FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
May 25, 1995

STATE EMPLOYMENT RELATIONS BOARD
MAY 30 12:26 PM '95

In the Matter of:	)	
The Mahoning County Sanitary Engineer	)	
and	)	95-MED-02-0073
The Mahoning County Sanitary Engineer Union	)	

APPEARANCES

For the Union:
Anthony P. Sgambati, Attorney
Michael Pennzale, Recording Secretary
John Michael, MCSEEU Vice President
Robert Kale, MCSEEU President
Jim Michaels, MCSEEU Treasurer

For Mahoning County:
Michael Angelo, Attorney
Michael Sciortino, Asst. County Administrator
William Coleman, Mahoning County Engineer's Office
Lynn Maro, Assistant County Prosecutor

Fact Finder: Dennis M. Byrne

Background

The Fact Finding involves the Mahoning County Sanitary Engineer and The Mahoning County Sanitary Engineer Employees Union. The Union represents the employees of the Engineer's Office. Prior to the Fact Finding there were a number of negotiating sessions and one extended mediation session. Many issues were settled. However, eighteen issues remain at impasse. The issues are Union Visitation, Vacancies, Vacation Schedules, Bereavement, Discipline, Sick Leave, Call Out Pay, Clothing Allowance, Manning, Wages, Sick Leave Incentive, License Premiums, Management Rights, Drug Testing, Obligation to Negotiate, Total Agreement, Classifications (The Grid), and various miscellaneous provisions submitted by both parties.

The Fact Finding Hearing was conducted on May 11, 1995 in the Sanitary Engineer's office building. The Hearing commenced at 10:00 A.M. and was adjourned at 5:00 P.M. The parties to the dispute had attempted a mediation effort prior to the Hearing, that settled a number of issues and elucidated their differences. Consequently, they believed that further mediation would be fruitless and, therefore, no mediation was attempted on the day of the Hearing.

The Fact Finder wishes to state that he appreciates the courtesy with which he was treated. Additionally, the conduct of the parties toward the Fact Finder and each other was exemplary. The Hearing was conducted with the greatest professionalism by both parties.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05. The criteria are:

(1) Past collectively bargained agreements, if any.
(2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
(3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
(4) The lawful authority of the public employer.

(5) Any stipulations of the parties.
(6) Such other factors, not confined to those listed above which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agree-upon dispute settlement procedures in the public service or private employment.

The Report is attached and the Fact Finder hopes the discussion of the issue is sufficiently clear to be understandable. If either or both of the parties require a further discussion, however, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

INTRODUCTION:

While there are a number of complex issues separating the parties, the major theme is communication, or the lack thereof. Essentially, the Union takes the position that the relationship is stable and, as such, the Union believes that the changes to the contract should be minimal and evolutionary. The status quo is preserved under this viewpoint. As "proof" of its assertion that the relationship is working well, the Union constantly alluded to the fact that there were few grievances that needed to be arbitrated. Of course, the Union does admit that the relationship has become strained over the past six months, and currently the parties are engaged in a number of arbitration proceedings.

The County disagrees with the Union's assessment. The County stated that the Sanitary Engineer's office must be run with greater efficiency. The County argued that the use of paid time off, especially sick leave, has become a problem, and that there is a real possibility of abuse in sick leave usage. The County agrees that the relationship has changed over the past months, but the County argues that changes are needed if the Engineer's office is to fulfill its duties.

Therefore, while the parties have different perceptions about the state of the overall relationship, it is clear that some (many) changes are in the offing for the Sanitary Engineer and his employees. These changes have caused and will continue to cause anxiety for the employees and friction for the parties. Anxiety breeds uncertainty and uncertainty breeds distrust, and currently there is a growing level of distrust in the relationship. The level of distrust has been heightened by the County's more aggressive negotiating stance in this round of talks compared to the historical norm. The employees see the County attacking a contract that they think works well. The County has a different view.

It is clear that the parties need to open and maintain more formal and better lines of communication about the workings of the Engineer's office. In order to facilitate communications, the Fact Finder recommends the formation of a Labor/Management Committee. This committee could be a forum for the parties to discuss issues of mutual concern in a nonthreatening environment. For instance, the County believes that there is a problem with the use of paid time off. A Labor/Management Committee is an excellent place to discuss, with the appropriate data, etc., this issue. Additionally, the parties raised a number of issues about the workings of the Engineer's office that might be better discussed in a Labor/Management forum than at the negotiating table: 1) pay for backhoe operators and mechanics, 2) CDL requirements, 3) changing technology and its relationship to staffing and safety at the Meander Plant, and 4) comp time in lieu of overtime. All are issues that might be profitably discussed in a Labor/Management setting.

Another area that needs some general discussion is the new contract language that the County desires to place in the contract. The County presented language for possible inclusion in the prospective contract that covered Total Agreement, Obligation to Negotiate, Management Rights and Sick Leave. Without discussing the merits of the

issues at this point, it is fair to say that the Union objected to the proposed language per se That is, the Union objects to the proposed clauses, but even if the clauses were to be accepted the Union objects strongly to the words themselves.

