STATE EMPLOYMENT
RELATIONS BOARD

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FACT-FINDING REPORT

STATE EMPLOYMENT RELATIONS BOARD
Case # 96-MED-11-1122

AFSCME OHIO COUNCIL 8, LOCAL 1099, AFL-CIO

-and-

WOOD COUNTY REGIONAL WATER/SEWER DISTRICT

Donald R. Burkholder, Fact-Finder

April 18, 1997

A Fact-Finding hearing under Section 4117-9 of the Ohio Administrative Code, assigned by the State Employment Relations Board by letter of December 31, 1996, was conducted beginning at approximately 9:30 a.m. on Tuesday, March 11, 1997 at the Wood County Courthouse Annex in Bowling Green, Ohio. Those present were as follows:

> Union: William F. Fogle, Advocate and Staff Representative, AFSCME Ohio Council 8; Richard Hammer, Local President; Lola Judson and Mark Tillison, Local Members.
>
> Employer: Steven Spirn, Advocate and Labor Relations Consultant, Wood County; Jim Cady; Beth Vannett, Office Manager; Dan Wickard, Superintendent; and John Harden, Finance Director.

The advocates presented an overview of their respective positions. Sixteen issues were initially brought to the table, as listed in the Pre-Hearing Briefs. Following the initial presentations, the Fact-Finder suggested, and the parties agreed, that team members other than the advocates would take a break while the Fact-Finder and the Advocates mediated a number of issues. The result was a signficant reduction in the number of issues, from sixteen to eleven. When the parties re-convened, exhibits were admitted into evidence, witnesses were sworn, and the hearing proceeded.

The issues resolved as a result of mediation were as follows: *

1. Article 2, no change except to ADD to Section I, Included, the following two positions:

Dispatcher/Inventory Clerk; Electronic Technician.

2. Article 31, no change except for A NEW SECTION 5, replacing the existing Section 5, with a new Table [See Appendix A].

3. Article 37, INJURY PAY LEAVE, to read as follows:

Section 1.
The Employer agrees to continue to pay for the Hospitalization/Major Medical Plan for the first **one hundred twenty (120)** days of a time period while an Employee is on an industrial leave.

4. Article 25, Section 1, no change, but the following is to be added:

Section 2.

Employees injured on thejob who are determined to be totally disabled by the appropriate external agency shall received all banked sick leave as soon as possible after said total disability is determined.

An employee killed in the line of duty shall have his estate recieve any banked sick leave as soon as possible.

5. Article 45: The parties agreed to maintain the language in the present contract.

6. Article 12: Present language.

7. The Union's AFSCME CARE PLAN and PEOPLE proposals were dropped

The issues remaining for Fact-Finding were "original" Articles 14, 26, 27, 29, 39, 40, 49, 44, and 56 and 57, wages and duration, plus a union-proposed issue, i.e., education and training.

FACT FINDER RECOMMENDATIONS: *

The Fact-Finder's recommendations were formulated taking into consideration the items outlined in the Administrative Code, as follows:

(1) Past collectively bargained agreements, if any, between, the parties;
(2) Comparison of 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 standard 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 of in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

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1. Article 14 - Disciplinary Procedure
   a) DELETE Section 1 D.
   b) DELETE last phrase of third sentence in Section 2, i.e., "or mitigated as equity suggests under the facts."

Rationale: The verbiage in Section I D and in the last phrase of the third sentence of Section 2 as noted above is redundant and therefore not conducive to positive labor relations.

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2. Article 26 - Compensatory Time

Add Section 3, as follows:

Section 3. The earning and utilizations shall be in one-fourth (1/4) hour increments, and paid in 15 minute (1/4 hour) interest requests.

Rationale: Work assignments or responsibilities are not necessarily completed in rounded hours; therefore it seem reasonable to provide a mechanism for such situations to be appropriately rewarded.

