the most efficient and cost effective methods to manage staffing, including using staff that does not result in overtime costs before incurring overtime.

The fact finder does not find the language proposed for a new paragraph (C) in section 23.02 to be needed. The fact finder does not recommend the addition of this language to the parties' successor Agreement.

Section 23.03

Article 23, section 23.03, Equalization of Overtime, is proposed to be deleted by the Employer and in its place the Employer proposes the following:

Volunteers will be utilized first from the daily posting and open shift posting. Schedules will be posted every other week for three (3) full days and taken down on the fourth day as time allows.

The Employer claims that the system now in place under the parties' predecessor Agreement used to request voluntary overtime hours needed to staff the facility and to mandate overtime hours needed to staff the facility when voluntary overtime proves insufficient to meet staffing needs, is a cumbersome and time consuming system that contains a number of moving parts that change over time as a result of changed circumstances. This system of voluntary overtime requests and mandatory overtime demands requires very substantial amounts of time and energy to implement. Under this system seniority is granted a priority in volunteering for overtime hours and delays mandating the more senior members when voluntary overtime proves insufficient to meet the staffing needs of the facility.

Aspects of the system that affect the sequence of contacts to be made in securing voluntary overtime or imposing mandatory overtime include seniority, the last instance of voluntary or mandated overtime provided by an employee, whether the employee holds a “Get Out of Mandation Free” card, and whether an employee has a health-related reason that will not allow the additional hours of work. Erie County Care Facility has one Registered Nurse assigned to the day shift and she is spending twenty-five percent (25%) of her scheduled work time implementing the voluntary and mandatory overtime system used to maintain adequate staffing at the facility under the parties’ predecessor Agreement.

The Employer’s proposal to simply do away with the voluntary and mandatory overtime system as presently constituted and instead provide a posting of voluntary assignments is intriguing in its simplicity. The argument, however, that by eliminating the entire system formerly agreed by the parties will somehow solve the kinds of scheduling problems now encountered under the present system is not fully accepted by the fact finder. The fact finder believes the present system can be changed for the betterment of all parties. The fact finder is not prepared at this time to recommend a removal of a detailed system under which the rights of bargaining unit members are recognized. The fact finder recommends the retention of current language within Article 23, section 23.03 but encourages the parties to improve this system through the use of technology and broader communication capabilities.

Section 23.04

Article 23, section 23.04 is entitled Mandation of Overtime. The Employer proposes the elimination of the current language in this section and proposes replacing it with:

The Employer will attempt to use volunteers and part-time employees which do not result in overtime before mandating employees to work overtime. The mandation rotation will be determined and posted by the shift supervisor on a daily basis. The Employer will not mandate employees working on a volunteer day.

An employee will not be required to work mandatory overtime on a regularly-scheduled day off, vacation, or personal day.

The Union proposes retaining the language of section 23.04 but proposes adding to section 23.04(F) language that reads: “The Employer will attempt to use volunteers and part-time employees before mandating.”

The Union also proposes in section 23.04(G) that employees with a “Get Out of Mandation Free” card will not be mandated for twenty-four (24) hours.

For the same sentiments expressed above about the proposed deletion of volunteered overtime hours in Article 23, the fact finder declines to recommend the Employer’s proposal to delete section 23.04. The fact finder recommends the language proposed by the Union for inclusion in Article 23, section 23.04.

Section 23.05

Article 23, section 23.05, Volunteering, provides bonuses and incentives to those who volunteer for additional hours. The Employer recommends the deletion of this

section. The Union proposes a small alteration to the language but otherwise proposes the retention of the language of this section.

The fact finder finds a lack of need for Article 23, section 23.05 and therefore recommends the Employer's proposal in deleting this section. Bargaining unit members will have their own reasons for volunteering or declining to volunteer for additional work hours and those reasons are sufficient and do not require the bonuses expressed in Article 23, section 23.05.

Section 23.06

The change proposed by the Employer for the language of Article 23, section 23.06, 8-HR Work Restrictions, inserting "for overtime" for "as described under Article 23, section 23.05" brings this Article into accord with the elimination of section 23.05 as proposed above. The fact finder therefore recommends the small change to the language of Article 23, section 23.06 proposed by the Employer.