The County presented "Exhibit J" during the hearing. Exhibit J contains over fifty public sector contracts negotiated by parties within northern Ohio. An examination of Exhibit J, and other contracts from around Ohio that are in the Fact Finder's possession, convinces the Fact Finder that the language submitted by the County on these issues is standard contract language. The Mahoning County Sanitary Engineer's contract does not contain language on the issues enumerated above, but the language submitted by the County is standard within Northern and Central Ohio.

A third point needs some discussion: a Neutral must exercise caution when making recommendations on a successor agreement, especially an agreement that has been in force for decades. A contract defines a relationship between two particular entities. It has grown and changed as the underlying relationship has changed. Consequently, the status quo assumes a heightened importance. Of course, contract clauses must change as conditions change, and new clauses must appear in the contract as needed. However, the party that is proposing changes to established and workable clauses must clearly prove the need for its proposed changes.

Finally, the Union demanded the use of comp time in lieu of overtime, and the use of vacations in one day increments. At the end of the mediation session, the Union proposed a one year experiment whereby the Union's demand(s) would be agreed upon, and as the quid pro quo, the Union believes that the use of sick leave will fall. As a result, the Fact Finder recommends a one year experiment starting on January 1, 1996 be devised. The Union gets the use of comp time and single day vacations which it desires and the County gets (?) less use of paid time off. The exact details of the arrangement need to be discussed and agreed upon by the parties. This may be a win-win situation.

It must be stressed that this is a recommendation for a non-precedent setting experiment. It is not designed as a way to include comp time in the contract over the County's objections. While the exact discussion on the relevant issues will come later in the report, the Fact Finder believes that the experiment may work to the benefit of both parties and urges the parties to give the concept careful consideration.

Issue: 4.03 Union Activities and Visitation

Union Position: The Union demands that the Union President and Vice President in addition to the steward be allowed to visit employees for the, "orderly settlement of grievances."

County Position: The County agrees that one of the aforementioned union officials can examine grievance issues.

Discussion: There is agreement that the President and/or Vice President can visit an employee in addition to the Steward. Currently, the language limits visitations to the Steward, although current practice is to allow the others to investigate grievances. The County wants to restrict the number of people off the job and investigating problems to one. The Union agrees that it should not be three, but sometimes the Union believes that two Union officials are needed.

The practical aspects of running the Engineer's office must be considered. This issue deals with work periods. It is not reasonable to have three individuals, two union officials and the potential affected employee who are "on the clock," absent from work at the same time, especially given the size of the unit.

Finding of Fact: There is basic agreement on this issue. Given the size of the bargaining unit and the disruption that can eventuate if three people are off the job at one time, only one union official should be allowed to investigate a grievance.

Suggested Language: add the words, "Union President or Union Vice President" after the words Shop Stewards in the first sentence.

A further demand was put forth on paragraph 4.03

Union Position: The Union demands access to the copy machine to expedite the processing of grievances.

County Position: The County rejects this demand.

Discussion: On this issue the Fact Finder understands and sympathizes with the Union's position. However, the County testified that it had promulgated rules covering the use of the copy machine, and it opposes allowing anyone other than the office staff access to the copy machine. The County understands that this may cause the Union some inconvenience, but argues that the impact is slight.

The Fact Finder heard no testimony of any anti-union animus in the discussion of the County's new rules. The rules are intended to insure economical and efficient operations of the Engineer's office. As such, the rules are unobjectionable. Therefore, on this issue the Fact Finder believes the County's position should prevail.

Finding of Fact: The County has the right to make reasonable work rules to insure efficient operations.

Suggested Language: None

Issue: 5.03(i) Job Vacancies

Union Position: The Union demands current language on this article.

County Position: The County desires to delete the section.

Discussion: This is an area where the testimony during the Hearing illuminated the issue. The Union testified that 5.03(i) follows from 5.02 and the earlier portions of 5.03. Therefore, the Union agrees that the County has the right to determine if a vacancy is to be filled. Consequently, the Union sees 5.03(i) as acceptable. Under this interpretation the County can simply decide not to fill a vacancy as defined under 5.02. Since a vacancy exists until it is filled, this interpretation of 5.03(i) in no way compels the County to fill any vacancy. It is a notification requirement that forces the County to notify the Union that the County is having a problem filling a vacancy the County wishes to fill.

Finding of Fact: The Union's interpretation of the wording of 5.03(i) vitiates the County's concerns about the language.

Suggested Language: Current Language.

Issue: Section 6.01 Comp Time

Union Position: The Union demand is for 80 hours of comp time in lieu of overtime payments.

County Position: The County rejects this demand.

Discussion: (See Introduction) This issue is cross referenced with 6.03 discussed below.

