

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

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IN THE MATTER OF FACTFINDING :

BETWEEN :

**CLARK COUNTY BOARD
OF MENTAL RETARDATION
AND DEVELOPMENTAL
DISABILITIES**

REPORT OF THE FACTFINDER

- AND -

**UNITED AUTO WORKERS,
LOCAL 658**

SERB CASE NO: 97-MED-12-1287

HEARING: March 4, 1998

FACTFINDER: David W. Stanton, Esq.

APPEARANCES:

FOR THE EMPLOYER

Jonathan J. Downes, Labor Counsel
Daniel M. Barksdale, Superintendent
Margaret A. Wilkes, Personnel Administrator
Judie Niles, Supervisor-Respite
Linda Burkholder, Family Home Administrator
Kathy Sakach, Unit Coordinator/Blue

FOR THE UNION

Ronald V. Rhine, International Representative
Tim F. Marshall, President
Sondra Via, Bargaining Chairperson
Peggy Peters, Bargaining Committee Member
Constance M. Pappert, Bargaining Committee
Member
Debbie Steele, Bargaining Committee Member

ADMINISTRATION

By letter dated February 9, 1998, 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 negotiations at impasse are those for a third Collective Bargaining Agreement between the Parties. Prior to the Factfinding Proceeding, the Undersigned was provided a copy of the current Agreement and tentative agreements reached during the 1995 negotiations. In addition thereto, tentative agreements were identified as a "change" from the original language contained in the predecessor agreement. As set forth therein, there are distinct departures from the Civil Service Procedures utilized prior to the execution of the initial Collective Bargaining Agreements by the Parties. They primarily involve the areas of Leave and Overtime. The Parties view several very important considerations of these issues relative to the administration of the Agreement as it impacts the Employer's ability to facilitate responsibility for the delivery of services and care for the mentally retarded residents of the F. F. Mueller Residential Facility.

As indicated by the Parties, previous negotiations for the renewal of the current Collective Bargaining Agreement occurred on the following dates: February 12; February 17; February 18; February 19; February 23; February 25; and, March 2, 1998. Those issues that remained at impasse were discussed and proposals were exchanged relative thereto. However, the Parties were unsuccessful in resolving them. The Undersigned was provided voluminous hearing statements relative to the positions taken by each Party concerning the issues that remained at impasse.

On March 4, 1998, the Factfinding Proceeding was conducted wherein mediation was offered prior to the Factfinding Proceeding as preliminarily discussed by the Factfinder during the course of telephone discussions with the Party representatives. However, the request to engage in mediation was declined by the Parties. The Factfinding proceeding commenced at approximately 10:00 o'clock a.m. and lasted until approximately 6:00 p.m. that evening, culminating in a tour of this facility until approximately 7:30 p.m. Pursuant to the request of the Parties, the Factfinder was given a thorough tour of the facility and received explanation as to the overall operation of this facility.

During the course of the Factfinding Proceeding, each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced relative to the unresolved issues. The statutory period had to be extended due to personal family emergencies experienced by the Factfinder that were ultimately modified based on conflicts that resulted with the Parties' schedules. Even though the Factfinder afforded the Parties the ability to submit Post-hearing Statements relative to the evidence and arguments advanced at the Factfinding Proceeding, such was declined. The Record of this proceeding was subsequently closed at the conclusion of the Factfinding Proceeding and those issues that remained at impasse are the subject matter for the issuance of this report hereunder.

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 recognizes certain criteria for consideration herein as follows:

- (1) Past collectively bargaining agreements, if any, between the Parties;

- (2) Comparison of unresolved issues relative to the Employees in the Bargaining Unit with those issues related to other Public and Private Employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the Public and the ability of the Public Employer to finance and administer the issues proposed and the affect of the adjustment on a normal standard of public service;
- (4) The lawful authority of the Public Employer;
- (5) Any stipulations of the Parties; and,
- (6) Such other factors not confined in 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 Public Service or in private employment.

I.

The Bargaining Unit defined it's duties and responsibilities to the Community and general background considerations.

As indicated by the Parties, the Successor Agreement at impasse herein is the third such agreement between the Parties. Many areas demonstrate a major departure from the Civil Service procedure utilized prior to the initial Collective Bargaining Agreement. They were recognized primarily for Leave and Overtime situations relative to the administration of the Agreement which were negotiated to facilitate the Employer's responsibility for the delivery of services and care for the mentally retarded residents of the F.F. Mueller Residential Facility.

The Bargaining Unit Employees are classified as Unit Counselors or Recreation Instructors at this facility. There are approximately one hundred forty-five (145) Employees in the Bargaining Unit which comprise approximately one hundred thirty (130) FTE's or Full-time Equivalent positions. The Bargaining Unit Employees and Front Line Supervisors are directly

responsible for the individual care provided for the severely mentally retarded residents. Such requires various levels of staffing, dependent upon the time of day and the different functions carried out throughout the week. Some residents participate in educational or workshop activities provided by the M.R.D.D.

As indicated by the Employer, the Clark County M.R.D.D. residential facility is one (1) of only four (4) remaining in the State of Ohio operated by a County Board. Only the Lake County M.R.D.D. residential facility is organized by a Labor Organization. The Employer indicates that the lack of funding compelled the closure of most of the County residential facilities and therefore there exists few facilities that could be relied upon by way of comparison relative to the issues that remain at impasse.

During the course of the Factfinding Proceeding, it was evident to the Factfinder that the Parties' relationship during the three (3) years of the current Collective Bargaining Agreement had realized tremendous improvement due in large part to an active Labor Management Committee. The Parties indicated that there had been only one Grievance filed that proceeded to Arbitration during this time frame.

