

18

STATE EMPLOYMENT  
RELATIONS BOARD

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
FACT-FINDING PROCEEDINGS

MAY 27 10 07 AM '98

Case No. 97-MED-12-1298

DANIEL N. KOSANOVICH  
Fact-Finder

IN THE MATTER OF: :  
 :  
CLARK COUNTY VOCATIONAL :  
ASSOCIATION OF SCHOOL EMPLOYEES :  
 :  
and :  
 :  
SPRINGFIELD-CLARK JOINT :  
VOCATIONAL SCHOOL DISTRICT :  
BOARD OF EDUCATION :

---

REPORT AND RECOMMENDATION OF THE FACT-FINDER

---

APPEARANCES

On Behalf of the Union:

C. Ray Sutherland  
Labor Relations Consultant  
Ohio Education Association  
Clark County Service Council  
4035 Colonel Glen Hwy.  
Suite 325  
Beavercreek, OH 45431-1601

On Behalf of the Employer:

Edward L. Ostrowski, Jr.

Gregory B. Scott  
Scott, Scriven & Wahoff LLP  
2500 LeVeque Tower  
50 West Broad Street  
Columbus, OH 43215-3301

### INTRODUCTION AND PROCEDURAL HISTORY

The bargaining unit in question consists of approximately 31 non-certified personnel. The unit description in the identifies the Clark County Vocational Association of School Employees, affiliated with the Ohio Education Association and the National Education Association as the sole and exclusive representative of the full-time and regular part-time personnel employed by the Board in the classifications of aides, clerks, cafeteria workers, custodians, secretaries, warehouse manager, lab technicians, and maintenance workers.

The Association filed a Petition for a Representation Election with SERB on June 2, 1997. SERB conducted an election on November 21, 1997 and certified the Association as the bargaining representative on December 16, 1997. A Notice to Negotiate was filed with SERB on December 23, 1997, which triggered the statutory bargaining period under ORC 4117.14 (C).

The parties agreed to the appointment of Daniel N. Kosanovich as the Fact-Finder and agreed to extend the deadline for the Fact-

Finder's Report until April 24, 1998. The full negotiating teams from the Board and the Association met for Fact-Finding on April 21, 1998. As required by statute, the Fact-Finder offered to mediate the 11 unresolved issues. Those issues were:

1. **Grievance Procedure**--The Association was seeking to have language in the contract that would require the Board to provide the Association with a copy of any resolved grievance in written form.
2. **Grievance Procedure**--The Association was seeking to include a binding arbitration provision in the contract.
3. **Holidays and Other Days Off**--The Association was seeking the employee's birthday as a day off with pay.
4. **Calamity Days**--The Association proposed pay for employees who did not report for work on calamity days and a premium for those who did report for work.
5. **Vacation Days**--The parties were seeking resolution on the proper number of vacation days to be afforded members of bargaining unit.
6. **Mileage Allowance**--The parties were seeking an agreement on the proper amount for mileage allowance.

7. **Health Insurance**--The Association was seeking a percentage of the premium to be paid by the Board for part-time employees.

8. **Salary**--The parties were seeking a resolution of the base rate increase, the proper salary steps, and longevity pay increments.

9. **Subcontracting**--The Association was seeking a limitation on the Board's right to subcontract bargaining unit work.

10. **Term of the Agreement**--The parties were seeking resolution to the proper term for the contract.

11. **Modified Summer Work Schedules**--The parties were seeking a resolution of whether to place language in the contract to govern summer work schedules and, if so, what that language should be.

The parties accepted the offer and successfully mediated the resolution of 7 of the outstanding issues. At the conclusion of the mediation session on April 21, 1998, the parties agreed that their representatives, Mr. Sutherland and Mr. Ostrowski would meet with the Fact-Finder on April 24, 1998 to conduct another mediation session. At this session the parties reached agreement on insurance and the term of the contract.

The time limit for the submission of the Fact-Finder's Report was again extended to allow the parties time to attempt to resolve the final two issues. The parties were very close to resolution of the final two issues, however, were not able to reach an agreement.

Pursuant to a letter of agreement the parties agreed to submit their respective positions by written statements and they have requested the Fact-Finder prepare his Report on the basis of those written submissions. The Fact-Finder's time limit for the submission of his Report was further extended to May 27, 1998 by agreement of the parties.

## II. CRITERIA

In compliance with Ohio Revised Code Section 4117.14(G)(7) and Ohio Administrative Code 4117-9-05(J), the Fact-Finder considered the following criteria in making the Findings and Recommendations contained in this Report:

1. Past collectively bargained agreements between the parties (of which there were none);
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, the ability of the public employer to finance and administer the issues proposed, and the affect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Stipulations of the parties; and
6. Such other factors not confined to those listed above which are normally or traditionally taken into consideration and the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

### III. ISSUES AND RECOMMENDATIONS

#### A. Calamity Days

##### 1. The Association's Position

The Association and the Board have reached an impasse over the issue of calamity days. Specifically, the Association is seeking compensation for time off as a result of emergencies, bad weather or other public calamity as determined by the Superintendent. In addition, for those employees required to work on the so called calamity day(s), the Association is seeking premium pay at time and one half.

It is the Association's view that the law provides the Board with the ability to compensate employees who are contractually excused from reporting to work when a calamity exists and provides that those who perform their duties on the calamity days be paid a premium.

The Association also points to the teacher's contract to support its proposition. In effect, the Association asserts that a "me too" provision should be included in this contract that is consistent with the teacher's agreement which requires that teacher's receive compensation on calamity days.