Issue: 6.03 Vacation Schedules

Union Position: The Union demands that vacations be taken in one day increments.

County Position: The County desires that the vacation schedule be added to the contract, and the County also proposed a change in the vacation eligibility language. Under the County's proposal all vacation time earned would be accrued on the employee's anniversary date. Finally, the County rejects the Union's demand on 6.03.

Discussion: Turning first to the County's demand that vacation schedules be added to the contract as a separate clause: this is reasonable. The current language references Section

325.19 of the ORC, and in some ways negates the concept of collective negotiation. The parties are free to modify, add to, delete, etc., the language regarding vacations in their contract. They are not bound by the ORC language. If the legislature should change the language in the relevant sections of the Code, then both parties would have a legitimate argument for the current practice. Any contract defines a relationship between two unique parties, and all contracts in one way or another supersede portions of the Code. Therefore, to fully explain and protect the vacation provisions, these agreements should be written into the contract.

The County's proposed change in the accrual system,whereby all vacation accrues on the employee's anniversary date, is understandable from the County's point of view. However, this language does make a major change in an established practice. There was no discussion indicating that the current practice had caused serious problems. Absent some proof that the status quo is deficient, the Fact Finder cannot see a reason to recommend the suggested change.

To support its demand for one day vacation use, the Union presented evidence that the County Policy Manual allows nonunionized county employees to use vacations in one day increments. The Union, as a matter of fairness, demands the same treatment. This is asking for the best of both worlds. The Union wants the contract to control where the contract is superior to the Policy Manual and the Policy Manual to control where it is superior to the contract. This is not the usual view of collective bargaining. The usual view is that the parties negotiate their own agreement, which controls their relationship. Only in those cases where the contract is silent does County policy come into effect.

In general, the Fact Finder would recommend the status quo on these issues except to have the vacation article added to the contract. However, on all these issues there is the possibility of a joint gain. The Union strongly desires the use of comp time and one day vacations. The County wants to control the use of time off. The Union proposed an experiment to determine the effect that comp time and one day vacations have on sick leave use. This is a novel approach to the situation. The Fact Finder urges the parties to consider a one year experiment starting on January 1, 1996 to determine the effects of comp time and flexible vacation schedules on total time usage. The outline for such an experiment should be:

1. It does not set a precedent.
2. Any plan must be mutually agreeable.
3. One week (5 days) of vacation can be taken in one day increments.
4. The total accrual of comp time is forty (40) hours.

Finding of Fact: There is some possibility for both sides to gain on these issues. An experiment to determine the effect that comp time and flexible vacation schedules have on the Engineer's office is reasonable if the details can be worked out by the parties. It is standard practice for vacation schedules, etc., to be included in a contract, and vacation language should be added to this contract. Finally, there was no evidence presented indicating that vacations per se were a source of conflict between the parties. Therefore,

excepting the proposed experiment, the recommendation is for the status quo with only minor modifications.

Suggested Language: Article VI

6.03 Vacations

Section 01 Each employee upon the completion of the appropriate amount of continuous service with the employer shall be entitled to a paid vacation in accordance with the following schedule.

Upon Completion of	No. of Weeks
After one (1) year	Two (2) Weeks
After seven (7) years	Three (3) Weeks
After fifteen (15) years	Four (4) Weeks
After twenty-five (25) years	Five (5) Weeks

Section 02 Earned Vacation shall accrue on a pro rata amount base upon the number of hours actually worked and the date hired.

Section 03 Vacation time not to exceed two (2) weeks may be carried over from one year to another only with the express written authorization of the Employer. Etc.

Section 04 For new hires prior service credit with the County or any political subdivision of the state or service with Mahoning County pursuant to CETA, JTPA or the like shall not be used in determining service credit for purposes of vacation accumulation.

Section 05. As per Management Proposal

Section 06. As per Management Proposal

Section 07 As per Management Proposal

Issue: Union number 6.11 Bereavement Leave (new)

Union Position: The Union demands a bereavement leave provision be added to the contract.

County Position: The County has agreed to add a bereavement leave provision.

Discussion: The disagreement is over the specifics of the proposal. The Union wants a four (4) day bereavement leave. Management is offering a three (3) day leave. Additionally, the Union is demanding a two (2) day leave for the death of an "extended family member."

There are two points that need to be noted at this point. First, the County has agreed to a new clause in the contract. While it is not exactly what the Union demands, it

is a substantial improvement over current practice. Second, the County pointed out that other leaves could be used for bereavement. Therefore, if an employee has a problem with bereavement, the employee can get time off. Consequently, a long discussion on this article is not needed. The Union has made a major gain in this area. Collective negotiations are a gradual process. If the Union desires further gains in the bereavement leave provision, then future negotiations are available.

Finding of Fact: The Parties have agreed to include a bereavement leave clause in the contract.

Suggested Language: Union proposal as modified by the County.

