

STATE EMPLOYMENT
RELATIONS BOARD
FACTFINDING TRIBUNAL
STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO

STATE EMPLOYMENT
RELATIONS BOARD
SEP 19 10 33 AM '97

IN THE MATTER OF FACTFINDING :

BETWEEN :

COLUMBUS CITY SCHOOL DISTRICT :
BOARD OF EDUCATION :

- AND - :

COLUMBUS EDUCATION
ASSOCIATION :

BOTH OF COLUMBUS, OH :

:

REPORT OF THE
FACTFINDER

SERB CASE NO.: 97-MED-04-0542

HEARING: July 10, 1997; Columbus, Ohio.

FACTFINDER: David W. Stanton, Esq.

APPEARANCES:

FOR THE EMPLOYER

Gregory B. Scott, Attorney
Mary Thomas, Director, Contract
Relations
Eugene Brundige, Director
of Classified Personnel
Nancy Holzemer, Paralegal

FOR THE ASSOCIATION

Richard L. Logan, Labor
Relations Consultant
Charlene Dossett, Bargaining
Chairperson
Ted Thomas, Staff Consultant
Carol Wagner, Staff Consultant

ADMINISTRATION

By letter dated June 27, 1997, from the State Employment Relations Board, the Undersigned was notified of his mutual selection to serve as Factfinder to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-9-05(J) in an effort to facilitate resolution of the issues that remained at impasse between these Parties. The impasse concerns thirty-nine (39) unresolved issues raised between the Parties by the proposal of language to be included, or not, in their initial Collective Bargaining Agreement covering "Latchkey Teachers."

On July 10, 1997, the Factfinding proceeding was conducted wherein Mediation was offered. However, that request was declined. The Factfinding proceeding commenced forthright at approximately 9:30 a.m. and lasted until approximately 5:30 p.m. that afternoon. During the course thereof, each party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced. No indication to submit any Post-hearing statement relative to the evidentiary arguments advanced at the Factfinding proceeding was presented. The Record of this proceeding was subsequently closed at the conclusion of the Factfinding proceeding. The disputed contract proposals that remain at impasse are the subject matter for the issue of this Report hereunder.

STATUTORY CRITERIA

The following findings and recommendations are offered for consideration by these Parties and were arrived at based upon their mutual interests and concerns; and, are made in accordance with the statutorily mandated guidelines set forth in Ohio Administrative Code Rule 4117-9, which requires the consideration of:

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

I. THE BARGAINING UNIT DEFINED, ITS DUTIES AND RESPONSIBILITIES TO THE COMMUNITY AND GENERAL BACKGROUND CONSIDERATIONS

The Columbus Public Schools (Columbus City School District Board of Education), hereinafter referred to as the "Employer," operates a system of 87 public elementary schools, 26 middle

schools, 16 high schools and 4 career centers in Columbus, Ohio and is recognized as the second largest system within the State of Ohio, and has an enrollment of approximately 63,000 students taught by approximately 4,700 teachers. Since the 1983-84 school year, the Employer has operated a Latchkey Program, which is now in thirty-one (31) buildings, most of them with one Latchkey Teacher and one Instructional Assistant.

The Columbus Education Association, hereinafter referred to as the "Association," has represented the Employer's certified, non-administrative staff for many years. The Association was certified on October 7, 1996 to represent a Collective Bargaining Unit defined as "certified Latchkey Teachers who work regularly during the majority of the school year." Latchkey programs run by the YMCA in two of the Employer's buildings are not part of this bargaining unit.

School systems are not required to provide a Latchkey Program, by law, and General Fund expenditures are forbidden for Latchkey Programs. The Employer's Latchkey Program is funded by the fees paid by parents of the students who participate in the program. The Employer provides only "ancillary services" in the form of space in school buildings, utilities, etc. The Latchkey Program's duties include, among other responsibilities, providing child care for school-age children before and after school hours. The Latchkey Program has no obligation to teach an approved curriculum, to grade student work, or to evaluate students' performance. The Employer has elected to require Latchkey

Teachers to have teaching certificates, although it is not required by State statute or regulation. Marilyn Gable, the "coordinator," administers the program.

The Bargaining Unit consists of approximately 32 persons employed on one-year "limited" contracts, at a rate of pay equal to the rate paid to classroom teachers when they perform certain non-classroom services, currently \$20.79 per hour. Latchkey Teachers work two (2) hours in the morning, and three (3) hours in the afternoon each school day (i.e., 180 school days), plus two (2) hours per month buying supplies and receiving student fees, and one (1) hour per month (at \$6.00 per hour) attending District-wide meetings, for a total of 927 hours per year at approximately \$19,139.22 annually. Latchkey Teachers earn the statutorily-required 15 days of sick leave per year, but have not been eligible to participate in the Employer's health and other benefit plans. They have, however, earned service credits with the STRS. Some Latchkey Teachers are also substitute classroom teachers in the same school building.

Prior to the July 10, 1997, Factfinding proceeding, each Party submitted a Pre-hearing Statement and accompanying documentation in accordance with the statutory procedure identified supra. As indicated by the Parties, negotiations between them began on May 14, 1997. The parties met on five (5) occasions. State Mediator Steve Loeffler, was appointed, but no mediation sessions were conducted. During the course of bargaining, the Association's initial contract proposals were

presented at the first meeting (May 14, 1997), and the Employer's initial proposals were presented at the second meeting (May 23, 1997). The Association presented new contract proposals in the third and fourth meetings (May 30 and June 9), and the Employer presented its second contract proposals in the fifth (and final) meeting (June 16, 1997).

At the conclusion of the negotiations, for purposes of this Factfinding, the Parties had resolved eleven (11) contractual areas concerning various issues and were in disagreement on thirty-nine (39) issues, which are discussed below. Agreed-upon language fell in the following "areas" as set forth in the supporting documentation:

- Authority of the Superintendent
- Responsibility of the Association
- Present Policies
- Board-Association Consultation
- Rights of the Association
- Grievance Procedure
- Latchkey Contracts
- Reports to State Teachers Retirement System Credit Reporting STRS Board "Pickup"
- Professional Personnel, or Personnel Files
- Physical Examination.

Additionally, various issues were seemingly resolved during the course of the Factfinding Proceeding. These issues will be

characterized and addressed as such as they arise numerically in this Report.

PRELIMINARY CONSIDERATIONS

As the voluminous evidentiary record demonstrates, this is the initial Contract for this 32,000 Member Bargaining Unit which provides latchkey services for the Columbus Public School System. Such services can be viewed as being incidental in nature and, given the fact that they don't carry out typical teacher functions per se, i.e., that of educating students, they do not have a significant impact on the educational mission of the school system as a whole. However, today's society unfortunately recognizes that parents have dual roles with regard to those normally associated as parents. Given the demands that are placed upon middle class families, the need for such a service provides a tremendous benefit for those affected and are in need of such a program. Obviously, inasmuch as these programs are self-sustaining, the Employer has indicated a basic premise upon which its various positions concerning the unresolved issues exist that is being cost responsible with regard to the economic impact that may exist. Alternatively, the Association insists that these thirty-two employees within this recently Board-certified Unit should be included within the larger Teacher's Unit that consists of approximately 4,700 teachers. That aspect of this proceeding is beyond the purview of this Factfinder, however, given the fact that this is an initial Contract for this

Unit, and as such, the Parties must be mindful of numerous considerations. The Collective Bargaining process, as these experienced advocates recognize, is an incremental process that recognizes a maturation of a relationship over time that addresses issues that may arise during the course of that relationship on an ongoing basis. Arguably, much of the Contract involving the larger unit would be in many ways inapplicable to the unit of this size. However, the consideration of various provisions of that Agreement would provide a useful basis to assist these Parties with issues that will undoubtedly arise concerning this initial agreement between them.

The "status quo" position, as the Record reveals, has its origin in many Board policies and practices that have resulted from issues from the larger unit. Unless compelling evidence exists to deviate therefrom, such will be recommended. The Factfinder is mindful, however, that this is an initial contract and expectations may be higher than what reality may provide.

The evidence of record is void of any comparable unit that provides such ancillary services who receive the rate of pay that these individuals receive for the hours of services that they provide. However, this does not mean that compensation and/or any other economic benefit be "frozen" or nonexistent for these employees until such time as other service providers "catch up" to the benefit level and compensation level of these employees.

It is against this backdrop that the following proposals, positions, recommendations and rationale are offered for the

Parties' consideration. The Undersigned has made a conscientious effort to streamline the voluminous nature of this record, however, given the fact that this is the initial Contract between the Parties, it is imperative that each issue be addressed clearly and concisely based on the language proposed by the Parties to avoid the risk of mistakes, misunderstandings and/or omissions that could arise.

ISSUES, POSITIONS OF THE PARTIES AND RECOMMENDATIONS

ISSUE 1

ARTICLE 001 - RECOGNITION AND DEFINITION OF LATCHKEY TEACHERS

ASSOCIATION PROPOSAL:

The Association asserts that, for practical purposes, the 32 teachers in this "ancillary" bargaining unit should be included under the same Collective Bargaining Agreement which covers the Employer's 4,700 teachers, as was previously accomplished with Tutors, but concedes its inability to require the Employer to accept this solution. The Association proposed the following language:

ARTICLE 001

RECOGNITION AND DEFINITION OF LATCHKEY TEACHERS

The Board of Education recognizes the Columbus Education Association as the sole and exclusive representative of the latchkey teachers. For the purposes of this Agreement the term "teachers" shall mean the latchkey teachers who work regularly during

the majority of the school year. Bargaining unit work (work currently being performed by bargaining unit members or similar work) will be performed only by bargaining unit members as defined above.

The Association rejects the Employer's proposal to eliminate the position of "Latchkey Coordinator" from the unit; the person performing that duty has been in charge of the program for ten (10) years, with little supervision from the Employer. The Association agreed to the language of the Employer's proposed sections 1.02; 1.03; and, 1.04, set forth below.

EMPLOYER PROPOSAL:

The Employer contends that Latchkey Coordinator, Marilyn Gable should have been excluded from the Collective Bargaining Unit as an "Administrator," but for the circumstance that she was not employed on an "Administrative Contract" when the representation petition was filed. The Employer's counter-proposal was as follows:

ARTICLE 1 - Recognition

1.01 The Columbus City School District Board of Education recognizes the Columbus Education Association as the exclusive representative, pursuant to the Certification of Election Results and of Exclusive Representative issued by the State Employment Relations Board on October 7, 1996, for certified Latchkey Teachers who work regularly during the majority of the school year. Upon ratification the CEA immediately will join with the Board to petition SERB to clarify the unit to remove the latchkey Coordinator as a managerial employee.

1.02 Excluded from the bargaining unit are the Superintendent, Deputy Superintendent, Assistant

Superintendent, Principals, Assistant Principals and other administrative or supervisory personnel having the authority to hire, transfer, assign, promote, discharge or discipline other certificated or professional employees or recommend such action, and seasonal and casual employees as defined by SERB and all others excluded by R.C. Chapter 4117.

1.03 Authority of the Superintendent

The administrative authority of the Board shall be implemented by the Superintendent, Deputy Superintendent, Assistant Superintendents, Principals, Assistant Principals, and other administrative or supervisory personnel employed by the Board. The Superintendent shall have the sole authority to direct, assign and transfer latchkey teachers, subject to the terms of this Agreement and applicable law.

1.04 Responsibility of the Association

The Association shall represent all latchkey teachers of the Columbus City School District equally and without discrimination, regardless of their membership or non-membership in the Association.

RECOMMENDATION AND RATIONALE:

Inasmuch as the Parties are essentially in agreement, except for the unit placement of the Latchkey Coordinator and the protection of bargaining unit work, it is recommended that the Parties include in their Contract the language proposed by the Employer, "Upon ratification the CEA immediately will join with the Board to petition SERB to clarify the unit to remove the latchkey Coordinator as a managerial employee." If the Parties wish to clarify the unit, such language would ensure this objective.

With respect to the Association's proposed language, "Bargaining unit work (work currently being performed by bargaining unit members or similar work) will be performed only

by bargaining unit members as defined above," I am not convinced that such a "work jurisdiction" claim is necessary or desirable. There is no showing that the Employer has demonstrated a history of, or currently possesses any intention to, assign bargaining unit work to non-unit employees. Moreover, State Law offers sufficient protection from unilateral transfers of unit work which may jeopardize latchkey teachers' employment opportunities or which may undermine the Association's status.

As indicated, the Association accepts the Board's proposed language for Sections 1.02; 1.03; and, 1.04.

ISSUE 2

ARTICLE 2 - BOARD OF EDUCATION RIGHTS AND SUPERINTENDENT'S RIGHTS

EMPLOYER PROPOSAL:

The Employer proposed, as the first section of Article 2, the following:

ARTICLE 2 - Board of Education and Superintendent's Rights

2.01 The parties agree that only the written specific, express terms of this Agreement bind the Board of Education and the administration. Except as specifically and expressly provided in this written Agreement, the Board and the administration have full and complete discretion to make decisions and implement changes in operations, including those affecting wages, hours, terms and conditions of employment of members of the bargaining unit.

ASSOCIATION PROPOSAL:

The Association rejects this proposal as a kind of "zipper" clause which would have the effect of superseding the bargaining process. Moreover, the Association argues, the language is unnecessary because the topic is already covered by law.

RECOMMENDATION AND RATIONALE:

This proposal should be read in conjunction with the Employer's sections 1.03, 2.03, and 2.04, which the Parties have agreed upon. Those section read as follows:

1.03 Authority of the Superintendent

The administrative authority of the Board shall be implemented by the Superintendent, Deputy Superintendent, Assistant Superintendents, Principals, Assistant Principals, and other administrative or supervisory personnel employed by the Board. The Superintendent shall have the sole authority to direct, assign and transfer latchkey teachers, subject to the terms of this Agreement and applicable law.

2.03 Present Policies

To the extent that any provision of the Administrative Guide, other Board policy, regulation or procedure, or building level policy, regulation or procedure conflicts with an expressed provision of this Agreement, the provisions of this Agreement shall have precedence.

2.04 During the term of this Agreement, the Board or its administrative agents shall make it a practice to advise the Association President or his/her designees prior to the adoption of new or substantially revised city-wide policies, programs, or procedures of significant importance to and directly involving latchkey teachers.

Read together, these sections form a kind of "management rights" clause of the sort commonly used to preserve to Management any authority which is not limited or surrendered by the Collective Bargaining Agreement. Inasmuch as the elected Board is required by law to oversee the Employer's programs, including the Latchkey program, I consider it appropriate to recognize that fact in this Contract. The recently-expired Agreement between these Parties covering the larger bargaining unit of teachers includes a similar section. It is recommended that the Parties include the language proposed by the Employer in their Agreement.

ISSUE 3

ARTICLE 2.02 - EQUAL EMPLOYMENT RIGHTS

ASSOCIATION PROPOSAL:

The Association proposed the following:

ARTICLE 004 EQUAL EMPLOYMENT RIGHTS

Members of the bargaining unit will not be discriminated against in any way in the exercise of their employment rights or their rights under this Agreement because of race, color, creed, national origin, age, sex or sexual orientation.

EMPLOYER PROPOSAL:

The Employer's proposal is the same, except it omitted the last protected category, as follows:

2.02 Equal Employment Rights

Members of the bargaining unit will not be discriminated against in any way in the exercise of their employment rights or their rights under this

Agreement because of race, color, creed, national origin, age, or sex.

RECOMMENDATION AND RATIONALE:

In the opinion of the undersigned, the Parties should include in their contract the broader protection afforded by the Association's proposal. If there were any allegation of discrimination based on sexual orientation, inclusion of this protected category in the contract would enable the Parties to afford themselves to the benefits of Arbitration under this contract, thereby possibly avoiding a heavy burden of litigation in the courts. I therefore recommend adoption of the Association's proposal.

ISSUE 4

ARTICLE 2.05 - BOARD-ASSOCIATION CONSULTATION

ASSOCIATION PROPOSAL:

The Association proposed the following language providing for consultation between the Parties, which is nearly identical to a similar section of the contract covering the larger unit of Classroom Teachers:

006.02 During the term of this Agreement, the Superintendent of Schools and designees shall meet on a regular basis, generally once a month, with not more than five (5) representatives of the Association to discuss matters of policy, procedure, and program of the school district that may affect latchkey teachers. In order to promote a free exchange of views, all matters discussed in such meetings shall be considered confidential by all parties unless otherwise noted in the meetings.

EMPLOYER PROPOSAL:

The Employer criticizes the Association's proposed committee's structure as "traditional" and offers the following "modern labor-management committee which could collaborate on problem-solving":

2.05 There shall be an Association-Management Joint Committee which shall be composed of no more than three latchkey teachers and three administrators. The latchkey teachers may request up to three meetings per year. Meetings shall be held during non-latchkey teachers' hours on mutually convenient dates. The purpose of the Committee will be to discuss matters of mutual concern.