The Parties began these negotiations by addressing the non-economic issues which were primarily the single largest concern of the Employer. It presented to the Union that the most important issue is coverage of the "cottages" and "family homes," the terms provided to the living units of the mentally retarded residents. Because the nature of the work performed by these Employees and the Supervisors as the direct care givers, coverage is an obvious, very important consideration of this facility.

As will be discussed *infra*, the Parties agreed to a concept, during the initial negotiations

that occurred six (6) years ago to "Universal Leave." Such is a combination of vacation leave and sick leave that is greater than the schedule for vacation leave but less than the schedule of the combination of the former sick leave and vacation leave schedules. Universal Leave, which has few limitations, was granted basically "on demand." Such requests would result in the reduction of staffing levels that mandate additional coverage through the use of Overtime. The Employer notes that the problem with coverage was exasperated under the current Agreement that prohibits mandatory overtime and overtime equalization. The Record demonstrates that the Employer proposed a combination of incentives and disincentives to encourage advance notice and discourage short notice and "gaming" of this leave. The Employer notes that three (3) factors have resulted in; i.e., a tremendous increase in overtime costs over it's former administrative system; huge blocks of time required by Supervisors to secure coverage while considering overtime equalization and the right to refuse overtime; and the procedural provisions of the Universal Leave and Overtime provisions that have resulted in "gaming" by the Employees in order to secure overtime work.

The Record demonstrates that the M.R.D.D. is funded primarily through two (2) sources; i.e., Federal and State funding through Medicaid and, secondly, through a local Levy which is subject to renewal by the voters. Medicaid funding is highly regulated and specific with regard to application and use and is enforced by regular audits from the State and Federal authorities.

In addition to the residential facility, the M.R.D.D. operates a sheltered workshop known as TAC Industries, "Town & County School," which is a school for the mentally retarded \Family

Support Services, a Transportation Department and County case management. The M.R.D.D. serves approximately one thousand (1,000) individuals, out of which approximately one hundred and ten (110) are residents of the Mueller Center with five hundred and fifty (550) Employees with one hundred and forty (140) in the Bargaining Unit. Approximately six hundred (600) clients or consumers are at the TAC Industries, and between one hundred fifty-five (155) and one hundred sixty (160) clients are serviced at the Town & County School. There are ten (10) residents at the Mueller Center as previously indicated and one hundred three (103) clients serviced through the Family Support Services or Community Living Services. The Transportation Department provides transportation for clients and residents to and from the TAC Center within the clients' home as well as to the Mueller Center.

As previously discussed, major funding is through Medicaid which is strictly regulated by Federal and State Agencies which also establish standards for the amount of reimbursements for certain services. Of approximately one hundred fifty dollars (\$150) to one hundred sixty dollars (\$160.00) per day cost to care for a resident, approximately seventy dollars (\$70.00) is received from Federal and State sources and local monies make up the remainder of this cost. The Board currently receives five (5) mills from property taxes within the County; two (2) mills is a continuing levy with three (3) mills of the levy which will expire in 1999. The three (3) mills generate approximately three (3) million dollars. The millage is adjusted by increases in property tax value to maintain a constant level of revenue and adjustment for increased property value. Even though property values increase, the millage is adjusted so that no "new money" is generated by property tax value increases. Personal property tax is a source of revenue, though volatile in nature, currently accounts for approximately one million dollars of the revenue

received.

As previously discussed, several economic and non-economic issues remain at impasse between these Parties. They are listed as follows and will be discussed more fully herein below where the Factfinder will state the respective positions of the Parties as well as indicate a recommendation with a rationale therefore identified.

The Factfinder is required to consider comparable employee units with regard to their overall makeup and services provided to the Members of the respective committees. And, as is typically apparent, there are no "on-point" comparisons relative to this type of facility. However, whatever similarities exist must be taken into consideration by the Factfinder based on the above-noted statutory criteria. It is the position of the Factfinder that the Party proposing any deviation or deletion of the current language or of the *status quo*, bears the burden of proof and persuasion to compel the change proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo* practice or current language. Based upon the aforementioned considerations, the following issues remain at impasse between the Parties:

ISSUE NO. 1

ARTICLE V - UNIT DEFINITION - RECREATION INSTRUCTOR

The proposal contained in Articles V and XXV, respectfully, is made by the Employer to delete from the Bargaining Unit the classification of "Recreation Instructor." Inasmuch as this sole modification proposed in both Article V and XXV concerns the deletion, such will be

addressed concurrently herein. The Employer emphasizes that many differences exist between the Recreation Instructor and the Unit Counselor relative to work schedules; part-time versus full-time; the nature of the work performed; the recreation instructors work from a separate facility; and, are required to have licenses and certifications that are not required of the Unit Counselors. The Recreation Department serves individuals with mental retardation and developmental disabilities throughout the County, including their families, whereas the Unit Counselor provides residential care for the residents at the F. F. Mueller Residential Center. The Recreation Department also provides Special Olympic opportunities, whereas the residents at the Mueller Center participate as "eligible citizens." The Recreation Instructor must be certified in life guarding and are required to attend overnight camping and travel activities. The Recreation Department consists of seven (7) part-time positions or 4.625 full-time equivalents whereas Unit Counselors total 129.4 FTE's plus on-call staff. The Unit Counselors have twenty-four (24) hour operation schedules and the hours of work for the Recreation Instructor are different.

The Union takes the position that the Recreation Instructor was certified as a Bargaining Unit position by SERB in Case No. 91-REP-06-0157 and, any deletion or modification relative to this or Article XXV, where such is noted, would erode the Bargaining Unit.

RECOMMENDATION & RATIONALE

It is recommended that the Parties adopt the current language and do not deviate, modify or delete that which is contained in Article V relative to the position of Recreational Instructor. The Record fails to indicate any persuasive support to warrant the recommendation of the proposal by the Employer.