Issue: 6.11 County Proposal Family Medical Leave Act

Union Position: The Union desires the leave provisions of the Family Medical Leave Act (FMLA) be added to the existing provisions in the contract.

County Position: The County wants the FMLA provisions to run concurrently with the leave provisions in the contract.

Discussion: The Union presented their position as an increased benefit to the membership, which is reasonable from their point of view. The County believes that the benefit provided in the Act should not be "piggybacked" on to the existing leave provisions. The FMLA was passed to help individuals who were faced with medical and family emergencies. It allows a person to take time off and not lose her/his job. The contract between the Engineer and his employees already spells out leave provisions, many of which are in excess of the FMLA provisions.

The only time this should be an issue is when a person is on an extended leave, and as a result the County is forced to hold his/her job open. In that particular case the workforce is short handed and overtime, etc., will increase. While this situation does arise in industrial activity, it is not the norm. Therefore, while the parties can undoubtedly give examples to support their positions, there is little reason to think that this is a major problem. However, the contract leave provisions are generous and there was no testimony that the time limits negotiated by the parties are in any way deficient. Therefore, the Fact Finder believes that the passage of the FMLA should not create an additional benefit for the Union. Once again, the contract speaks on these issues and there is no indication that the contract is deficient. In effect, the Fact Finder believes that the status quo is acceptable.

Finding of Fact: The contract spells out the leave provisions agreed to by the parties. In this case the contract should control the relationship.

Suggested Language: Section New
Any and all leaves contained in this Agreement which meet the definition of Family and Medical Leave shall be applied toward each employee's twelve (12) week entitlement to Family and Medical Leave.

Issue: Article X Discipline (Cross referenced with Article 17.05(f)

Union Position: The Union wants all discipline records to be expunged from an employee's file after one year.

County Position: The County wants the records of all written discipline to be sealed after two years and any discipline that results in suspension to remain in the employee's file for three years.

Discussion: The Union's position is self-explanatory. The County's position is based on a foundation of "progressive discipline." Under the County's plan an employee's record would remain open for an extended period. This should, hopefully, cause the employee to think about any action that might result in discipline. This is an issue of first impression. The question is evident.

An action leading to a written notice is by its very nature less severe than an action that leads to a suspension. Therefore, the more serious offense should lead to a harsher consequence. Also, the concept of progressive discipline is well established. Therefore, the County's proposal of a longer time period for suspension events to remain in an employee's file is acceptable by any standard. At the same time, a Union member should not remain at risk for prolonged periods after an infraction takes place. Consequently, the Fact Finder recommends expunging the files after one year for a written warning and after two years for a suspension.

Finding of Fact: The time lines for deleting references to past discipline should be entered into the contract. (Note: This affects current Section 17.05 (F))

Suggested Language: Article X Section 18.

.18 Records, warning notices and other discipline, except suspensions, will be removed from an employee's file after one year (1) from the date of the incident. Records of suspensions shall be removed two (2) years from the date the suspension ends.

Issue: Section 12.04 Sick Leave

Union Position: The Union demands the status quo on the sick leave language, except for an increase in the sick leave buyout provision.

County Position: The County is proposing major changes in the sick leave clause and a decrease in the buyout provision.

Discussion: First, there was little testimony presented by either of the parties on the buyout provision. However, the County did present evidence (Exhibit J) that lists the buyout provisions throughout Northern Ohio. The buyout provision in the Engineer's contract is unusually generous by any standard. Furthermore, according to the testimony presented at the Hearing, because of the pattern of sick leave use, the buyout has limited impact on most employees. Therefore, the Fact Finder believes that the current clause should be modified. While this will work to the detriment of some employees, the County has proved its position that the current clause is overly generous compared to other jurisdictions.

The sick leave issue is a major source of disagreement between the parties. The County believes that it has a problem with sick leave usage. It testified that the average sick leave use within the unit is fourteen plus days per year. In other words, almost all the sick leave accrued within a year is used in that year. (This fact explains the County's demand to delete section 13.03, the sick leave incentive clause from the contract.) The County presented further evidence that there were no exceptionally long illnesses in the sick leave data that would lead to biased results. Sick leave use is high.

The Union believes that the County has overstated its case. Additionally, the Union argues that the County has the right to discipline employees or to promulgate reasonable work rules to control problems that may exist. The Union clearly stated that it claims the right to grieve any rule changes, policies, discipline, etc., that it believes are not warranted or unfairly applied. The County testified that it understood that the Union has the right to grieve unwarranted actions, but the County states that it has no intention of controlling legitimate sick leave use. It does intend to control abusive practices, however.

The County strongly argued that sick leave use is a large and growing problem. The County believes sick leave use, and the staffing and overtime problems which flow from the sick leave problem, are impairing the Engineer's ability to effectively meet his mandate. Therefore, the County wants language inserted into the contract to clearly define the sick leave policy.