RECOMMENDED LANGUAGE: Article 23 – Hours of Work/Overtime Scheduling

Section 23.01 NORMAL WORK WEEK

A. The normal work period for all full-time employees is eighty (80) hours per pay period. The work week shall begin at 12:01 a.m. on Sunday and end at 11:59 p.m. on Saturday for all departments except Maintenance and Clerical. The normal work week for the Maintenance and Clerical departments shall be Monday through Friday.

B. The normal work week shall be determined by work hours scheduled exclusive of one (1) thirty (30) minute unpaid lunch period.

C. Retain current language.

D. The Employer agrees that an employee shall normally not be scheduled for more than five (5) consecutive days of work in any given biweekly period, without the employee's consent. An employee who is required to work more than five consecutive

days shall, at the employee's request, receive an adjusted day off during the same pay period if staffing requirements allow.

Section 23.02 OVERTIME

A. Employees working overtime shall receive time and one-half (1½) of the employee's regular rate of pay when they actually work in excess of forty (40) hours in a work week. Employees shall receive double (2X) time for hours worked on an actual holiday. For purposes of this Article, hours actually worked shall not include any paid or unpaid time off.

B. Retain current language.

Section 23.03 – Retain current language.

Section 23.04 MANDATION OF OVERTIME

(A), (B), (C), (D), and (E) – Retain current language.

Section 23.04(F) - Employer will attempt to use volunteers and part-time employees before mandating.

Section 23.04(G) – When employees use their “get out of mandation free” slip it will count as a mandation and their name goes to the bottom of the list, and they will not be mandated for twenty-four (24) hours.

Section 23.04(H) and (I) – Retain current language.

Section 23.05 – Delete current language.

Section 23.06 8-HR Restrictions – Restrictions on the amount of hours an employee may work will be permitted for up to twelve (12) weeks per condition unless otherwise covered by law. Employees who present an 8-hour work restriction must have that restriction updated by their physician every thirty (30) days during the period of restriction. Physician slip must indicate the employee's name, date of examination, condition or diagnosis leading to the restricted work hours, prognosis on when employee may be returned to full duty without restrictions and physician signature. An employee under an 8-hour restriction is prohibited from volunteering for overtime. An employee on an 8-hr restriction may be mandated with an adjustment to their normal scheduled hours. An employee may not exercise his bid rights during the period of restriction unless otherwise prohibited by law.

Article 24 – Schedules

Section 24.01

Article 24, section 24.01, Work Stations/Assignments, in its current language states that work stations and work assignments will be made fairly by the Employer and all the departments will have permanent schedules posted by line. The Employer agrees in this language not to change scheduled lines for arbitrary reasons.

The Union proposes the retention of current language in Article 24, section 24.01.

The Employer proposes that the language of Article 24, section 24.01 be changed to read:

Work stations and work assignments will be made based on facility and resident needs. The Employer maintains the right to change scheduled lines based on operational needs. The Employer will not change scheduled lines for arbitrary reasons.

The fact finder recommends the language proposed by the Employer for Article 24, section 24.01. The fact finder finds the language proposed by the Employer to describe the authority of the Employer to schedule work at the facility for the facility's operational needs.

Section 24.02

Both parties have proposed new language to be added to Article 24 within section 24.02.

The Employer proposes that the additional language read: "Rest between shifts – The Employer will attempt to provide at least eight hours off between shifts."

The Union proposes that the language of Article 24, section 24.02 read as follows:

Rest between shifts – The Employer must provide at least eight (8) hours of an unbroken rest period for the employee to be off between any scheduled shifts. All employees working twelve (12) hour shifts due to current work schedule or mandation, must be provided twelve (12) hours off between any scheduled shifts.

The fact finder recommends the language proposed by the Union for section 24.02. This language refers to scheduled shifts and the language proposed by the Union maintains a minimum amount of time that must be provided between scheduled shifts. This is a matter that affects the safety of both bargaining unit members and facility residents and is recommended by the fact finder for inclusion in the parties' successor Agreement.