RECOMMENDATION AND RATIONALE:

In theory, the Parties are in agreement with regard to the Joint Association-Management Committee to discuss matters of policy, procedure and program of the school district that may have some effect on Latchkey Teachers within this Unit. Indeed, the purpose of such an "association" promotes the free exchange of use, however, under the Association's proposed language, this shall remain confidential. It is clear that the Parties agree in theory, however, disagree with respect to how many are represented by the Association. Clearly the Board can designate the number of Board representatives who would participate in such a program. Given the nature of this Unit, i.e., that it is only of thirty-two (32) Latchkey Teachers and not to diminish the value of the input that additional individuals could provide, it is recommended that the Parties adopt the Employer's proposal

concerning the Joint Committee in that it consists of three (3) Latchkey Teachers and three (3) Administrators. As stated supra, it is clear that the Parties agree concerning this Joint Committee and the primary difference concerns the number of Latchkey representatives. Given the size of the Unit, it does not appear that representational considerations of three (3) Latchkey representatives versus five (5) would have any significant impact on what may or may not be accomplished during these Joint Committee meetings.

ISSUE 5

ARTICLE 006.03 - FORMS

ASSOCIATION PROPOSITION:

Following the pattern set by the Parties' Agreement for the larger teachers' unit, the Association proposes the following:

006.03 All administrative forms provided by this Agreement shall be mutually acceptable to the Board and the Association, subject to binding arbitration in case of dispute. The development of such mutually acceptable forms shall include discussion between the parties of the procedures for the use of such forms. In the event mutual agreement on a form does not occur, the Board shall be free to utilize its preferred form until the arbitrator renders a decision.

EMPLOYER POSITION:

The Employer offered no alternative language and omitted any mention of this proposal in its pre-hearing submission.

RECOMMENDATION AND RATIONALE:

During the course of the Factfinding proceeding, the Union challenged the fact that the Employer did not provide a position on a number of unresolved issues. As indicated to the Parties by the Undersigned, enforcement of the statutory procedure is best served through the Administrative Agency charged with the responsibility of overseeing Chapter 4117 of the Ohio Revised Code. Despite the fact that the Employer did not present a written position per se, rebuttal evidence based on the Association's proposal, as the moving party, concerning this issue was received.

With respect to the language proposed by the Association, "Forms" generally do indeed provide uniformity and are orderly and systematic with regard to their intended purpose. The problematic aspect is whether they are indeed "mutually acceptable" and are subject to binding arbitration in case of any dispute. It would seem that the Joint Labor Management Committee previously discussed would provide an avenue for the Parties to discuss the mutuality of the forms. Given the fact that there is no alternative language argued by the Board, it is hereby recommended that the Parties adopt the Association's language relative thereto.

ISSUE 6

ARTICLE 007 - RIGHTS OF THE ASSOCIATION

ASSOCIATION PROPOSAL:

Following the language in its contract with the Employer for the larger unit, the Association proposed:

007.04 Representatives of the Association shall be permitted to transact Association business on school property at reasonable times with the approval of the principal, without charges, provided that this shall not interfere with or interrupt normal school operations. Such approval shall not be arbitrarily or capriciously withheld.

EMPLOYER PROPOSAL:

The Employer offered no alternative language and omitted any mention of this proposal in its pre-hearing submission and indicated at the Factfinding that it does not object to the Association's proposal since it had agreed to such in Section 3.01.

RECOMMENDATION AND RATIONALE:

Based on the Employer's position, it is hereby recommended that the Parties adopt the Association's proposed language concerning the rights of the Association relative to its ability to conduct Association business noting the parameters set forth in its proposal.

ISSUE 7

ARTICLE 007 - RIGHTS OF THE ASSOCIATION

ASSOCIATION PROPOSAL:

007.08 Representatives of the Board will not interfere with the Faculty Representative in scheduled hearings where the latchkey teacher is entitled to representation as provided in this Agreement. However, nothing in this provision is intended to limit in any manner the authority of the Board to give direction or to discipline the Faculty Representative except as provided in the scope of this Article.

EMPLOYER PROPOSAL:

The Employer agrees with the concept generally, and has agreed that a Latchkey Teacher is entitled to have an Association representative present when the teacher is receiving discipline (See, the Employer's proposed Article 13, discussed below under Issue 31).

RECOMMENDATION AND RATIONALE:

The right to Association representation is fundamental. The Undersigned is of the opinion that the Union would be in a better position to address what it deems sufficient representation of employees under it's affirmative duty to represent. In this regard, it is recommended that the Parties adopt the Association's language relative to this proposal. Additionally, it is broader in scope with regard to the manner in which representation should not be interfered with by the Board. In this regard, it again takes into consideration the affirmative duty of a labor organization to fairly represent the employees it is obligated to represent.

ISSUE 8

ARTICLE 008 - ARBITRATION

ASSOCIATION PROPOSAL:

The Association proposes that the Grievance Procedure should culminate in binding arbitration, as is provided in the Agreement covering the larger teachers' unit.

**ARTICLE 009
ARBITRATION**

009.01 If a Grievance is not resolved to the satisfaction of the Grievant in Step Two of the Grievance Procedure above, the Association may make a request for Arbitration within thirty (30) calendar days after receipt of the decision of the Superintendent or his or her designated representative.

009.02 Within three (3) days after this written request for Arbitration, the Board and the Association shall attempt to agree upon a mutually acceptable Arbitrator and shall obtain a commitment from said Arbitrator to serve. If the Parties are unable to agree on an Arbitrator or to obtain such commitment within the specified period, a request for a list of Arbitrators may be made jointly to the American Arbitration Association. An arbitrator shall be selected from the list submitted by alternatively striking names from the list.

009.03 The Arbitrator so selected shall be requested to hold a hearing on the earliest day available and, unless such time is extended by mutual agreement, shall issue his or her decision not later than thirty (30) days from the date of the hearing. The Arbitrator's decision shall be in writing and shall set forth his or her facts, reasoning and conclusions on the issues submitted.

009.04 The Parties recognize that the Board of Education is legally charged with the responsibility of operating the school system. The sole power of the Arbitrator shall be to determine whether the terms of this Agreement have been violated, misinterpreted, or inequitably applied, and the Arbitrator shall have not power or authority to make any decision which modifies or amends any terms of the Agreement which is violative of the terms of this Agreement. The Arbitrator shall not substitute his or her judgment for that of the Board except in the following circumstances:

- A. Where an issue to be determined by the Arbitrator is an issue of fact;
- B. Where the issue before the Arbitrator involves the interpretation of the terms of this Agreement.

009.05 The decision of the Arbitrator will be submitted to the Board and the Association. As subject

to law the foregoing stipulation of this Agreement shall be final and binding in respect to interpretation or application of any provision of this Agreement. Other recommendations of the Arbitrator shall be advisory only and no judgment may be entered thereon.

009.06 The cost of the services of the Arbitrator including per diem expenses, if any, and actual and necessary travel and subsistence expenses as well as related costs of the American Arbitration Association Services shall be borne totally by the loser. The Arbitrator shall designate in the Award the prevailing party or the predominantly prevailing party and shall submit all charges to the other party for payment. Such charges shall not be divided by the Arbitrator between the Parties in any manner or under any circumstances without prior approval of both Parties. The expenses of witnesses and other representatives shall be borne by the Party they represent. A stenographic record of the Arbitration proceeding shall be made. Each Party shall pay for its own copy of such record and the Parties shall share equally the cost of the Arbitrator's copy.

EMPLOYER PROPOSAL:

The Employer accepted the language of the first section, above, modified the next two sections as shown below (Step 1 and Step 2), accepted the language of the Association's proposed Section 008.04, and modified the final two sections as shown below. The Employer's proposal shifts Grievance processing to the supervisor at the first step and the Superintendent or designee at the second step, which it calls "a streamlined procedure designed to resolve grievances at the lowest level possible."

The Employer contends that all other provisions of the contract should be resolved, assuring the Employer of the

flexibility it needs to modify or eliminate the Latchkey Program, before it can grant binding arbitration.

In its pre-hearing submission, the Employer proposed the following, and emphasized its points of contention:

COLUMBUS PUBLIC SCHOOLS

**BOARD OF EDUCATION POSITION
ON ARBITRATION OF GRIEVANCES (CONTINGENT)**

Article 4

.01 If a grievance is not resolved to the satisfaction of the grievant at Step 2 of the Grievance Procedure above, the Association may make a written request for arbitration within thirty (30) calendar days after receipt of the decision of the Superintendent or his/her designated representative.

.02 Within three (day) days after this written request for arbitration, the Board and the Association shall attempt to agree upon a mutually acceptable arbitrator and shall obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified period, a request for a list of seven (7) arbitrators shall be made jointly to the American Arbitration Association. ~~An arbitrator shall be selected from the list submitted by alternatively striking names from the list.~~

.03 The arbitrator so selected shall be requested to hold a hearing on the earliest date available, and, unless such time is extended by mutual agreement, shall issue his/her decision not later than thirty (30) days from the date of the hearing. The arbitrator's decision shall be in writing and shall set forth his/her findings of fact, reasoning, and conclusions on the issue submitted.

.04 The parties recognize that the Board of Education is legally charged with the responsibility of operating the school system. The sole power of the arbitrator shall be to determine whether the terms of this Agreement have been violated, misinterpreted or inequitably applied, and the arbitrator shall have no power or authority to make any decision which modifies, alters, or amends any terms of this Agreement or which is violative of the terms of this Agreement. The

arbitrator shall not substitute his/her judgment for that of the Board, except in the following circumstances:

A. Where an issue to be determined by the arbitrator is an issue of fact;

B. Where the issue before the arbitrator involves the interpretation of the terms of this Agreement.

.05 The decision of the arbitrator shall be submitted to the Board and to the Association and, subject to law and the foregoing stipulations of this Agreement, shall be final and binding in respect to the interpretation, meaning, or application of any provision of this Agreement. Other recommendations of the arbitrator shall be advisory only and no judgment may be entered thereon.

.06 The costs for the services of the arbitrator, including per diem expenses, if any, and actual and necessary travel and subsistence expenses, as well as the related cost of the American Arbitration Association services, shall be borne totally by the loser. The arbitrator shall designate in his/her award the prevailing party, or the predominately prevailing party, and shall submit all charges to the other party for payment. Such charges shall not be divided by the arbitrator between the parties in any manner or under any circumstances without prior approval of both parties. The expenses of witnesses and other representatives shall be borne by the party they represent. A stenographic record of the arbitration proceedings shall ~~may~~ be made. ~~Each party shall pay for its own copy of such record, and the parties shall share equally the cost of the arbitrator's copy.~~ The party ordering a transcript shall pay the cost of the court reporter and transcript; if the other party wants a copy of the transcript, the cost will be split equally.

RECOMMENDATION AND RATIONALE:

The Employer emphasizes that this is the initial contract between the Parties that will necessarily result in uncertainty with regard to the interpretation of the language contained therein. Such a proposition is indeed noteworthy. However, such

also begs the consideration of time-proven language that these Parties have utilized for a number of years concerning the larger unit. Unfortunately, with this process, issues must be resolved on an issue-by-issue basis and this issue must be addressed on its own merit. The Association's proposed language culminates in binding arbitration which the Undersigned is of the opinion is more beneficial to the Parties than that of advisory. Advisory typically may serve as a basis for providing an objective view on the issue that exists, however, it compels neither party to take any affirmative action.

The Parties are seemingly in agreement regarding various aspects of the Arbitration provisions to be included in the initial contract between them.

In the second paragraph relative to the number of Arbitrators, the Association number is silent, thereby leaving that determination up to the Administrative Agency it has requested to provide a list of Arbitrators. The Employer specifically requested a list of seven (7) Arbitrators and it deletes the manner in which the Parties are to strike from the said list. My previous work experiences with that Agency can provide some guidance in this regard. Providing the Parties with a list of fifteen (15) names, in my opinion, is more cumbersome and time consuming. The AAA can modify its rules pursuant to the mutual agreement of the Parties based on a selection process. The Parties can agree to do that on their own accord without any formal indication to the AAA. In this regard, it is recommended

that the Parties adopt the Employer's language with regard to the number of Arbitrators and the selection process.

The language presented by both Parties indicates that the Award shall be final and binding relative to the interpretation, meaning or application of any provision of the Agreement. Any other recommendations of the Arbitrator shall be advisory only and no judgment may be entered thereon. This language seemingly indicates that any dicta and/or rhetoric that the Arbitrator may provide during the course of his/her analysis will not have any binding affect on the Parties. This is seemingly addressed in the fourth paragraph of this Article which specifically provides guidance to the Arbitrator with regard to his scope of jurisdiction. The general function of the Arbitrator is to interpret and/or apply the disputed provisions of the Parties' Agreement. Without the Labor Agreement, the office of Arbitrator generally does not exist. I fail to see any impact being felt by these Parties where the Arbitrator has in some way "editorialized" his/her Award. To do so, in my opinion, would exceed the Arbitrator's authority.

It appears that the Parties are in agreement relative thereto.

With respect to mandating that a Court Reporter be utilized for each case, it is hereby recommended that the Parties adopt the Employer's language relative to this consideration. Mandating a stenographic record for every Arbitration case may, in many cases, be unnecessary and provide an additional cost to

the Parties. The Parties can determine in their own accordance if they indeed wish to have the proceeding transcribed and, in those circumstances, the Party requesting the service shall be responsible for the cost.

ISSUE 9

ARTICLE 010 - AGENCY FEE

ASSOCIATION PROPOSAL:

Again, mirroring that of the larger unit, the Association proposes the following:

ARTICLE 010 AGENCY FEE

010.01 All latchkey teachers who are not members of the Association shall pay an agency fee equivalent to the monthly dues uniformly required of such members, not including initiation fees, fines or assessments, as certified by the Association to the Treasurer before each school year and as further necessary to be accurate. Such payment shall be subject to a rebate procedure provided by the Association meeting all requirements of applicable state and federal law. Agency fees shall be automatically deductible in twelve (12) equal installments beginning with the first pay date after January 15.

010.02

A. The prorated balance due shall be deducted from the final paycheck of a non-member latchkey teacher resigning his/her position, receiving an unpaid leave of absence, leaving a bargaining unit position, or terminating his/her employment after the opening of school.

B. The Association will compensate the Board in the amount of fifteen cents (\$.15) per non-member deducting latchkey teacher per year for the payroll deduction service to be deducted from the first deduction period each school year.

C. The Board will provide the Association with a single printout showing the non-member latchkey teachers from whom such agency fees were deducted. This itemized statement with a transmittal letter will be after each pay date.

010.03 The foregoing provisions regarding agency fees shall be subject to all requirements of Ohio Revised Code, Section 4117.09(C) and all other applicable law of like subject matter.

010.04 The Association shall indemnify the Board, its members, and its administrative and supervisory employees, including but not limited to the Treasurer (all hereinafter, "The indemnities"), for, and to hold them harmless from, any and all liability, damages and expenses, including but not limited to legal fees at customary rates in the community and costs, directly or indirectly incurred by the indemnities, or any of them, because of any legal action or administrative claim brought against them as a result of the provisions of this Article.

EMPLOYER PROPOSAL:

The Employer did not formally provide language relative to this provision due to the fact that it primarily benefits the labor organization, safeguarding its ability to assess a Fair Share Fee and/or Agency Fee to non-members employed by the Columbus Public Schools. It indicates that it is not unilaterally opposed to such a provision, however, it insists that it must have the flexibility in modifying employees hours, laying off employees, disciplining, terminating of employees and the supersedence of any arguably applicable State law provisions must be provided.

RECOMMENDATION AND RATIONALE:

It is hereby recommended that the Parties adopt the Association's language relative to the Agency Fee provision. Obviously, the Board does not gain a benefit per se relative to

such language, but the Ohio Revised Code and the Supreme Court of the United States has indicated that payment of such a fee is statutorily permissible and constitutionally sound in order to avoid a "free rider" scenario. In this regard, and for reasons set forth infra, it is hereby recommended that the Parties adopt the Association's proposal relative to this provision.

ISSUE 10

ARTICLE 011 - ASSOCIATION'S PROGRAM COUNCIL

ASSOCIATION PROPOSAL:

Again, paralleling that provided to Members within the larger unit, the Association proposal is inclusive of the following:

ARTICLE 011 ASSOCIATION PROGRAM COUNCIL

011.01 The latchkey program shall have an Association Program Council which meets monthly during the school year with representatives of the Board. The Association shall name five (5) latchkey teachers to it, one of which shall be the Senior Faculty Representative. All members shall serve by consent. The term of office shall be one school year.

011.02 The Association Program Council shall be advisory only and is intended to assist the Board in developing policies and programs for the program. The Council shall assume the responsibility for being knowledgeable about matters in this Agreement which relate to its functions.

011.03 The Council shall elect a Chairperson at its first meeting each year. The Council Chairperson shall prepare an agenda prior to each subsequent meeting, after consultation with the Board. The Council Chairperson shall record the business of each meeting and shall make a written report of such business to the latchkey teachers.

011.04 Each latchkey teacher shall have the right to have matters placed on the Council Agenda and shall have the right to speak to the Council on an item which the has initiated unless a majority of the Council shall vote to limit the discussion. The Council's meetings shall be open to all latchkey teachers in the program, except that a majority of the Council may declare executive session.