ISSUE NO. 2

ARTICLE XII - HOURS OF WORK/FULL-TIME & PART-TIME EMPLOYEES

The Employer has proposed various minor changes to this Article, the first being in Section 12.1, wherein the Union indicated no opposition thereto and therefore it is recommended as such. The issue at impasse is contained in Section 12.4 regarding "Tardiness" wherein the Employer proposes a new first sentence that the Union does not object to, however, it does object to the Employer's proposal in the first sentence in the second paragraph regarding the penalty for individuals who are tardy.

The Union recognizes this as being a "take-away" from the current practice of a six minute (:06) grace period and would oppose any change relative thereto.

RECOMMENDATION & RATIONALE

Indeed punctuality for the start of a shift is of tantamount importance, not only in any work setting but particularly where a care giver's need to provide that which is necessary to the residents, not only in this type of facility but for generally any type. Apparently the Parties engaged in lengthy discussion during negotiations relative to the tardiness of Employees. A review of the current language between the Parties provides the type of policing aspect that the Employer is seeking to implement with it's proposal. The Union's position is indeed persuasive when the Union Representative stated during the course of the Factfinding proceeding that if indeed habitual tardiness with Employees is problematic, then disciplinary action should result. Given that understanding of how such matters should be addressed, it is recommended that the Parties maintain the status quo language as set forth in the current Collective Bargaining

Agreement.

ISSUE NO. 3

ARTICLE XVI - OVERTIME

16.3 - WORK STATUS - UNSCHEDULED UNIVERSAL LEAVE

The Employer has proposed in Section 16.3, titled "Work Status," to add a formula for calculating hours worked whereby it would delete unscheduled Universal Leave from consideration as hours worked for overtime compensation. The Employer takes the position that the purpose of this proposal is to create a disincentive for the use of unscheduled Universal Leave, which, as it contends, creates coverage problems since such unscheduled leave generally occurs within forty-eight (48) hours or less notice to one's Supervisor. Scheduled use of the Universal Leave requires advance notice to the Supervisor and affords the necessary considerations relative to the coverage. The concept of "gaming" was discussed at great length during the Factfinding Proceeding, wherein an Employee who works overtime for a shift of someone on Universal Leave one day during his week, oftentimes would call in for Universal Leave on an "unscheduled" basis and, as a result of overtime equalization set forth in Article XVI, that Employee would still be subject to call-back on still a later date in the work week resulting in overtime compensation. The Employer contends that the incentive of the Universal Leave, which is flexibility for the Employees to use it on demand, must be balanced with the Employer's need to provide consistent care for the residents and to project consistent budgets which have in the past years been unpredictable due to the large use of overtime. This disincentive would take the form of deducting unscheduled Universal Leave from the calculation of hours worked and thus impact the

Employee's ability to be paid overtime.

The Union takes the position such would indeed constitute again yet another "take-away" as it insists that the unscheduled Universal Leave is not counted toward overtime considerations.

RECOMMENDATION & RATIONALE

The documentary and testimonial evidence of Record demonstrates to the Factfinder that indeed a problem exists relative to coverage when Employees engage in "gaming" which places a significant burden, not only on the staffing concerns, but also budgetary ones for this Employer. Documentary evidence supplied by the Employer relative to the cost of overtime has demonstrated a pattern of increase for the past several years wherein it explains that this concept is being abused by certain Employees. The problematic aspect rests with those legitimate needs for having unscheduled use of Universal Leave that do not fall into the consideration of abuse. As the old saying goes, "there are bad apples that spoil the barrel," and this situation proves no exception. There must be some type of policing aspect to the use and abuse of this Universal Leave on demand concept, otherwise overtime cost considerations will continue to escalate for this Employer. Based thereon, it is hereby recommended that the Parties adopt the Employer's proposal relative to 16.3 concerning a policing mechanism for the use of unscheduled Universal Leave.

ISSUE NO. 4

ARTICLE XVI - OVERTIME

SECTION 16.6 - OVERTIME CALL-IN PROCEDURES

The evidence of Record demonstrates that the Parties are apart on the amount of notice which must be provided to utilize the overtime call-in procedure. The Employer proposes that the notice requirement be at least nine (9) hours instead of the current nine (9) or two (2) hours as set forth in the current Collective Bargaining Agreement. Such would also overlap into Section 16.7, titled "Overtime Equalization List." Prior to the current Collective Bargaining Agreement, the overtime equalization list and call-in procedures were not required to be utilized with any notice of less than forty-eight (48) hours from an Employee to his or her Supervisor. The Employer agreed to the nine (9) or two (2) hour notice requirement to provide greater flexibility to the Employees. The Employer proposes a straight nine (9) hour overtime procedure as the single time frame given that the two (2) hour requirement is limited only to afternoon and night shifts during weekdays and a nine (9) hour requirement exists for all other shifts, which is the majority of the shifts during the work week.

The Union insists that two (2) hours is indeed enough time and that it believes such to be a major concession in this regard. It also views the proposal by the Employer as being one that can be addressed by re-vamping the current overtime list wherein, given the shift where the overtime is needed, the Employer would have access to those individuals who will and will not work during that given time frame.

RECOMMENDATION & RATIONALE

Consistent with the previous recommendation concerning Section 16.3, it is hereby recommended that the Parties adopt the Employer's proposal concerning this aspect of Article XVI. Testimony of Record indicates that numerous phone calls must be placed to secure

placement when an Employee called off for Universal Leave due to the on-demand nature of this leave. It is also recognized that there are few penalties attached to the lack of adequate notice from the Employees. There is a huge administrative endeavor undertaken to provide the necessary staff which is ultimately used on an overtime basis. Consistent with the other aspects of Article XVI, it is recommended that the Parties adopt the Employer's proposal relative thereto. It is also recommended that the Parties incorporate that which the Union has offered with regard to shift selection preference and the utilization of part-time Employees to cover Holidays. However, such does not take into consideration the administrative problem associated with providing sufficient relief based on the time frame as it currently exists.

