

cost implications, if any, would be implemented retroactive to January 1, 2018, and they agreed to waive the statutory impediment to retroactivity set forth in Ohio Revised Code, Section 4117.14(G)(11). They invited the undersigned to serve as a Fact Finder for purposes of issuing recommendations on the final unresolved issues that were at impasse between the parties. The invitation to serve as the Fact Finder for resolution of these unresolved issues was accepted on April 2, 2018.

This Fact Finding Report and the following recommendations encompass the parties' Mutually Agreed Dispute Settlement Procedure as provided in Chapter 4117 of the Ohio Revised Code, for fact-finding based upon the statutory criteria set forth in the Ohio Revised Code, Section 4117.14(G)(6) and in Section 4117-9-05(K) of the Ohio Administrative Rules, which are summarized as follows:

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

The Authority is an independent political subdivision of the State of Ohio. It provides housing and assistance to more than 50,000 low-income residents of Cuyahoga County. The Union is the exclusive representative of a bargaining unit consisting of all painters, decorators,

tapers and paperhangers and Lead Abatement employees, except those employees of the Authority who are presently represented by other unions having CBAs with the Authority. The parties agreed to a scheduled hearing, which occurred on May 17, 2018. They timely filed pre-hearing statements identifying the remaining disputes over their unresolved issues after participating in negotiations. They offered oral evidence and submitted documentary exhibits. This Report, which contains recommendations as to the resolution of the unresolved issues, incorporates all unchanged provisions and language set forth in the parties' expired CBA, and all tentative agreements reached between the parties during and after their negotiations.

The unresolved issues are: (1) Article IX - Wages, Section 9.1; (2) Section 9.3, Transportation of Equipment Pay; (3) Section 9.3(b), Uniform Allowance; (4) new proposed Union language that would provide Union Steward input for consideration by management to convert a probationary employee to permanent status; and (5) Section 11.3, Authority proposal to change accrued but unused vacation hours in excess of 240.

II. The Ability Of The Authority To Finance And Administer The Union's Proposed Issues And The Effect Of The Adjustments On The Normal Standard Of Public Service

The Authority's funding and revenue primarily depends upon the Department of Housing and Urban Development ("HUD"). The bargaining unit employees are paid from the HUD programs under which they work; (1) Low Income Public Housing, (2) Housing Choice Voucher Program, (3) Low Income Housing Tax Credit/Residential Assistance Demonstration, and Section 8 New Construction Program. Monies granted to the specific programs cannot be shared or commingled. Rental income from the LIPH program is a lesser source of revenue. It accounts for less than 15% of LIPH revenue. The rent levels that can be charged are limited by HUD, and they have increased minimally, if at all over the past years.

The PBAM program has 11 Asset Management Properties (“AMPs”), 8 of which were operating at losses (expenses over revenue) as of December 2017. The Authority believes that the federal government clearly intends to reduce funding for social services and particularly subsidized housing. Based upon this assumption, it will be required to reduce its expenditures due to cuts in subsidies. It believes that due to the existing dependence on government funding as its primary source of revenue, it must operate within this inflexible system by controlling its payroll and limiting its expenditures for wages and benefits. If the Authority is unable to operate within the confines of its government funding limits, it will be forced to institute layoffs that will in turn affect its ability to provide its necessary housing services for low income residents. This would clearly be against the interests and welfare of the general public.

The Union acknowledges the restrictions on the Authority’s funding sources, but believes that the Authority’s predictions of drastic funding or subsidy cuts from the federal government over the next 3 years are overstated and unsubstantiated. There has not been any recent decrease in the Authority’s revenue stream, or unusual increase in its expenses. This unit consists of 26 employees that include one foreman. It believes that its proposal for wages is within the range of increases paid to similarly skilled workers within this geographic area, and the total cost of its proposals can be easily managed by the Authority. Paying the unit members fair and reasonable wage increases will not force the Authority to reduce its workforce over the next 3-year CBA term.