EMPLOYER PROPOSAL:

With respect to the Association's proposal regarding an advisory committee structured along traditional lines as those set forth in the larger unit Contract, the Board proposes a modern labor management committee as discussed infra to problem solve for this Bargaining Unit. To provide yet another structural committee to address program matters provides a hidden cost to the program which is self-sustaining based on monies paid by participating parents. Such should be held outside the work hours; i.e., pre-school and post-school latchkey sessions.

RECOMMENDATION AND RATIONALE:

As discussed supra, the number of representatives was reduced to three concerning Issue No. 4, "Board-Association Consultation." This unit is thirty-two (32) members and already has a labor management-type the committee recommended previously and to provide yet another avenue for committee meetings would indeed impose cost considerations into this self-sustaining program. In this regard, it is hereby recommended that the Parties not include the Association's provision concerning the Program Council.

ISSUE 11

ARTICLE 012 - LATCHKEY CONTRACTS, SCHOOL ASSIGNMENTS

ASSOCIATION PROPOSAL:

The Association proposes the following:

012.02 Latchkey teachers will receive their assigned schools prior to latchkey orientation in August. All latchkey teachers will be paid for five (5) hours a day for each full day that teachers are paid for. Latchkey teachers will be paid mileage for their latchkey schools, to monthly latchkey teachers meetings, and from their latchkey schools to purchase snacks and supplies for their latchkey centers in accordance with the transportation mileage rate as established by the Board. Monthly latchkey teachers meetings are mandatory. Latchkey teachers will be paid one (1) hour extra for days when early dismissal occurs in their schools, and two (2) hours monthly for their shopping time and time spent doing pay-ins.

EMPLOYER PROPOSAL:

The Employer emphasizes that many of the Association's proposals in these sections of Article 12 are economic in nature and would provide a significant additional cost item for this program. Therefore, it proposes that such not be included within this, the initial Collective Bargaining Agreement between the Parties.

RECOMMENDATION AND RATIONALE:

It is hereby recommended that the Parties adopt the Association's proposal relative to this Article. As the Record demonstrates, these considerations are already compensatory in

nature. Since such currently exists, no compelling evidence warrants deviation from the status quo.

ISSUE 12

ARTICLE 012 - LATCHKEY CONTRACTS, PAID HOLIDAYS

ASSOCIATION PROPOSAL:

The Association proposes the following:

012.03 Latchkey teachers will be paid for holidays for which teachers are paid.

EMPLOYER POSITION:

The Employer opposes the proposal of the Association on the basis that, as has been emphasized, this program is self-sustaining in nature and State law prohibits any kind of General Funds contributions to subsidize it's existence. For this reason, the Employer opposes any additional cost items that would have a significant economic impact on continuation of this program's existence. As will be discussed infra when it pertains to Wages and other Benefits, the Employer insists that additional cost considerations such as that which would add to the overall budget of this program is unwarranted.

RECOMMENDATION AND RATIONALE:

By its very existence, the Latchkey Program provides assistance to parents who need child care prior to and after normal school hours. In the event that school does not take place on a given day because of school vacation, holidays, etc.,

the Latchkey service as an ancillary service would not necessarily occur. Presumably other arrangements would have to be considered for those parents when school is not in session and, consequently, their children may be placed in some other type of day care which provides a "day-long" service which would meet those needs.

As the Record demonstrates, these employees work two (2) hours before the normal school day and up to three (3) hours after the normal school day concludes. In the event that school is not in session, the scope of day care, per se, for the child affected would necessarily increase. Based on the total economic picture involving these individuals, it is hereby recommended that they do indeed receive the same paid holidays that the teachers are paid since they presumably would not work on the days that holidays occur.

ISSUE 13

ARTICLE 012 - LATCHKEY CONTRACTS, PERSONAL DAYS

ASSOCIATION PROPOSAL:

The Association proposes the following:

012.04 Latchkey teachers shall receive two (2) personal days per school year in accordance with current system practices for regular contract teachers.

EMPLOYER POSITION:

Again, the Employer emphasizes that this proposal provides yet another economic impact on this program. It insists by

adding eleven (11) paid holidays proposed by the Association in addition with two (2) personal days would realize a six percent (6%) increase in pay.

RECOMMENDATION AND RATIONALE:

As set forth in the comparables provided by the Employer, in Exhibits 8 and 9 of it's Pre-hearing documentation, Groveport-Madison provides three (3) personal days, however, the wage consideration is more than double for these Latchkey Teachers. All those relied upon seemingly provide for some type of time off with sick pay. These teachers currently enjoy fifteen (15) paid sick days per year which, as will be discussed infra, will continue. Indeed, additional time off impacts the economic viability of such a program. Therefore, it is recommended that the Parties do not adopt the Association's proposal concerning the inclusion of two (2) personal days.

ISSUE 14

ARTICLE 012 - LATCHKEY CONTRACTS, INDIVIDUAL CONTRACTS

ASSOCIATION PROPOSAL:

The Association proposed the following:

012.05 All latchkey contracts shall have language mutually agreed to by the Board and the Association.

Additionally, the Association agreed to the language of the Employer's proposed Section 5.01, below, but did not agree to the Association's section 5.02.

EMPLOYER PROPOSAL:

The Employer proposed the following:

ARTICLE 5 - Latchkey Contracts

5.01 Latchkey teachers shall be offered appropriately worded individual one (1) year latchkey contracts. The regular distribution of latchkey contracts shall be on or before June 15. All latchkey teacher contracts shall be deemed automatically nonrenewed as of their expiration date and no action or notification by the Board shall be required in connection with such nonrenewal. The Superintendent or designee shall determine the number of latchkey teachers needed.

5.02 This Article completely supersedes and replaces R.C. Chapter 124, and R.C. 3319.11, and R.C. 3319.111 to the extent any of such statutes would apply in the absence of this Article.

RECOMMENDATION AND RATIONALE:

The utilization of the "uniform" employment contract for this unique group of employees would indeed seem beneficial to the Board as well as the individual employee. The emphasis being on the fact that there is no room for discrepancy. Moreover, to effectively bargain away legal rights set forth in State law, as indicated by the Union would not be forthcoming from it, therefore it seems futile to recommend something that would in effect prove to be basis for rejection of this Report. Therefore, it is recommended that the Parties adopt the Association's language with the agreed upon provisions of the Employer's proposal relative to the individual contract proposal previously discussed.

ISSUE 15

ARTICLE 013 - SICK LEAVE

ASSOCIATION PROPOSAL:

Mirroring the language utilized by the large unit, the Association proposes the following:

**Article 013
SICK LEAVE**

013.01 General Rules Pertaining to Sick Leave:

A. Sick leave shall accumulate at the rate of fifteen (15) days per year, credited at the rate of one and one-half days per month September through June.

B. Each new full-time latchkey teacher shall be credited with five (5) days of sick leave, which may be used in case any such employee is unable to work because of personal illness or illness or death in his/her immediate family, after beginning his/her employment but before he/she has accumulated that amount of sick leave in the manner provided in paragraph A above. If any of said five (5) days of sick leave is used, it shall be deducted from the total sick leave which he/she may accumulate during the first year of service as provided above.

C. It shall be the responsibility of each latchkey teacher to transfer any unused sick leave from a previous employer to the office of the Treasurer of the Columbus Board of Education. When a former latchkey teacher in the Columbus School System returns to the employ of the Board, his/her unused accumulated sick leave, if any, shall be automatically reinstated. Such transfer or reinstatement of sick leave will be accepted by the Board provided the latchkey teacher's most recent employment takes place within ten (10) years of the date of the last termination from Ohio public service and provided such sick leave was earned in Ohio public service.

013.02 Sick leave with pay may be used only for the purposes provided in paragraphs A, B, and C below:

A. For absence of the latchkey teacher due to personal illness, pregnancy, injury or exposure to contagious disease which could be communicated to

others. Up to ten (10) consecutive school days may be taken as sick leave at the time of legal adoption of a child.

B. For absence of the latchkey teacher due to illness or injury of someone in the teacher's immediate family. Immediate family is defined as father, mother, brother, sister, son, daughter, wife, husband, grandmother, grandfather, grandson, granddaughter, father-in-law, mother-in-law, legal guardian, or foster or step-parents of the said latchkey teacher.

(1) If a latchkey teacher is absent not more than three (3) consecutive school days because of the illness of a member of the latchkey teacher's immediate family, the latchkey teacher need only make the report of absence required by this Agreement in order to be eligible for sick leave with pay for such absence.

(2) If a latchkey teacher is absent in excess of three (3) consecutive school days for this reason, the latchkey teacher must provide the Manager, Personnel Services, with a doctor's certificate setting forth the identity of the patient, the nature of the illness involved and the need for the absence of the latchkey teacher in order for the latchkey teacher to be eligible for sick leave with pay for such absence.

C. For absence due to death in the immediate family of a teacher. Death in the immediate family of a latchkey teacher is defined to mean the death of the father, mother, brother, sister, son, daughter, husband, wife, grandmother, grandfather, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, legal guardian or foster or step-parents of the said latchkey teacher. Absence due to death in the immediate family shall not exceed five (5) consecutive school days.

D. In addition, a latchkey teacher may use up to twenty (20) days of assault leave due to injury resulting from a physical assault on a latchkey teacher which occurs on Board premises or which occurs off Board premises in connection with the performance of assigned duties, subject to the following stipulations:

(1) The latchkey teacher's conduct was within the bounds of general standards of professional behavior;

(2) The building administrator or other appropriate administrator was notified as soon as possible of the occurrence;

(3) The latchkey teacher submits the certificate required in case of sick leave absence, accompanied by the physician's statement required below;

(4) The latchkey teacher provides a physician's statement describing the nature and duration of the resulting disability and the necessity of absence from regular employment, with the findings of the physician subject to review by the Board physician;

(5) In the event the foregoing conditions are satisfied, none of the first twenty (20) days of absence resulting from such occurrence shall be deducted from the latchkey teacher's accumulated sick leave or personal leave;

(6) Worker's Compensation cannot be received simultaneously with sick leave benefits.

013.03 Use of Sick Leave Notification

A. When any latchkey teacher is to be absent for a full school day, or a longer period, such absence shall be reported to the Board at least one hour and thirty minutes prior to the latchkey teacher's normal required reporting time or as soon as possible thereafter by any latchkey teacher who wishes to use sick leave in accordance with the above procedures. The latchkey teacher shall not be required to state, during this notification, the cause or type of illness involved. If possible, however, the latchkey teacher will estimate the duration of his/her absence.

B. In the event the estimated duration of the absence is expected to be continuous for a period in excess of three weeks, or when an absence has been continuous for such a period, the latchkey teacher shall advise the administration of the estimated duration of disability by completing the designated form. Such notification shall be submitted fifteen (15) days prior to the expected date of absence when such date can be anticipated or not later than the 20th day of a continuous absence in cases where the absence could not be anticipated.

013.04 A latchkey teacher who has been absent on a Monday through Thursday shall inform the Board by 2:00 p.m. on the day before he/she wishes to return. The Board shall assume that a latchkey teacher who is absent on Friday or the day before the start of a

vacation period will return on the next Monday or the first working day after the vacation unless the latchkey teacher notifies the Board on Sunday or the last vacation day not later than 7:00 p.m. that he/she will not return to duty on the next day. Whenever it can be determined by the latchkey teacher on a Friday or the school day prior to the starting of a vacation that he/she will not be returning to duty on the next scheduled school day, the latchkey teacher should let the Board know by 2:00 p.m. that he/she will not be returning so that the same substitute latchkey teacher can be continued.

013.05 Absence on Saturdays, Sundays, paid holidays, and paid non-work days shall not be charged against sick leave.

013.06 Certificates Required in Case of Sick Leave Absence

A. When a latchkey teacher is absent, a report for such absence, signed by the teacher, shall be completed by such employee on a form supplied by the Board. Such form shall be filed with the Board within three (3) school days following the last day of such absence or three (3) days after the close of a school year, whichever occurs first.

B. If medical attention was required, the latchkey teacher shall list the name and address of the attending physician and the dates when the physician was consulted on the form provided above.

C. Such report shall be made in a manner which will satisfy the requirements of Section 3319.141 of the Revised Code. The filing of any willfully false statement by a latchkey teacher shall be considered by the Board as grounds for disciplinary action in such form and manner as the Board may deem advisable.

D. Latchkey teachers shall not be asked or required to sign a statement authorizing a doctor or hospital to release medical records unless the absence due to illness, injury or pregnancy of the latchkey teacher has been challenged, in which case the latchkey teacher shall be furnished with the written reasons for such a challenge and the need to examine medical records.

EMPLOYER POSITION:

The Employer proposes the inclusion of the following language:

ARTICLE 9 - Sick Leave

9.01 Sick leave shall accumulate at the rate of ten (10) days per year, credited at the rate of one (1) day per month September through June, while in the active paid employment of Columbus Public Schools.

9.02 The first ten (10) sick leave days used in a school year by a latchkey teacher shall be paid at one hundred percent (100%) of the latchkey teacher's regular per diem pay. Beginning on the eleventh (11th) day of sick leave used in a school year, sick leave shall be paid at eighty percent (80%) of the latchkey teacher's regular per diem pay.

9.03 Sick leave with pay may be used only for the purposes provided in paragraphs A and B below:

For absence of the latchkey teacher due to personal illness, pregnancy, injury or exposure to contagious disease which could be communicated to others. Up to ten (10) consecutive work days may be take as sick leave at the time of legal adoption of a child.

B. For absence of the latchkey teacher due to illness or injury of someone in the latchkey teacher's immediate family. Immediate family is defined as father, mother, brother, sister, son, daughter, wife, husband, grandmother, grandfather, grandson, granddaughter, father-in-law, mother-in-law, legal guardian, or foster or step-parents of the said latchkey teacher. Absence due to death in the immediate family shall not exceed five (5) consecutive work days.

9.04 Certificates Required in Case of Sick Leave Absence.

A. When a latchkey teacher is absent, a report for such absence, signed by the latchkey teacher, shall be completed by such employee on a form supplied by the Board. Such form shall be filed with the immediate supervisor within three (3) work days following the last day of such absence or three (3) days after the close of the school year, whichever occurs first.

B. If medical attention was required, the latchkey teacher shall list the name and address of the attending physician and the dates when the physician was consulted.

C. Dishonesty in the use of sick leave or the filing of any false statement by a latchkey teacher shall be considered by the Board as grounds for disciplinary action in such form and manner as the Board may deem advisable.

D. Latchkey teachers who have been out of school on account of serious illness, extending over a period of three or more weeks, must have the approval of the Superintendent before returning to regular school work. Such approval shall be secured through the Director of Certificated Personnel after he/she has received a confidential report from the personal physician of the absent latchkey teacher. Such report shall indicate the nature of the illness and the condition of the latchkey teacher.

E. Members of the bargaining unit shall not be asked or required to sign a statement authorizing a doctor or hospital to release medical records unless the absence due to illness, injury or pregnancy of the member of the bargaining unit has been challenged, in which case the latchkey teacher shall be furnished with the written reasons for such a challenge and the need to examine medical records.

F. The Director of Certificated Personnel may require written certification from the latchkey teacher's physician when:

1. The latchkey teacher has already used six (6) days or more of sick leave in a school year; or

2. The latchkey teacher has been absent using sick leave far more than three (3) consecutive workdays; or

3. There is a pattern of use, such as but not limited to workdays before or after a holiday or vacation period or on Mondays or Fridays; or

4. The latchkey teacher is on an extended absence, every thirty (30) calendar days.

G. The Director of Certificated Personnel may require the latchkey teacher to be examined at Board

expense by a physician designated by the Director when:

1. The Director wishes to verify the latchkey teacher's fitness for return to work; or
2. There is suspicion of abuse when the latchkey teacher is absent more than twenty (20) consecutive work days; or
3. The latchkey teacher is absent more than ninety (90) consecutive work days; or
4. The latchkey teacher is on duty but there is a reasonable question whether the latchkey teacher is able to perform essential functions of the job.

9.05 This Article constitutes the basis for any claim or entitlement to use of sick leave, and replaces and supersedes R.C. 124.38 and R.C. 3319.141 in their entirety to the extent to which either of such statutes would apply in the absence of this Article.

RECOMMENDATION AND RATIONALE:

It is hereby recommended that the Parties maintain the current level of benefit pertaining to Sick Leave and the other aspects thereof as set forth in the Association's proposal relative thereto. Again, consistency with regard to the application of that which has been in effect for many years is both beneficial to the employer with regard to administration and for reasons that will be discussed infra, do not detract from what the employees have enjoyed prior to becoming represented by the Association. The concerns of the Employer with regard to policing the use of sick leave are still provided. The ability of the Employer to utilize disciplinary action in the event that the Employee fraudulently indicates whether they have indeed sought the attention of a medical provider is provided. In this

regard, there is a policing aspect also in the Association's proposed language. Overall that which has been presumably utilized within the District for a number of years would seem less problematic when addressing such considerations for these employees. Simply because employees become unionized does not mean that their benefits should be reduced. No compelling evidentiary basis exists to deviate from the status quo.

ISSUE 16

ARTICLE 014 - COORDINATOR

ASSOCIATION PROPOSAL:

The Association proposes the following:

Article 014
COORDINATOR

The coordinator(s) for the latchkey program will be hired as a teacher(s) on special assignment.

