

STATE OF OHIO
VOLUNTARY FACT-FINDING PROCESS

In the Matter of
Fact-Finding Between:

CUYAHOGA COUNTY DEPARTMENT OF HEALTH)	
AND HUMAN SERVICES)	
DIVISION OF CHILDREN AND FAMILY SERVICES)	Robert J. Vana
(IT SECTION))	Fact-Finder
)	
-and-)	
)	
LABORERS INTERNATIONAL UNION)	
OF NORTH AMERICAN, LOCAL 860)	

FACT-FINDING REPORT

AND

RECOMMENDATIONS

Appearances

For the Union

For the Employer

Basil Mangano, Esq.

Egdilio Morales, Esq.

Date of Issuance: March 19, 2014

PROCEDURAL BACKGROUND

This matter came on for hearing on February 12, 2014, before Robert J. Vana, appointed as fact-finder pursuant to Ohio Revised Code Section 4117.14 and Administrative Code Section 4117-9-05. The hearing was conducted between the Division of Children and Family Services (IT Section) of the Cuyahoga County Department of Health and Human Services (the “Employer”) and the Laborer’s International Union of North America Local 860 (the “Union”). The Union is the sole and exclusive representative of all employees in the Cuyahoga County Department of Child and Family Services (IT Section) occupying the positions of all full-time and regular part-time Help Desk Technicians, Network Administrators, Software Specialists, Program Officer 2's and Database/Developers. The bargaining unit is comprised of approximately thirteen (13) employees.

The parties are in the process of negotiating their initial collective bargaining agreement and the following issues remain open and are properly before the fact-finder for his recommendation.

1. Article 2 - Management Rights
2. Article 8 - Union Representation
3. Article 14- Hours of Work
4. Article 21-Inclement Weather
5. Article 22-Assignment and Equalization of Overtime
6. Article 23-Overtime - Premium Pay
7. Article 24-Holidays
8. Article 31- Jury Duty
9. Article 36- Court Leave
10. Article 46- Layoffs
11. Article 52-Orientation Training
12. Article 53-Employee Evaluation
13. Article 58-Air Conditioning
14. Article 62- After-Hours Call

15. Article 66-Bargaining Unit Work
16. Article 68-Parking
17. Article 78-Wages
18. Article 82-Successor

The fact-finder incorporates by reference into this Report and Recommendations all tentative agreements between the parties relative to the current negotiations. In making the recommendations which follow, the fact-finder has reviewed the arguments and evidence presented by the parties at hearing, together with their respective position statements.

FACT-FINDING CRITERIA

In the determination of the facts and recommendations contained herein, the fact-finder considered the applicable criteria required Ohio Rev .Code . 4117.14 (C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin.Code Section 4117-9-05(K) as follows:

- 1) Past collectively bargained agreements, if any, between the parties;
- 2) Comparison of the issues submitted to arbitration relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- 3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public services;
- 4) The lawful authority of the public employer;
- 5) Any stipulations of the parties;
- 6) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to arbitration through voluntary collective bargaining, mediation, fact-finding, or other resolution procedures in the public

service or in private employment.

FINDINGS OF FACT AND FINAL RECOMMENDATIONS

Introductions

The record establishes that Cuyahoga County is one of the largest counties in the State of Ohio. The Cuyahoga County Division of Children and Family Services (“CFS”) is a Division of Cuyahoga County Government, and is responsible “to assure children at risk of abuse or neglect are protected and nurtured within a family and the support of a community.” The County employs nearly 800 employees in CFS. CFS, which is one of the largest, if not the largest, child and family service agencies in Ohio, has an annual budget in excess of \$147 million.

The Union has asserted, for the purpose of the establishment of appropriate external comparables, that the following counties in Ohio should be considered:

- 1) Lake County,
- 2) Lorain County,
- 3) Lucas County and
- 4) Mahoning County

The Fact-Finder notes that the Employer neither objected to nor offered any evidence in contradiction to the Union’s list of comparable jurisdictions.

The Employer has entered into collective bargaining agreements with the following unions (collective the “Existing CBAs”):

- 1) The American Federation of State, County and Municipal Employees, Ohio Council 8, Local 27, AFL-CIO (“AFSCME Local 27”)
- 2) The American Federation of State, County and Municipal

Employees, Ohio Council 8, Local 1746, AFL-CIO
("AFSCME Local 1746")

- 3) International Brotherhood of Teamsters, Local 407
("Teamsters Local 407")

The Union contends that, generally, the Existing CBAs are appropriate internal comparables, and more specifically, the AFSCME 1746 collective bargaining agreement (the "AFSCME 1746 CBA") is the most appropriate contractual comparable. The Employer maintains that the AFSCME Local 1746 CBA is not an appropriate comparable given i) the size of the AFSCME 1746 bargaining unit and ii) the fact that the AFSCME 1746 CBA has evolved over approximately 40 years of bargaining between AFSCME 1746 and the County. In the opinion of the fact-finder, the Existing CBAs are appropriate, and will be used herein, as contractual comparables. The fact-finder is of the opinion that AFSCME 27 CBA is the most reliable contractual comparable since a) it represents the initial collective bargaining agreement between the Employer and AFSCME 27, and b) became effective approximately two (2) years ago. The fact-finder does recognize the concern of the Employer regarding distinguishing factors present among the Existing CBAs and the open contractual issues which are the subject of this proceeding, and will give due consideration to the Employer's position on an issue by issue basis herein.

Issue 1: Article 2 - Management Rights

Position of the Union

The Union maintains that the AFSCME 27 CBA and the AFSCME 1746 CBA contain similar Management Rights provision that has been accepted by the Employer in the past, and is

a fair and equitable Management Rights provision for inclusion in the Union's collective bargaining agreement. The Union argues such language protects the interests of the Employer in so much as it clearly indicates that nothing therein impairs the right and responsibility of the Employer "[u]nless the Employer agrees otherwise in the Contract."

Position of the Employer

The Employer's proposed language, while providing for a general management rights provision, is considerably more detailed in identifying a listing of fifteen (15) specific management rights. Most notably one of the specific management rights delineated is the following:

"13. To consolidate, merge or otherwise transfer any or all of its operation facilities, property, processes or work to any other governmental or private entity or to effect or change in any respect the legal status, management or responsibility of such operations, facilities, property, process or work."

The Employer maintains that the foregoing provision is necessary to afford the Employer with the flexibility in addressing potential future strategic management decisions. The Employer contends that its proposed language is more comprehensive and protective of rights necessary to insure flexibility in managing the information systems function for the Department of Health and Human Services.

Final Recommendation

The fact-finder is of the opinion that the concept of "retained management rights" is well accepted in the administration of collective bargaining agreements. The concept of "retained management rights" provides that any right not specifically negotiated away by management is retained by management.

The fact-finder is of the opinion that the language proposed by the Union does adequately protect the management rights and responsibilities of the Employer, does not erode the authority of the Employer under the retained management rights concept, and is consistent with other internal parity comparables, most notably the AFSCME 27 CBA which was negotiated in 2011 and which is, also, the first contract between the Employer and AFSCME 27.