The Union is particularly concerned about the Authority’s wage proposal that would limit the unit members to increases agreed upon between the Authority and the large AFSCME unit consisting of its maintenance and clerical employees. It believes that a strict automatic application of the increases paid under that CBA to the members of this skilled workers unit based upon a past pattern of acceptance in prior CBAs between the parties would produce less

than “reasonable” and “well deserved” pay increases, when the wages of its members are compared to external employees who perform skilled services. The Authority believes that internal comparisons should apply, based upon its unique funding limitations and the prior agreements between the parties.

III. The Unresolved Issues.

(1) Article IX, Section 9.1 - Wages

The Painters presently earn \$22.74 per hour, and the Painter Foreman earns \$28.14 per hour. The Union proposes an across the board increase of 3% in the first contract year (2018), 3% in the second year (2019) and 2% in the final contract year (2020). The Authority proposes the same pay increases as recommended by Fact Finder Nelson in the successor CBAs executed between the Authority and the Clerical and Maintenance units. This is 1%, 1% and 1.5% over their 3-year contract terms.

The evidence shows that 2% annual across the board wage increases for similarly skilled workers in public employment have been negotiated under CBAs for 2018 and beyond. This reflects cost of living statistics based upon the Consumer Price Index (“CPI”). Social Security benefits have been increased for 2018 by 2% based upon the 2% cost of living adjustment (“COLA”) that is tied to the increase in the CPI.

The correlation between the COLA/CPI increases and increases in wage agreements under CBAs can be seen in the CBA between Cleveland sign painters and IUPAT that provides for a 2% across the board increase for 2018, Cuyahoga Community College and SEIU (2% for 2018), and Northeast Ohio Reg. Sewer Dist. and IUOE (2% for 2017).

One must reasonably accept that the evidence presented in this matter regarding the Authority’s concerns over future government funding cuts was presented during the negotiations with the Clerical and Maintenance units, and that evidence was a controlling factor in their

ultimate agreements on 1% - 1% and 1.5%. Evidence also was presented of the wage increases by other Housing Authorities in Ohio, which presumably have the same future funding issues or concerns as the CMHA. The Akron - MHA CBA provides for a 2% increase in 2018 with a reopener for 2019. It is reasonable to conclude that Akron and its Union are taking a wait and see approach to determine whether funding cuts will occur, and if so, the effects of such cuts upon its budget.

The wage evidence relative to the Cincinnati MHA and Columbus MHA painters is reflected in CBAs that cover 2014-2017 periods. They show increases of 2.25% 2.25% and 2% for Cincinnati for 2015, 2016 and 2017. The Columbus MHA CBA is 2.5%, 2% and 2% over this same period. The expired CBA for the painters in this unit over the same period was 3%, 3% and 2%.

Based upon this evidence, I cannot conclude that the Authority's conservative approach of paying 1%, 1% and 1.5% to this unit is inherently unfair, or so unreasonable that it warrants a recommendation that the painters should break from its past agreements to accept the increases provided in the much larger bargaining units. While the Akron approach of using a reopener to make any future necessary adjustments is one way to address the funding concerns, the clerical and maintenance agreement avoids reopener negotiations and provides for stability over the 3-year term. If it turns out that the Authority's predictions and concerns over its future financial ability to serve its low income residents is erroneous, adjustments can be made in the next CBA. In the final analysis, it would be imprudent not to take the rhetoric emanating from the President and his administration at face value, based upon the funding cuts and freezes that have already taken place or have been planned to take place in other federal administrative agencies.

Recommendation: All employees covered by the CBA will receive an increase in base wages equal to 1.0% effective January 1, 2018; 1.0% effective January 1, 2019; and 1.5% effective January 1, 2020.

(2) Article IX, Section 9.3 - Transportation of Equipment Pay

Presently, any painter who transports CMHA equipment in their own personal vehicle is paid \$6.25 per day for every day of use. The Authority may discontinue this allowance at any time it decides to provide vehicles for the painters or otherwise provides for the transport of materials and equipment weighing over 25 pounds. There is no dispute over the language of Section 9.3. That language will remain in the new CBA. The dispute is over the payment amount.

The Union proposes an increase in the daily amount to \$10.00 per day, an increase of \$3.75 per day. The Authority opposes any increase based upon the same financial concerns expressed in the wage proposals. The Union states that the amount has not increased since its 2003 CBA, notwithstanding increases in the cost of living, which in turn translates to the increased cost borne by the painters in performing this service requirement. The painters at the hearing stated that the \$6.25 rate has existed for 19 or more years, or as long as they have been employed. Painters, therefore, must provide a vehicle for the transport of their materials and equipment as an essential part of their duties.