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3. Article 27 - Medical Leave/Personal Leave

Add at end of Section 1, as follows:

An employee on non-medical leave must give notice of intent to return to work at least two weeks prior to the date of the last day of the leave granted. Failure to do so may result in termination.

Family Medical Leave Act and any other medical or sick leave shall run concurrently.

Rationale: Regarding non-medical leave, the Employer needs a firm expectation of the dates an employee will be at work in order to properly plan and staff the agency. Regarding the FMLA, concurrent usage of FMLA and other medical or sick leave should work no hardship on either party, and should be beneficial in terms of planning, staffing, and carrying out the work of the agency.

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4. Article 29 - Uniforms. No change.

Rationale - There is no significant evidence indicating a need for a change in the current provision.

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5. Article 39 - Grievance/Arbitration Procedure

Section 1.

A grievance is a dispute or difference between the **Employer** and the Union, or between the **Employer** and an employee concerning the interpretation and/or application of, or compliance with any provision of this Agreement

STEP 1. An employee who has a grievance shall take it up orally with his immediate supervisor/superintendent, accompanied by his Steward, within **ten (10)** working days after the employee has knowledge of the event upon which his grievance is based, and the supervisor/**superintendent** shall give his answer to the employee within **ten (10)** working days after the grievance was presented to him.

STEP 2. If an employee's grievance is not satisfactorily settled in Step 1, the grievance shall, within **ten (10)** working days after the receipt of Step 1 answer be reduced to writing and filed with the employee's **supervisor/** superintendent on a grievance form, signed by the employee and his Steward. The **supervisor**/superintendent shall meet with the Steward within **ten (10)** working days after the written grievance has been filed, and a written answer shall be given within **ten (10)** working days after Step 2 meeting. The employee and the appropriate witnesses will be called in by mutual agreement of the parties hereto.

STEP 3. If the grievance is not satisfactorily settled at Step 2, the grievance may within **ten (10)** working days after receipt of the Step 2 answer, be appealed to the Director. The Director shall meet with the Union seven (7) days after the grievance has been appealed and a written answer shall be given within seven (7) working days after Step 3 hearing. The employee and appropriate witnesses will be called in by mutual agreement of the parties hereto.

Step 4 A. Should any grievance remain unsettled after the exhausting of the above procedure, either party hereto, and only either party, shall, if the party desires, demand arbitration within ten (10) working days after failing to settle the grievance, by serving notice on the other party. The arbitrator shall be appointed by mutual consent of the parties and they shall jointly petition the Federal Mediation and Conciliation Service for a panel of seven (7) qualified arbitrators, and the parties shall select a single arbitrator for each panel.

1. Alternately, one (1) name shall be struck from the list until one (1) name remains and that person shall be the arbitrator.
2. The right to strike the first name shall be determined by lot.

B. The fees and expenses of the arbitrator shall be shared equally between the two (2) parties.

1. Employees called as witnesses by either party shall receive their regular rate of pay while attending such hearing.
2. All other expenses for witnesses or otherwise shall be borne by the party incurring the cost.

C. The arbitrator shall schedule a hearing date as soon as possible. The decision of the arbitrator shall conform with applicable laws and shall be binding upon the parties.

1. The Arbitrator shall not be empowered to rule contrary, to amend, add to or eliminate any of the provisions of this agreement.

Section 2

Where a group of employees desires to file a grievance involving a situation affecting every or each Bargaining Unit employee/ Union in the same manner, one employee selected by such group will process the grievance as a "class action" grievance.

Rationale: A Fact-Finder's objective is to recommend a course of action which is a) within the parameters of applicable law , and b) in the best interests of the parties to a dispute in terms of permanent improvement in the Employer-Employee relationship, given the existing circumstances. Binding arbitration is clearly in the best interest of both parties inasmuch as it

provides certainty of final settlement and a fair means of achieving that end. Binding arbitration is not unusual among non-public safety collective bargaining units in Ohio (Union Exhibit 2); it would most likely lead to improved labor-management relations in situations such as this where non-closure of grievances leads to continued hard feelings and contentious interpretations of events. Union Exhibit 3 is an example of the continuing mischief which a voluntary and/non-binding system of arbitration can wreak.