RECOMMENDED LANGUAGE: Article 24 - Schedules

Section 24.01 WORK STATIONS/ASSIGNMENTS. Work stations and work assignments will be made based on facility and resident needs. The Employer maintains the right to change schedule lines based on operational needs. The Employer will not change scheduled lines for arbitrary reasons.

Section 24.02 – Rest between shifts – The Employer must provide at least eight (8) hours of an unbroken rest period for the employee to be off between any scheduled shifts. All employees working twelve (12) hour shifts due to current work schedule or mandation, must be provided twelve (12) hours off between any scheduled shifts.

Article 28 – Miscellaneous

Section 28.03

Article 28, section 28.03, Review of Personnel Folders, in current contract language empowers employees to review their personal folders, upon request, at a reasonable time, in the presence of a representative of the Employer.

The Employer proposes adding language that reads: “The employee may schedule a time with Human Resources to review and copy their personnel folder at the employee’s expense as set by the Erie County Board of Commissioners.”

The Union proposes the addition of the following language to section 28.03 following this section’s first sentence: “The employee may also make a written request that a copy of the personnel file be printed and mailed to the employee within three (3) days upon management receiving a written request.”

The fact finder recommends the language proposed by the Employer for section 28.03 as this language continues an employee’s right to view the employee’s personnel file and describes a reasonable method to do so, namely scheduling a time with Human Resources to view the file and copying the personnel file at the employee’s expense. The fact finder presumes that the costs of this copying will be around ten cents per page.

The mailing of the personnel file to an employee is a convenience for a bargaining unit member but a burden upon the Human Resources Department. The method proposed by the Employer gives full access to each bargaining unit member to the member’s personnel file and provides a reasonable and cost effective method to access and copy this material.

Section 28.13

Article 28, section 28.13, Closings, presents agreed language that addresses the closing of Erie County offices due to an emergency. Under current language, employees who report to work on time for their normal shifts during an emergency that has closed Erie County offices will be compensated at twice their regular hourly rate of pay for all hours actually worked.

The Union proposes that the following language be added to section 28.13:
“Employees who are mandated to stay at work due to this emergency shall receive two (2) times their normal rate of pay plus a Get Out of Mandation Free Card.”

The fact finder recommends the inclusion of language proposed by the Union as to the double-time pay to be paid to employees who are mandated to stay at work during an emergency in which Erie County offices have been closed. The fact finder does not recommend the Get Out of Mandation Free Card, believing that the double-time pay is sufficient compensation for the mandation of additional work during an emergency.

RECOMMENDED LANGUAGE: ARTICLE 28 – MISCELLANEOUS

Sections 28.01 and 28.02 – Retain current language.

Section 28.03 – REVIEW OF PERSONNEL FOLDERS. Employees shall be allowed to review their personnel folders at any reasonable time upon request, in the presence of a representative of the Employer (Human Resources). The employee may schedule a time with Human Resources to review and copy their personnel folder at the employee’s expense as set by the Erie County Board of Commissioners. If an employee, upon examining his personnel folder, has reason to believe that there are inaccuracies in those documents to which he has access the employee may file a grievance with the Employer explaining the alleged inaccuracy. If, upon investigation, the Employer sustains such allegation, the documentation supporting such inaccuracy may be attached to the documents in the personnel file to show that such documents are inaccurate. Nothing shall be taken from a personnel file. All medical records shall be kept separate from the normal contents of a personnel file. The Union may review an employee’s medical records contained in his personnel folder upon a written authorization from the employee. References from prior employers and the employee’s social security number are exempt from the Open Records Act and therefore are not available to an employee or to a Union representative.

Sections 28.04 through 28.12 – Retain current language.

Section 28.13 – CLOSINGS. The parties agree that emergencies may occur that could result in an announcement of a delayed opening or closing of the county offices. When this occurs, employees who report to work for their normal shift will be compensated at twice their hourly rate of pay for all hours actually worked. Employees who are mandated to stay at work due to this emergency shall receive two (2) times their normal rate of pay.

The Employer will continue its normal procedure of attempting to provide transportation to the Facility.