The Union had numerous objections to each paragraph of the proposed sick leave provision. Without going into overwhelming detail, the Fact Finder understands the Union's positions on the language. However, the language proposed by the County is standard (Exhibit J) throughout Northern Ohio. As such, with minor modifications, the Fact Finder recommends its inclusion in the contract.

The County has listed a problem that it believes require attention, and the County proposed specific language to ameliorate the situation. In addition, the County presented evidence to support its position. The Union's objections to that language are understandable; but given the prevalence of the proposed language in contracts throughout the state, the Fact Finder does not believe that the employees will be adversely affected. The language proposed is a major change in this contract, but it is not unique. .

A further point must be noted. The County in its language proposed reducing the sick leave accrual rate. An examination of the County's evidence in Exhibit J does not support the proposed change. With only one exception, the contracts listed use an accrual rate of 4.6 hours of sick leave per 80 hours of work, which is the current accrual rate in Mahoning County. The Fact Finder understands the County's desire to reduce sick leave use, but sick leave is necessary when the employees are ill. Therefore, the recommendation is for the status quo on the accrual rate. If the proposed language and the County's resolve to curb sick leave usage do not work, then future negotiations can be used to discuss the problem further.

Finding of Fact: The County proved its case with regard to the need for a new sick leave provision. In addition, the County also proved that the language of the proposed clause is standard throughout Northern Ohio.

Suggested Language: Management's proposed clause with an accrual rate of 4.6 hours per 80 hours of work.

Last Paragraph:

Upon the retirement of an employee who has not less than ten (10) years of continuous employment with the Employer and who has qualified for retirement benefits from a State of Ohio public employee retirement system, such employee shall be entitled to receive a cash payment equal to his hourly rate of pay at the time of retirement multiplied by one-third (1/3) the total number of accumulated but unused sick leave hours earned by the employee, as certified by the County, provided that the resulting number of hours shall not exceed nine hundred and sixty (960) hours.

Issue: Section 12.05 Call Out Pay

Union Position: The Union demand is for call out pay to be increased to six (6) hours.

County Position: The County has proposed language that would prevent the "pyramiding of overtime."

Discussion: The County's proposed changes to this article are unexceptional. Language prohibiting the pyramiding of overtime is standard in contracts throughout Ohio and the Nation. If this were an initial contract, the Fact Finder would recommend acceptance of the proposed language. However, this is a successor agreement, and there was no convincing evidence that the current language has caused serious problems for the County. Absent such evidence, the Fact Finder recommends the status quo on this issue.

Finding of Fact: There was no evidence presented on the severity of any problems presented by the current language.

Suggested Language: Current Language.

Issue: Section 12.09 Clothing Allowance

Union Position: The Union demands an increase in the clothing allowance from $225.00 per year to $400.00 per year.

County Position: The County is proposing to replace the current allowance with a system where the County would provide each employee with five (5) uniforms per week.

Discussion: Currently each employee is provided with a $225.00 per year clothing allowance. This comes to approximately $.87 per day. ($225.00/260 = $.87) It is clear that this will not cover the cost of wear and tear, cleaning, replacement, etc., of the employees clothes. The Union demand for $400.00 is, however, an increase in the basic benefit of 78% per year. This is excessive. The Fact Finder recommends $300.00 per year. Again this is a situation where the employees demand the status quo; that is, they provide their own clothes. Given the facts elicited at the Hearing, the Fact Finder will agree with the status quo. However, the Fact Finder is not convinced that the employees' position is in their best interest. Once the novelty (revulsion) of wearing a uniform passes, the idea that the County will supply work clothes, especially considering the type of work involved, has some appeal.

This is an area where a Labor/Management committee might profitably be employed. A discussion of the issue, both the pros and cons, might lead to an agreement that is mutually beneficial. While the County's offer is a dramatic departure from current practice, it might be a benefit to the employees to have a clean uniform provided daily.

Finding of Fact: The current clothing allowance is substandard.

Suggested Language: The clothing allowance be increased to $300.00 per year.

Issue: Article 12.10 Manning

Union Position: The Union demands that three employees be scheduled at the Meander Plant, and it desires changes in the classification of the individuals working on road crews.

County Position: The County rejects the Union demands as an intrusion into Management Rights.

Discussion: The Fact Finder accepts the County position on the second part of the Union's demand. The classifications involved in a road crew are arguably a management right. In addition, the Union's demand is actually to increase the pay of the person who drives the "Combo Vehicle." The qualifications and pay of a single individual are not the usual subject of negotiations.

The first part of the Union's demand concerns minimum staffing at the Meander Plant. This is a negotiable item because language covering this item appears in the

contract. The Union bases its demand on the fact that the technology involved within the plant has changed necessitating, in the Union's opinion, manning changes. The plant now uses a centrifuge and there was testimony that this one piece of equipment requires constant attention. This leaves only one person to attend to the rest of the plant. The Union believes the level of work requires three people.