Accordingly, Article 2 of the subject collective bargaining agreement shall provide as follows:

“Unless the Employer agrees otherwise in this Contract, nothing impairs the right and responsibility of the Employer to:

Determine matters of inherent management policy which include, but not limited to areas of discretion of policy such as functions and programs of the Employer, standards of service, its overall budget, utilization of technology, organizational structure; direct, supervise, evaluate, or hire employees; maintain and improve the efficiency and effectiveness of governmental operations; determine the overall methods, process, means, or personnel by which governmental operations are to be conducted; suspend, discipline, demote or discharge for just and proper cause; lay off, transfer, assign, schedule, promote, or retain employees; determine the adequacy of the work force; determine the overall mission of the Employer as a unit of government; effectively manage the work force; determine the overall mission of the Employer as a unit of government; effectively manage the work force; and take actions to carry out the mission of the Employer as a governmental unit. Further, this Article does not limit the rights of the County under Ohio Revised Code Section 4117.08.”

Issue 2: Article 8 - Union Representation

Position of the Union

The Union’s proposal provides for the same language as that contained in the Local 1746 CBA, with slight modification. The Union desires its steward to be treated in the same fashion as other unions’ stewards. The Union is very mindful of the Employer’s operations and is

committed to ensuring grievance investigation and processing does not interfere with its operations. The Union rejects the concept that it must seek permission from the Employer in order to carry out its obligations on behalf of the bargaining unit.

Position of the Employer

The Employer's proposal better meets the operational needs of the Department and is aligned with the language negotiated in 2011 when AFSCME Local 27 was negotiating its first contract. While the Employer understands the duties and obligations the Union has undertaken as the exclusive representative of the bargaining unit members, the Employer needs to have control over the management of its workforce in the necessary and orderly operation of its obligations as a governmental unit.

Final Recommendation

While the fact-finder understands the Union's hesitancy to be required to seek the permission of the Employer in order to undertake its duties and obligations owed to the bargaining unit members, the right to manage the workforce is clearly a management function. One aspect of the right to manage the workforce is the authority of management to determine the adequate staffing requirements to meet the workload demands present. A union official, who is performing a job, at the direction of management, cannot abandon the job in order to perform a Union duty or obligation without the consent of management. Clearly, management must act in a reasonable manner when such a request for consent to leave an assigned job for the purpose of performing a union function is made by a union official. In the opinion of the fact-finder, if the Employer acts in an arbitrary, capricious or discriminatory manner in refusing to give such

consent, then the Union has an actionable grievance under a collective bargaining agreement.

Accordingly, the fact-finder recommends the following provision be inserted as Article 8 in the parties' collective bargaining agreement:

Article 8: Union Representation

Section 1. Employees selected by the Union to act as Union representatives for the purpose of processing grievances under the Grievance Procedure shall be known as "Stewards". Each Steward shall have an alternate who shall act as Steward when the regular Steward is absent from work, or is unavailable due to job duties.

Section 2. The County shall recognize one Steward and one Alternate Steward. The Union shall notify the County regarding the actual assignments of the Stewards by location and/or classification.

Section 3. Stewards shall be permitted to investigate, process grievances, represent employees in pre-discipline conferences, investigatory interviews and handle other related union business during normal work hours without loss of pay.

Section 4. Stewards are expected to perform their job duties and to meet the performance expectations of their jobs.

Section 5. The Union shall furnish the County a written list of names of Stewards and Alternate Stewards, including locations to which each is assigned. Further, the Union shall promptly notify the County in writing of any changes therein.

Section 6. Stewards and Union Officers shall adhere to the following procedure in processing grievances and carrying out all other functions of their offices:

- A. An employee having a grievance as defined herein shall notify his/her Steward who will notify the employee's immediate supervisor to arrange for the release of the employee to meet with the Steward. This shall be done in accordance with the provisions in Section 8 of this Article.
- B. Before leaving his/her job, the Steward shall record on a special Steward Activity Sheet, the time he/she starts his/her union work. (Upon request, a copy of this record will be furnished to the Union.). The Steward must receive the consent of his/her immediate supervisor prior to leaving his/her work station to conduct such union business, such supervisor consent will not be unreasonably withheld.

- C. When it is necessary for a Steward to enter a department (or section of a department) supervised by a supervisor other than his/her own, he/she shall report first to the supervisor in charge and advise him/her of the purpose of his/her being there. When it is necessary for a steward to speak with a bargaining unit employee regarding Union business during times that the employee is expected to be working, he/she shall report to the employee's immediate superior to obtain consent, which consent will not be unreasonably withheld.
- D. Upon returning to his/her job, the Steward shall first report to his/her own supervisor before resuming work if the supervisor is available (or if he/she is unavailable, as soon as possible after resuming work).

Section 7. A Steward having an individual grievance in connection with his/her own work may ask a Union officer to assist him/her in adjusting the grievance with his/her supervisor.

Section 8. If available, Office space shall continue to be provided to the Union. The location of said space shall be at the sole discretion of the County. This space shall be lockable. The Steward shall hold the keys and shall be responsible for the office. The office shall be furnished with: One (1) desk, four (4) chairs, one (1) file cabinet, and one (1) telephone.

Issue 3 Article 14- Hours of Work

Position of the Union

The Union's proposal is the same as contained in AFSCME Local 1746 CBA, except as modified to provide the bargaining unit's right to use a flex-schedule. The Employer has denied the right of

the bargaining unit employees to use a flex schedule.

Position of the Employer

The proposal of the County better meets operational needs and maintains flexibility to manage. It is essential that employees performing overtime assignments be qualified to perform the work. The Employer further maintains that Articles 14, 22 and 23 can be condensed into this one Article 8, entitled Hours of Work and Overtime.

The Employer proposes the following provision in Article 14:

No provision of this Article is intended to create a right or expectation that an employee will be paid or granted compensatory time off time that he/she does not actually work, and no such payment may be granted to remedy an alleged violation of this Article.

Final Recommendation

The fact-finder recommends the condensing of Articles 14, 22 and 23 into one (1) article. The condensed article shall be numbered Article 14. Regarding the Union's request that its bargaining unit members be permitted to have the opportunity to work on a flex schedule, the fact-finder is of the opinion the Employer is not acting unreasonably in not agreeing to that request. Although other bargaining units may have the option to work on a flex schedule basis, the subject bargaining unit has a relatively few number of employees with very specialized skills, and does not work a 24/7 shift schedule like some of the other bargaining units employed by the County. The Employer has maintained, and the fact-finder accepts the Employer's assertion, that managing of this function is more orderly and efficient without a flex schedule opportunity.

Additionally, the Employer seeks to assign overtime to employees based upon classification, skill and ability to perform the work. The Union asserts that overtime must be assigned solely on the basis of seniority on a rotational basis. The fact-finder is of the opinion that seniority is the

cornerstone of any collective bargaining agreement, and unless compelling evidence is present that requires limiting rights that are generally associated with the senior status of employees, the fact-finder does not believe eroding the seniority rights of employees is justified. The fact-finder did not find there was sufficient evidence of a compelling need to require that a determination of skill and ability was a critical factor in the assignment of overtime. The fact-finder recommends that overtime be assigned on the basis of classification seniority on a rotational basis.

The Union, also, sought the right for the subject bargaining unit to work special projects, on, if necessary, an overtime basis. The evidence indicates that the group of employees that constitute the subject bargaining unit had not worked on special projects in the past. Accordingly, the fact-finder does not recommend that the Employer be required to offer such work to the bargaining unit at this time.

The Employer proposed to insert the following provision in Article 14:

No provision of this Article is intended to create a right or expectation that an employee will be paid or granted compensatory time off time that he/she does not actually work, and no such payment may be granted to remedy an alleged violation of this Article.

The fact-finder recommends the language proposed immediately above by the Employer not be inserted into Article 14. The fact-finder cannot find similar language in any of the Existing CBAs, whereby the bargaining unit members are denied a common remedy for a breach of this Article by the Employer.