Article 31 – Hospitalization/Major Med

The current language of the parties' collective bargaining agreement in Article 31, section 31.01 tasks the Employer with selecting a carrier for the insurance programs to be provided to bargaining unit members. This language provides that any change in carriers or programs, as recommended by the Cost Containment Committee and approved by the Board of Erie County Commissioners and Local 3358, will amend this Agreement to reflect said change.

The Union proposes the retention of all of the language within Article 31, unchanged.

The Employer proposes language that still requires the Employer to select a carrier for the insurance programs to be provided to bargaining unit members but explicitly states that the Employer will provide the same insurance benefits to bargaining unit members that are provided to all other Erie County employees under the jurisdiction of the Erie County Board of Commissioners. The Employer under this language is required to notify the Union of any changes to coverage in advance of implementation, and any such changes are to be considered as incorporated into this Agreement.

The Employer proposes adding language to section 31.03 that refers to changes in levels of benefits and the fact that those benefits will also be provided to bargaining unit members. Current language provides that any additional cost of new benefits are to be paid by the bargaining unit members at the same rate as non-bargaining unit employees. The Employer proposes adding the following language:

Bargaining unit employees shall pay the same premium contribution as non-bargaining unit employees as set by the Erie County Board of Commissioners provided that bargaining unit employees shall not be required to pay for more than twenty percent (20%) of the health insurance premium.

Article 31, section 31.04, Voluntary Plans, reserves to the Employer the right to increase the premiums for voluntary plans, including but not limited to COBRA, and “family” plan is changed under the Employer’s proposal to “dental” plan.

The Employer proposes the deletion of section 31.08 that refers to an action agreed by the parties that was effective January 1, 2009 under which employees were required to contribute at the same rate as non-bargaining unit employees as recommended by the Cost Containment Committee and approved by the Board of Erie County Commissioners and Local 3358.

To a much greater extent in the case of hospitalization/major medical coverage provided by the Employer, market forces determine what is available and at what cost. In the area of medical insurance coverage the Employer may exert an influence on the size of the coverage pool and the contributions to be made by the Employer and the employees who avail themselves of this coverage, but the Employer has little influence on what coverage is available and at what cost.

The fact finder is of the opinion that the broadest coverage pool spreads the risks and costs to the largest extent. The Erie County Commissioners offer the same coverage to all Erie County employees, organized and non-organized, with the same benefits and the same costs for all. The fact finder believes the most that can be expected is that everyone be treated fairly and uniformly and share equally in the benefits and costs of

coverage. For this reason the fact finder recommends the language proposed by the Employer for Article 31, section 31.01.

The Employer offers two options – a PPO with a single coverage contribution by an employee of forty-two dollars (\$42) per month, and a family coverage contribution by an employee of \$112 per month, contributions that are eleven percent (11%) of the monthly premium for coverage. A high deductible health savings account is also available that requires no premium contribution from participants.

The fact finder recommends the language proposed by the Employer for Article 31, section 31.01 as a reasonable response to the realities of selecting major medical coverage to provide to bargaining unit employees under the parties' successor Agreement. Putting all Erie County employees in the same coverage pool is the most efficient way to provide this coverage.

The twenty percent (20%) cap proposed in Article 31, section 31.03 refers to those occasions when benefits or programs change and additional costs are required. The twenty percent (20%) cap is an inchoate limitation, something that may or may not be applied during the duration of the parties' successor Agreement. The fact finder recommends the additional language proposed by the Employer for section 31.03; recommends the change of the "family" to "dental" in section 31.04; and finds no need to retain the language of section 31.08 and therefore recommends that section 31.08 be deleted from the parties' successor Agreement.

RECOMMENDED LANGUAGE: Article 31 – Hospitalization/Major Med

Section 31.01 – The Employer shall select the carrier for the insurance programs provided to bargaining unit employees. The County will provide the same insurance

benefits to bargaining unit employees that are provided to County employees under the jurisdiction of the Erie County Board of Commissioners. The Employer will notify the Union of any changes to coverage in advance of the implementation. Any such changes shall be considered as incorporated in this agreement. The Union will continue to send at least one (1) representative from labor to the Erie County Cost Containment & Wellness Committee meetings held monthly.

Section 31.02 – Retain current language.