The Fact Finder is sympathetic to the Union's arguments. However, this must be weighed against the County's opposition to the proposed change. If the Fact Finder were convinced that the health and safety of the workers was endangered, then a recommendation might follow. However, the testimony centered on the amount of work performed. Given the fact that the Engineer must be allowed to direct his work force, the Fact Finder does not believe that the Union proved its point on this issue.

Again, the Fact Finder recommends that the parties explore the possibility of forming a Labor/Management Committee. This is the type of issue that could be profitably discussed. There is no reason to assume that the County desires anything other that the most efficient operation of its facilities; and in this case the employees have concerns that may have a potential impact on those operations. Both sides might benefit by discussing these concerns in an ongoing forum.

Finding of Fact: The employees did not prove the need for the proposed changes to the contract.

Suggested Language: Current Language.

Issue: Section 13.01 Wages

Union Position: The Union demands a 4% increase in 1995, a 3.5% increase in 1996, and a 3.5% increase in 1997. In addition, the Union is demanding a premium payment for the backhoe operator.

County Position: The County is offering 3% per year in each year of the proposed contract. The employer rejects the backhoe premium pay demand.

Discussion: The demand for a backhoe operator premium is based on the fact that the backhoe operator must be highly skilled, sometimes acts as a crew chief, and still can be paid less than other members of the road crew because these other crew members receive a "ditch premium." The backhoe operator(s) do not think that this is fair. Again, the Fact Finder is sensitive to this argument. However, the discussion of this issue will mirror the discussion of the "Combo Vehicle" driver issue. There may be a need to evaluate the entire pay scale, but contracts are not usually negotiated to change one individual's wage. The Fact Finder would urge the parties to discuss these issues, but the Fact Finder does not recommend a special pay category for the backhoe operator.

On the issue of the base wage increase, the parties devoted time to this issue during the mediation effort. Information was passed back and forth and positions were modified accordingly. The standard of reference was the Sheriff's contract. The Sheriff's department employees received 1.75% biannually for the first two years of the contract, and 3.5% in the final year. The parties to the Engineer's contract have agreed to annual rather than semiannual raises, therefore, the recommendation is for 3.0% in 1995, 3.0% in 1996, and 3.5% in 1997.

Finding of Fact: The information presented at the Mediation and Hearing indicated that the Sheriff's contract is a reasonable pattern for the wage increase.

Suggested Language: The wage scales in Article XIII be adjusted by 3.0% in 1995, 3.0% in 1996, and 3.5% in 1997. All increases retroactive to April 1, 1995.

Issue: Article 13.03 Sick Leave Incentive Program

Union Position: The Union desires the status quo on this issue, i.e., a sick leave incentive program in the contract.

County Position: The County wishes to delete the sick leave bonus program from the contract.

Discussion: The County's position is that the incentive has not worked and, therefore, should be deleted. The Union argues that this program is an incentive which should be left in the contract. In the Union's view, this is especially true because the County is trying to control sick leave usage. The Union thinks an incentive may be a valuable tool.

In reality the incentive has not worked. However, that also means that the cost of the program is minimal. Given the fact that the County wishes to control sick leave use, an incentive system makes some sense. In other words, "It can't hurt, and it may help." Consequently, the recommendation is for the status quo on this issue.

Finding of Fact: The incentive has not worked, and a strong argument can be advanced that it should be deleted from the contract. However, with the County's determination to control sick leave abuse, and with the suggested language on Sick Leave discussed elsewhere, an incentive program makes some sense.

Suggested Language: Current Language.

Issue: Section 13.05 License Premiums

Union Position: The Union demands an across the board increase of between $125.00 and $150.00 for each license.

County Position: The County has offered to increase the premium(s) by $50.00.

Discussion: Both sides presented comparables on this issue that proved their point. The County used surrounding counties as the base of comparison and the Union used other employers in the Mahoning Valley area, e.g. Youngstown. This evidence shows that counties tend not to pay a license premium, but other local employers who pay the premium pay more than the Engineer. In other words the comparables data is mixed.

The evidence does show that among the employers who pay a premium, the payment is Mahoning County is substandard. Because the County has chosen to negotiate a premium into its contract, the Fact Finder believes that the premium should be raised somewhat. Of course this must be balanced against the County's data that shows counties often do not pay the premium. Therefore, the suggested increase over the County's offer is marginal. The recommendation is for $75.00 to be added to each premium.

Finding of Fact: Among the jurisdictions that pay a license premium the payment by the Mahoning County Engineer is low.

Suggested Language: The license premium, including the Class A and Class B premiums, shall be increased by $75.00 per year.

Issue: Article 15 Management Rights

Union Position: The Union demands that the current language be maintained in the contract.

County Position: The County has proposed a new Management's Rights clause that enumerates specific management rights.