Accordingly, Article 14 of the collective bargaining agreement shall provide as follows:

Article 14- Hours of Work and Overtime

Section 1. Employees shall be scheduled, as needed, to meet the operational needs of the County. The County reserves the right, as operational needs and conditions require, to establish and change the hours of work, starting and/or ending times of any shift, and/or schedules of hours. In the event it is necessary to reduce the regular work week below forty (40) hours, the County will, before implementing such decision, first meet with the Union to obtain input.

Section 2. The County shall be the sole judge of the need for overtime work. Bargaining unit employees shall be compensated at time and one-half (1.5) their regular hourly rates for all hours worked in excess of forty (40) in one week. The County, at its discretion, shall have the right to offer compensatory time in lieu of pay for overtime. Approval of compensatory time off shall be at times that are mutually agreed to by the employee and the employee's supervisor and shall be based on operational needs. To be eligible to use compensatory time, employees must provide at least 72 hours advanced notice in writing of their compensatory time off requests. Compensatory time off must be taken within 180 calendar days of its accrual or it will be converted into cash payment.

Section 3. For purposes of computing overtime pay, holidays, vacation leave and any other time in active pay status, except sick leave, shall be counted as hours and days worked.

Section 4. Employees shall be allowed a one (1) hour paid lunch period, which may be delayed or interrupted based on operational needs. In addition, County employees may receive two paid rest breaks of fifteen (15) minutes in duration. All rest breaks and lunch periods are to be scheduled by the employee's immediate supervisor based on the operational needs of the employee's unit in accordance with the following provisions:

- a) One rest break may be taken in the first half of the work day and one may be taken in the second half of the work day;
- b) Rest breaks shall not abut the end or the beginning of the lunch period.
- c) Rest breaks and lunch periods cannot be used to make up tardiness or quitting early. For example, an employee who is scheduled to end his or her day at 4:30 p.m. may not leave for the day at 3:30 p.m. and take his or her lunch from 3:30 to 4:30 p.m.; and,
- d) An employee must return to work after lunch period to be considered a lunch period. For example, an employee may not take his or her lunch period from 12 p.m. to 1 p.m. and then take sick leave from 1 p.m. until the end of the day. The employee will be required to use his or her own leave time to cover the period from 12 p.m. to 1 p.m. If, however, the employee only used sick leave from 1 p.m. until 2 p.m. and returned to work for the remainder of the day, the 12 p.m. to 1 p.m., period would be considered a proper lunch.

Section 5. Overtime shall be offered by classification seniority on a rotational basis. Overtime may be offered for a project and/or on an individual workload basis. Overtime offered and refused shall be counted as overtime worked (approved absence does not equal refusal). The

County shall have the ability to assign mandatory overtime starting with the least senior employee on a rotational basis. Overtime accepted and not worked will be considered AWOL and subject to discipline pursuant to the County's Attendance Control policy, unless the employee's absence is excused by management. Overtime accepted and not worked may subject an employee from removal from the project unless absence is excused by management.

Issue 4. Article 21-Inclement Weather

Position of the Union

This is the same language as contained in AFSCME 27 CBA. AFSCME 1746 CBA requires bargaining unit employees to call in by 10:00 a.m. The Union originally proposed AFSCME 1746 language, but then modified its proposal to conform with AFSCME 27.

Position of the Employer

The language proposed by the Union is identical to the language found in AFSCME 27 CBA. While the County agrees pattern bargaining is appropriate for economic issues, it does not agree that pattern bargaining is appropriate for issues impacting operations. The employees in this bargaining unit are very different. Negotiating a first contract with information technology employees cannot be formulaic as cutting and pasting from a labor contract that has developed over 4 decades of collective bargaining with a group that largely consists of social workers and welfare specialists. The same history and rationale that led to the development of this language does not exist with the new bargaining unit. The Employer seeks to negotiate language that, to the extent possible, meets the interests of the employees, but at the same time does not conflict with operational needs.

Final Recommendation

The fact-finder recommends a slight modification to the Inclement Weather provision found in the AFSCME 27 CBA., for insertion in the subject collective bargaining agreement. It clearly is more advantageous for the Employer to be advised of an employee (s) absence prior to the shift commencement, to permit the Employer the time to address the necessary work assignments to cover such absence(s). However, the reasonableness of requiring an employee to contact the Employer prior to the start of his assigned work shift, in circumstances of inclement weather, is dependent upon a number of variables, some of which are out of the control of the employee. For instance, an employee might depart his/her home, only to discover the weather and/or road conditions are much worse than anticipated and determines he/she needs to turn around and return home. The distance an employee has to travel to work certainly impacts the amount of time it would take to venture out, and then to turn around and return home. Such unsuccessful good faith effort to report to work might easily take over an hour before the employee returns to his/her home to call the Employer to report off. While the fact-finder understands the impact of cell or mobile phones may have in this situation, the usage of such equipment should be discouraged, not encouraged, when driving in hazardous conditions.

In the opinion of the fact-finder, the recommended provision below requires the employee to make a good faith effort to contact the Employer of his/her absence from work due to inclement weather, but recognizes the impracticality of necessarily being required to do so under all circumstances. The recommendation for a permissible time limit (1 hour) after the start of the scheduled work time for the bargaining unit employee to call in to report off under inclement weather conditions, is reasonable and is consistent with the provisions of the AFSCME 27 CBA.

Accordingly, Article 21 of the collective bargaining agreement shall provide as follows:

Article 21- Inclement Weather

Whenever, the County Executive declares a closing of County offices due to inclement weather, the following rules shall apply:

Section 1. **WHOLE DAY CLOSING:** If the County offices are closed for an entire day, all employees who were scheduled to work on that day shall be paid their regular straight time rate for any regular hours they were scheduled to work. Employees not scheduled to work on an inclement weather day due to vacation, sick leave, compensatory time, etc., shall be charged for the leave as though no inclement weather day was declared. For the purpose of this section, Article 19 (Report in Pay) shall not be applicable.

Section 2. **PARTIAL (EARLY) DAY CLOSING** If the County offices are closed after the start of a regular work day, directors or their designee shall have discretion to designate essential staff, in accordance with Article 22; who shall be required to remain at work as though no inclement weather day was declared. All employees not designated as “essential staff” who reported for work and are present when the office closing is announced, shall be paid their regular straight time rate for the remainder of their normal work day as though they were at work. Essential staff shall remain at work. However, such employees shall receive “early closing time” on an hour for hour basis. The early closing time must be exhausted within ninety (90) calendar days from the date of accumulation.

Section 3. **SEVERE WEATHER ABSENCE.** When an employee is tardy or unable to report to work due to severe weather conditions on days that are not declared inclement by County Executive, the employee must make a reasonable effort to contact his/her supervisor prior to the start of his/her shift but the employee must, in any event, contact his/her supervisor no later than one (1) hour after the scheduled start of his/her shift. The supervisor may authorize the use of vacation, comp time, leave without pay, or early closing time. Said authorization shall not be unreasonably denied. An employee who fails to contact his/her supervisor within one (1) hour after the start of his shift will be charged off duty for the time absent from work unless circumstances beyond the employee’s control prevent such timely contact.