ISSUES NOS. 5, 6, 7, 8, 9, 10, 11, 12 & 13

ARTICLE XIX - UNIVERSAL LEAVE

As the Record demonstrates, the concept of Universal Leave has its genesis during the initial negotiations between these Parties whereby Vacation Leave provisions and Sick Leave provisions under Civil Service Law were combined to constitute Universal Leave. Article XIX of the Parties' current Collective Bargaining Agreement addresses Universal Leave wherein the Employees are credited in January of each year for the subsequent year. There are provisions which provide that Employees who terminate the employment relationship or change from full or part-time status or the reverse during the course of the year will have their balances adjusted accordingly. Universal Leave is scheduled initially during the shift selection procedure then the work schedule or grid schedule provision set forth in Section 21.4 is also impacted.

During the course of the Factfinding proceeding, it became apparent to the Factfinder that

the Employer's utilization of the Universal Leave has become more restricted given the administrative impact such Leave provides to the Employer. At the heart of the Employer's position relative to this Factfinding is its need to obtain greater flexibility with regard to coverage issues, particularly those involving the use of Universal Leave and the impact that results for coverage concerning escalating costs for overtime to maintain this coverage.

Section 19.1

The Employer proposes in Section 19.1 to simplify and clarify that provision. It notes that the forty (40) hour reference is not applicable to the thirty-two (32) hour part-time Employees who are also permitted to schedule work in a "block" of Universal Leave time. A block usually consists of a forty (40) hour period and such is able to be selected during January and June of each year during the shift selection process.

The Union is seeking to obtain greater flexibility with regard to scheduling the Employee's Universal Leave in that it proposes to delete the requirement for scheduling a week of Universal Leave during the calendar year or that it be made optional for the Employees.

It is recommended that the Parties maintain the current language relative to the Employees' ability to schedule Universal Leave in blocks and that it be made applicable to thirty-two (32) hour Employees and part-time Employees who also have the ability to schedule Universal Leave in such increments relative to their particular block or what constitutes their point position with this institution. There fails to exist any compelling reason to deviate from that which has been contained in the predecessor Agreement. Typically, vacation time is taken in one (1) week increments in a "normal" work week consisting of a forty (40) hour week.

Section 19.2 - Notice/Minimum Use

Such was proposed by the Employer to clarify the second sentence of the first paragraph. The Union suggested a clarification with which the Employer agrees, as such it will be deemed a tentative agreement by and between the Parties.

Section 19.3 - Emergency Use

The Employer has proposed modifying the "calendar year" to a "rolling" twelve (12) month period for counting Universal Leave for emergency use purposes. Prior to 1995, Universal Leave use required forty-eight (48) hour notice wherein the Parties agreed to a Union proposal to have an exemption for emergency use. The Employer proposes a twelve (12) month rolling time frame due to what it characterizes as numerous occurrences in December of each year where Employees utilize the emergency use of Universal Leave due to the expiration of the calendar year. It argues that the abuse can be rectified by modifying the period for calculation from the current calendar year period to a rolling twelve (12) month period.

The Union opposes any modifications in the current calendar year procedure regarding Universal Leave and also proposes that the emergency use also apply to call-in emergency situations (such as a heart attack that was given as an example) and when an individual has to leave the work site after arriving. It contends that such should be deemed an emergency use for that purpose.

It is recommended that the Parties adopt the Employer's proposal relative to the rolling twelve (12) month period for emergency use to address its concerns relative to the use of Universal Leave in December, just prior to the expiration of the calendar year and have the

exemption only apply to emergency use of Universal Leave. It is also recommended that the Parties expand the use of emergency use of Universal Leave to include those situations as characterized by the Union that are indeed and can be characterized as true emergency situations whereby an Employee may sustain an injury or an illness or has a personal emergency that requires leaving the work site.

Section 19.48 - Sanctions (As Identified By The Union)

This provision addresses the sanctions Employees may receive when they utilize Universal Leave.

The Employer proposes to gain some policing capabilities with the use of Universal Leave in what it deems as abuse based on “gaming” and other situations where it believes the Employees are not utilizing Universal Leave in accordance with it’s intended purpose.

The Union opposes any consideration relative to changing or modifying the current language and that it views such as being concessionary in nature.

Consistent with the previous recommendations concerning the Employer’s concern surrounding the use of Universal Leave, it is hereby recommended that the Parties adopt the Employer’s proposal relative to this provision of Article XIX. That would include utilization of any Leave within a twelve (12) month period that occurs without the scheduling requirements to be included in the area to be considered for sanction. The low balance provision contained in Item B; and that the medical excuse provision be reduced from five (5) to three (3) consecutive work days of absence. Such, in the opinion of the Factfinder, would again provide the Employer with various policing aspects relative to the use of Universal Leave and would hopefully provide a

disincentive for “gaming” possibilities.

Section 19.5 - Universal Leave Schedule

The Union proposes to increase the amount of the Universal Leave by twenty-four (24) hours for all groups except for those with one (1) year of service, with that group remaining at the current level. Moreover, such would be divided out with the increases being paid equally to the Employees on their anniversary dates.

For economic reasons, the Employer opposes any increase in this provision since it views the amount of Universal Leave to be generous and would constitute an increase of approximately \$32,832 per year based thereon. Moreover, it proposes clarifying language which does not have any substantive impact on the provision as a whole. It notes importantly that the costs generally associated to cover overtime required by the use of Universal Leave is equal to approximately fifty percent (50%) of Universal Leave requested by the Employee.