Section 31.03 – The Employer agrees that any future change in level of benefits or any new insurance programs which are provided to other County employees during the life of this Agreement shall also be provided to the bargaining unit employees. Any additional cost of such new benefits or programs shall be paid by the bargaining unit member at the same rate as non-bargaining unit employees as set by the Board of Erie County Commissioners. Bargaining unit employees shall pay the same premium contribution as non-bargaining unit employees as set by the Erie County Board of Commissioners provided that bargaining unit employees shall not be required to pay more than 20% of the health insurance premium.

Section 31.04 – VOLUNTARY PLANS Any plan in which the employee pays a portion of or the entire monthly premium is understood to be a voluntary participation plan. The County reserves the right to increase the premiums for such voluntary plans, including, but not limited to, COBRA and the dental plan. Employees will be required to contribute at the same rate as non-bargaining unit employees.

Sections 31.05, 31.06, and 31.07 – Retain current language.

Section 31.08 - Delete current language.

Article 32 - Wages

The Employer proposes no wage increase for bargaining unit members during the first year of the parties' successor Agreement. Language proposed by the Employer for Article 32, section 32.01 states that between September 1, 2014 and October 31, 2014 either party may request a reopener of negotiations, to include a discussion of wages during the second and third years of the parties' successor Agreement.

The Employer proposes a change to section 32.07, Part-Time Employees, that currently provides that the Employer does not intend to decrease the number of full-time

employees to add part-time employees to do the former full-time employees' work. The Employer proposes the deletion of this language. The Employer proposes deleting all of section 32.07 and substituting the following for the deleted language: "Any unfilled full-time positions as of December 31, 2013 will be posted as part-time positions. The Employer reserves the right to determine whether future postings or positions will be full-time or part-time."

In contrast to what the Employer proposes for Article 32, section 32.07, Part-Time Employees, the Union proposes a change to the language to section 32.07(A) that would change the language that describes the Employer's intention to an imperative that reads: "It is agreed by and between the parties that the Employer **shall not** decrease the number of **current** full-time employees effective only to add part-time employees to do the former full-time employees' work."

Both parties recognize the financial difficulties encountered in operating a rehabilitative and skilled nursing center that generates more expenses than revenues. The Erie County Care Facility is at the lowest Medicaid reimbursement rung in ODJFS peer group 3, and still suffered decreases in this lowest level of reimbursement in recent years.

Part-time employees are less expensive than full-time employees because the costs of benefits are much reduced. Part-time employees also have less invested in the position and therefore may be more fluid in their movements to other facilities that offer comparable or better terms and conditions of employment. Such competition is found in Erie County among six newer skilled nursing facilities.

The fact finder recommends that present full-time bargaining unit members at the Erie County Care Facility DBA The Meadows at Osborn Park be maintained but the fact

finder does not extend this priority to future hires at the facility in classifications covered by the parties' collective bargaining agreement. The fact finder has concerns about the effect on continuity of care among residents when a largely full-time work force transitions to a substantially part-time work force. Under the realities of the facility's financial circumstances, however, such a change may be necessary to continue to operate the facility. The language proposed by the Employer would affect positions that were vacant as of December 31, 2013 and therefore would not apply to those positions filled by full-time employees in the bargaining unit as of December 31, 2013.

Based on the very difficult financial circumstances of the facility, the fact finder recommends the Employer's proposed language for Article 32, section 32.07(A).

The Union proposes language in paragraph (B) of section 32.07 that would change to full-time status a part-time employee who has worked more than thirteen (13) of twenty-six (26) consecutive weeks at thirty-six (36) hours per week. Current language requires that a part-time employee work an eighty-hour pay period for a continuous 180 days to receive full-time status.

The fact finder recommends the inclusion of the language proposed by the Union for section 32.07(B). This language appears to the fact finder to be a reasonable limitation on the Employer in determining what constitutes part-time employment.

The Union proposes adding language to section 32.07 that would appear as paragraphs (D), (E), (F), and (G).

Proposed paragraph (D) in section 32.07 refers to regular part-time employees who work at least twenty-one (21) hours per week for 120 days or more and who meet

eligibility requirements being entitled to participate in the same health insurance plan provided to full-time employees.