Strong testimony was presented by the Employer that binding arbitration is rare or non- existent in non-public safety units in Wood County. This is not doubted, but it does not obviate the fact that binding arbitration would be a constructive measure to adopt if the objective is to maintain and improve the labor relations atmosphere with this particular bargaining unit. Adoption of this proposal most likely would result in the continuing improvement of the services by this unit's workers, i.e., improvement in morale, services, and therefore efficiency and effectiveness.

Ten working days provides a more realistic time frame for a decision to move or process a matter to the next step. The changes in titles, i. e., adding Supervisor, etc. are significant in that they clarify and thereby hopefully provide less opportunity for unproductive nitpicking and negative labor relations.

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6. Article 40 - Work Week/Work Day/Overtime

Section 8 - RESPONSIBILITY

(Beginning with first full paragraph on page 33, "The Duty Man will x x x)

The Duty Man will be paid thirty (30) straight hours for each seven (7) day period of rotation, in addition to **all** those hours worked. **. Saturday and Sunday hours worked shall be paid at one-and-one-half the employee's base rate of pay, above the thirty hours.** All employees who volunteer **and who are eligible under the provisions of Article 7 above** will be rotated for Duty Man.

(No change in remainder of Section 8)

Section 9 -Computation of Overtime and Hours

The definitions regarding overtime and the fixed thirty (30) straight hours herein are defined to mean that any employee serving as Duty Man is still entitled to overtime pay for purposes of this Article, including receiving one-and-one-half (1.5) time pay for those hours worked on a Saturday or Sunday. The Duty Man activities in no way abate or take away any other pay or provisions of this Article.

Rationale: It seems reasonable to retain the work of the unit and to make provision for rewarding the irregularity, uncertainty, and skill level required for Duty Man responsibilities, which, is noted are assumed on a voluntary basis and should be made worthwhile for those willing to assume such responsibility.

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7. Article 44 - License Pay

Section 3

A. Office personnel who complete or have completed each part of the **three (3)** part C. P. I. Exam (per July 26, 1991 memo) shall receive license pay as reflected herein.

B. Office personnel after 7-1-94, who complete the full C. P. I. Exam, shall

receive license pay equal to others who have completed said C. P. I. Exam, **three (3)** study requirements, even though their testing may be reduced to three (3) test parts therein.

Section 4

Effective 2-1-94 license pay shall be as follows:

Class #1	$ **.40**
Class #2	$ **.50**
Class #3	$ **.60**

Employees shall be paid for all licenses obtained.

Rationale: Positive labor relations, reward for working to improve one's skill level, and the important factor of providing motivation for improvement are signficant considerations, along with comparables and relationship to other recommendations contained herein.

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8. Article 49 - Funeral Leave and Pay

Section 1

Employees shall be entitled to **four (4)** days of Funeral Leave with pay for their immediate family such as defined in Article 31, Sick Leave. Thus Funeral Leave and pay is not deducted from sick leave.

(No change remainder of existing Article 49).

Rationale: The Union proposal spelling out distances or radii which bereaved could travel and relating those distances to permitted time off would be complex, difficult to apply, and therefore is not conducive to good labor relations.

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9. **Article 56 - Education/Training**

Section 1

The parties agree that all Job Education, Job Training, and orientations for job enhancement, job promotions, job reviews, and advancements and the standards therefor must be mutually agreed upon by the Parties, per O.R. C. 4117 and the provisions of the Collective Bargaining Agreement, prior to any such activities being created or carried out.