It is hereby recommended that the Parties maintain the status quo language relative to the Universal Leave schedule as set forth in Section 19.5. At the current rates, the Employees receive generous amounts of Universal Leave time and any increases relative thereto are unwarranted. Additionally, the proposed addition for clarification purposes regarding probationary employees being eligible to use Universal Leave, which the Employer indicates has been the ongoing practice at this facility, has been agreed to by the Union and, as such, it is recommended for inclusion herein.

Conversion At Retirement

This proposal concerns severance of the employment relationship due to resignation by the

Employee wherein the Union proposes that the Employee receive 100% of their unused balance of Universal Leave based on the fact that these hours are earned based on one's seniority and any hours that they have worked in order to accrue this benefit.

The Employer takes the position that this is another cost prohibitive item that should remain at the current payment level of 40%, which it contends is an amount greater than that for conversion of sick leave.

As set forth in the current Agreement, the Employees are entitled to 40% conversion due to resignation which is larger than the amount of conversion for sick leave. The Union proposal of 100% is unwarranted, however some increase is reasonable. This conversion amount is based on leave which accrues. The Employee would be at work as opposed to being off and should receive some benefit for maintaining good attendance. In this regard, it is recommended that the Parties increase the conversion rate to 60% for the successor Collective Bargaining Agreement.

Bereavement Leave

The Union is requesting that Bereavement Leave entitlement should not be reduced from the Universal Leave balance. The Employer contends that this is yet another economic consideration that would only exacerbate the cost considerations by providing additional days off work for Employees.

It is recommended that the Parties adopt a modified aspect of the Union's proposal. The idea behind Bereavement Leave is to provide individuals with the opportunity for travel and the grieving process attendant with the death of a family member. It is recommended that the Parties implement a provision which would provide Employees two (2) days pay, that would not be taken

from one's Universal Leave, for funerals and arrangements for funerals that occur within a two hundred and fifty (250) mile radius. For those situations that exceed two hundred and fifty (250) miles, it is recommended that the parties provide a provision which would enable the Employee four (4) days off on Bereavement Leave which would not be paid out of his/her Universal Leave balance. Generally, such leave time is differentiated from Vacation and Sick Leave use and most Collective Bargaining Contracts provide language addressing the rare occasions when Employees must utilize such Leave. As set forth in Employer Exhibit No. 15 relative to its costing of the Bereavement Leave proposal made by the Union, the four (4) day cost would have an impact of approximately \$336. Given the infrequent nature of such a situation giving rise to the payment of Bereavement Leave, such may or may not be utilized during the course of the three (3) year term of the Collective Bargaining Agreement.

Section 19.8 - Sanctions (See Section 19.48, titled "Sanctions")

Section 19.11 - Attendance Bonus

As the Record demonstrates, both Parties have proposed modifications to this provision. The Employer is proposing to reduce the "gaming" of Universal Leave for, on or after days off or before, on or after holidays. The Union has proposed an increase in the bonus pay each month. It would also add a new section in the current Agreement. The Employer notes that this provision has provided an additional means of compensation for Employees who are already performing at satisfactory levels. The purposes originally set forth by the Union have not occurred and they have not increased regular attendance by the Employees. The Union proposes that the current

one (1) hour bonus pay be increased to four (4) hours and be paid by a separate check to the Employee.

It is hereby recommended that the Parties adopt a modified version of the Union's proposal relative to increase the amount of the attendance bonus to two (2) hours and that it be paid by a separate check to the Employee. Moreover, it is recommended that the Parties adopt the Employer's proposal of deleting the Section titled "Old Leave Balances," which was unopposed by the Union herein.

ISSUE NO. 14

ARTICLE XX - HOLIDAYS

Section 20.1 - Holidays

The Union is proposing the addition of Christmas Eve and Easter Sunday to the list of thirteen (13) holidays set forth in the current Collective Bargaining Agreement. It argues that the Employees need time off with their families due to the stressful work at this facility. The Employer opposes increasing the holidays since such was rejected by the Factfinder concerning the three (3) year Agreement identified as the predecessor herein, and that the thirteen (13) holidays is above the average for Public Employees and is therefore adequate. It also notes that such is an additional cost to the Employer due to the additional pay received by the Employees of an additional one hundred (100) hours compensation above their normal work year. Essentially, an Employee receives twenty (20) hours of compensation for an eight (8) hour work shift due to the time and one-half provision plus the amount of time the individual is at the work site.

The Employer agrees to the Union's proposal by adding the sentence, "No Employee will

be scheduled to work on their birthday.” As such, such will be deemed as an tentative agreement herein. Secondly, it is recommended that the Parties add Christmas Eve and Easter Sunday as proposed by the Union, however, subject to the list of holidays being considered a “pool” of fifteen (15) out of which the total number of holidays of thirteen (13), for which the Employees shall receive pay. Essentially the Employee would, by seniority, have the ability to chose thirteen (13) holidays from the list of fifteen (15) for which pay at the contractual rate would be considered. Obviously, this will differ from Employee to Employee and the Factfinder recognizes that Christmas Eve and Easter Sunday can be just as important a holiday consideration for some as opposed to others. This does not increase the Employer’s financial obligation since it would still only pay for thirteen (13) holidays, the Employee would have the opportunity to chose as a holiday Easter Sunday or Christmas Eve, however, the Employee would still only be entitled to a total of thirteen (13) holidays as set forth in the Agreement.