Proposed paragraph (E) in section 32.07 provides that the Union agrees that any currently unfilled full-time positions as of December 31, 2013 may be posted as part-time positions.

Proposed paragraph (F) in section 32.07 would make explicit the Employer's agreement to stop using agency and non-bargaining unit staff as of December 31, 2013 in lieu of the Union agreement on part-time positions listed herein, and this does not take away the ability of the Employer to use intermittent or PRN staff as listed in paragraph (D) of this section.

Proposed paragraph (G) in section 32.07 refers to intermittent employees (PRN staff) used to fill vacancies who shall not be used to reduce the hours of full-time or part-time staff.

The fact finder, in recommending the Employer's language proposed for Article 32, section 32.07, incorporates the intention of what is proposed by the Union for paragraph (E), the Union's agreement that any unfilled full-time positions as of December 31, 2013 may be posted as part-time positions. The fact finder does not recommend the remainder of the Union's proposal for paragraphs (D), (F), and (G).

The Union proposes adding language, paragraph (G), to Article 32, section 32.05 that reads as follows:

Employees working beginning with the day shift on Saturday and concluding with the night shift on Sunday shall receive a \$2.00 per hour differential. Such differential shall only be paid for actual hours worked and shall not be subject to overtime compensation.

The Union also recommends a wage increase of \$.10 per hour for the first year of the parties' successor Agreement, a wage increase of \$.15 per hour for the second year of the parties' successor Agreement, and a wage increase of \$.20 per hour for the third year of the parties' successor Agreement.

The Employer estimates that the first year wage increase of \$.10 per hour would cost the County \$16,000, and estimates that over the three years of the parties' successor Agreement, the wage increases proposed by the Union, would cost \$124,000.

The fact finder does not recommend the additional language proposed by the Union for section 32.05(G).

The wage increases proposed by the Union for each of the three years of the parties' successor Agreement are modest. An employee earning \$14.00 per hour in base pay would, with a \$.10 per hour wage increase in the first year of the parties' successor Agreement receive a wage increase of less than 1.0%, a pay raise of .71%. An employee earning \$14.10 per hour in base pay would, in the second year of the contract, with an increase of \$.15 per hour, receive a wage increase of 1.1%; an employee earning \$14.25 per hour in base pay would, in the third year of the parties' successor Agreement, with an increase of \$.20 per hour, receive a wage increase of 1.4%.

The fact finder views as significant the increased flexibility extended to the Employer to use greater numbers of part-time employees in operating the facility, and finds that the savings from this transition will be substantial. While much of the savings will be available to address the precarious financial condition of the facility, the fact finder is persuaded that some small amount of these savings can be used for the modest wage increases proposed by the Union over the three years of the successor Agreement.

The fact finder is persuaded that the flexibility exhibited by the Union on issues important to the Employer in these negotiations merit consideration, and the compensation proposed by the Union is, in the context of the expected savings, affordable by the public employer. The fact finder recommends the wage increases proposed by the Union for each of the three years of the parties' successor Agreement. With the recommendation on wages there is no reason for reopener language so the fact finder does not recommend the language proposed by the Employer for Article 32, section 32.11.

RECOMMENDED LANGUAGE: Article 32 – Wages

Section 32.01 – The rates of pay are listed in Appendix B.

Sections 32.02, 32.03, 32.04, 32.05, and 32.06 – Retain current language.

Section 32.07 – (A) Any unfilled full-time positions as of December 31, 2013 will be posted as part-time positions. The Employer reserves the right to determine whether future postings for positions will be full-time or part-time.

Section 32.07 – (B) – It is agreed by and between the parties that the Employer shall not decrease the number of current full-time employees effective only to add part-time employees to do the former full-time employees' work. However, if unforeseen circumstances arise that are outside of the Employer's control, the numbers of part-time employees may be changed after the parties meet in a Labor-Management Meeting in accordance with Article 26, Labor Management Meetings. Any additional part-time employees will not displace or replace existing full-time employees.

Section 32.07 – (C) – Any part-time employee who works greater than thirteen (13) of twenty-six (26) consecutive weeks at thirty-six (36) hours per week shall be reclassified as a full-time employee.