Issue 5. Article 22-Assignment and Equalization of Overtime

Position of the Union

The Union proposal contains the same language as is found in AFSCME Local 1746

CBA except for a slight modification that gives the bargaining unit the right to work on special projects. The Employer has, in the past denied bargaining unit members the right to work on special projects, while permitting similarly situated non-bargaining unit employees to perform such work. The proposal also allows employees to perform special projects without daily interruptions, which allows employees to be more productive and perform their jobs more efficiently.

Position of the Employer

The Employer rejects the Union's proposal because it does not suit operations of the workers who will be covered by this new CBA. The language again is cut and pasted from the AFSCME Local 1747 contract and contains rules for 24/7 operations that do not exist with regard to this bargaining unit. The Employer's proposal is more consistent with the existing terms and conditions of the covered employees.

Final Recommendation

The fact-finder recommends that this provision be consolidated with the Hours of Work and Overtime article found hereinabove in Article 14.

Issue 6. Article 23-Overtime - Premium Pay

Position of the Union

The language is the same as contained in AFSCME 27 CBA and AFSCME 1746 CBA.

Position of the Employer

The Employer's proposal is embodied in its proposed Hours of Work and Overtime article.

Final Recommendation

The fact-finder recommends that this provision be consolidated with the Hours of Work and Overtime article found hereinabove in Article 14. All Articles following Article 21 shall be renumbered as a result of Articles 22 and 23 being incorporated into Article 14 above.

.Issue 7. Formerly Article 24 now Article 22 -Holidays

Position of the Union

This is the same language contained in AFSCME 1746 CBA and AFSCME Local 27 CBA. The only issue is whether bargaining unit employees should be entitled to one (1) personal day. As other employees in the same building receive at least one (1) personal day, the fact-finder should recommend the same for bargaining unit members.

Position of the Employer

The proposal of the County better meets operational needs and maintains flexibility to manage.

Final Recommendation

The fact-finder recommends that the subject bargaining unit members be permitted to take one (1) personal day per year, based upon the staffing and procedure requirements of the Employer. The evidence indicated that all of the other bargaining units are permitted to take personal leave, while the Employer has refused to permit the subject bargaining unit from taking any personal days. The fact-finder found no compelling reason to deny the subject bargaining unit a right that has been afforded to other bargaining unit employees of the County.

Accordingly, Article 22 of the collective bargaining agreement shall provide as follows:

Article 22: Holidays

Section 1. All regular full-time employees shall be entitled to the following holidays: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving and Christmas Day.

Section 2. Should any of the recognized holidays fall on a Sunday, the following Monday shall be observed as the holiday. Should any of the recognized holidays fall on a Saturday, the preceding Friday shall be observed as the holiday.

Section 3. To be entitled to holiday pay, an employee must be on the active payroll (i.e., actually receives pay) during the week in which the holiday falls. Further, to be entitled to holiday pay, employees must actually work the scheduled workday before and the scheduled workday after the holiday. Employees working in seven day operations who are scheduled to work a holiday must work it to be entitled to holiday pay. For the purposes of this paragraph, prior approved vacation, verified funeral leave, verified accident or injury which requires hospitalization as in-patient or out-patient, and any other written prior approved paid leaves of absence will be considered as hours worked.

Section 4. An employee who does not work on a recognized holiday shall receive eight (8) hours straight time pay at his/her regular hourly rate. If an employee's work schedule is other than Monday through Friday, he shall receive eight (8) hours straight time pay at his/her regular rate for the holiday observed on his/her day off or at the option of the employee, eight (8) hours straight compensatory time at the regular rate. The eight (8) hour compensatory time also may be used as an alternate day off in the week that the actual holiday occurs.

Section 5. All employees who work on a recognized holiday shall receive eight (8) hours holiday pay in addition to time and one-half (1-1/2) their regular rate of pay for all hours worked on the holiday.

Section 6. All regular full-time employees shall be entitled to one (1) personal day in each calendar year. The personal day may be used contingent upon the operational needs of the Employer. A written request for use of a personal day must be submitted at least twenty-four (24) hours in advance. In the event numerous requests are made for a certain day, seniority shall govern. A personal day must be used in a full eight (8) hour increment. Probationary employees (new hires) are ineligible to use a personal day. A personal day cannot be accrued from one calendar year to another.

Issue 8. Formerly Article 31 now Article 29- Jury Duty

Position of the Union

The Union's proposal provides the same language as that contained in AFSCME 1746 CBA and AFSCME 27 CBA.

Position of the Employer

The proposal of the County better meets operational needs and maintains flexibility to manage. The Employer contends that as a public sector employer it has a responsibility to assure the expenditure of taxpayers funds is prudent and responsible. If a bargaining unit employee can reasonably return to work after completing his/her jury duty obligation for at least one (1) hour of work, then the employee should do so.

Final Recommendation

The fact-finder recommends the incorporation of the language contained in the AFSCME 27 CBA into the subject collective bargaining agreement. While the Employer presented argument supporting its contention regarding this issue, the Employer did not present a compelling case as to why this bargaining unit should be required to do more in connection with this provision than do the other bargaining units with which the Employer has contractual relationships. The fact-finder does find that the issues raised by the Union in connection with logistical compliance concerns, such as the distance an employee will be required to travel from his/her home county (or city) to work after completing jury duty, does complicate the even handed administration of the Employer's proposal.

Accordingly, Article 29 of the collective bargaining agreement shall provide as follows:

Article 29 -Jury Duty

An employee called for jury duty or subpoenaed as a witness shall be granted a leave of absence for the period of jury service or witness service, and will be compensated for the difference between his/her regular pay and jury duty or witness pay for work absences necessarily caused by the jury duty or witness duty. To be eligible for jury duty pay or witness pay, an employee shall turn in to the County a jury pay voucher showing the period of jury service and the amount of jury pay or witness pay received.

Issue 10. Formerly Article 36 now Article 34- Court Leave

Position of the Union

The Union's proposal provides the same language as that contained in AFSCME 1746 CBA and AFSCME 27 CBA.

Position of the Employer

The proposal of the County better meets operational needs and maintains flexibility to manage. The Employer's proposal provides that a bargaining unit member "may be granted time off without pay, paid vacation or paid compensatory time off" to attend a court proceeding.

Final Recommendation

The bargaining unit members of AFSCME 1746 and AFSCME 27 are entitled to time off from work without pay to attend court proceedings where the employee is a party to a lawsuit. The Employer's proposal does not grant the right to time off to attend court hearings, but provides that the bargaining unit employee "may" be entitled to take the day off to attend the court hearing. There is no evidence of a compelling reason for the Employer to treat the subject

bargaining unit members different than the bargaining unit members of AFSCME 1746 and AFSCME 27 with regard to this provision. Further, Court hearings are most often compulsory matters which require a party's attendance. In such compulsory matters, the fact-finder can find no justification for treating the subject bargaining unit employees more stringently than the other bargaining unit employees under their respective Existing CBAs.

The fact -finder recommends the adoption of the Union's proposal for this article.

Article 34 - Court Leave

An employee who is a party to a law suit shall be granted time off without pay to attend the Court proceedings. The employee will furnish proof by showing the department head or designee the Court notification of the scheduled hearing.

Issue 11. Formerly Article 46 now Article 44 - Layoffs

Position of the Union

The Union's proposal is the same as contained in AFSCME 1746 CBA, with only slight modification. The Union 's proposal provides that the Employer may take into consideration whether an employee, after being displaced in a reduction of forces, is "qualified" to "bump" into another position based upon seniority ranking. The Union seeks a thirty (30) day advance notice be given the Union of an impending layoff, and the affected employees be given a thirty (30) day advanced notice of their layoff. The Union proposal provides for the ability of a senior employee to "bump" a junior employee based upon the bargaining unit seniority of the affected employees. Further, the Union seeks to have a probationary period of 180 calendar days for laid-off employees who accept a vacancy in another classification, or who are recalled into the

classification they held at the time of the layoff but in another division. If the laid-off employee fails the probationary period, the Union proposes to place the employee back on the recall list.