ISSUE NO. 15

ARTICLE XX

Section 20.2 - Holiday Pay - AWOP Status

The Union proposes that an individual who works a second shift on a holiday also receive twenty (20) hours pay to which the Employer opposes since it, in essence, would be paying twice the holiday pay for the same eight (8) hour period since the Employee for whom another Employee would be working, or covering the holiday, would also be receiving the eight (8) hours pay. If the Employee works an eight (8) hour shift on a holiday, that Employee receives twelve (12) hours of pay under Section 20.2. If that Employee works a second shift on that holiday, an

Employee receives an additional twelve (12) hours of pay. That is, eight (8) hours at time and one half for a total of thirty-two (32) hours of pay for sixteen (16) hours of work, which essentially would result in double-time and-a-half payment. The Employer is concerned that Employees who would work a double shift on a holiday would in turn call off and utilize Universal Leave for which the payment of overtime would become a reality. As such, it would further perpetuate the “gaming” of the Universal Leave system.

It is hereby recommended that the Parties maintain the status quo language relative to payment of holidays as set forth in Section 20.2. The evidence does not warrant consideration of the proposal made by the Union relative to the additional pay for working a second shift on a holiday.

ISSUE NO. 16

ARTICLE XXI

Section 21.4 - Transfers, Vacancies & Work Schedules

As indicated by the Parties, they are in agreement with regard to the proposed changes and clarifications relative to Sections 21.1, 21.2, and 21.3 and the main point of contention resting in Sections 21.4 and 21.5, respectively.

The changes proposed in Section 21.4 concerning work schedule selection involves what the Employer deems as a clarification under Item No. 4 in the listed order wherein it has included “[eight (8) hour increments].” The Employer notes that such is a clarification of the current practice. The Union notes that such has been provided in four (4) hour increments.

If the Parties were to provide such a four (4) hour increment, it would require that two (2)

individuals be allotted to cover an eight (8) hour shift. In that regard, it is recommended that the Parties adopt the Employer's proposal inserting the eight (8) hour increment provision.

Otherwise, an additional administrative coverage issue will result.

ISSUE NO. 17

ARTICLE XXI

Section 21.5 - Scheduling and Work On Holidays

The major change in Section 21.5 regards the selection of a holiday. The Record demonstrates that such was modified three (3) years prior that allowed the holiday "not" to count in holiday selection if such fell during the selected block of Universal Leave. The Employer notes that such permitted twice the number of Employees who could be off on a holiday from one to two per work unit, cottage or family home. It contends that such is a tremendous administrative problem due to securing coverage on holidays. The Employer proposes to return to the practice previously utilized by allowing only one (1) Employee off per holiday on Holiday Leave by counting the holiday in the block as a holiday selection.

Indeed, coverage on holidays can be problematic for Employers, particularly in health care or direct care type facilities such as this. The Parties have indicated their intent however to separate Universal Leave from Holidays. The Union opposes the Employer's proposal since it would impact the Employee's ability to schedule blocks of time that may coincide with the contractually permitted holiday. Given the problematic nature of the Employee's utilization of this leave, it is recommended that the Parties maintain the status quo language which would again provide the Employees the ability to select a block of schedule on the Universal Leave that would

include a holiday but would not constitute selection of a holiday under this provision.

ISSUE NO. 18

ARTICLE XXV - SENIORITY

Section 25.1 - Calculation in Breaks of Service

As set forth in the recommendation concerning Article V, Article XXV addresses the Recreation Instructor position which the Employer proposes to delete from the Bargaining Unit based on the previous discussion set forth therein. The Parties are recommended to maintain the current language relative thereto.

ISSUE NO. 19

ARTICLE XXIX - ASSAULT LEAVE

The Union has proposed that Assault Leave be extended to all injuries which occur at the work place and that a cap of seven (7) days per year per Employee be the limitation for the injury leave. The Employer opposes the Union proposal as potential extraordinary cost since it has the highest rate of worker's compensation claims in Clark County due to the nature of the work. It notes that it has an aggressive program to address worker's compensation matters, emphasizing training for Employees and how to perform their work and to avoid injuries. It argues that the Union proposal would have far reaching affects, including the pay for lost time as well as the cost for coverage for those Employees on injury leave. It also notes that such would be susceptible to "gaming" as previously discussed.

It is recommended that the Parties maintain the status quo language relative to this

provision. Sick Leave has been utilized as a supplement for the initial days of worker's compensation injuries and such is recognized under the Universal Leave concept at this facility. The inclusion of Universal Leave has been utilized for the last six (6) years for short term periods for on-the-job injuries. Moreover, the Employer has noted that light duty-type injuries Employees have received accommodation relative to work assignments so they do not lose paid time.

ISSUE NO. 20

ARTICLE XXXII

Section 32.3 - Overnight Compensation

The Union proposes a modification to this provision to increase the amount of pay Employees receive for an overnight outing, off-campus trip, or vacation from a sixteen (16) hours to twenty-four (24) hours during the time they accompany residents off campus. The Record demonstrates that Employees do accompany the residents on family vacations, some out-of-state as well as in-state locations. These assignments are filled by Employees who volunteer for such trips. The Employer opposes the increase as requested by the Union in that such was increased from fourteen (14) hours to sixteen (16) hours just three (3) years prior and that these Employees are provided eight (8) hours for personal time and in many instances have more than that amount of time during one of these trips. Moreover, it notes that such could result in the payment of overtime since the hours worked per week would generally exceed forty (40) hours and therefore would result in overtime status for the affected Employee at an additional cost for the Employer.

It is recommended that the Parties adopt the Union's proposal for this provision in that indeed these Employees are responsible for the residents whom they accompany for one of these

trips and such would recognize compensation to the individual for being away from his or her own family and surroundings.