Sections 32.08, 32.09, and 32.10 – Retain current language.

Article 37 – Duration/Termination

Section 37.01 – Duration

Article 37, section 37.01, Duration, specifies the effective date of the parties' successor Agreement and its expiration date. The parties' predecessor Agreement was in effect from November 1, 2010 through October 31, 2013, and for purposes of continuity, the fact finder recommends that the parties' successor Agreement, upon ratification by both parties, take effect retroactive to November 1, 2013 and remain in effect through October 31, 2016.

Section 37.03 - Reopener

The fact finder recommends the deletion of Article 37, section 37.03 as language that is no longer needed.

RECOMMENDED LANGUAGE: Article 37 – Duration/Termination

Section 37.01 Duration – A. This Agreement shall be effective as of November 1, 2013 and shall remain in effect and full force until October 31, 2016 unless otherwise terminated as provided herein.

Section 37.01(B) and (C) – Retain current language.

Section 37.02 – Retain current language

Section 37.03 – Delete current language.

Article 38 – Successor Clause

The Union proposes the retention of Article 38 unchanged in the parties' successor Agreement.

The Employer proposes the elimination of Article 38, section 38.01, language that makes the parties' Agreement binding upon all of the Employer's successors and assigns, whether by sale, transfer, merger, subcontract, acquisition, consolidation, or otherwise. Under this language the Employer is to make it a condition of the sale, transfer, merger, or subcontract that the successor shall be bound by the terms of this Agreement and that the transferee is obligated to continue to employ all bargaining unit employees in accordance with the terms of this Agreement.

The fact finder makes no pretense of being able to predict how the Erie County Care Facility DBA The Meadows at Osborn Park will operate in the future and whether its present ownership and management will continue or change. The language of Article 38, section 38.01, however, extends to the bargaining unit a promise contained in the parties' present Agreement that the fact finder finds no sufficient reason to eliminate. The fact finder recommends that the current language of Article 38, Successor Clause, be retained in the parties' successor Agreement.

RECOMMENDED LANGUAGE: Article 38 – Successor Clause

Section 38.01 – Retain current language.

Section 38.02 – Retain current language.

Appendix B – Wages

	WAGE RATES		
	11/01/14	11/01/15	11/01/16
HOUSEKEEPING AIDE	10.99	11.14	11.34
LAUNDRY AIDE			

CUSTODIAL AIDE DIETARY AIDE	11.19	11.34	11.54
VAN DRIVER	11.86	12.01	12.21
ACTIVITIES AIDE	12.09	12.24	12.44
COOK	12.42	12.57	12.77
NURSES AIDE	12.64	12.79	12.99
MAINTENANCE WORKER 1	14.13	14.28	14.48
MAINTENANCE WORKER 2	14.55	14.70	14.90
ACCOUNT CLERK 3 MEDICAL RECORDS TRCHNICIAN	16.10	16.25	16.45
LPN	17.82	17.97	18.17

Rate increases reflect a \$0.10 per hour increase for the first year of the contract, a \$0.15 per hour increase for the second year of the contract, and a \$0.20 per hour increase for the third year of the contract.

All changes in rates will occur at the beginning of the pay period in which the date of the new rate is effective.

Any retroactive wages will be considered due and owing in the pay period in which they are paid for purposes of the Public Employees Retirement System contribution.

ATTENDANCE BONUS: Full time employees who have perfect attendance, as defined in 21.01 (A), for each pay period of eighty (80) consecutive hours shall receive \$ 0.15 per hour for that pay period (\$12.00). Part time employees who have perfect attendance for each pay period, as defined in 21.01 (A) shall receive \$ 0.15 per hour for that period. The attendance bonus shall be added to the pay period immediately following the pay period in which it was earned.

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
February 14, 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 Erie County Care Facility DBA The Meadows at Osborn Park, and the American Federation of State, County and Municipal Employees Local #3358, Ohio Council 8, AFL-CIO, SERB case number 2013-MED-08-0930, was filed electronically with the Ohio State Employment Relations Board at MED@serb.state.oh.us and served electronically upon the following this 14th day of February, 2014:

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Columbus, Ohio
February 14, 2014