Section 2

The Employer and the Union will meet at least twice in each twelve month period, the first such meeting to take place within 60 days of the signing date of the current collective bargaining agreement, to discuss and consider legal/work/ position requirements, areas/work and any and all situations for which training would benefit the Employees, and ultimately the Employer in terms of ensuring improved or higher morale, a more skilled, more productive, and therefore more efficient and effective work force. Following such discussion, the parties will prioritize the areas of potential training which have been identified, then develop and, scheduled, and carry out programs in the sequence identified, in accord with Section 1 above.

Section 3

The Union will assist the Employer in various training programs whenever feasible.

Rationale: Both the Employer and the collective bargaining unit members have a vested interest in the planning, development, scheduling/delivery of training which should ultimately help advance their job performance and

training which should ultimately help advance their job performance and their value to the Employer. The Fact-Finder makes special note of the fact that neither party presented exhibits on training, although the initial emphasis included by the Union in the Pre-Hearing briefs, as well as the general tenor or attitudes of the parties during the Hearing made it apparent that training is needed. Alcohol/Drug Testing Policy Training was listed by the Union, and at some point training regarding trenching activities was mentioned; both of these suggested areas of training make eminent sense to the Fact-Finder, yet they are not included in the formal recommendation above because a) he believes there is no need to be specific; b) the advocates and leadership of both parties, based on the Fact-Finder's observations, have a professional and mature relationship which, he trusts, should lead to identification of and action on the most serious and immediate needs.

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10. Article 57 - Wages

A. Retroactive to February 1, 1997, the base rate for bargaining unit Employees will be increased by 2%.

B. Effective February 1, 1998, the base rate for bargaining unit employees will be increased by 2%.

Rationale: Consideration of the Employer's financial position as presented in its final exhibit, the recommendations in Articles 26, 40, 44 above, and in Article 59, Duration, (two years) following, plus the comparables led to the conclusion that the Wage increases recommended are equitable. Further, note should be taken that two percent for each of two years increases the base sooner and more substantially than the Employer-recommended 2-1-1.

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11. Article **58** - DURATION/TERMINATION

Section 1.

This Agreement shall be effective as of February 1, 199**7** and shall remain in effect and full force until January 31, 199**9**. It shall automatically renew from year to year unless either party shall notify the other party in writing on or before September 1, 199**8**, prior to the termination (anniversary) or date that it desires to terminate or modify this Agreement. In the event that x x x (remainder of Section 1 and Section 2 in its entirety unchanged.)

Rationale: A two-year duration is reasonable from the standpoint of both parties given the recommended alterations in the Agreement.

* New language is noted in **bold-face type.**

Please note: The Fact-Finder is appreciative of the thorough, professional and courteous manner in which the Advocates as well as their respective parties/witnesses conducted themselves in this matter.

Donald R. Burkholder

(Donald R. Burkholder, Fact-Finder)

April 18, 1997

(Date)

Appendix A

add to existing 31

1099 1996

Article # 31

Section # 5.

Employees will be given Bonus Paid Days each year provided the employee has earned sick pay benefits. in the pervious year, in accordance with the following Table:

BONUS DAYS- CANCELLATION TABLE

Months worked	0	1	2	3	4	5	6	7	8	9	Sick Days Taken 10	11	12	13
12	5	5	5	4.5	4	3.5	3	3	2	2	1	1/2	0	0
11	5	4.5	4.5	4.5	4	3.5	3	2.5	2.5	2	1	1/2	0	
10	4	4	4	3.5	3.5	3	2.5	2	1.5	1	1/2	0		
9	4	3.5	3.5	3	2.5	2	2	1.5	1	1/2	0			
8	3.5	3	3	2.5	2	1.5	1	1/2	1.5	0				
7	3	2.5	2.5	2	2	1	1	1/2	0					
6	2.5	2	2	1.5	1	1	1/2	0						
5	2	2	1.5	1	1	1/2	0							
4	1.5	1	1	1/2	1/2	0								
3	1	1	1/2	1/2	0									
2	1/2	1/2	0	0										

Employees will receive this Bonus Pay upon their annual hire in date.