The value of a 2003 dollar in 2018 based upon the rate of inflation that has occurred in the interim is \$1.36, meaning that the present cost for providing the transport service in 2018, if adjusted for inflation is \$8.50. The Union is proposing an increase to \$10/day based upon the long history of keeping the daily payment stagnant, notwithstanding the increased cost of providing these services.

The Authority points to the cost of the Union's proposal. It amounts to a hourly cost increase of \$.47/day (\$3.75 divided by 8 hours). The total cost of the proposal over the 3-year CBA is \$76,252.80 (\$25, 417.60 x 3 years). The Authority calculates that paying the Union proposal increases the painters' pay by another 1.7% per employee in the first CBA year. It would amount to a "de-facto" wage increase not shared by the other bargaining units.

The Authority acknowledges that the separate transportation payment is not technically part of any existing pattern or practice that can be observed when comparing past CBAs between the separate bargaining units. It stands alone as a compensation item that the other bargaining units do not share. The Authority states that the other units have their own unique compensation provisions that differ from the painters unit. It expands the description of what it believes is a longstanding practice and pattern that all the unions have agreed upon -- that the painters must follow the wages and benefits negotiated with the larger units, and that all the units must freeze their other unique compensation items for all time. This is so notwithstanding that there may be justifiable reasons for paying increases due to the costs of providing services in exchange for receiving those unique payments.

I find, however, that the transportation pay to the painters and the uniform allowance discussed below should not be forever frozen as part of some fixed understanding and practice that arguably exists or is otherwise expressed in across the board wages increases that have been agreed upon by all of the bargaining units in the past contract negotiations. Each of these unique items are stand alone compensation items that must be judged individually with an analysis of the underlying purpose for providing the separate payments, and by judging the costs to the Authority and the fair compensation for the services provided.

The pictures of the equipment and materials in the painters' personal vehicles shows a variety of heavy containers and related painting equipment that must be transported by the

painters in order to perform their work. If the vehicle is their only vehicle, it must be used as both a personal family vehicle and a work vehicle. If the painter can afford to have both a personal and a family vehicle, there is an additional cost involved to drive, maintain, clean and repair the additional vehicle. These factors undoubtedly were considered by the parties when the additional compensation was originally agreed upon, some 20+ years ago. Whatever transportation payments are made by the Authority to the painters for providing these additional services, they would pale in comparison to the costs for the agency in providing service vehicles to transport the materials and equipment to the various worksites.

Raising the payment from \$6.25/day to \$8.00/day increases the daily rate by \$1.75/day, an increase of \$.22/hour. The annual increase would be \$457.60 and would increase the Authority's cost to \$11,897.60 per year, or \$35,692.80 over the CBA term. The painters, however, would be receiving their first year hourly pay of \$28 per hour (1% not including the foreman) plus \$1.00 per hour for transporting their materials and equipment. This \$29/hour wage for their skilled labor would amount to a total hourly increase in pay from \$28.52/hour (\$27.74 + \$.78) to \$29/hour (or \$.48/hour). This would provide an effective wage increase of nearly 1.7% instead of the Authority's proposed 1%, and would bring the painters closer to the 2% wage increases provided in 2018 CBAs to their comparative skilled painters, and other skilled workers.

Recommendation: The pay for transporting materials and equipment set forth in Section 9.3 should be increased from \$6.25/day for every day of use to \$8.00/day for every day of use.

(3) Article IX, Section 9.3(b).

The Authority does not provide uniforms to the bargaining unit members. Instead, they are paid \$350 per year and are required to "wear clean white overalls, or Painter's Pants and white shirts". The stipend has existed for many years and has never been increased. The

Union has proposed increases for transporting equipment and for this uniform allowance, but the proposals were rejected by the Authority during contract negotiations.

During the hearing, one of the Union painters commented upon the fact that he wears safety shoes, and that the cost of safety shoes is very expensive. Section 9.3(b), however, does not mandate the wearing of steel toed safety shoes. Nevertheless, it is presumed that the Authority appreciates the fact that some or all of the painters wear safety shoes because this would prevent more serious injuries and reduce the number of worker compensation claims.