Discussion: This is an emotional issue to the Union. The Union strongly objects to changing the current management rights language. The Union argues that the County has management rights guaranteed by both ORC 4117, and common practice. The Union does not believe that the basic management rights are open to serious question. The Union, therefore, argues that the County's suggested language is not needed and may be pernicious.

The County, for its part, testified that the proposed language is simply an enumeration of basic management rights, and as such it is unobjectionable. The County believes that it needs this language because there is some ambiguity in the current language and it will help both sides to better understand the boundary between the contract and those functions that are reserved to management.

It must also be noted that the same or similar language is found in other contracts throughout Northern Ohio. The County's Exhibit J, which has been referenced elsewhere, contains the same language for any number of jurisdictions. While that fact in and of itself

is not compelling, it does imply that other parties to collective bargaining agreements have negotiated similar language and been able to live with it.

Additionally, the Fact Finder has carefully examined the current Management Rights language, ORC 4117, and the County's proposed language. The current language lists five (5) examples of Management Rights. However numbers 1 and 4 are identicle. Therefore, the contract lists 4 illustrations. Arguably, the current language of the current contract is similar to the proposed language as it relates to facilities. That is, the new items (8) through (14) are covered by the current (2), (3), and (4).

The first seven items of the proposed language relate to employees. The only language in the current agreement that mentions employees is the phrase in (1), which states "....direction of the working forces." It is clear that the new (1) through (7) define that phrase.

It must also be noted that the existence of a Management Rights clause cannot be read in a vacuum. A contract limits Management Rights. Prior to the ratification of a collective bargaining agreement, management is limited only by law and policy, such as it is. Subsequent to the ratification of a collective bargaining agreement, management is limited by a signed agreement with its employees. A management rights clause reserves to management traditional management rights that have not be changed by negotiations. In other words, management gets to keep the rights that are historically part of management unless these rights have be changed via negotiations.

Philosophically, the inclusion of a detailed Management Rights clause is not an issue. ORC 4117 specifically lists management rights. Moreover, the concept delineating management rights dates from passage of the Wagner Act. Listing the rights cannot damage the Union. The question then turns to the specific language. The Union did object to the second paragraph of the proposed clause. The most controversial part of the paragraph was the last sentence which limited access to the grievance procedure. However, in its final proposal presented at the Hearing, the County dropped that sentence. The deletion of that sentence allows the Union to grieve management actions that it considers unjust. The use of the grievance procedure and a ruling by a neutral third party on the validity of contract interpretation is essential to the orderly conduct of industrial relations. With that change, and given the totality of the evidence on this issue, the Fact Finder recommends the inclusion of the proposed clause into the contract.

Finding of Fact: Management's proposed language on the Management Rights clause is standard through out Northern Ohio and, as such, it is simply a list of management rights.

Suggested Language: As per Management Proposal

Issue: Section 17.05 (c) and (f). Miscellaneous Provisions.

Union Position: The Union did not agree to these changes because there was no agreement on the clauses they reference.

County Position: The County proposed to delete these subsections because the new contract invalidates the clauses.

Discussion: These clauses are not necessary given the proposed changes in 1) the bereavement clause, and 2) discipline.

Finding of Fact: This language is no longer needed.

Suggested Language: delete 17.05 (c) and (f).

Issue: Article New: Drug Testing

Union Position: The Union agrees in principle with a drug testing provision. However, the Union does not agree to the County's proposed language. The Union wants a system ending in binding arbitration to decide the exact language.

County Position: The County has proposed a new article on this issue.

Discussion: The first thing to be noted is that the parties have agreed in principle that a drug testing provision should be added to the contract. The questions that remain concern the specific language of the clause. The Union wants the parties to meet after the contract is negotiated and present language on this issue. If the parties cannot agree to the language, then a neutral will hear the positions and decide the issue. The neutral's decision, if it comes to that, will be the specific contract clause.

The County objects to this provision. The County believes that it has proposed a standard clause and the Union did not make any counter offers. Therefore, the County desires to have its proposed language in the contract.

This is an issue where both parties agree that the County has the right to establish a policy that deals with substance abuse. The County has asked for the Union's input into the process. Because the County has offered to negotiate with the Union, the Fact Finder believes that some discussions on the issue would be useful. The Fact Finder understands management's desire to finish negotiations on this contract. However, the passage of a few months to discuss the problem is acceptable. Therefore, the Fact Finder recommends that the parties meet and negotiate a drug program for sixty (60) days after agreement on the new contract. After sixty (60) days, if there is no agreement, then an arbitrator will decide the issue. Note: This recommendation assumes that as a part of the proposed

contract, the parties have agreed to include a substance abuse provision in their contract. Therefore, the arbitrator cannot decide that no drug testing language should be entered into the contract.

Finding of Fact: The parties have agreed to add a drug testing clause to the contract.

Suggested Language: The parties agree to attempt to negotiate a drug testing provision for inclusion into the proposed contract for sixty (60) days after the contract is ratified. If an agreement is not achieved, then the parties shall submit their positions to an arbitrator who will decide on specific language.