Position of the Employer

The Employer contends in the selection process for layoffs, including bumping rights, the Employer must have the right to base its decisions on, among other things, the respective skills, abilities and experience of the affected employees. The Employer proposes to give the Union advanced notice of a layoff, and to provide the Union the opportunity to discuss the impending layoff. The Employer further proposes to give the affected employees a fourteen (14) calendar day advance notice of the layoff. The Employer proposes to provide a laid-off employee who bumps into another classification or a position in the same classification but in a different operational unit a 120 day probationary period.

Final Recommendation

One of the differences between the proposal of the Employer and the Union regarding this contractual provision involves whether layoffs, bumping rights and recall rights are dependent upon whether the employee is “qualified” to meet the operational need (the “Union’s Layoffs Proposal”), or whether the employee must “possess the skill, ability and experience necessary” to meet the Employer’s operational need (the ‘Employer’s Layoffs Proposal”).

The fact-finder notes the term “qualified” is the term that the Employer recently found acceptable in the Layoff provision of the AFSCME 27 CBA. It is important to note that whether

an employee is “qualified” is a determination of the Employer, and subject to review only if such determination is arbitrary, capricious or discriminatory. Since the determination regarding the qualifications of affected employee’s is a management function, the fact-finder is of the opinion the provision the Employer agreed to in the AFSCME 27 CBA is adequate for insertion in the subject collective bargaining agreement.

Further, the fact-finder notes that in the recall provision of the Employer’s Layoff Proposal, a recall of an employee is based upon the employee being “qualified”. The fact-finder is of the opinion the standard for determining the eligibility of an employee for layoff, bumping and/or recall rights should be consistent in this provision.

With regard to the timing provision proposals of the parties, the fact-finder finds the following requirements to be reasonable:

- 1) The Employer shall give the Union an advanced thirty (30) calendar day notice prior to notifying affected employees of an impending layoff.
- 2) The Employer shall give affected employees at least a fourteen (14) calendar day advance written notice of the layoff.
- 3) The probationary period for an employee bumping into another classification or in the same classification but in a different operational unit shall be 120 days.

Accordingly, Article 44 of the collective bargaining agreement shall provide as follows:

Article 44 - Layoffs

Section 1. Whenever it is necessary because of lack of work or funds or whenever it is advisable in the interest of economy or efficiency to reduce the working force, employees shall be laid off based on inverse order of seniority within their job classification(s) provided that there are senior employees who, in the opinion of the County, are qualified to meet its operational needs.

Section 2. An employee shall have the right on the basis of bargaining unit seniority to bump another employee within his/her own or lower rated job classification provided that the bumping

employee is qualified to meet the operational needs of the County. An employee who bumps into another classification or a position in the same classification but in a different operational unit shall be required to serve a 120 probationary period. An employee who fails such probationary period shall be laid off and placed on a recall list. Notwithstanding the above, IT personnel and Program Officers shall not have bumping rights between the two groups.

Section 3. Before any bargaining unit employee is notified of his/her layoff, the County shall give the Union a minimum of thirty (30) day written advance notice of the impending layoff and provide it with an opportunity to discuss the matter and provide input.

Section 4. Affected employees shall be given a minimum of 14 calendar days advanced written notice of layoff.

Section 5. In the event an employee is laid off, he/she shall receive payment for earned but unused vacation and for any unpaid compensatory time off no later than 14 calendar days after the effective date of the layoff.

Section 6. Recall lists shall be created for each classification for which there is an employee who was laid off. The most senior employee on the list for a given classification will be recalled when a vacancy that the County determines to fill in that classification arises provided that the employee is qualified to perform the work.

Section 7. An employee on layoff will be given 14 calendar days' notice of recall from the date on which the County sends the recall notice to the employee by certified mail to his/her last known address as shown on the County's official personnel records. It is the obligation of the employee to keep the County advised in writing of his/her current address.

Section 8. If an employee fails to report back to work when recalled within the 14 calendar day period stated above, his/her employment shall be separated, unless satisfactory excuse is shown.

Issue 12. Formerly Article 52- now Article 50 Orientation and Training

Position of the Union

Adequate training is essential to the operation of professional IT department or any other job utilizing computers, computer software or networks. As hardware and software are constantly evolving, it only makes sense that employees maintaining, operating, upgrading and

repairing are trained. Trained employees also serve to assist employees in becoming more efficient and productive. An untrained employee learns from trial and error which could take away from the project at hand. Worse yet, it may result in other employees receiving wrong information or damaged hardware.

Position of the Employer

The proposal of the County better meets operational needs and maintains flexibility to manage. The Employer's proposal provides for new hire orientation and for subsequent training as the Employer determines necessary to enhance the ability of the bargaining unit to perform their jobs.

Final Recommendation

There is, perhaps, no area where changes occur as quickly and as regularly as in the IT area. Improvements in technology, both hardware and software, is the routine and not the exception, in processing information. The fact-finder agrees with the Union's assertion that training for IT employees is critical in order to maintain their level of expertise in both the operation of the County's data systems and in the training of other individuals who need to work within the framework of the County's data system. While the need for training of bargaining unit employees is evident, the inherent management right of the Employer must still be recognized.

Accordingly, the fact-finder recommends that if a bargaining unit member is of the opinion that he/she requires training to properly perform his/her job duties, the employee must seek the consent of the Employer to attend such training. When addressing the request for training by a bargaining unit member, the fact-finder proposes that, although consent is a

management prerogative, consent to attend training will not be unreasonably withheld by management. Accordingly, Article 50 of the collective bargaining agreement shall provide as follows:

Article 50 -Orientation and In-Service Training

Section 1. The County shall provide new hire orientation. The County shall provide the Union with the opportunity to speak to all new bargaining unit employees within ten (10) working days of their starting date of hire. The Union shall contact the Department of Human Resources to coordinate scheduling.

Section 2. The County will provide training when it determines such training is necessary to enhance the ability of bargaining unit employees to perform their jobs. Bargaining unit employees may submit written requests, with written supporting documentation, to the Employer for additional training that the employee believes is necessary to perform their jobs.. The County shall not deprive an employee of offered or requested training opportunities for unreasonable, arbitrary or capricious reasons.

Issue 13. Formerly Article 53- now Article 51 - Employee Evaluation

Position of the Union

The Union maintains that the Employer must provide an evaluation form that includes, among other things, an area designated for comment by the bargaining unit employee. Further, the Union requests that the Employer provide notice to a bargaining unit member at the time the Employer receives a negative comment concerning the employee's job performance that may ultimately impact the evaluation of the employee. The Union also seeks a contractual provision that requires that employee evaluations be completed within thirty (30) calendar days after his/her employment anniversary date. In addition the Union proposes that when an employee leaves a supervisor for any reason, that the supervisor will provide the employee an evaluation upon the employee's request.

Position of the Employer

The proposal of the County better meets its operational needs and maintains flexibility to manage. The County's proposal requires an annual evaluation of the bargaining unit employees, with the right of the employee to submit a memorandum containing comments or objections to the evaluation. That memorandum will be attached to the evaluation form.