EMPLOYER POSITION:

As noted above, the Employer proposed the following language in the Recognition article:

Upon ratification the CEA immediately will join with the Board to petition SERB to clarify the unit to remove the latchkey Coordinator as a managerial employee.

RECOMMENDATION AND RATIONALE:

As was previously discussed in the Recognition Article at the beginning of this Report, it is clear that the Parties are seemingly in agreement that the Latchkey Coordinator position is

supervisory in nature and would not be appropriate in the Bargaining Unit as recognized under the Recognition Clause of the Agreement. Please refer to that recommendation and rationale relative to consideration of this issue, as previously discussed.

ISSUE 17

ARTICLE 015 - CALAMITY DAYS

ASSOCIATION PROPOSAL:

The Association proposes that which mirrors the contractual language of the larger unit relative to this issue:

ARTICLE 015 CALAMITY DAYS

Latchkey teachers shall be compensated at their daily rate for days they were scheduled to work, but did not work as a result of schools being closed for a calamity, as with regular contract teachers in the same schools, up to a maximum of five (5) such calamity days in a school year.

EMPLOYER PROPOSAL:

The Employer proposes that such a provision not be included in the initial contract between the Parties due to the significant additional cost it would impose. It argues that such a concept applies to teachers holding positions for which the Department of Education certification is required. The statutory basis for calamity day pay is not applicable to child care workers like Latchkey Teachers.

RECOMMENDATION AND RATIONALE:

It is recommended that the Parties adopt the Association's proposal relative to the inclusion of the Calamity Day provision in the initial Collective Bargaining Agreement. As was previously discussed in the Personal Days provision, such was not recommended due to the additional cost factor associated therewith. The use of Personal Days oftentimes are utilized at the discretion of the individual employee and more often than not are utilized in the course of a given year. Calamity days, on the other hand, occur when school is not in session due to some unforeseeable act; usually an act of God which was unpreventable by the employees that are affected. In this regard, it would seem unfair to not provide some form of compensation by way of calamity day pay in the event that school is not in session for some act that is unforeseen and the time for which was not created by the members of this Bargaining Unit.

ISSUE 18

ARTICLE 017 - USE OF COLLEGE SCRIP

ASSOCIATION PROPOSAL:

The Association proposes that the language be included under Article 17, titled "Use of College Scrip" as follows:

Latchkey Teachers shall be eligible to receive college scrip.

EMPLOYER PROPOSAL:

During the course of the Factfinding Proceeding, the Employer indicated no objection to the Union's proposal relative to this Article. As such, it shall be viewed as a "Tentative Agreement" reached by and between the Parties relative thereto.

RECOMMENDATION AND RATIONALE:

Tentatively agreed to, the Association's proposal relative thereto, is recommended.

ISSUE 19

ARTICLE 018 - SALARY POLICIES AND SCHEDULES

ASSOCIATION PROPOSAL:

The Association proposes paying the teachers within this unit the same as teachers in the larger unit and, absent some agreement relative thereto, it is indicated it's intention to litigate what it deems discrimination against them. It indicates that the Board's proposal of a fixed hourly rate providing no increase for the coming year, has only surfaced after SERB recognized this Bargaining Unit. It indicates that the Columbus Public Schools has not raised its fees in nearly five (5) years; that indeed this unit is a unique entity; and, no others are unionized.

**ARTICLE 018
SALARY POLICIES**

018.01 It is the conviction of the Board and the Association that salaries should be at a level which will enable latchkey teachers to assume a place in the

community in keeping with the importance of their work and which will provide security for their later years.

018.02 Progress toward maximum salaries shall be made by increments.

A. A full increment shall be granted to members who have served 120 or more school days within a given school year.

B. Those latchkey teachers currently employed by the Board who have received credit for partial increment shall continue to receive the amount of that partial increment in effect prior to this Agreement.

C. Salary column placement for training beyond the Bachelor's Degree shall be effective the earning period following the submission of the required documentation to the Personnel Office.

D. A latchkey teacher who becomes a regular contract teacher shall be granted up to five (5) years of Columbus teaching experience for salary purposes. In order to qualify for a year of latchkey experience, a certificated latchkey teacher must teach five (5) hours daily, twenty-five (25) hours a week during the full school year.

**ARTICLE 019
SALARY SCHEDULE**

Latchkey teachers shall be paid in accordance with the following:

Years Experi- ence	Less than Bachelor's Degree	Bachelor's Degree	150 Hours and Bachelor's Degree	Master's Degree	Master's Degree Plus 30 Semester Hours
0	\$21,182	\$26,577	\$27,348	\$29,474	\$30,032
1	22,032	27,640	28,437	30,643	31,255
2	22,909	28,756	29,580	31,866	32,504
3	23,840	29,899	30,750	33,142	33,779
4	24,770	31,095	31,999	34,470	35,135
5	25,780	32,344	33,274	35,852	36,543
6		33,620	34,603	37,288	38,005
7		34,975	35,985	38,776	39,547
8		36,384	37,420	40,317	41,115
9		37,819	38,909	41,939	42,762
10		39,334	40,477	43,613	44,463
11		40,929	42,098	45,367	46,244
12		42,550	43,772	47,174	48,104
13		44,251	45,526	49,061	50,018
14		46,031	47,360	51,028	52,038

EMPLOYER PROPOSAL:

The Employer proposed the following:

ARTICLE 15 - Wages and Health Insurance

15.01 Latchkey teachers shall be paid at the rate of \$20.79 per hour for work time that is authorized and approved by the Supervisor of Early Childhood Education or designee.

The Employer emphasizes that the Factfinder must address the traditional factors utilized in wage determinations generally including comparables and inflation and the financial effect on the program or the entity. As set forth in the Ohio Revised Code, it asserts that none of these factors support an increase in wages and, if anything, require a decrease be imposed. The Employer insists that the data on comparables is both undisputed and overwhelming in that these employees are paid approximately twice as much per hour as Latchkey Teachers in the programs in other public school districts. Such exists not only where teacher certification is required, but where a college degree is required. Moreover, such a discrepancy exists not only where Latchkey Teachers in other districts have insurance benefits, but even where they do not. Additionally, the Board pays more than double the private sector social security employer contribution to the public retirement system which equates to approximately 14% on top of payroll compared to the private sector employer's 6.2% in social security contribution. The medicare charge is 1.45% and for a wage of \$10 per hour, the Columbus public schools are paying an additional \$1.40 compared to the private sector

employer's additional payment of \$.62 for social security. In this regard, it asserts that such is inescapable that these teachers are priced over the market rate compared to similar employment.

The Employer insists that this group of teachers is no way in a "catch up" mode so any cost of living consideration is simply unwarranted. The wages for these teachers have far surpassed the Consumer Price Index since the program began in 1983. The hourly rate has increased for these employees from \$11.02 per hour to \$20.79 per hour in effect, totally an 88.7% increase. Such it contends is even more compelling based on the fact that Ohio's inflation rate is lower than the national rate. It contends that the "real" inflation rate since the inception of this program is approximately 33% whereas the Latchkey Teachers' wages have increased by 88.7%.

The Employer also emphasizes even though the Latchkey Program is reported to have a nominal surplus (479,711.00), such exists simply because the unfunded obligation for accumulated sick leave has not been taken into consideration as well as no overhead or other associated costs have been charged to the program. This program utilizes school facilities free of charge and its Coordinator has an office that is also free of charge. There is no charge for secretarial services, the time of building principals or other administrators interfacing with the Latchkey personnel or even the time and cost of Collective Bargaining efforts. The large cash balance as recognized by the Association

for this self-sustaining program is merely an internal auditing principle to account for Appropriations and does not count for Revenue and Costs of this program in a true accounting sense. The Employer emphasizes that direct and structural costs in most Ohio districts, including Columbus, account for approximately 50% of the District's General Fund expenditures. The remaining 48.5% are support, custodial, and maintenance utilities, repair for buildings, building administration, human resources, treasurer's office and accounting and legal services. It emphasizes that if those costs were attributed to this program, even on a conservative 40% basis, those costs would approximate the cost for direct service, Latchkey personnel of approximately \$982,000. If the District were to attribute those costs or charges to the Latchkey program instead of the \$168,500 for miscellaneous costs now attributed, the difference would more than obliterate the cash balance of \$479,711 in one year's time. It emphasizes that this cash balance is not a recurring source of revenue and in every year after the first year funds for those costs would have to be obtained from higher fees to parents and guardians. The Employer emphasizes that the Factfinder must be mindful of the fact that in the event that the fees to parents and guardians are raised, this program might well be replaced.

Additionally, the Employer emphasizes that the General Fund does not fund incidental programs such as Latchkey and only is utilized for the educational mission of the school district. The fact that the District bears overhead costs for the operation of

this program is an indirect impact on the General Fund. The Employer emphasizes that the aforementioned discussion, taken in conjunction with the contingent liability of \$156,000 for accumulated Sick Leave demonstrates that this program is already far from self-sustaining. A comparison of personnel costs and parent fee schedules of other Latchkey Programs in central Ohio indicates that they pay their lead staff, including college degree lead teachers, sight managers or sight coordinators, \$9.00 to \$10.50 per hour with no Insurance Benefits and even less Sick Leave benefits than these teachers receive. Those providers generally charge comparable or lower fees to parents.

As such, it is imperative that the Factfinder be mindful not to exacerbate the existing discrepancies between this unit and other Latchkey programs in central Ohio or such will have a significant impact on the continuation of this program.

RECOMMENDATION AND RATIONALE:

Based upon the evidentiary Record and the positions advanced by each Party, it is hereby recommended that the Parties adopt language that will in effect impose a wage freeze for year one of the three (3) year Collective Bargaining Agreement to provide the Parties the ability to ascertain and maintain the overall costs of this program now that it is subject to previous and subsequent considerations under the Collective Bargaining Agreement. Such is not to suggest that simply because a group of employees becomes unionized, that they should in some way be penalized

because of that determination. Simply, the comparable data provided is compelling with regard to the rate of pay received by these employees in comparison to both comparable programs in and outside of this school district. Such a recommendation would provide that the affected employees receive the \$20.79 per hour pay they currently enjoy which, according to the comparables, is more than double the hourly rate for Groveport-Madison, Hilliard, and Upper Arlington, and for non-district comparisons, Gahanna, New Albany, Westerville, Dublin and Reynoldsburg. Other districts indicate a yearly salary and do not demonstrate the hourly rate comparable based on the manner in which these employees are compensated. Additionally, the Columbus public school costs per week for one child for the a.m. and p.m. session is third lowest from Gahanna at \$33; Worthington at \$35; and, Columbus at \$40 per child. The highest is Hilliard at \$89. Clearly, it would indeed be prudent to take a conservative approach with regard to increases which, since the inception of this program, have increased from \$11.02 an hour to \$20.79 an hour in approximately fourteen (14) years. That equates to an average of approximately 6% a year since the inception of the program.

With respect to years two and three of the Collective Bargaining Agreement, it is recommended that the Parties implement a wage increase to the base wage as set forth in the Employer's hearing materials. These employees have received an hourly rate equal to that of classroom teachers performing

certain non-classroom services. Such a practice shall be maintained for years two (2) and three (3) of this Agreement.

The collective bargaining process is incremental in nature and the Parties cannot expect to make significant gains where they have not otherwise been realized prior to their collective bargaining relationship. It is clear that the record demonstrates that each time the teachers have received increases, so too have the Latchkey Teachers. Again, it must be stated that this is not to suggest that simply because these employees elected to be unionized that they should be penalized as a result; nor should it place relationships on a strained playing field simply because they have elected to have representation. In this regard, it is indeed a noteworthy consideration to allow the relationship to mature while also recognizing numerous cost considerations that have and will be discussed throughout this Report.

With respect to addressing comparable wage considerations, typically there are no "on-point" comparisons relative thereto. "Similarities," however must be, and have been, taken into consideration by the Factfinder under the statutory criteria.

ISSUE 20

ARTICLE 020 - VISION CARE

ASSOCIATION PROPOSAL:

The Association proposes the inclusion of the Vision Care benefit which is currently not provided to the larger unit. It

notes that the unit is currently bargaining a successor Agreement and this is on the bargaining table. It encourages inclusion to support parity so that all insurances are identical to both units. Therefore, it proposes the following:

**ARTICLE 020
VISION CARE INSURANCE**

Effective January 1, 1998, and for the duration of this Agreement, vision care coverage shall be provided at Board expense for the latchkey teachers. The plan shall provide for the payment of the usual, customary, and reasonable charges for the following:

BENEFIT	BENEFIT PERIOD
Examinations	Once in any twenty-four month period
Necessary Lenses . . .	Once in any twenty-four month period
Frames	Once in any twenty-four month period
Deductibles	None

EMPLOYER POSITION:

The Board opposes the inclusion of the Vision Care benefit for this unit in that no other employees of the district have such a benefit and such would aggravate the discrepancy between the compensation of these teachers and those in the Latchkey program. It notes that such a benefit would likely cost approximately \$200-\$300 per year, per employee.

RECOMMENDATION AND RATIONALE:

Based on the evidentiary record, the comparables provided do not support the inclusion of such a benefit at this time. The cost therefore is diminimus in the larger picture, nonetheless, and considering other issues of an economic nature, has an

economic impact on this self-sustaining program. What will be discussed more fully infra is that the Parties must be mindful of maintaining this program on a self-contained, self-sufficient basis. Additional cost items may result in the program being priced out of the market and therefore these individuals may be impacted even greater. As such, it is not recommended that the initial Collective Bargaining Agreement have a provision providing for a secondary fringe benefit of Vision Care.

ISSUE 21

ARTICLE 021 - EMPLOYEE ASSISTANCE PROGRAM (EAP)

ASSOCIATION PROPOSAL:

Again, mirroring the larger unit's agreement, the Association proposes inclusion of the following:

ARTICLE 021 EMPLOYEE ASSISTANCE PROGRAM (EAP)

Within sixty (60) days of the effective date of this Agreement, a committee will be established for the purpose of continuing the development of an Employee Assistance Program (EAP) for all Columbus Public School employees. The CEA shall have a right to appoint at least as many members to this committee as any other employee organization represented. The committee will oversee the EAP or establish another body which will oversee the EAP.

EMPLOYER PROPOSAL:

As indicated during the course of the Factfinding proceeding, the Board does not oppose inclusion of the Association's language with regard developing an Employee

Assistance Program (EAP) for this unit. Moreover, such represents a diminimus cost to the program.

RECOMMENDATION AND RATIONALE:

Inasmuch as the Parties seemingly agree to the inclusion of this language, it shall be recommended that the Parties adopt the Association's proposed language relative thereto.

ISSUE 22

ARTICLE 022 - CAFETERIA PREMIUM PAYMENT

ASSOCIATION PROPOSAL:

The Association proposes the Cafeteria Premium Payment pursuant to IRS Section 125 for this unit, as is also provided to the larger bargaining unit. It notes that the Board has rejected this issue prior to its pre-hearing statement, however, such was based on the Board's position of refusing any premium payment for health care coverage. Accordingly, the Association proposes the following:

**ARTICLE 022
CAFETERIA PREMIUM PAYMENT**

Effective with pay dates beginning January 1, 1993 [sic], the Board shall sponsor and administer a Cafeteria Premium Payment Plan established in accordance with Internal Revenue Code Section 125, for latchkey teachers. Under this Plan, all teacher payroll deductions towards the premium(s), if applicable, for health, dental, life, and/or disability insurance(s) will be paid into the Cafeteria Premium Payment Plan. It is the intention that such employee payroll deductions will be excluded from an employee's gross income under Section 125 of the Internal Revenue Code. This Cafeteria Premium Payment Plan is provided solely

for the purpose of reducing current income tax for members of the bargaining unit who contribute employee payroll deductions for insurance premiums. The Board will have no liability to the members of the bargaining unit for the tax treatment of such employee payroll deductions, and is assuming no additional portion of the cost of such benefits. This Cafeteria Premium Payment Plan will continue to be sponsored by the Board only to the extent that Section 125 of the Internal Revenue Code or the regulations promulgated thereunder remain substantially unchanged.

EMPLOYER PROPOSAL:

The Employer takes the position that if Latchkey Teachers, who currently are not eligible for enrollment in the district's insurance plan, become so eligible for enrollment at their own cost, it would not oppose a "premium only" tax sheltering of the employee contribution to insurance benefits under a cafeteria or Section 125 plan. It proposes that such be achieved under the following provision:

15.02 Latchkey teachers may enroll in the District's health insurance plan during the usual enrollment period. The latchkey teacher shall pay the full cost of the coverage for which she or he enrolls.

RECOMMENDATION AND RATIONALE:

With respect to the creation of a Cafeteria Premium Payment Tax Shelter, it is recommended that the Parties include the Association's language relative thereto in that it addresses each type of insurance, specifically, and at some future date that will already have been included in the Collective Bargaining Agreement and perhaps these individuals can improve upon their

position relative to the type of benefits that they may receive.

ISSUE 23

ARTICLE 024 - TERM LIFE INSURANCE

ASSOCIATION PROPOSAL:

The Association proposes the same Group Term Life Insurance benefit as is provided for the larger unit. It proposes the following language:

**ARTICLE 024
TERM LIFE INSURANCE**

024.01 The Boardhall provide, at Board expense, \$40,000 group term life insurance for all latchkey teachers.

024.02 Latchkey teachers may elect to buy \$10,000 group term life insurance in addition to that provided above. This additional insurance shall be paid through payroll deduction at the same rate as the Board pays for coverage. Election of this additional coverage or deletion of this additional coverage shall be made each year only during the month of November with an effective date of the following January 1.