ISSUE NO. 21

ARTICLE XXXII

Section 32.9 - Pension

The Union is proposing that it needs relief on the Employee's contributions based on higher rates using a percentage and earnings. The Employer argues that it currently pays thirteen percent (13%) which is one of the best payment rates in the country and all other Employees have no Employer contributions in the county. Moreover, the Union has failed to provide comparables to support its proposal.

The Record fails to demonstrate any comparables which would support the Union's proposal that there be some relief to the Employees for the Public Employment Retirement System Pension consideration. As such, it is recommended that the Parties maintain the current language relative to this provision.

ISSUE NO. 22

ARTICLE XXXIII - WAGE SCALE

As the evidence of record demonstrates, the Employer currently enjoys a 1.7 million dollar carry-over balance from the previous year's budget. The Board does not dispute that these are indeed accurate numbers, however, it argues that it has exercised fiscal prudence to have such a carry-over balance and that such may be necessary to address shortfalls that may arise relative to

the manner of funding that has been previously discussed. The Union is proposing a five percent (5%) across-the-board increase for each of the three (3) years of the successor Collective Bargaining Agreement. Both Parties do not dispute that the effective date would be July 1st of each year for the implementation of such increase. Such, as the Record demonstrates, is the traditional date for wage increases and has been for the past six (6) years of this Collective Bargaining relationship. The Board does not oppose a reasonable wage increase, but encourages the Factfinder to also exercise fiscal prudence with any recommendation, including a wage increase, and that any increases be associated with the Employees' base wages. It opposes any other such increases relative to shift differential, tenure bonuses, etc.

As the documentation demonstrates, the average wage for these Employees is \$8.77 per hour. However, as set forth in Employer Exhibit #23, wherein it has provided a wage comparison chart based on the 1997 wage scales, addressing the 130 full-time equivalents recognized at this facility, it demonstrates that this Bargaining Unit receives a minimum starting pay of \$7.35 an hour and a maximum of \$12.21 per hour. Apparently, the Parties deleted the consideration of addressing the "step increments" with regard to increasing those increments and neither proposes nor supports the step system to be reinstated. The Employer argues that due to the uncertainty of the additional economic issues, it proposes wage increases by twenty-five cents (25¢) per hour effective July 1; a 2.5% increase in 1999; and, a 25¢ per hour increase in the year 2000, which, as previously indicated, would occur on the traditional anniversary date of July 1st of each year. The Employer's proposal is a departure from that of the Union's 5% increase for each of the three (3) years of the Agreement across-the-board to maintain, as it contends, the spread between the top and bottom Employees within the classification of Unit Counselor. It indicates that the large

spread of the minimum and maximum pay is a result of older Employees receiving percentage increases during years prior to the Collective Bargaining relationship and such will eventually rectify this disparity.

The Record demonstrates that the Employer is indeed financially viable, however, it has demonstrated prudent spending relative to the manner in which it operates this facility. Recommendations for excessive wage increases would not be appropriate to undermine this objective as the carry-over balances demonstrate; i.e., that of remaining financially prudent with regard to it's management of this facility. Given however the recommendations contained supra concerning the recommendations providing flexibility for the Employer relative to coverage issues that its deems priority in these negotiations, an increase above that recommended by the Employer, in the opinion of the Factfinder, would be prudent. As is oftentimes the case, there are no on-point comparisons with regard to this facility and the services it provides to this community. The comparables provided by the Employer demonstrate that, of the various counties' direct care workers as set forth in Employer Exhibit #23, they receive an average wage of \$7.76 an hour, which is more than the \$7.35 per hour the Employees receive at this facility. However, the maximum pay received is 67¢ higher than the average of those counties utilized as comparables. Moreover, these Employees have Universal Leave and receive more holidays than all of those counties indicated, except for Ottawa and Henry which have fifteen (15) and thirteen (13) Holidays respectively. None of the comparables provided by the Employer recognize Longevity Pay and only Hancock recognizes Shift Differential that these Employees enjoy. The area wage comparables as set forth in Employer Exhibit #23 demonstrate that these Employees receive the highest minimum and maximum wage of the counties of Clarke, Champaign, Heartland

and Seminole. As the budget statements demonstrate and the expenditures set forth therein, this Employer is recognizing an escalating cost for overtime which it deems to be the result of the abuse of utilization of Universal Leave. Hopefully, the recommendations contained relative to the Universal Leave Article have addressed, in some ways, the concerns the Employer has relative to curtailing the overtime expenditures relative to the use of Universal Leave.

Based on the foregoing, it is hereby recommended that the Parties implement language in Article XXXIII of the successor Collective Bargaining Agreement that would provide these Employees with a three-and-a-half percent (3.5%) increase for Year One; a 35¢ per hour increase for Year Two; and, a four percent (4%) increase for Year Three of the Collective Bargaining Agreement to become effective on July 1st of each of those respective years to be applied across-the-board without reinstating the step system as indicated by the Parties.

ISSUE 23

ARTICLE XXXIV - SHIFT PREMIUM

The Union has proposed an increase to the current shift differential of 20¢ per hour to a “reasonable increase” which the Employer opposes based on other cost considerations proposed by the Union. The Union notes that these Employees first received any increase during the course of the predecessor Collective Bargaining Agreement and a reasonable increase is warranted for the successor. The Employer argues that such an increase is unjustified since at the shift selection or grid selection process, they have experienced no difficulty in filling the slots for second and third shifts and therefore, to reward them with differential is simply unwarranted. Moreover, the Employer notes that the Union has failed to provide any evidence of comparable employers who

recognize such a shift premium and such would not improve the attendance on these shifts. It also notes that the differential pay of the members of this Bargaining Unit mirrors that of other Employees of the Clarke County M.R.D.D.