Final Recommendation

The fact-finder is of the opinion that the proposal of the Employer adequately protects the bargaining unit employees' interest in the performance evaluation process. Also, an annual performance evaluation is reasonable, and customary in most employee - employer relationships. The right of the employee to comment or object to an evaluation by appending a memorandum to the evaluation form adequately addresses the Union's concern. The fact that there is not a specific area provided on the evaluation form for an employee's comment is not a fatal flaw with regard to the Employer's proposal. A hard deadline requirement as to when an evaluation must be completed is not necessarily practical. The fact-finder recommends the Employer conduct the evaluation within a reasonable time following the employee's anniversary date.

Accordingly, Article 51 of the collective bargaining agreement shall provide as follows:

Article 51 -Employee Evaluation

Section 1. Each employee shall be evaluated by his/her immediate supervisor at least once annually, and within a reasonable time period after the employee's anniversary date..

Section 2. The employee shall be given an opportunity to examine his/her evaluation and to discuss the findings with his/her supervisor and to sign the evaluation form to indicate that he has done so. The employee's signature shall be viewed as a representation that the employee reviewed the

evaluation and does not indicate the employee's concurrence with the information contained therein. In the event an employee refused to sign an evaluation form, it shall be so noted on the form by the supervisor. The employee may submit a written statement containing comments or objections. The employee's statement will be attached to the form and filed in the employee's personnel record. Employees will receive a copy of his/her performance evaluation form and any attached statement.

Section 3. An employee may request a review of their evaluation within 30 calendar days from the date he/she signed the evaluation. The Department head or his/her designee will conduct the review in the presence of the employee. It may result in a higher score, a lower score, or the same score

Issue 14. Formerly Article 58 now Article 56-Air Conditioning

Position of the Union

This is the same language as contained in AFSCME Local 1746 CBA and AFSCME 27 CBA with the addition of the requirement that bargaining unit employees will not be required to work in temperatures in excess of 78 degrees. The bargaining unit employees have been required to work in areas without air conditioning or with malfunctioning heating, resulting in exposure to very high work temperatures as high as 90 degrees. The Employer has failed to address this issue in a timely manner in the past.

Position of the Employer

The proposal of the County better meets operational needs and maintains flexibility to manage. To a large extent, the Employer is limited in its ability to control the temperatures in the various work locations based upon existing lease and property conditions. To require the Employer commit to a provision that permits an employee to not work as a result of a situation out of the direct control of the Employer is unreasonable. The Employer will make a good faith effort to address the concerns of the employees with regard to their work room temperature.

Final Recommendation

The issue of controlling the temperature in the room (s) within which the bargaining unit members are required to work is clearly a significant issue. The record reflects that in the past, employees have had to work for an extended period of days in temperatures that exceeded 90 degrees due to either malfunctioning heating or cooling systems. There is no question that the bargaining unit employees are entitled to reasonable working conditions. In the opinion of the fact-finder, working in temperatures in excessive heat conditions is an issue that must be addressed by management.

The Union seeks a specific right to not work when the work area temperature exceeds 78 degrees. In the opinion of the fact-finder, such a specific contractual requirement is not reasonable. The Employer must have some flexibility to address the temperature problems which have affected employees in their working areas in the past. The fact-finder recommends that the Employer make a good faith effort to relocate the employees if it cannot remedy the temperature problem within a reasonable time. The contractual standard of “good faith” is a significant standard, and requires the Employer to actively take steps to resolve the problems identified herein.

Accordingly, Article 56 of the collective bargaining agreement shall provide as follows:

Article 56 - Air Conditioning

The County shall attempt to provide air conditioning at all of its locations as soon as current leases allow or at the time new leases are negotiated, whichever is sooner. At those locations which are presently air conditioned, the equipment shall be adequately maintained so as to be operable at all times. If, due to equipment failure or malfunction, the room temperature in the

bargaining unit employees' work area exceeds 78 degrees for longer than a de minimis period of time, the County will make a good faith effort to relocate the employees within a reasonable period of time.

Issue 14. Formerly Article 62 - Now Article 60 - After Hours Calls

Position of the Union

The Union seeks payment for a bargaining unit member for any work related call placed to the employee after his/her work hours.

Position of the Employer

The Employer proposes that a bargaining unit member that is called after hours and is actually required to perform his/her work, shall be paid for the time of the call.

Final Recommendation

The fact-finder notes the Employers time system allocates compensable time in increments of fifteen (15) minutes. Accordingly, an employee must work at least fifteen (15) minutes before the system will recognize compensable time worked.

Accordingly, Article 60 of the collective bargaining agreement shall provide as follows:

Article 60 - After Hours Calls

Whenever an employee is called after hours and is required to perform his/her work for fifteen minutes or more, he/she shall be paid for the time of the call.

Issue 15. Formerly Article 66- new Article 64 -Bargaining Unit Work

Position of the Union

The Union seeks to stop the erosion of the bargaining unit. Since the Union filed its petition to organize the bargaining unit, the Employer has failed to fill the position of Network Administrator. The Employer has assigned the duties formerly performed by the Network Administrator to non-bargaining unit Network Managers. The Union recognizes the right of the Employer to use supervisors and non-bargaining unit members to perform work that can or has been performed by bargaining unit employees, provided no bargaining unit employees are laid off and such assignments do not reduce working hours or overtime opportunities for the bargaining unit.

Position of the Employer

The proposal of the County better meets the operational needs and maintains flexibility to manage. The Employer proposes that it have the right to use supervisors and non-bargaining unit members to perform work that can or has been performed by bargaining unit employees, provided no bargaining unit employees are laid off and such assignments do not reduce working hours for the bargaining unit. Specifically, the Employer does not believe that the Union's proposal that such assignments do not reduce overtime opportunities is not reasonable.

Final Recommendation

The fact-finder recommends that the proposal of the Employer be adopted. The fact-finder is of the opinion such proposal is reasonable, and is consistent with the provisions of the AFSCME 27 CBA. The fact-finder did not find that the Union presented a compelling reason to

treat the bargaining unit employees herein differently than the AFSCME 27 bargaining unit members are treated under the provisions of AFSCME 27 CBA.

Accordingly, Article 64 of the collective bargaining agreement shall provide as follows:

Article 64 - Bargaining Unit Work

In the interest of efficient and/or effective operations, the County may use supervisors and other non-bargaining unit employees to perform work that can be or has been performed by bargaining unit employees, provided such assignment does not reduce working hours or result in layoff of bargaining unit employees. The County will not transfer work out of the bargaining unit for arbitrary or capricious reasons, or if such a transfer results in the erosion of the bargaining unit.

Issue 16. Formerly Article 68- now Article 66 -Parking

Position of the Union

This is similar language to that contained in AFSCME 1746 CBA. AFSCME 27 CBA provides for reimbursement for parking while away from their office on official agency business, provided receipts are presented. The Union contends that employees with a pay grade of 12 or higher also receive parking for free.

Some of the subject bargaining unit employees leave their building to perform their jobs, the Employer should pay for their parking. The Union proposes that the Employer pay all bargaining unit employees five dollars (\$5) each day for parking, until the Employer provides a parking lot to accommodate all eligible employees.

Position of the Employer

The proposal of the County better meets the operational needs and maintains its flexibility to manage. The Employer also maintains that there is a shift away from providing paid parking for employees, and that trend is magnified in connection with the construction of the new County administration building being built in Cleveland.