EMPLOYER PROPOSAL:

The Board indicated during the course of the Factfinding Proceeding that the cost associated with this proposal is \$6 per person, per year for a total of approximately \$2,700 and characterizes such as "least objectionable."

RECOMMENDATION AND RATIONALE:

It is recommended that the Parties adopt the Association's language for the inclusion of Term Life Insurance for the

Process, as these advocates recognize, is incremental in nature and obtaining benefits that employees do not have, or obtain such on a limited basis is recognized as an incremental advancement to improve upon their current situation. In this regard, the recommendation of this item would satisfy that consideration.

ISSUE 24

ARTICLE 025 - DISABILITY INSURANCE PAYROLL DEDUCTIONS

ASSOCIATION PROPOSAL:

The Association proposes the inclusion of a Disability Insurance Payroll Deduction Plan as is currently in effect for the larger Bargaining Unit. It emphasizes that this is a no cost item to the Board and such should be awarded by the Factfinder. As such, it proposes the following language:

ARTICLE 025 DISABILITY INSURANCE PAYROLL DEDUCTIONS

A. The Association will indemnify the Board and Treasurer against all liability for all deductions and for all acts of the insurance carrier made in accordance and connection with this program.

B. There shall be a maximum of four (4) options available for election by latchkey teachers under this plan.

C. Latchkey teachers may not change their status under this program with regard to enrollment and change in option more than once every twelve (12) months. Latchkey teachers may enroll or make a change in option on or before October 15. Such enrollment or change in option will become effective the following December 1. In addition, latchkey teachers may cancel at any time based on the payroll deduction schedule; however, they cannot re-enroll until the following October 15. A change in the premium rate shall not be considered a change in status under the program. Any and all such changes, except cancellation, must be made at the same time.

EMPLOYER POSITION:

During the course of the Factfinding proceeding, the Employer indicated that indeed there is no direct cost associated with the inclusion of such proposal and as such it had no strong objection to it.

RECOMMENDATION AND RATIONALE:

It is hereby recommended that the Parties adopt the Association's language relative to the inclusion of a Disability Insurance Payroll Deduction as seemingly unchallenged by the Employer herein.

ISSUE 25

ARTICLE 026 - ANNUITY PROGRAMS

ASSOCIATION PROPOSAL:

The Association again proposes the same annuity program for this unit as provided to the larger Bargaining Unit. It proposes the following language:

**ARTICLE 026
ANNUITY PROGRAMS**

The Board shall continue to provide payroll reductions from the annual salary of any teacher for any tax deferred annuity which is available from a company conforming to the Board's General Policies, Tax Deferred Annuities, revised April 1975. Latchkey teachers may change annuity companies or amounts entirely at the member's discretion at anytime.

The amount of the salary reduction shall be in conformance with applicable laws and rules of the Internal Revenue Service. The amount of the salary

reduction shall be agreed to between the latchkey teacher and the annuity company. The Association and the latchkey teacher shall hold the Board harmless in regard to the amount of salary reduction, provided that the reduction is made in accordance with an amendment to a salary contract signed by the latchkey teacher and a representative of the annuity company. The Treasurer shall transmit all such salary reduction funds to the designated companies through electronic transfer on scheduled pay dates.

EMPLOYER PROPOSAL:

As indicated during the course of the Factfinding proceeding, the Board did not indicate any opposition to the concept of a Voluntary Annuity Program Deduction by these teachers however, it questions if such are actually available to employees of this nature under the applicable IRS regulations.

RECOMMENDATION AND RATIONALE:

Seemingly the Parties appear to be in agreement on this article and, as such, it is hereby recommended that the initial Collective Bargaining Agreement include the Association's language relative thereto. In the event, however, that such is deemed inapplicable based on the nature of the employees involved as it pertains to the requirements of IRS regulations, then such may be considered for deletion at the appropriate time. It is recommended that the Parties obtain some type of declaratory determination as to whether these employees are indeed in the position to recognize this consideration under the applicable IRS regulation.

ISSUE 26

ARTICLE 027 - DENTAL INSURANCE

ASSOCIATION PROPOSAL:

The Association proposes that Dental Insurance benefits be provided to this group of teachers as is the case for other teachers in the larger Bargaining Unit. It indicates that the Board has refused such a benefit and continues to discriminate against these teachers. Accordingly, the Association proposes the following language:

**ARTICLE 027
DENTAL INSURANCE**

During the term of this Agreement, the Board shall continue the current dental insurance program, as specifically modified below, for latchkey teachers electing and eligible for such coverage, in accordance with the following provisions and stipulations:

A. The Board shall pay 90 percent of the cost of the unitary rate for latchkey teachers. Such latchkey teachers shall pay 10 percent of the cost of such coverage by the monthly payroll deduction schedule.

B. In the event the Board elects to change the insurance carrier during the term of this Agreement, the benefits provided under such insurance programs shall not be reduced.

C. The dental insurance program shall be as follows:

1. Description of Covered Services Subject to the Exclusions and Limitations hereinafter stated, the following is a brief Description of Covered Dental Services when such services are rendered by a licensed dentist and when necessary and customary, as determined by the standards of generally accepted dental practice: This program pays the following percent of the Usual, Customary and Reasonable Fees

2. Basic Dental Services Preventive: ...100%
Prophylaxis (cleaning, scaling, and polishing, not more often than once in any six-month period), topical application of fluoride solutions, space maintainers,

oral examinations, and emergency (palliative) treatment.

Diagnostic: 100%

X-rays, and other diagnostic procedures to evaluate the existing condition to determine the required dental treatment. Also included are Diagnostic Casts, when necessary.

Oral surgery: 80%

Procedures for extractions and other oral surgery, including pre- and post-operative care.

Restorative: 80%

Provides amalgam, synthetic porcelain and plastic restorations for treatment of carious lesions. Restorative crowns, onlays, and other cast restorations are benefits only when other materials will not satisfactorily restore the tooth.

Endodontics: 80%

Procedures for pulpal therapy and root canal filling.

Periodontics: 80%

Procedures for treatment of the tissue supporting the teeth.

Prosthodontics: 50%

Procedures for construction of bridges, partial, and complete dentures.

Orthodontics:50%

Procedures for the correction of malposed teeth.

3. Deductible

There are no deductibles.

4. Maximum Benefit

Each eligible patient shall be entitled to a \$1,500.00 benefit per calendar year, except that Orthodontics shall be limited to a lifetime maximum benefit of \$1,000.00 per patient.

5. Exclusions

- * Dental Services which are compensable under Worker's Compensation or other similar laws
- * Surgical Services with respect to congenital or developmental malformations and dentistry for purely cosmetic reasons
- * Any Prosthodontics Service started prior to the date the patient became eligible
- * General Anesthesia, other than for Oral Surgery

- * Prescription drugs and appliances other than the Prosthodontia appliances
- * Sealants, oral hygiene instruction and dietary instruction
- * Plaque control programs
- * Myofunctional therapy
- * Treatment for disturbance of the Temporomandibular Joint
- * Procedures, appliances or restorations necessary to increase vertical dimension and/or restore or maintain the occlusion--such procedures include, but are not limited to, equilibration, periodontal splinting, restoration of tooth structure lost from attrition, and restoration of malalignment of the teeth
- * All other services not specified.

6. Limitations

- * Full-mouth X-rays are a benefit once in a three-year period.
- * Bitewing X-rays are a benefit once in each six months.
- * Prophylaxis is a benefit once in each six months.
- * Gold restorations are provided when amalgams, silicates or plastics cannot satisfactorily restore a tooth.
- * Prosthodontics and crowns are a benefit once in any five-year period. The allowance for a standard Prosthodontics appliance will be allowed toward the cost of an implant.

7. Predetermination of Benefits

If other than brief and routine dental services are needed, an Attending Dentist's Statement (claim form) listing the proposed services should be submitted to Delta Dental Plan of Ohio in advance of your dentist completing such services. The Predetermination of Benefits procedure will enable Delta Plan of Ohio to verify eligibility and state the amount of benefit payable by your program.

EMPLOYER PROPOSAL:

As indicated during the course of the Factfinding proceeding, the Board indicated its opposition against the inclusion of Dental Insurance benefits for these teachers. It again emphasizes the importance of the Factfinder to recognize

that this group is self-sustained based on the monies paid by parents utilizing such a service and no General Fund subsidation is available. In fact, such is prohibited by State law. It indicates that such a benefit would cost in the neighborhood of \$540 per person, per year which equates to approximately a 58.3 cent per hour increase. It also notes that, of the comparables provided, none provide for Dental benefits for comparable employees.

As mentioned above, in the discussion of Issue 22, the Employer proposed the following:

15.02 Latchkey teachers may enroll in the District's health insurance plan during the usual enrollment period. The latchkey teacher shall pay the full cost of the coverage for which she or he enrolls.

RECOMMENDATION AND RATIONALE:

As the evidentiary record demonstrates, the comparables provided do not indicate the inclusion of Dental benefits for employees in the districts of Groveport-Madison, Hilliard, Upper Arlington and those in the non-district category as well. Only that indicated in the Gahannah, New Albany, Westerville district indicates "medical insurance enrollment at the employee's cost." None of the comparables relied upon indicate inclusion of a Dental Insurance benefit. The Association however argues that the Aides currently receive such as well as teachers within the larger unit. As must be emphasized again relative to the disposition of this issue, this 32 employee unit is self-

sustaining based on the funds received by customers utilizing the service. If indeed employees are seeking to gain great strides in the initial Collective Bargaining Agreement, what will likely occur is that those funds need to be increased to offset the increases in operational costs. Again, it must be emphasized that the Parties be mindful that such increases be prudent so that this service remains competitive in the marketplace. The Factfinder recognizes benefits such as Vision; Life Insurance; Dental, etc., as secondary in nature. Obviously they are important, however, Medical insurance is most practical and is viewed as a "primary" type fringe benefit. Emphasis therefore, has been placed on that consideration later in this Report.

Moreover, based on the comparables provided, which under the statutory criteria must be considered by the Factfinder, there simply exists no evidentiary basis to warrant a recommendation for the inclusion of the Dental Benefit Article in the Parties' Agreement. Based thereon, it is recommended that the Parties adopt the Employer's language relative thereto, providing the teachers the ability to enroll in such a benefit at its cost. Such allows these employees the opportunity to become part of a large "group" for benefit consideration, and they will likely realize a savings compared to what their individual costs may provide.

ISSUE 27

ARTICLE 028 - HOSPITAL, SURGICAL, AND MAJOR MEDICAL INSURANCE

ASSOCIATION PROPOSAL:

As has been recognized throughout this Report, the Association proposes the inclusion of language that would provide hospitalization, surgical and major medical insurance for members of this Bargaining Unit consistent with the larger unit. It contends that the Board refuses to bargain such a benefit that is already provided to other teachers in the larger unit and the Aides within this district. Mirroring the language contained in the larger Bargaining Unit's Agreement, the Association proposes the following:

ARTICLE 028 HOSPITAL, SURGICAL, AND MAJOR MEDICAL INSURANCE

During the term of this Agreement, the Board shall continue the current Comprehensive Major Medical Insurance Program for latchkey teachers for such coverage in accordance with the following provisions and the modifications provided in Paragraph F below:

A. The Board shall pay 90 percent of the cost of individual or family coverage for latchkey teachers. Such latchkey teachers shall pay 10 percent of the cost of such coverage by the monthly payroll deduction schedule.

B. During the term of this Agreement, latchkey teachers may elect to enroll in a health maintenance organization offered by the Board as an alternative to the program provided above. Such election shall be in accordance with the following:

(1) The latchkey teacher shall pay, by the monthly payroll deduction schedule, the difference between the cost of the health maintenance organization and the Board's cost for such employee coverage as provided in paragraph A above.

(2) Latchkey teachers may change their status under this program with regard to enrollment, withdrawal, or change to the Comprehensive Major Medical Insurance program during the fall enrollment period.

C. In the event the Board elects to change the insurance carrier for the Comprehensive Major Medical Insurance program during the term of this Agreement, the benefits provided under such program shall not be reduced.

D. (1) An additional deductible of \$~00.00 is established if Pre-Admission Certification through the Third Party Administrator is not used prior to admission for non-emergency hospitalization or, where practical, within twenty-four (24) hours of an emergency admission.

(2) An additional deductible of \$100.00 is established if a Second Surgical Opinion is not obtained prior to a non-emergency surgery for:

- Breast Surgery
- Back Surgery
- Ligation or Stripping of Varicose Veins
- Knee Surgery
- Bunion Surgery
- Nose Surgery
- Cataract Surgery
- Coronary Bypass
- Tonsillectomy and Adenoidectomy
- Gall Bladder Surgery
- Hemorrhoidectomy
- Hernia Surgery
- Prostate Surgery
- Hysterectomy
- Prostatectomy
- Disc Surgery

(3) Case Management is added to the coverage. With mutual agreement by the patient and the Third Party Administrator, alternative forms of care can be provided that are not otherwise allowable expenses for the Comprehensive Major Medical program.

(4) An employee Hospital Audit Bonus is established whereby an employee can receive 25% (Minimum payment \$5, Maximum payment \$500) of the net savings from hospital billing errors detected by the employee. (Errors or discrepancies found by the Third Party Administrator during initial processing are not subject to this program.)

E. Effective January 1, 1998, the following coverages will be added to the comprehensive major medical insurance program.

1. Newborn care
2. Well baby care & immunizations to 12 months of age
3. Well child care, ages 1 to 9
4. Routine physical exam, ages 9 plus
5. Vision exam
6. Hearing exam
7. Oral chemotherapy
8. Prescription drug card (retail pharmacy) with \$2 co-pay per prescription
9. Prescription drugs (mail order) with \$2 co-pay for a ninety (90) day supply
10. Psychiatric and substance abuse (outpatient): fifty (50) hours per calendar year; 80%/20% coverage; co-insurance to be factored in stop-loss
11. Dependent age limits according to IRS regulations.
12. Maternity benefits (employee, spouse and dependent children as defined by IRS regulations)

EMPLOYER PROPOSAL:

As mentioned above, in the discussion of Issue 22, the Employer proposed the following:

15.02 Latchkey teachers may enroll in the District's health insurance plan during the usual enrollment period. The latchkey teacher shall pay the full cost of the coverage for which she or he enrolls.

The Board emphasizes the comparables provided and indicates that no other similarly affected employee receives Health Insurance benefits and that this group has never been eligible to enroll in the Group Insurance benefits prior to now. The Association's proposal which would require the Board to pay 90% of the cost thereof is indeed misplaced when considering the current hourly rate these employees receive. It does however propose that these teachers be allowed to participate in Group Insurance Plans at the teacher's cost. It emphasizes that the Educational Assistants in this program under the OAPSE contract receive a starting hourly rate of \$8.69 and the Employer does

indeed pay health benefits at 90%. It emphasizes that in comparison with the Aides which the Association asserts "get it," the hourly rate comparison and the cost of insurance on an hourly basis would nearly double that if these teachers were to receive the same type of benefits that are near the same cost. The comparables provided show very few receiving insurance benefits paid by the employer and most have no benefits at all available. Some however are allowed to enroll in the insurance plans but at the employee's cost. In this regard, there is no competitive compensation standpoint why the employer should contribute to the cost of insurance for this unit. The Association's proposal would dramatically increase personnel costs which would have an effect, driving up the fees charged to customers or lead to the discontinuance of the program.

RECOMMENDATION AND RATIONALE:

As is consistent throughout the positions advanced by each Party, the Association emphasizes that since the inception of this program, some thirteen (13) years ago, these employees have received little, if any, consideration relative to benefits other than an hourly rate. It continually asserts that the Aides within this unit receive the benefits it is seeking for these members and thirteen (13) years without such consideration is indeed long enough - it is now time for the "board to pay the piper." The Board emphasizes the need to remain cautious with regard to the significant increases sought by the Association

based on a competitive standpoint with other providers of this service.

Indeed, cost is a driving force in any negotiations, however, there has not been any indication of the "inability to pay" argument proffered by the Board, simply one of caution with regard to the types and extent of benefits sought and recommended in this proceeding. Of the comparisons of district-operated programs, no health insurance benefits are provided. The Gahanna, New Albany, Westerville district operated by the YWCA offers Medical Insurance and enrollment at the employee's cost. The districts of Bexley; Hamilton; Olentangy; Pickaway; Pickerington; Southwestern Whitehall and Columbus Public, operated by the YMCA, which its number of employees total between 150 and 200, receive Health Insurance. The comparison with this unit of 32 teachers hardly is comparable with regard to the number of employees and the wage consideration.