It is recommended that the Parities implement an increase of 25¢ per hour for each shift, second and third, respectively, for the successor Collective Bargaining Agreement. Obviously, normal work day considerations revolve around the "day shift" and Employees that work a second or third shift oftentimes have conflicting schedules with members of their families and other activities that the majority of the working public enjoy following the completion of their day shift obligation. It is not at all uncommon to reward Employees who work second and third shifts with some sort of differential above that received from the day shifters. In this regard, an increase to 25¢ per hour is not at all extreme and realizes an improvement upon the current standing for these Employees.

ISSUE NO. 24

ARTICLE XXXV - TENURE BONUS

The Union has proposed a 15¢ across-the-board increase effective on the Employee's anniversary date for the tenure bonus which is commonly known as a longevity payment. The Employer notes that there are only a few Employees who enjoy the tenure bonus are those who already enjoy a higher wage rate than less senior Employees. It contends that there is no justification to increase the tenure bonus since there is no turnover for the Employees in the years of service of ten (10) or more and those Employees remain with the wage rates that they receive and only separate employment due to retirement. As such, traditional reasons for supporting

longevity payments or a tenure bonus to preserve tenured Employees is without basis for this Collective Bargaining Unit. Moreover, this proposal is not supported by the comparables provided.

As previously discussed, none of the comparables provided by the Employer provide for the Employees' receiving longevity pay. This is typically an item that is seen with the service forces and is rarely seen in this type of work environment. To increase this amount by that proposed by the Union would only further burden the cost considerations for the Employer. Even though it has not offered any position concerning its "inability to pay," this proposal nonetheless, in the Factfinder's opinion, is unwarranted. As set forth in Employer Exhibit No. 25, the 20¢ per hour increase, which has been reduced during the course of Factfinding to 15 ¢, would result in approximately \$75,000 for the term of the Contract. It is the opinion of the Factfinder that money would be better served in the way of a wage increase above that proposed by the Employer, given the recommendations providing it the flexibility administering Universal Leave, etc., as it deemed a priority item.

ISSUE NO. 25

ARTICLE XXXVI - INSURANCE COVERAGE

Essentially the Union is proposing that the Parties implement language that the specific coverage the Employees currently enjoy would not change during the term of the successor Collective Bargaining Agreement. The Board notes that it has proposed the current language for this Article which was agreed to in 1995 negotiations. The insurance proposal of the Employer provides 100% Employer-paid coverage. In exchange therefore, the Employer can make the

necessary adjustments to the type of coverage in order to maintain cost control at it's discretion. Such was agreed to during the last negotiations and during the past three years the Employer notes that the only changes that have occurred have been improvements for the Employees. It also notes that during 1998, the premium costs increased by approximately 10% and were fully absorbed by the Employer.

Given the lack of persuasive evidence that would suggest that the type of coverage has been depleted or diminished in some way for the Employer to maintain the approximate cost consideration it currently recognizes, there seemingly is no need to provide that which apparently has not proved to be a problem relative to this benefit. Indeed, the insurance industry is very volatile and it is virtually impossible to guarantee the same coverage at various levels. Given the large group of Employees of the County Board, i.e., 1,400 Employees County-wide, the size of the group would be very attractive to an insurance provider to propose reasonable and comparable coverage levels to obtain the contract of such a large Employer. In this regard, it seems highly unlikely that whatever changes that might occur during the course of the three (3) year Agreement, would have a significant impact on this Bargaining Unit. As such, it is hereby recommended that the Parties maintain the status quo language relative to this provision.

ISSUE NO. 26

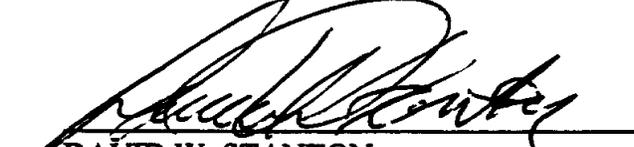
NEW ARTICLE - TWENTY-FOUR HOUR NOTICE TO USE UNIVERSAL LEAVE

The Union has proposed that the Parties implement language that would provide the Employees the ability to have more flexibility to utilize Universal Leave given the fact that requests are rarely granted. The Employees in attendance at the Factfinding indicated that it is

very difficult to schedule Universal Leave during the January - June time frames when they have selection considerations. Given this new language, the Employees would have greater ability to schedule the use of Universal Leave in the event that certain situations arise that may occur outside of the selection times offered. The Employer opposes the implementation of such and argues it would again provide an administrative problem for coverage issues concerning overtime costs, etc.

The message gathered by the Factfinder from the Employees is one that is marred by frustration, given the inability to utilize that which they have accrued in the way of Universal Leave. It would seem reasonable to provide some avenue to allow these Employees to schedule some time off outside of the two (2) times per year in which they can select Universal Leave time, however, the twenty-four (24) hour notice seems short in light of the administrative considerations relative to coverage. It would seem reasonable to provide these Employees the ability to utilize the Leave, but it would seem more reasonable from the administrator's standpoint to provide at least one (1) week's notice; i.e., that of the Employee's normal work week, whatever that might be, for advance notice to use Universal Leave. In this regard, it is hereby recommended that the Parties implement language to allow this to occur, however, not on a twenty-four (24) hour notice as proposed by the Union, but that of the Employee's normal work week.

Dated: May 13th, 1998


DAVID W. STANTON
Factfinder

CERTIFICATE OF SERVICE

I hereby certify that the aforementioned document was hereby faxed and mailed to the Parties, Jonathan J. Downes and Cheri B. Hass, representatives for the Employer, at his/her office located at 300 S. Second Street, Columbus, Ohio 43215, and Ronald Rhine, representative for U.A.W., Local 658, at his office located at 1155-D Lyons Road, Dayton, Ohio 45458, respectively, on this 13th day of May, 1998.



DAVID W. STANTON, ESQ.