Final Recommendation

This issue was of significant importance to the Union. The Union asserted that the Employer pays for the parking of all employees who are a pay grade 12 or higher, and the Union proposes that its bargaining unit members occupying pay grade 12 or higher also have their daily parking expenses paid by the Employer. In the opinion of the fact-finder, the evidence was not clear that all employees at grade 12 and above, at provided paid parking by the Employer. Further, the Employer proposal is similar in nature, and even enhanced, to the provision contained in the AFSCME 27 CBA. The fact-finder can find no provision in any of the Existing CBAs where the Employer is required to pay a flat rate to subsidize an employee's parking expense for the entire bargaining unit. The fact-finder cannot recommend that the Employer be required to pay each of the subject bargaining unit members \$5 per day for parking.

Accordingly, the fact-finder finds the proposal of the Employer to be reasonable, and recommends its adoption herein.

Accordingly, Article 66 of the collective bargaining agreement shall provide as follows:

Article 66- Parking

If any employee must pay for parking while away from his/her office on official agency business, he/she will be reimbursed the actual amount that was paid for parking. Receipts for this expenditure must be presented.

If in any month an employee is required to use his/her personal vehicle in the course and scope of his/her employment on 50% or more of his scheduled work days in that month, he/she shall be reimbursed for his/her actual parking expense for that month incurred at the lots provided by the County.

Issue 17. Formerly Article 78- now Article 76 -Wages

Position of the Union

Most of the bargaining unit employees' current salaries are 15 to 20 percent below industry standards and are not comparable to their peers at other governmental agencies. In September of 2012, the County Council passed Ordinance No. 02-012-0024 (the "Schedule B Ordinance"), which created a separate pay schedule ("Schedule B") for technology positions in the County and included higher pay rates across the pay grades.

The Schedule B Ordinance contained a provision that stated the higher pay rates were required because labor market conditions in the computer industry were restricting the County's ability to maintain and recruit information technology employees. Other information technology positions were moved into the Schedule B pay schedule. However, the bargaining unit employees were left in the lower pay rate Schedule A, and were paid less than other employees in the County in similar positions.

Additionally, non-bargaining unit employees received a merit bonus in June 2013 based upon their 2012 performance (the "2012 Merit Bonus"). The bargaining unit members were denied the bonus even though SERB did not certify the unit until April 2013. The subject bargaining unit

members earned the 2012 Merit Bonus based on their job performance in 2012, and were entitled to receive the bonus in 2013.

In order to bring the bargaining unit members into parity with other employees in similar positions the Union requests that the fact-finder recommend the following:

- 1) Place all bargaining unit members in Schedule B.
- 2) Establish ten (10) seniority steps for each classification within the pay ranges of Schedule B.
- 3) After the correct wage rate is established, provide for the following general wage increases:
 - A. First year 3%
 - B. Second year 3%
 - C. Third year 3%

For the past eight (8) years, the bargaining unit employees were denied any cost of living raises to account for inflation and general cost of living increases. In order to make up for those inequities, corrective action is warranted in moving the employees to the Steps in which they would have been placed, but for the County's conduct, and in implementing a slightly higher yearly wage rate increase than would be typical.

In addition to the foregoing, the Union seeks to have the fact-finder recommend that the Help Desk Technicians and Software Specialist (Pay Grade 7) positions be reclassified as Network Administrators, or paid at the applicable pay grade (Pay Grade 10). The County has previously performed a job audit for the Software Specialist position, and determined that the position should be reclassified as Network Administrator. However, no action has been taken on such recommendation. It is clear from the evidence that the help Desk Technician and the Software Specialist perform the essential functions of the Network Administrator position, and should be reclassified accordingly.

Additionally, the Union seeks the that current Network Administrator position should be reclassified as a Network Manager, or paid at the applicable pay grade (Pay Grade 13).

The evidence establishes that the bargaining unit positions are paid substantially less than similar positions in the counties of Lake, Lorain and Lucas. Similarly, the evidence establishes that the bargaining unit members are paid substantially less than comparable employees working for the State of Ohio.

The Union maintains that the Employer has the financial ability to pay the wage increases that are proposed by the Union. Further, as suggested by the evidence submitted, the County's revenue stream is expected to increase over the next three (3) years. As of 2013, the County had a surplus of approximately \$3.5 million dollars.

As such, the Union contends there is no reasonable argument that the County is not in a financial position to afford to compensate adequately the members of the bargaining unit.

Position of the Employer

The Employer's wage proposal for the bargaining unit employees is as follows:

- a) 2013- Either Option 1- A lump sum payment based on the employee's evaluation based on the same parameters that were implemented for non-bargaining employees, or Option 2 - A 1% increase in base wages effective on the first day of the full pay period following ratification of the Agreement by both parties.
- b) 2014- A 2% increase in base wage rates to be effective on the first day of the first full pay period in January 2014,
- c) 2015- Wage Re-opener negotiations.

The Employer notes that the employees of the bargaining unit already received a 1% increase to base wages for 2013. The County has offered the following options: (1) to be treated

in the same manner as non-bargaining employees were treated in 2013 (1% wage increase plus a one-time performance bonus of either \$ 500 , \$ 1,000 or \$ 1,500 based on the employees performance evaluation) or 2) in the same manner as all other bargaining unit employees (an additional 1% increase to base wages that would bring them to the same 2% that all bargaining employees received). The County's position and proposed language is predicated upon: 1) pattern bargaining, 2) the current financial and budgetary condition of the County and 3) external and internal equity considerations.

The Employer contends its wage proposal is fair, and when compared to the other Ohio counties that have been identified as comparables, the clear superiority of the County's employees' health care benefits must be taken into consideration when viewing the employees' total compensation package. The bargaining unit employees' have no, or very little, out of pocket expense as a result of the superior health care benefits the Employer provides.

The Employer is not proposing a seniority based step schedule for the bargaining unit employees. The County believes wage increases should not be automatic based upon number of years of service, but wage increases should be based upon the merits of an employee's job performance.

As to the financial condition of the County, the Employer acknowledges that things have improved over the past few years, but the County is still in a very fragile financial condition. Increases in revenue like sales tax collections has been offset by State budget cuts and decreases in other major funding sources. The core revenue sources of the County have declined by almost 5% since 2011.

For 2012 and 2013, the Health and Human Services Levy Fund expenditures exceeded revenues by \$4 million and \$ 4.1 million, respectively.

It must be recognized that most revenue streams are flat and there is still risk related to slow economic growth and very low short-term interest rates. Some sources like investment income will not recover in the near future.

In summary, based upon i) the current and projected financial condition of the County and ii) internal and external comparables, the proposal of the County is fair and equitable, and should be adopted by the fact-finder.

Final Recommendation

The record reflects that the members of the bargaining unit have not had a cost of living increase or inflation adjustment since 2005, and the bargaining unit members were not paid the 2012 Merit Bonus. Further, while other IT positions were moved to a newly established Schedule B wage schedule, the bargaining unit members were not moved, since the Union was in the process of being certified as the exclusive representative of the bargaining unit. When comparing the IT positions in the CFS division to comparable positions in the counties of Lake, Lorain, Lucas and Mahoning, the bargaining unit employees consistently receive a lower wage rate.