The Association raises a valid point with regard to this unit being the first of its kind in the general area to become unionized and obviously the types of benefits the union is seeking are basic employee fringe benefits. Allowing the employees to participate in the enrollment process and being considered part of the "group" would enable them to receive benefits at a more cost efficient "Group" price than if they were to obtain such on their own accord. This should be recognized as the year one (1) step in this initial contract for these employees. In this regard, it is hereby recommended that the

parties adopt the Employer's language relative to Health Insurance for the first year of the Collective Bargaining Agreement. Beginning with the second year of the Parties' Agreement, it is hereby recommended that the Employer cost of Health Insurance represent 50% cost of the premiums as well as that for the third year of the Parties' three year Collective Bargaining Agreement, with the Association's language relative to the scope of coverage. It must be noted that health insurance obviously is the most important type of fringe benefit, other than wages, that significantly impacts an employee to a greater extent than whether an employee has vision care or dental care. In this regard, the aforementioned is recommended for inclusion.

ISSUE 28

ARTICLE 029 - INSURANCE EFFECTIVE DATES

ASSOCIATION PROPOSAL:

The Association proposes that there be an effective date for providing insurance benefits for these Latchkey employees as follows:

ARTICLE 029 EFFECTIVE DATES

All insurance benefits provided by this Agreement shall be effective for newly employed latchkey teachers on the first day of the month following the second pay date in which the new employee works. Such benefits shall terminate on the last day of the month for which the employee has paid for such coverage. Coverage for latchkey teachers electing disability insurance shall be in accordance with the published insurance coverage chart.

EMPLOYER PROPOSAL:

The Employer indicated during the course of the Factfinding proceeding that it does not disagree with the language, if indeed any insurance benefits are awarded by the Factfinder. It does not oppose the utilization of this language in the event that there are recommendations to include insurance coverage.

As mentioned above, in the discussion of Issue 22, the Employer proposed the following:

15.02 Latchkey teachers may enroll in the District's health insurance plan during the usual enrollment period. The latchkey teacher shall pay the full cost of the coverage for which she or he enrolls.

RECOMMENDATION AND RATIONALE:

Inasmuch as there have been recommendations that would provide some Insurance coverage for these employees' utilization of an effective date would indeed be appropriate. Accordingly, and inasmuch as the Employer indicated no opposition thereto, it is hereby awarded that the Parties adopt the Association's proposal relative to this provision.

ISSUE 29

ARTICLE 030 - ASSIGNMENTS, TRANSFERS, AND VACANCIES

ASSOCIATION PROPOSAL:

As stated in its Pre-hearing Statement, as well as during the course of the Factfinding proceeding, the Association indicated it could agree with the Board's proposal, as set forth infra, if the Factfinder could recommend provisions covering

mutually agreed forms for application and other provisions outlined in Section (D) concerning reassignments set forth in the following proposed language:

**ARTICLE 030
ASSIGNMENTS, TRANSFERS, AND VACANCIES**

A. Not later than May 20 of each year, the Manager, Personnel Services, and the latchkey coordinator will prepare a list of all known vacancies in teaching positions for the following school year. Vacancies to be identified shall be those vacancies after reorganization of the existing staff based on the anticipated needs for the following school year.

B. Latchkey teachers desiring to be considered for such vacancies shall apply on forms agreed to between the Board and Association, and supplied to latchkey teachers upon request by the Manager, Personnel Services, or the latchkey coordinator. Assignments will be made by the coordinator in consultation with his/her immediately supervisor.

C. Latchkey teachers will be notified promptly by the Manager, Personnel Services, of the receipt of their applications.

D. Prior to a reassignment recommendation by the latchkey coordinator, a conference involving the latchkey coordinator and latchkey teacher shall be conducted and the concerns which may lead to such recommendation shall be discussed. The latchkey teacher may be accompanied by a CEA representative at such a conference and, if so, the latchkey coordinator may be accompanied by an administrative representative. In the event the coordinator recommends reassignment, the basis for the recommendation shall not be arbitrary or capricious.

EMPLOYER PROPOSAL:

The Employer asserts that it cannot agree with Section (D) of the Association's proposal since such is too burdensome to require that a representative be present. However, it could

agree to the first sentence of that paragraph. It also asserts that there is no contractual provision and the "status quo" policy relative thereto should be maintained. It asserts that such is indeed a permissive process and they do have Weingarten Rights regardless of contractual language regarding this consideration.

ARTICLE 11 - Vacancy Postings

11.01 Not later than May 20 of each year, the Supervisor of Early Childhood Education or designee will prepare a list of all known vacancies in latchkey teaching positions for the following school year. Vacancies to be identified shall be those vacancies after reorganization of the existing staff based on the anticipated needs for the following school year.

11.02 Latchkey teachers desiring to be considered for such vacancies shall apply in writing for such a vacancy by June 1. Assignments will be made by the Supervisor of Early Childhood Education or designee.

11.03 Assignments shall be made by June 15.

RECOMMENDATION AND RATIONALE:

It seems apparent that such consideration has been addressed by both Parties in their proposals and the Association indicated its willingness to agree with the Employer's sections in its revised proposal. As such, such shall be recommended subject to the following modification which would include an insert after the language in paragraph 11.02, "Latchkey teachers desiring to be considered for such a vacancy shall apply in writing ..." and insert the following, "on forms agreed to between the Board and the Association." Moreover, it is recommended that the Parties adopt the first sentence of Paragraph (D) of the Association's

provision and delete the language contained thereafter since indeed these teachers are afforded Weingarten Rights despite language that is contained in the Agreement. It seems as though allowing employees to apply for a position on a form as opposed to a written request will hopefully deter any type of confusion or mistakes that may arise.

ISSUE 30

ARTICLE 0031 - LATCHKEY TEACHER EVALUATION

ASSOCIATION PROPOSAL:

The Association proposes the same process as provided other members of the larger Bargaining Unit, emphasizing that these employees are indeed "teachers" and not "childcare workers" as asserted by the Board, and that such a process would address the "buddy system" that the Association alleges is utilized by the Board. In this regard, the Association proposes the following Evaluation language:

ARTICLE 031 LATCHKEY TEACHER EVALUATION

031.01

A. The following number of evaluations shall be conducted by the immediate supervisor based upon continuous experience in the Columbus Public Schools*:

1st and 2nd years	2 evaluations
3rd year	1 or 2 evaluations at administrator's option
4th and 5th years	1 evaluation
subsequent years	1 evaluation every second year, commencing with the seventh year

*'Continuous experience" shall not include the consideration of a school year during which there was a leave of absence in excess of sixty-one (61) days.

031.02 Evaluations provided for in Section 031.01 of this Article shall be for the major purpose of assisting the latchkey teacher toward improved performance.

031.03 Special Evaluation

A. When the Board or any of its administrative agents deem that a teacher's performance may be seriously unsatisfactory and it is their intention to recommend involuntary transfer, non-renewal of contract, or termination of contract or investigate further with the possibility of making any of the aforementioned recommendations, the Board shall notify such latchkey teacher of his/her intent in writing on a form mutually agreeable to the Board and the Association. Such notification shall set forth the specific areas of alleged unsatisfactory performance. Following such notification the Board shall evaluate the latchkey teacher's performance, observing all stipulations of this Article except Section 031.01. The Board will observe the latchkey teacher at least twice. Each observation will be for at least thirty (30) minutes. A conference shall be held between the Board and the latchkey teacher to discuss the latchkey teacher's performance prior to any final action by the Board. The latchkey teacher may be accompanied or represented by an Association representative at such conference and shall have three (3) days prior notification of the conference. In such conference the Board may be accompanied by a Board representative if the latchkey teacher is accompanied in such conference. Final Board action in regard to the alleged unsatisfactory performance shall not conflict with any provision of this Agreement.

B. Unusual Condition - Written evaluations provided in Section 031.01 above, except the second evaluation for first and second year latchkey teachers, shall be performed before any Special Evaluation as required by this Agreement, except when conditions threaten the physical or emotional well-being of pupils or when conditions result in a significant disruption of, or threat to, the educational program or the well-being of the school. When such an Unusual Condition exists: (1) the observations provided in Sections 031.03-A and 031.04 shall not be required if such observations would not substantively contribute to an evaluation of such

Unusual Condition, (2) the Notice of Special Evaluation issued as a part of the Special Evaluation process shall be accompanied by a written statement identifying the Unusual Condition and, if applicable, indicating the reason(s) observations would not substantively contribute to an evaluation of such Condition.

031.04 Observations of the work performance of a latchkey teacher for the purpose of a formal written evaluation shall be conducted openly with the observer visible to the latchkey teacher. A minimum of one (1) and a maximum of three (3) such observations shall be accomplished through prior arrangement with the latchkey teacher. In addition, a maximum of three (3) such observations may be accomplished at the convenience of the Board provided the number of such observations does not exceed the number of observations accomplished through prior arrangement. At least one (1) such observation shall be for a minimum of fifteen (15) minutes in duration.

031.05 A pre-evaluation conference may be requested by either the latchkey teacher or evaluator and shall occur if requested by either party. If held, the primary purpose of the conference shall be to discuss procedural matters related to the evaluation process and questions related to that process. The conference may provide the latchkey teacher and the evaluator an opportunity to discuss their philosophies as educators, and to give the latchkey teacher and the evaluator an opportunity to discuss their short- and long-term goals. No written requirements may be attached to this conference but either party may summarize the conference in writing and may provide a copy of such summary to the other party. Failure to request a pre-evaluation conference does not constitute a procedural violation of the evaluation process.

031.06 A latchkey teacher shall be given a copy of any written evaluation or report on an observation. No evaluation or report on an observation will be placed in the latchkey teacher's permanent file or otherwise acted upon without a prior conference with the teacher.

031.07 All evaluations or reports on an observation must be dated and signed by the latchkey teacher. Such signature shall not necessarily indicate agreement with the evaluation.

031.08 Latchkey teachers shall be permitted to affix comments to any evaluation or report on an

observation prior to placement of the evaluation or report in the latchkey teacher's permanent file.

031.09 The factors to be used in evaluations conducted by the Board shall be jointly developed by the Association and the Board.

031.10 The factors, forms, and procedures used in all evaluations of latchkey teachers shall be mutually developed and agreed to by the Board and the Association.

031.11 A latchkey teacher shall not be represented or accompanied by a representative of any other employee organization at any conference required in Section 031.03-A of this Article.

031.12 No member of the bargaining unit shall have his/her limited contract non-renewed without accomplishment of a special evaluation and without accomplishment of such regular evaluations as are required by this Article, provided that nothing in this Agreement shall require accomplishment of such evaluations in order (1) to non-renew limited contracts or to suspend limited contracts in accordance with Article 034 entitled "Reductions in Personnel"; (2) to terminate a limited contract in accordance with the Ohio Revised Code; (3) to non-renew a limited contract latchkey teacher providing service under a temporary certificate unless such latchkey teacher possesses a regular certificate in another teaching area and has previously provided service under such regular certificate in the Columbus Public Schools; (4) to non-renew a limited contract latchkey teacher advised prior to employment that such non-renewal may occur due to the special nature of the specific assignment for which such latchkey teacher is being employed.

031.13 No member of the bargaining unit shall be denied a positive recommendation by the Manager, Personnel Services, to the State Department of Education for the renewal or upgrading of a teaching certificate as a result of an evaluation rating given on an evaluation conducted within the provisions of Article 031.01.

031.14 In the event a latchkey teacher performs work under the supervision of more than one (1) supervisor, one (1) supervisor shall be designated as the evaluating supervisor.

031.15 Supersession/Applicability of 117th Ohio
General Assembly Am. Sub. H.B. No. 330

A. Subject to Section 031.15-B of this Article, because of the terms of this and other Articles of this Agreement, all provisions of 117th Ohio General Assembly Am. Sub. H.B. No. 330, and any subsequent law amending those provisions, shall be superseded by this Agreement and inapplicable to members of the bargaining unit.

B. Notwithstanding Section 031.15-A, and subject to Section 031.15-C, of this Article, from the time that any cancellation of the PAR Program by the Board becomes effective (1) Am. Sub. H.B. No. 330 and any subsequent law amending the provisions of same shall be fully applicable to the Board except as manifestly inconsistent with this Agreement, and (2) Sections 031.01, 031.02, 031.03, 031.04, 031.05, 031.06, and 031.12, of this Article and Sections 033.04 and 033.05 of Article 033 shall be negated and inoperative.

C. In the event that Section 031.15-B of this Article becomes operative, then, notwithstanding Sections 3319.11(B) (3), 3319.11(C), 3319.11(D), 3319.11(E), 3319.11(G), and 3319.111 of the Ohio Revised Code as enacted by Am. Sub. H.B. No. 330, or any subsequent amendment thereto, the limited or extended limited contract of a latchkey teacher may be non-renewed by the Board without evaluations, hearing, or written Board decision or order thereafter if the written statement describing the circumstances that led to the intention of the Board not to reemploy the latchkey teacher provided to the latchkey teacher pursuant to Ohio Revised Code Section 3319.11(G) (2) or otherwise recites as a basis for non-renewal (1) a reason for a reduction in personnel or the non-renewal of a limited contract set forth in Article 034 of this Agreement, (2) that the latchkey teacher's current contract entails service being provided under a temporary certificate without the latchkey teacher's possessing a regular certificate in another teaching area under

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which the latchkey teacher has previously provided service in the Columbus Public Schools, or (3) that the latchkey teacher has been advised prior to employment that such non-renewal may occur due to the special nature of the specific assignment for which such latchkey teacher was employed.

EMPLOYER PROPOSAL:

The Board takes the position that the Association's proposal to insert wholesale the Evaluation requirements from the Classroom Teacher's Contract is completely inapplicable to childcare workers who, it insists, are not teachers for the purposes of the "Teacher Tenure Law." Based on the automatic expiration of individual teacher contracts to which the Parties have agreed, such a proposal would be unnecessary.

RECOMMENDATION AND RATIONALE:

One of the obvious purposes of an Evaluation procedure is to reassure employees when good performance is being exhibited and to provide a mechanism by which employees who are exhibiting subpar performance are placed on notice relative thereto. It serves as a means by which an employer can "police" the performance of its employees. In this regard, an Evaluation process is worthwhile. The question arises, as raised by the Employer, whether certain aspects of the Association's proposal are applicable to these individuals, i.e., whether they are indeed deemed "teachers" for the purpose of the Teacher Tenure Act. That determination is a legal conclusion in nature and it

is recommended that the Parties seek some declaratory guidance relative thereto. Otherwise, it is indeed a noteworthy proposition that the Parties adopt some type of evaluation process that would also serve as the basis to safeguard the Employer with regard to the performance of its employees. Indeed when parents make selections as to these types of programs and services, the quality of the personnel is a compelling consideration. As a parent, it would be a major concern to ensure that one's children are placed in the "best possible hands." An evaluation process like the type recommended by the Association would address and ensure the quality of the individuals employed by this district. Again, emphasizing the applicability of the legal considerations raised, such would, in my opinion, be subject to some type of declaratory guidance as to whether certain statutory provisions are applicable for this type of employee. Otherwise, the Association's proposal would be recommended.

ISSUE 31

ARTICLE 033 - PROFESSIONAL BEHAVIOR

ASSOCIATION PROPOSAL:

The Association, again mirroring the contractual language contained in the larger teacher's Bargaining Unit, proposes language regarding Professional Behavior of Latchkey Teachers. It emphasizes the need to change the Board's language set forth in its Article 33.01 to specify the faculty representative and

include the request for the presence of a representative of the Association, not being delayed for more than two (2) days. It notes that the Board's proposal was silent regarding reprimands and terminations which are included in the Association's proposal in Sections .02 and .03, respectively. Moreover, it indicates that due to the Agreement of Section 012.01 regarding the automatic expiration of limited contract, the Association would withdraw Sections .04 and .05, respectively. It proposes the following language:

ARTICLE 033
PROFESSIONAL BEHAVIOR

033.01 A latchkey teacher shall be entitled, upon his/her request, to have present an Association Faculty Representative or other representative of the Association when the latchkey teacher is being given a formal reprimand or warning, is being disciplined for any alleged infraction of rules, delinquency, or unprofessional performance, or is being given a recommendation that such latchkey teacher resign or take a leave of absence without pay. The request for the presence of a representative of the Association shall not delay such proceedings for more than two (2) school days.

033.02 A latchkey teacher shall not be given a formal written reprimand or warning, or be disciplined for any alleged infraction of rules, delinquency, or unprofessional performance, without just cause. Any such action shall be subject to the Grievance Procedure set forth in this Agreement, except that any such action taken in connection with Article 031 shall not be grieved with non-compliance with this Paragraph cited as a claimed violation.

033.03 The termination of the contract of a latchkey teacher shall not be subject to the Grievance Procedure set forth in this Agreement. Latchkey teachers whose contracts are terminated shall have recourse to their rights under Section 3319.16 of the Revised Code of Ohio or any successor Section.

033.04 The reasons for a decision leading to a recommendation not to reemploy a non-tenured latchkey teacher shall be made available in writing to the affected latchkey teacher at his/her option.

[WITHDRAWN]

033.05 Any failure to observe the provisions of Section 033.04 of this Article in regard to the giving of written statements relative to reemployment shall be subject to the Grievance Procedure set forth in this Agreement.