The recommended increase to \$475/year is less than that proposed by the Union of \$500, which the Authority computes to be a 0.003% wage increase. The cost of this \$350 item in 2003 has risen to \$476.58 in 2018 dollars. Raising the allowance to \$475 would be reasonable and would be a minimal cost increase for the Authority. The cost increase of \$125 per year for 26 employees is \$3,250 per year.

Recommendation: The uniform allowance should be increased from \$350/year to \$475/year.

(4) New Union Proposal For Evaluation Opportunities For Probationary Employees

The Union wants to opportunity for its Union Steward to evaluate each probationary employee 60 days after the start of the probationary period and at the end of the probationary period. The evaluations would be supplied to management, and management would only be required to “consider” the evaluations when determining whether probationary employees should be hired as permanent employees at the end of their probationary period. The decision to hire or not hire the employee would always remain with management.

The Union believes that its proposal has merit because the Union Stewards work with the probationary employees on a daily basis and are able to observe and gauge the progress of these employees in terms of meeting their required skills and abilities. Employees who are hired must be apprentices or have skill levels equivalent to apprentices.

The Authority objects to this proposal on principle as an infringement upon its reserved statutory rights under Revised Code 4117.08(C), and its contractual management rights set forth in Article III.

Discussion of this proposal occurred during the hearing after the Fact Finder expressed his opinion that input from co-workers about the performance progress of newer employees is seldom received from bargaining unit members in the collective bargaining world. Such input, if the Union is willing to provide such input can only be considered as a positive suggestion that could increase the level of workmanship within the bargaining unit.

The Authority would not lose any of its statutory or contractual rights because management would only be obligated to review the Union submission and consider it. The decision with respect to the probationary employee's continued employment would remain entirely with management.

The parties agreed to discuss the subject further. The Authority will propose a letter setting forth the extent of the Union's input and the particulars of its agreement to consider the evaluations.

Recommendation: There will be no change at this time, but hopefully the parties will agree upon the details of the Union's proposal.

(5) Article XI, Section 11.2 - Vacation.

The Authority proposes changing the language of this section, which mandates that employees must cash out accrued but unused vacation hours in excess of 240 hours as of December 31 of each year. The Authority proposes that the cash out opportunity be eliminated, and that employees may no longer accrue and carry-over more than 240 hours of vacation leave per year. Any vacation leave accrued in excess of 240 hours must be used by the end of the year or lost the following year. If approved and scheduled vacation leave is cancelled by the

Authority for operational reasons, those hours will be restored by the Authority notwithstanding the 240 hour per year limit.

The Authority's proposal to the Painters is similar to the agreements reached with the AFSCME Clerical and Maintenance CBAs, and with its non-bargaining unit employees. It believes that providing for administrative consistency for all the employees on this subject is more efficient and more preferable than having the Painters under a different arrangement. It argues that the change is not a material economic item, since only one bargaining unit member accrued vacation time in excess of 240 hours in 2017.

The Union opposes any change that would diminish this economic benefit. It contends that the cash out benefit has been used by some unit members, and that it is a valued benefit because the extra cash from payouts at the end of the year are used for Christmas gifts and other expenses.

I do not find that there is any past pattern or practice between the parties that includes any acceptance or agreement by the Union that it must follow benefit reductions that were agreed upon by the other bargaining units. This is somewhat different than a pattern bargaining history showing concerted agreement over across the board wage increases as between the larger bargaining units and the smaller painters' unit. The Authority's proposal amounts to removing a cash payout that has been used by some employees over the years.

I am reluctant to remove any contractual benefit without some *quid pro quo* or consideration forthcoming from the Authority. Moreover, the evidence does not warrant a change in the status quo based upon compelling operational needs or because of any major financial necessity.

Recommendation: No change.

Date of Report: June 4, 2018

Mitchell B. Goldberg
Mitchell B. Goldberg, Fact Finder

CERTIFICATE OF SERVICE

This Fact Finding Report was served upon the following persons by electronic mail on the 4th day of June, 2018:

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