In the opinion of the fact-finder the most reliable comparable is the internal comparable, which the County formulated and memorialized as Schedule B. In 2012, the County determined that the wages specified in Schedule B were fair and adequate compensation for the non-bargaining unit IT employees of the County. It appears logical then to the fact-finder, that since the bargaining unit members duties and functions are comparable to those of the non-bargaining unit IT employees, then

the compensation of the bargaining unit members should be at least comparable to the non-bargaining unit IT employees. While the fact-finder does not find that the bargaining unit members are to be “moved” over to Schedule B, the fact-finder is of the opinion that Schedule B should be used as the basis for establishing the wages for the bargaining unit. Unless the bargaining unit is paid, in their initial CBA, at least approximately on par with the non-bargaining IT employees, the subject bargaining unit will have difficulty in ever achieving parity with comparable non-bargaining unit County IT employees.

By using Schedule B as the primary comparable for wages, the issue of the health insurance impact on total compensation becomes moot, since the health insurance is assumed to be essentially equivalent for all County groups.

Further, while the Employer proposed that the bargaining unit’s wages should not be founded upon a seniority based step program, the fact-finder notes that AFSCME 1746, AFSCME 27 and Teamsters 407 have schedules of wages based on programs of 6 steps, 5 steps and 6 steps respectively. Additionally, Schedule B, as well as Schedule A , reflect salary schedules based upon 17 step programs. Based upon internal comparables, the fact-finder is of the opinion that the wages for the bargaining unit herein should also be based upon a seniority step program, as well. The fact-finder can find no compelling justification to treat the subject bargaining unit members differently by rejecting the Union’s request to have a seniority based step wage schedule in the subject collective bargaining agreement.

The Union has proposed that the 17 step Schedule B be condensed to 10 steps for inclusion in the subject CBA. The fact-finder can not recommend converting Schedule B to a 10 step

schedule. The fact-finder believes the proposal of the Union is excessive given the acceleration of Step 17 of Schedule B to Step 10 in the subject collective bargaining agreement.

Again, the fact-finder is not adopting Schedule B for incorporation into the subject collective bargaining agreement, rather the pay structure contained in Schedule B is being used solely as a comparable for establishing the wage schedule for the CBA.

Based upon the foregoing, the fact-finder recommends the use of the first ten (10) steps of Schedule B as the 10 step wage schedule for the subject collective bargaining agreement, as follows (the “ Recommended CBA Wage Schedule”):

Seniority	2013 Schedule B Step	CBA Wage Schedule Step
1 year	1	1
2 years	2	2
3 years	3	3
4 years	4	4
5 years	5	5
6 years	6	6
7 years	7	7
8 years	8	8
9 years	9	9
10 years	10	10

The following is a complete listing of the across the board adjustments to the wage schedule that shall take place during the life of this CBA (the “Across the Board Adjustments”).

2013 - 1.5 % effective on the first day of the full pay period following ratification of the Agreement by both parties (in addition to the 1% previously paid to the bargaining unit employees)

2014 - 2.0 % effective July 1, 2014
2015 - 2.5 % effective January 1, 2015

Employees whose rates of pay are above the established pay steps shall receive the Across the Board Adjustments.

The Across the Board Adjustments recommended herein are slightly higher than wage schedule adjustments given to other Employer bargaining units based upon the fact that the subject bargaining unit employees' wages have lagged behind such other bargaining units' wages as a result of the subject bargaining unit not having received an inflation or cost of living adjustment in approximately eight (8) years. Further, the subject bargaining unit's wages herein have lagged behind the wages of the non-bargaining unit County IT employees who were moved over to the Schedule B salary schedule in 2012.

While the fact-finder agrees with the Employer that challenging economic times appear likely to continue for the foreseeable future, as a result of general slow economic growth and low investment returns, the fact-finder is of the opinion that i) the CBA wage schedule recommended above and ii) the recommended Across the Board Adjustments, are within the ability of the Employer to pay.

The fact-finder is of that opinion, based, in significant part, on the statement issued on January 16, 2014 ("January 2014 Statement"), by the County Executive, that included the following:

"Cuyahoga County Executive Ed Fitzgerald today announced that the County's General Fund closed 2013 with an estimated operating surplus of \$3.5 million that brings the Fund's total cash reserves to \$186.9 million - 53% of the total amount of the County's annual operating expenditures and significantly higher than the 25% level required by the County's reserve policy."

The County Executive further indicated in the January 2014 Statement that:

The Cuyahoga County Office of Budget and Management initially projected a \$15.4 million operating deficit for 2013, but the County achieved a preliminary \$3.5 million surplus in large part because actual operating expenses were \$17.2 million (4.7%) lower than anticipated. Cash reserves for the Health and Human Services (HHS) Levy Fund sit at \$34.1 million - 16.3% of ongoing expenditures. When combined with the General Fund, total cash reserves for these major operating funds now exceed \$220 million.”

Accordingly, the fact-finder recommends that the CBA Wage Schedule and the Across the Board Adjustments be incorporated into the parties’ initial CBA.

The Union, also, sought the reclassification of the following positions: a) the Help Desk Technicians and Software Specialist (Pay Grade 7) positions be reclassified as Network Administrators, or paid at the applicable pay grade (Pay Grade 10) and b) the Network Administrator position be reclassified as a Network Manager, or paid at the applicable pay grade (Pay Grade 13) (the “Reclassification Requests”). The fact-finder declines to make a recommendation on the Reclassification Requests, noting the Employer has a process to audit a position for a determination as to the position’s proper classification. The fact-finder believes the parties should continue to follow the position audit procedure for the purpose of the Reclassification Requests.

Issue 18. Formerly Article 82-Successor

Position of the Union

The Union maintains the bargaining unit needs to protect its work in the event of any transfer of the department’s function or operation to another governmental unit, or in the event the Employer attempts to subcontract bargaining unit work to third parties. The Union submits that a formal Successor provision in the subject collective bargaining agreement is necessary to provide such

protection. Accordingly, the Union proposes the following language be inserted in the subject collective bargaining agreement:

The provisions of this Contract shall cover all future locations DHHS may operate during the term of this Agreement or any extension thereof, or any transfer of operations from the existing location, or any subcontract of work covered or performed by employees in the existing location(s).

Position of the Employer

No Successor provision is required in the CBA. The County needs to maintain flexibility in the management of this department

Final Recommendation

The fact-finder notes that the AFSCME 1746 CBA provides for a “Successor” provision addressing, among other things, the relocation and/or transfer of operations during the term of that agreement. However, the fact-finder also notes that AFSCME 27 CBA, which was more recently negotiated and was, also, the initial contract between the parties, does not provide for a “Successor” clause. Further, Teamsters Local 407 CBA does not have a “Successor” provision included therein

The fact-finder, also, finds that the subject collective bargaining agreement will be binding on its terms when ratified by the parties. In the opinion of the fact-finder, no Employer action identified in the Union’s proposed Successor clause noted above, affects the binding nature of the subject collective bargaining agreement on the parties thereto.

Based upon the internal comparables suggested by the Union, and the findings noted herein, the fact-finder recommends that the subject CBA not contain a “Successor “ provision.

Article 82-Successor

The fact-finder recommends that the CBA does not contain a Successor provision.



Robert J. Vana
Fact-Finder

Dated: March 19, 2014

CERTIFICATE OF SERVICE

The foregoing Fact-Finding Report and Recommendations was served upon Basil W. Mangano, Mangano Law Offices, bmangano@bmanganolaw.com, 2245 Warrensville Center Road Suite 213, Cleveland, Ohio 44118, Counsel for the Union, and Mr. Egdilio Morales, Assistant Law Director, Cuyahoga County Department of Law, emorales@cuyahogacounty.us, Courthouse Square, Suite 731, 310 lakeside Avenue, Cleveland, Ohio, 44113, via email this 19th day March, 2014.



Robert J. Vana