Issue: Article(s) New. Obligation to Negotiate and Total Agreement

Union Position: The Union is adamantly opposed to adding these clauses to the proposed agreement.

County Position: The County desires to add these clauses to the agreement.

Discussion: These clauses, taken as a whole, state that the written contract is the entire agreement between the parties. This is not unusual. A basic rule of contract law is that a contract means what it says. Therefore, the agreement must be reduced to writing. The Union argues, in this instance, the relationship is of such long standing that some usual "conditions of employment" are unwritten and have become the law of the shop by common practice. These work practices have grown up over time and have become the standard. Consequently, the Union believes that the County's proposals might drastically alter the work relationship. Additionally, the Union believes that accepting these clauses effectively forfeits its ability to challenge any County action with which it disagrees. Therefore, the Union will not agree to a clause that it believes waives its right to grieve County actions that change usual terms and conditions of employment.

The County contends that a contract is just that; it is the agreement between the parties. The County thinks that the contract should be certain, that is, it should mean what it says. Management believes these clauses protect it from a kind of double jeopardy. That is, the County thinks that it can "win" in a negotiation and "lose" in arbitration. In addition, the County pointed out that the proposed language is found in contracts throughout Northern Ohio (Exhibit J).

The Fact Finder is not totally convinced by the Union's arguments. Indeed, if this were the first contract between the parties, the Fact Finder might recommend acceptance of the County's position. However, in this instance the Union may be correct about the existence of unwritten terms and conditions of employment. Consequently, the Fact Finder recommends against the inclusion of these clauses in the prospective contract.

Finding of Fact: The collective bargaining relationship between the parties is of such long standing that implicit terms and conditions of employment may exist. Therefore, the inclusion of the proposed clauses might change the work relationship in unforeseen ways.

Suggested Language: None.

Issue: Article New: CDL Grid

This issue relates to a new classification system for employees within the unit. Basically there is no disagreement on the issue between the parties. There are two modifications to the proposed language that the parties desired to be included in the Fact Finding Report.

Suggested Language:

Change sentence "No job bids from non-CDL to CDL positions." to read "In order to bid on a position, an employee must have the requisite qualifications for the position."

Change the end of the last sentence in the Article from ".....premium shall be paid in full when first worked." to ".....premium shall be paid in full. (Current payment practice shall continue.)"

Issue: Article New Union Miscellaneous Demands

I. Union Position: The Union demand is to fill the Class II Assistant Operator Positions at the Meander and Boardman plants.

County Position: The County rejects this demand.

Discussion: The County's position is based on Management Rights considerations. This is an acceptable defense on this issue. However, from the discussion on Article V, this is also affected by 5.02 and 5.03, which according to the Unio allow the County not to fill a position unless the County declares and fills a vacancy. This language apparently controls this situation.

Finding of Fact: The vacancy provisions of the contract cover this situation.

Suggested Language: None

II. Union Position: The Union demands that sick leave be used in minimum fifteen (15) minute intervals.

County Position: The County rejects this demand on the grounds of increased administrative cost.

Discussion: This provision relates to sick leave use which has been discussed at length elsewhere in the report. In that provision the recommendation is for minimum one hour use of sick leave. While this demand has some marginal benefit to the employee, the times when a person needs to use sick leave for only fifteen minutes are few. The benefit to the employee in this instance must be weighed against the increased cost to administer the program. The Union did not prove any need for this demand that would justify the cost of administration.

Finding of Fact: The Union did not prove its position on this demand.

Suggested Language: None

III. Union Position: The Union demands that a new position, Safety Coordinator, paid as a MRIII be established.

County Position: The County rejects this demand.

Discussion: The demand is based on the fact that legal requirements force a person to act as the safety coordinator. Currently, the job is being filled as part of the assignment of one employee. In other words it is not a full time job. There was no testimony that the safety of the employees was adversely affected by this practice.

The County argued that this is a Management Right and, as such, the County did not wish to consider the demand. The Fact Finder agrees that the way a function is performed is a Management Right as long as there is no violation of the contract. This is the case in this situation.

Finding of Fact: The position and duties of the safety coordinator are being adequately performed.

Suggested Language: None

IV. Union Position: The Union demands that the current Mechanic I be promoted to Mechanic II.

County Position: The County rejects this demand.

Discussion: This demand is similar to the demands on the ""Combo Vehicle" driver and backhoe operator demands. The discussion mirrors the discussion of these issues.

Finding of Fact: The Union did not prove its position.

Suggested Language: None

Note: Again the Fact Finder urges the parties to consider the formation of a Labor/Management committee. Clearly, there are at least three cases where the Union feels and makes a strong argument that the pay for certain positions does not fit the job requirements. A Labor/Management forum would allow the parties time to discuss these issues in detail. There might not be a change in the pay of the affected employees, but the parties would have the opportunity to address the issue in depth.

Dennis Pappy