[WITHDRAWN]

033.06 In general, direct, verbal criticism of a latchkey teacher by the administration in front of students or parents tends to reduce the latchkey teacher's effectiveness in maintaining an orderly teaching environment. As a result, the parties agree that this practice should be avoided where reasonably practical. Agreement to avoid such criticism where reasonably practical is in no way intended to limit the right of the administration to give direction to members of the teaching staff. In the event a latchkey teacher believes that such criticism has occurred, the latchkey teacher may request a conference with the administration to discuss the incident. Following such a conference, in the event the latchkey teacher believes that such criticism has again occurred, the latchkey teacher may request a second conference with the Board. In either conference, the latchkey teacher may be accompanied and represented by a representative of the Association.

EMPLOYER POSITION:

The Employer's proposal, as will be discussed more fully infra, contained in Article 7 concerning "Suspension and Termination" obviously is similar and parallel to Professional Behavior. Obviously suspension and termination considerations would necessarily result, based on the behavior, professional or otherwise, of the teacher and, in that regard, the Employer proposes the following language relative to Article 7 and Article 13 as follows:

ARTICLE 7 - Suspension and Termination

7.01 The Superintendent or designee may suspend a latchkey teacher without pay for up to twenty (20) days for just cause. The Superintendent or designee will provide a latchkey teacher with notice of charges and an opportunity to challenge, rebut or explain the latchkey teacher's conduct before suspending a latchkey teacher without pay or recommending termination of the latchkey teacher's contract(s) to the Board. After such notice and opportunity, the Board may take action to terminate the latchkey teacher, specifying the effective date. The latchkey teacher may file a written grievance to challenge the suspension or termination within five (5) days of receiving written notice of the action.

7.02 Employees are subject to the work rules and policies of the Columbus Public Schools Latchkey Program. A serious infraction may subject the latchkey teacher to termination without prior discipline. However, three verbal or written warnings during the same school year shall be deemed just cause for termination.

7.03 This Article supersedes and replaces R.C. Chapter 124 and R.C. 3319.16 in their entirety if either such law otherwise would apply in the absence of this Article.

ARTICLE 13 - Behavior

13.01 A latchkey teacher shall be entitled, upon his/her request, to have present an Association representative when the latchkey teacher is being given a formal reprimand or warning, is being disciplined for any alleged infraction of rules, delinquency, or unprofessional performance, or is being given a recommendation that such latchkey teacher resign or take a leave of absence without pay.

13.02 In general, direct, verbal criticism of a latchkey teacher by the administration in front of students or parents tends to reduce the latchkey teacher's effectiveness in maintaining an orderly teaching environment. As a result, the parties agree that this practice should be avoided where reasonably practical. Agreement to avoid such criticism where reasonably practical is in no way intended to limit the right of the Board to give direction to members of the teaching staff. In the event a latchkey teacher believes that such criticism has occurred, the latchkey

teacher may request a conference with the administration to discuss the incident. Following such a conference, in the event the latchkey teacher believes that such criticism has again occurred, the latchkey teacher may request a second conference with the Board. In either conference, the latchkey teacher may be accompanied and represented by a representative of the Association.

RECOMMENDATION AND RATIONALE:

A challenge was raised concerning the Employer's Pre-hearing Statement which did not specifically include Disciplinary Suspension and Termination of Article 7, as set forth in page 14 and 15 of it's hearing documentation provided to the Factfinder. The Association contends that inasmuch as it was not stated in the Pre-hearing Statement, the Factfinder should not render a recommendation relative thereto. It is seemingly apparent that there needs to be some type of mechanism for addressing Professional Behavior matters that may arise. The ultimate goal of the Factfinder in these proceedings is to try to provide a product that the Parties can utilize to reach agreement. By not addressing the issues raised during the course of the Hearing would certainly circumvent that objective. In this regard, the Undersigned will address the impact of Article 7 as well as that of Article 13 as set forth in the Employer's Statement and that of Article 033, titled "Professional Behavior" of the Association.

The Article proposed by the Association, Article 033, is recommended with the following modifications concerning the time limit within which the proceeding should occur. It should read

as follows: "The request for the presence of a representative of the Association shall not unreasonably delay such proceedings. If scheduling becomes problematic, reasonable requests for extensions of time shall be honored." .02 of that Article is also recommended which also incorporates the same "just cause" consideration as set forth in the Employer's 7.01 concerning suspension and termination.

Section 33.06 represents the same language of the Employer's Article 13.02 and is hereby recommended to be incorporated. It is also recommended that the Parties adopt the Employer's Article 7, Section 7.01, concerning Suspension and Termination which provides for consideration of suspension and discipline for discharge being tied to a "just cause" standard which has been addressed in the Grievance Procedure previously. The Undersigned must agree that binding Arbitration provides a quicker and efficient resolution of such disputes. Section 7.02 maintains the current Handbook provisions relative to warnings provided during the course of a school year. Again, consideration of whether these Latchkey employees fall under the Teacher Tenure Law relative to the termination statute is a legal determination which requires declaratory guidance as referenced in the Employer's proposal in Section 7.03. To not recommend the inclusion of such a process would likely provide unnecessary litigation as to whether and to what extent the revised code applies to this group of employees as has been previously

discussed which the Undersigned believes is in need of declaratory guidance.

ISSUE 32

ARTICLE 034 - REDUCTIONS IN PERSONNEL

ASSOCIATION PROPOSAL:

The Association proposes Reduction in Force language based on, as it contends, the Board's refusal to include these Latchkey Teachers with the Teachers in the larger Bargaining Unit. It contends that programmatic deliberation is necessary through a reduction in force procedure. Moreover, it challenges the fact that the Board did not provide any proposal concerning this issue. As such, the Association proposes the following language relative to reductions in personnel:

**ARTICLE 034
REDUCTIONS IN PERSONNEL**

034.01 In the event a reduction in the number of latchkey teachers is necessary which requires the Board to suspend contracts, such reductions shall be implemented in conformity with Paragraph A below, whether in its present form or as revised in compliance with Paragraph B below.

A. When by reason of decreased enrollment of pupils, or by reason of suspension of schools or territorial changes affecting the district, a board of education decides that it will be necessary to reduce the number of latchkey teachers, it may make a reasonable reduction. In making such reduction, the board shall proceed to suspend contracts in accordance with the recommendation of the Superintendent of Schools who shall give preference to latchkey teachers who have greater seniority.

B. During the term of this Agreement, any change to Section 3319.17 of the Revised Code of Ohio shall

automatically and simultaneously change paragraph A in precisely the same manner without any consultation or agreement by the Board and CEA.

034.02 The non-renewal of limited contract latchkey teachers resulting from program cancellations or other cutbacks not related to the evaluation or performance of personnel in the bargaining unit shall be accomplished on the basis of seniority in the system. Such latchkey teachers shall be considered in a layoff status and shall be recalled in the order of seniority as positions are available. Seniority shall be measured from the first day of paid status as a member of the bargaining unit resulting from the most recent employment by the Board of Education. In case of tie the date of Board action to employ shall further determine seniority for layoff only. The Board shall recall all latchkey teachers on layoff status prior to employment of any new latchkey teachers.

Stipulations:

A. In the event two or more latchkey teachers have equal seniority, all determinations in the order of non-renewal and recall within the equal group shall be made by the Board. In such event the Board may give consideration to areas of certification, to past Columbus teaching assignments, to past teaching experience in other districts, and to race or sex where staff balance is a consideration.

B. Latchkey teachers on a layoff status shall be responsible for keeping the Manager, Personnel Services, informed as to their current address and telephone number. Notification of recall by the Manager, Personnel Services, shall be to such address and failure to contact the Manager, Personnel Services, within fourteen (14) calendar days of the date of mailing shall remove the latchkey teacher from layoff status. The Manager, Personnel Services, will also attempt a telephone contact of the teacher. Further, failure to accept the offered assignment shall remove the latchkey teacher from layoff status. Latchkey teachers on layoff status may work as substitute teachers in the Columbus Public Schools without jeopardizing their layoff status.

C. Latchkey teachers who are reemployed from a layoff status shall have all seniority rights restored to their status which were in effect on their last date of employment including but not limited to salary, transfer, and evaluation rights. As an example, a latchkey teacher with one year of experience prior to

layoff would be given credit for one year of teaching experience on the salary schedule at the time of recall.

D. All rights provided in this provision for latchkey teachers on a layoff status shall be limited to thirty-six (36) months.

EMPLOYER PROPOSAL:

The Board rejects the Association's proposal because the reduction in force statute contained in the Ohio Revised Code, on which this proposal is based, is inapplicable to "childcare workers" as it contends. Moreover, such is inconsistent with the automatic expiration of Latchkey Teachers contracts as previously agreed to by and between the Parties in Section 5.02 of the Board of Education Counter-proposal of June 16. In this regard, the Employer emphasizes the inclusion of its Article 6 relative to the "Days and Hours of Employment," regarding the procedure to follow in the event that reduction in personnel, is warranted.

RECOMMENDATION AND RATIONALE:

Again, the issue is raised concerning the Employer's Pre-hearing Statement that specifically raises the manner in which the Pre-hearing Statement failed to provide consideration per se of this issue. Again, the Factfinder is of the opinion that his role of this process is to facilitate resolution of the impasse and to ignore the unresolved issues would not serve that basic purpose and intent of the statute relative to this process. As such, it is clear that such language is necessary with regard to

what occurs in the event that staffing needs need to be adjusted from time to time based on enrollment. Clearly, that determination is one which is best left in the hands of Management. The Employer's proposal in this regard is hereby recommended thereby providing it with the flexibility it has asserted throughout this proceeding, to allow it to address certain staffing needs it deems appropriate. Moreover, it's language provides certain "notice" considerations while recognizing "seniority" with the Board in the event a lay-off is necessary.

Furthermore, recognition of the Ohio Revised Code in connection with its applicability to this Bargaining Unit is, as has been previously discussed, a matter for declaratory determination.

ISSUE 33

ARTICLE 035 - LATCHKEY EDUCATIONAL AIDES

ASSOCIATION PROPOSAL:

The Association proposes that the Factfinder include this provision for the same reason that the Board has included the same for Teachers in the larger Bargaining Unit. It insists that the Board's argument of "undue regulation" of the employees who are in another Bargaining Unit is what it characterizes as "smoke and mirrors" in attempting to minimize the ongoing importance of this Unit. For these reasons, the Association proposes the following language:

**ARTICLE 035
LATCHKEY EDUCATIONAL AIDES**

035.01 The employment and use of latchkey educational aides shall also be in accordance with Section 3319.088 of the Revised Code of Ohio, guidelines established by the State Board of Education, and guidelines established by the Board. If it becomes necessary to revise the guidelines established by the Board during the term of this Agreement, such revisions will be made only after consultation with the Association in keeping with Article 006.01 of this Agreement. During the term of this Agreement, the number of educational aides employed shall be left to the judgment of the school administration, except as provided elsewhere in this Agreement.

035.02 In addition to the system-wide guidelines established by the Board, guidelines, written job descriptions and the assignment of latchkey educational aides will be established for each latchkey site by the Board with the advice of the Association Program Council.

035.03 Guidelines and written job descriptions established by the Board shall not conflict with the content or intent of the educational aide statute or guidelines established by the State Board of Education.

035.04 The Association Program Council shall consider and recommend to the Board appropriate procedures for the participation of latchkey teachers in the interview and selection of educational aides.

EMPLOYER PROPOSAL:

The rejects the Association's proposal as inapplicable as it continues to contend that certain statutory considerations are inapplicable to instructional assistants in the Latchkey Program. It insists that such is an undue regulation of the employees who are in another Bargaining Unit.

RECOMMENDATION AND RATIONALE:

The evidence of record and the testimony of those who testified indicates that the use of "educational aides" is based on enrollment numbers and there is no supervisory relationship between the Aide and the Latchkey Teacher per se. Moreover, reference to the Ohio Revised Code considerations can, in the opinion of the Undersigned, be addressed only after declaratory determination of whether such personnel are indeed under its auspices. In this regard, it is recommended that the Parties do not include that language proposed by the Association which may or may not be addressed in the language of the Aides' Collective Bargaining Agreement.

ISSUE 34

ARTICLE 036 - VOLUNTEER WORKERS

ASSOCIATION PROPOSAL:

The Association notes that this program has consistently utilized volunteer workers and the contract for the larger Bargaining Unit provides an orderly procedure for such workers. The Association emphasizes that the Board's June 16th proposal and Pre-hearing Statement were silent on this issue, therefore, it requests that the Factfinder incorporate the Association's proposal in his Report as follows:

**ARTICLE 036
VOLUNTEER WORKERS**

In each latchkey site which uses volunteer workers the Board, in consultation with the Association Program Council, may develop guidelines for such workers. The

utilization of volunteer workers in a latchkey teacher's classroom shall be at the option of each teacher.

EMPLOYER PROPOSAL:

As indicated in the Pre-hearing information, and accompanying documentation as well as the position of the Board at the Factfinding proceeding, it has not indicated a compelling objection relative to this issue.

RECOMMENDATION AND RATIONALE:

Based on the foregoing, it is hereby recommended that the Parties adopt the Association's proposal relative to the inclusion of language addressing "Volunteer Workers."

ISSUE 35

**ARTICLE 038 - PROCEDURE FOR
PROFESSIONAL NEGOTIATIONS**

ASSOCIATION PROPOSAL:

The Association proposes what it characterizes as a "tried and true" procedure utilized by the larger Bargaining Unit for approximately twenty-five (25) years, to address procedures for negotiations. It insists that such is not antiquated as characterized by the Board and there is no need to create a new procedure when this one has worked well for these Parties.

**ARTICLE 038
PROCEDURES FOR PROFESSIONAL NEGOTIATIONS**

038.01 Exclusive Representative

The Exclusive Representative shall mean the latchkey teacher organization recognized by the Board as the Exclusive Representative of all latchkey teachers of the Columbus City School District, for purposes of professional negotiations. Such Exclusive Representative shall, for purposes of professional negotiations, represent all latchkey teachers regardless of their membership or lack of membership in such latchkey teacher organization, and shall represent all latchkey teachers equally without regard to their race, creed, color, national origin, sex, age, marital status, or sexual orientation.

038.02 Scope of Negotiations

A. The scope of bargaining between the Board and the Association shall be as established by Section 4117.08 of the Ohio Revised Code. Section 4117.08 provides as follows: Sec. 4117.08

(A) All matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the public employer and the exclusive representative, except as otherwise specified in this section.

(B) The conduct and grading of civil service examinations, the rating of candidates, the establishment of eligible lists from the examinations, and the original appointments from the eligible lists are not appropriate subjects for collective bargaining.

(C) Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117 of the Revised Code impairs the right and responsibility of each public employer to:

1. Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, and organizational structure;

2. Direct, supervise, evaluate, or hire employees;

3. Maintain and improve the efficiency and effectiveness of governmental operations;

4. Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;

5. Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;

6. Determine the adequacy of the work force;

7. Determine the overall mission of the employer as a unit of government;

8. Effectively manage the work force;

9. Take actions to carry out the mission of the public employer as a governmental unit. The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. A public employee or exclusive representative may raise a legitimate complaint or file a grievance based on the collective bargaining agreement.

B. During the term of this Agreement, any change in the Ohio Revised Code which modifies the scope of bargaining hereunder shall automatically and simultaneously change the scope of bargaining, as provided in paragraph A above, in the same manner and without consultation or agreement by the Board and the Association.

038.03 Joint Negotiation Committee

No more than nine (9) representatives or designees of the Board, the Superintendent or his/her designated representative, and no more than ten (10) representatives named by the Exclusive Representative shall comprise a joint committee for the purpose of negotiating. All negotiations shall be conducted in executive session and exclusively between said representatives or designees. In addition, each team of representatives or designees shall be authorized to admit no more than two observers at one time to such meetings. Such observers, if any, shall be designated prior to each Joint Negotiation Committee meeting and shall be without the right to speak or to otherwise comment to either party during said meetings.

038.04 Good Faith Bargaining Good faith bargaining shall mean the obligation on all parties to deal openly and fairly on all matters being negotiated in a sincere effort to reach a mutual understanding and agreement on such matters, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

038.05 Days
Days shall mean calendar days.

038.06 Meetings
Negotiation Meetings--Upon written request of the Exclusive Representative made not less than fifteen (15) days and not more than thirty (30) days prior to March 15, the Board President or his/her designated representative shall call for the initial meeting of the Joint Negotiation Committee to take place not later than March 15, giving due notice of time and place. The purpose of this initial meeting shall be for establishing agenda items for subsequent meetings, and for the handling of administrative details. Thereafter, negotiations meetings shall be held at such times and places as are agreed to by the members of the Joint Negotiation Committee. Negotiation meetings shall be held as often as necessary between March 15 and June 1. In the event the members of the Joint Negotiation Committee are unable to reach agreement by June 1, negotiations shall be suspended for approximately forty-five (45) days. Negotiations shall resume after July 15.

In the event an existing agreement between the Board and the Exclusive Representative expires at a time other than immediately prior to the beginning of a school year, negotiations on a new agreement shall begin and the initial meeting shall be held no less than three (3) months and no more than four (4) months prior to such expiration date. The above provisions notwithstanding, the parties may negotiate at such other dates as may be established in any agreement or memorandum of the parties. In the event an agreement is reached, it will continue in full force and effect for its established term, and no further negotiations will take place between the parties until the schedule provided above, except for interim negotiations which may occur as provided elsewhere in these procedures.

Negotiation meetings shall not be conducted during the regular school day.

038.07 Exchange of Information

The Board agrees to furnish the Exclusive Representative, upon written request, through a person designated by the Superintendent, with such relevant information as is currently available which will assist the Exclusive Representative before and during negotiations, before and during any impasse procedures, and during implementation of negotiated agreements. Likewise, the Exclusive Representative agrees to furnish the Board or their representatives, upon written request, such relevant information as is currently available before and during negotiations, before and during any impasse procedures, and during implementation of negotiated agreements.

038.08 Consultants

Notwithstanding any other provision of this Agreement, up to two (2) consultants at any one time may be called upon by either party for advice and information on matters being considered by the Joint Negotiations Committee and may participate in the negotiations. The expenses of such consultants shall be borne by the party retaining them.

038.09 Agreement

When an agreement is reached, it shall be reduced to writing by the Joint Negotiation Committee and be submitted to the Exclusive Representative and, if approved by such Exclusive Representative, thereafter to the Board.

038.10 Impasse

(This section provides a mutually agreed to dispute settlement procedure which supersedes the procedures contained in Ohio Revised Code Section 4117.14.) In the event the members of the Joint Negotiation Committee are unable to reach agreement after July 15, or thirty (30) days prior to the expiration of an Agreement that expires at a time other than immediately prior to the beginning of a school year, either party may declare an impasse. Upon such declaration, the parties shall jointly request the services of the Federal Mediation and Conciliation Service, or other mutually agreeable mediation service if Federal Mediation and Conciliation Service is not available to the parties. In the event the members of the Joint Negotiation Committee are unable to reach agreement within ten (10) days of the expiration of the existing Agreement, the mutually agreed to dispute settlement procedures set forth herein shall be deemed exhausted and the Exclusive Representative shall have the right to proceed in accordance with Section 4117.140(2) and Section 4117.18(C) of the Ohio Revised

Code, such right being modified by future changes, if any, to the Ohio Revised Code.

EMPLOYER PROPOSAL:

The Employer emphasizes that the "status quo" position relative to the procedure utilized for negotiations is that set forth under the Ohio Revised Code. It asserts that unless a compelling reason to deviate from the status quo is provided, such should be maintained. There is no reason to incorporate an elaborate ADR procedure in this initial labor contract since the law provides the duty to bargain in good faith and a framework for resolution of impasse, including mediation and factfinding. It emphasizes that the Ohio Revised Code procedure has indeed stood the test of time and if the Parties wish to change that in the future, they can follow the procedure or agree to some "ad hoc" dispute resolution process. The issues are different than those of the larger Bargaining Unit and the nature of the operation is different. The history and the size of the Bargaining Units are radically different. It insists that the relationship of these Parties must have the opportunity to evolve and contractual language should not be taken "wholesale" from the larger Bargaining Unit contract with a thirty (30) year history.

RECOMMENDATION AND RATIONALE:

Given the familiarity these Parties apparently have had with the dispute resolution process proposed by the Association, such would, in the opinion of the Undersigned, assist the Parties in

"evolving" the Collective Bargaining relationship from its inception based on this initial Collective Bargaining Agreement. Such seemingly addresses all aspects of dispute resolution that may arise and is very elaborate in the procedure the Parties are to adhere to. In this regard, it would seem that such would be beneficial to the Parties to allow it to maintain the familiarity that the District has enjoyed with the larger Bargaining Unit. Therefore, it is recommended that the Parties adopt the Association's language relative to Procedures for Professional Negotiations.

ISSUE 36

ARTICLE 039 - INTERIM NEGOTIATIONS

ASSOCIATION PROPOSAL:

The Association recognizes that the Parties have agreed on Section 039.01 as referenced in Board Article 16.03, however, it proposes to complete an interim negotiation procedure for this unit, the same as that required and provided to the larger Bargaining Unit. It emphasizes that this procedure has historically enabled the Parties to meet the ever-changing needs of an urban school system during the term of the Contract and should therefore be included as follows:

ARTICLE 039 INTERIM NEGOTIATIONS

039.01 If, during the term of this Agreement, there is a change in any applicable state or federal law, or valid rule or regulation adopted by a federal agency or a state agency pursuant thereto, which would invalidate any provision of this Agreement, the parties

will meet to negotiate any necessary change in the Agreement relative to the affected provision within sixty (60) days by demand of either party.

[AGREED]

039.02 Upon written request of the Exclusive Representative, the Board President, or his/her designated representative, shall call for the initial meeting of the Joint Negotiation Committee for the purpose of interim negotiations to be held not later than fifteen (15) days after receipt of such written request. Negotiation meetings shall be held as often as necessary pursuant to procedures set forth in 038.06; however, the last negotiation meeting shall be held not later than fifteen (15) days after the first meeting. In the event the members of the Joint Negotiation Committee are unable to reach agreement during the period of interim negotiations, all unresolved issues will be submitted to final and binding arbitration.

039.03 At the last negotiations meeting, the Joint Negotiation Committee will request the American Arbitration Association to submit to them a list of qualified arbitrators. The American Arbitration Association shall be instructed to submit the list within ten (10) days of the date of request. Within three (3) days of the receipt of such a list, the Board and the Exclusive Representative shall select the arbitrator by alternately striking names from the list submitted. The arbitration shall be held in accordance with the rules of the American Arbitration Association.

039.04 There shall be no interim negotiations during the term of this Agreement except as provided in Section 039.01 of this Article. In the event additional funds from the State require mandated raises for members of the bargaining unit, the salary increases herein provided shall be considered to be a result of such mandated raises and any such stipulated raises that require the Board to exceed the salary levels provided herein in any given year shall not result in increasing the salary levels provided in the succeeding year(s).

EMPLOYER PROPOSAL:

The Board does not oppose mid-term bargaining limited to the provisions that become illegal by virtue of an overriding

enactment or decision. However, the concept of superceding State law must be preserved as is set forth in its proposal in Section 16.03. It opposes the formal, rigid and elaborate process the Association proposes in 39.02 and the culmination in binding interest arbitration in 39.03. The Association's proposal 39.04 simply has no relevance to these employees who are in a discretionary and self-supporting program for which the law has never mandated salary increases.

RECOMMENDATION AND RATIONALE:

As is readily apparent, the Parties agree to the 16.03 of the Board's proposal and 039.01 of the Association's. It is recommended that the Parties delete 039.04 of the Association's proposal as it pertains to salary increases based on the question of State law applicability to these employees as has been discussed in previous matters. Additionally, it is recommended that the Parties simply incorporate that which addresses consideration of mid-term issues that may arise as a result of the change in any State or Federal law, Federal Agency, or State Agency that may invalidate any provision of the Agreement.

The Association's Section 039.02 and 039.03 provide for a "final" step in the process in the event negotiations on unresolved issues that may arise "mid-term" prove unsuccessful. Resolution through "good faith" negotiations is the best alternative, however, such is oftentimes unobtainable.

Therefore, the utilization of such a process would be beneficial. As such, Sections .02 and .03 are recommended for inclusion.

ISSUE 37

ARTICLE 040 - AMENDMENT PROCEDURES

ASSOCIATION PROPOSAL:

The Association proposes what it deems an "orderly" procedure for amending the contract as is that provided to the larger Bargaining Unit. It proposes the following language relative thereto:

ARTICLE 040 AMENDMENT PROCEDURES

The President of the Association and the Superintendent may meet privately during the term of this Agreement for the purpose of discussing the amendment of this Agreement. In the event this discussion produces a mutual accord that a specific amendment is desirable, such proposal for amendment will be referred to the Joint Negotiating Committee and, if the amendment is mutually agreed upon by the joint committee, it will be submitted for ratification by the Board of Education and a policy-making body of the Association. No public discussion or disclosure of the desire for amendment shall take place prior to or unless mutually agreed to be submitted to the Joint Negotiating Committee.

EMPLOYER POSITION:

Simply stated, the Employer proposes that the Parties can accomplish this task by mutual agreement and whatever endeavors occur prior to reaching mutual agreement must occur regardless. Therefore, it proposes the following language:

16.04 Amendments to this Agreement may be made at any time by mutual agreement in writing.

RECOMMENDATION AND RATIONALE:

Based on the proposals provided, it seems as though the Employer's proposal relative to amendments to the Agreement is more simplistic and is silent on the manner in which the Parties achieve the mutual agreement in writing. In that regard, it is less restrictive. Simply stated, let the Parties seek whatever means necessary to reach a mutually agreed amendment to this Collective Bargaining Agreement.

ISSUE 38

ARTICLE 041 - APPLICABLE STATE LAW

ASSOCIATION PROPOSAL:

The Association insists that there is no connection guaranteeing applicable state law as proposed by the Association and the "Zipper Clause" as proposed by the Board in 16.02. It notes that the Ohio Supreme Court has indicated that without a specific waiver in the Contract, applicable laws govern. In this regard, the Association indicates that it's language eliminates any confusion as that utilized in the larger teacher's contract. Therefore, it proposes the following language:

**ARTICLE 041
APPLICABLE STATE LAW**

041.01 In the event there is a conflict between a provision of this Agreement and any applicable state or federal law, or valid rule or regulation adopted by a federal agency or a state agency pursuant thereto, the applicable state or federal law or valid rule or regulation adopted by a federal or a state agency shall prevail as to that provision. All other provisions of this Agreement which are not in conflict with any applicable state or federal law, or valid rule or

regulation adopted by a federal agency or a state agency pursuant thereto, shall continue in full force and effect in accordance with their terms.

041.02 The Board and the Association agree that all items in this contract which supersede applicable state law and which may permissibly do so under Ohio Revised Code Section 4117 shall not be affected by this Article. Should any clause of this contract be held to be in violation of the law by a court of competent jurisdiction, then that clause of the contract shall be rendered null and void, but the remainder of the contract shall remain in full force and effect.

EMPLOYER PROPOSAL:

The Employer proposes in it's Section 16.01 and 16.02, as set forth on pages 24 and 25 of it's hearing documentation, what it characterizes as the traditional "waiver of negotiations" or "Zipper Clause," common to most labor agreements. It emphasizes the importance to "zip up" the contract and limit the parties' agreement to precisely what is contained within the four (4) corners of the written document. Moreover, it emphasizes the Parties' acknowledgment that they have exhausted the duty to bargain and have waived that right for the term of the agreement except as the Administration or Board intends to change a term or condition of employment about which the Contract is silent. In this regard, the Board's proposal in Section 16.01 contains an obligation to give the Association written notice of the proposed change and opportunity to bargain the impact. It insists that such a bargaining obligation parallels that required by law.

ARTICLE 16 - General Provisions

16.01 The Superintendent or designee will provide the Association with notice and an opportunity to bargain to the extent required by law with respect to

changes in wages, hours, terms and other conditions of employment that are not addressed specifically and expressly in this Agreement. Other than this obligation, the Board and the Association acknowledge that during negotiations resulting in this Agreement, each party had the right and the opportunity to make demands and proposals with respect to any matter, and that the parties arrived at this Agreement after the exercise of that right and opportunity. Board and the Association shall voluntarily waive, during the life of the this Agreement, said rights and each agrees that the other shall not be obligated to negotiate with respect to any subject or matter irrespective of whether such matter or subject is specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both parties at the time negotiations were being conducted or at the time the party signed this Agreement.

16.02 This Agreement supersedes all previous oral and written agreements or practices between the Board and the Association and between the Board and any employee within the collective bargaining unit. The parties hereby agree that the relations between them shall be governed exclusively by the terms of this Agreement only and no prior agreement or practices, amendments, modifications, alterations, additions, or changes, oral or written, pertaining thereto shall be controlling or in any way affect the relations between the parties or the wages, hours and working conditions of the employees covered by this Agreement. R.C. Chapter 3319 shall not apply to latchkey teachers and, to the extent allowed by law, R.C. Chapter 124 shall not apply to latchkey teachers, if either such Chapter would apply in the absence of this Agreement.

RECOMMENDATION AND RATIONALE:

It is hereby recommended that the Parties adopt the Employer's language relative to the aforementioned issue in that the question as to the applicability of State Law still exists and as has been discussed supra relative to the need for declaratory guidance. The Parties' relationship needs to evolve with regard to their rights and obligations. Given the fact that

such is indeed an initial contract, such rights and obligations need to be set forth therein. Moreover, it is important that the Parties recognize that once the Agreement has been ratified and executed, the Collective Bargaining relationship formally begins based on what is contained within the four (4) corners of that written document. Moreover, it is important that the Parties recognize that the language contained therein, except where previous discussions indicate may be modified, must be the document providing guidance for that relationship. The Board's language contains an obligation to provide the Association with written notice of a proposed change, giving it the opportunity to bargain the impact which is parallel with that required by law. Therefore, it is hereby recommended that the Parties adopt the Board's language relative to this issue.

ISSUE 39

ARTICLE 042 - DURATION OF AGREEMENT

ASSOCIATION PROPOSAL:

Inasmuch as the Board has proposed its three (3) year wage freeze, a three (3) year agreement is simply unacceptable to the Association. It emphasizes the history of these employees and the School District wherein they have received increases in wages throughout its thirteen (13) year history. Moreover, it emphasizes that of the other districts relied upon throughout this proceeding, this is the only unionized program. Therefore,

the Association proposes the following language relative to the duration of this Agreement:

**ARTICLE 042
DURATION OF AGREEMENT**

This Agreement shall be effective at 12:01 a.m. on August 25, 1997, and shall continue in full force and effect until midnight August 24, 1998.

In witness whereof the parties have caused this Agreement to be executed on the day and year first mentioned above.

EMPLOYER PROPOSAL:

The Employer proposes that the duration of the initial labor agreement between the Parties be for three (3) years upon the ratification by the Association. It emphasizes that a three (3) year agreement is the "norm" and such is needed to provide the Parties with some evolution of their collective bargaining relationship and hopefully some stability based thereon.

16.05 This Agreement shall become effective upon ratification by the Association and remain in effect for three years.

RECOMMENDATION AND RATIONALE:

At the heart of the Association's proposal, relative to Duration where it seeks only a one (1) year Agreement, is as it emphasizes the three (3) year wage free as proposed by the Board being unacceptable. Based on the wage article previously discussed, the Factfinder recommended that these employees continue to be compensated at \$20.79 for year one (1); and that they be compensated at the same rate that classroom teachers

receive for "non-classroom" services for years two (2) and three (3), respectively. Hopefully this will address the Union's consideration relative thereto. Moreover, Health Insurance was recommended for the second and third years of the three (3) year Collective Bargaining Agreement as well.

Of significant importance is the need for these parties to evolve their collective bargaining relationship following the implementation of their initial Collective Bargaining Agreement. Based thereon, it is recommended that the Parties adopt the Board's language relative to a three (3) year Agreement based upon the ratification of the Agreement by the Union.

ARTICLE 8 - REASSIGNMENT OR SUB-CONTRACTING

The Board's "counter-proposal" of June 16, 1997, contained language addressing, what it deems essential, the area of reassignment and/or sub-contracting of work.

This service has existed for some thirteen (13) years prior to the unit certification. There simply exists no compelling basis to provide an avenue to "farm-out" this service. Previous discussions concerning this issue being omitted from the Employer's Pre-hearing Statement requires a clarification of the statutory mandate as to this aspect of the statutory procedure.

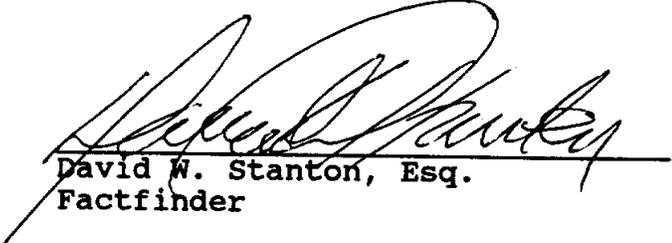
Nonetheless, this District provides educational services to approximately 63,000 students - with a sufficient number utilizing this service to the extent it has remained self-

sustaining for some thirteen (13) years. There seems no eminent possibility that such a program will not continue to prosper.

As such, inclusion of this language is not recommended at this time.

SUMMARY

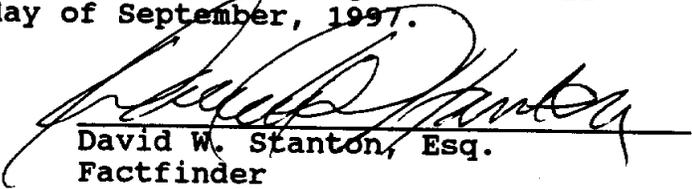
Again, the Factfinder must emphasize that this is the initial Contract between these parties. Based on the premise that collective bargaining is an incremental process, "substantial" gains relative to that relationship simply cannot occur overnight absent compelling reasons to do so. As such, I hope the Parties recognize these underlying guidelines that have been utilized that seemingly address the Association's desire to gain improvements over the status quo position for these employees as well as the Employer's need for flexibility and stability with regard to the manner in which it continues this self-sustaining operation.


David W. Stanton, Esq.
Factfinder

September 16, 1997
Cincinnati, Ohio

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Factfinding Report has been made available to each Party via overnight U.S. Mail service, on this 16th day of September, 1997.


David W. Stanton, Esq.
Factfinder