## **2. The Board's Position**

Initially the Board was resistant to any change in its existing calamity day policy as applied to the employees in this particular bargaining unit. However, in an effort to accommodate the Association's concerns the Board proposed the following:

7.121-When the school is closed due to an emergency, all employees are required to report to work or remain at work as scheduled, unless notified otherwise, or unless the county sheriff has declared all county roads closed. Employees may voluntarily report and work as regularly scheduled when school is closed during an emergency, if work remains to be performed. Employees reporting to or

remaining at work will be paid their regular hourly rate for hours worked during the emergency. Employees who are unable to report to work as scheduled may use their own accrued personal leave or vacation time (without advance notice) or may choose leave without pay for their absence.

### 3. Findings and Recommendations

The Association argues in its Fact-Finding submission that resolving the "problem with calamity days" is a top priority for these negotiations. The Association's memo identifies the following reason for placing such a high priority upon the issue of calamity days:

"The reason for this being a top priority was due to the total unjust and unfair way this policy had been administered prior to the beginning of the Union. The administering of this policy prior to the Union was from permitting some members to stay home and receive a days pay to some members having to report to work and some members who stayed home had to take a paid leave of absence in order to receive salary for the day."

Unquestionably, the Association's interest in obtaining fair and just treatment for its bargaining unit members is legitimate.

Maintaining a stance on this issue is both laudable and appropriate.

The difficult question presented by the issue is: "how to remedy the situation, keeping in mind the interests of both the Association and the Board?"

Initially, the Association adopted a position calling for compensation for each employee denied the opportunity to work as a result of a so-called calamity day and a premium of time and one half (in addition to a regular days pay) for all work performed on a calamity day.

The Board's posture was antithetical to the Association's position. The Board simply was not interested in adjusting the manner and method in which it dealt with calamity days.

Through the negotiations and the mediation efforts both parties appear to have modified their respective positions. The Association has adjusted its premium requirement for work performed on calamity days to a simple time and one half formula. The Board, on the other hand, adjusted its position to reflect more opportunities for employees in the bargaining unit to receive compensation on calamity days.

On balance, the Fact-Finder has determined that the Board's approach is apt to meet the needs and interests of both parties.

Therefore, the Fact-Finder recommends the adoption of the Board's proposal captioned as Article 7.12 and all pertinent subsections.

In addition to the standard criteria considered by the Fact-Finder in making this recommendation, the undersigned considered the following.

Calamity days occur infrequently. While it is a significant issue in terms of fair and just treatment, it does not receive a great deal of play in any one given year (for instance, 1997). The major concern of the Association was to provide its members with a calamity day policy that resulted in fair and just treatment, particularly with respect to who received compensation and in what form.

The Board's most recent proposal provides for the application of a fair and reasonable policy. First of all, it sets forth a standard for **all employees** in the bargaining unit. **All employees in the bargaining unit are expected to report for work or remain at work on calamity days.** Enforcing this expectation should result in similar, if not identical, treatment for each bargaining unit member. It tends to eliminate favoritism and game playing. The exceptions to the standard are clearly spelled out in the proposal. However, no one who is excepted from the standard may receive

compensation for a calamity day unless he/she exercises one of the following options:

1. report to work or remain at work voluntarily, provided there is work to do; or
2. opt to remain home or leave school and take a personal day or a vacation day.

One may also opt to take a leave without pay on a calamity day.

Under this system, an enforceable standard is establish which calls for uniformity. However, the formula provides the employees the opportunity to receive compensation in a manner of their own choosing. Furthermore, it eliminates any claimed illegalities associated with using sick time to receive compensation on calamity days and avoids negatively impacting the sick leave incentive clauses contained in the tentative agreement.

Finally, it is also significant to note that Article 7.12 as proposed by the Board, satisfies the demands of operating the JVS, which has an adult education component and very different hours than a regular high school. The operational needs dictate a site specific approach to the calamity day issue.

In summary, the calamity day proposal offered by the Board appears to satisfy the interests of both parties and produce a fair and equitable result which is recommended by the Fact-Finder.

## B. Salary Structure

### 1. Association's Position

The Association's position is rather straight forward. It is seeking a total compensation increase of 3% per year in each year of the three year contract. To accomplish this task the Association proposes and has reached agreement with the Board on a 2% increase in base rate compensation for each year of the three year agreement. In addition, the Association proposes a salary structure which is designed to allocate the additional 1% in compensation to addressing certain inequities in the existing salary structure. (The Association's salary structure is attached hereto as Exhibit "A")

### 2. Board's Position

The Board's position is equally straight forward. It contends that it has reached an agreement with the Association that will provide a 2% increase in the base rate in each year of the three year agreement. Further, the Board contends that it has negotiated in good faith with the Association and jointly developed a salary structure that deals with the perceived inequities of the existing salary structure and meets the needs of the Association. (The Board's salary structure is attached hereto as Exhibit "B") In addition, the Board points out that the comparables that the Fact-

Finder is required to consider justify its approach. Finally, the Board points out that the salary structure that it is advancing in Fact-Finding has already been agreed to and that the Association should not be rewarded for attempting to renege on its arrangement.

### 3. Findings and Recommendations

The arguments advanced by the parties in their respective Fact-Finding submissions are laced with allegations of tentative agreements that were not honored. For instance, the Board argues that its proposal should be adopted because the Fact-Finder "should not reward the Union's attempt to renege on a tentative agreement on both issues" (inclusive of the salary structure issue). On the other hand, the most recent submission of the Association implies that a tentative agreement had been reached between the parties which was consistent with its proposal and that the Board is advancing a position far different from the original intent of the agreement.

The Fact-Finder certainly does not want to encourage or condone actions which allow parties to avoid the obligations attendant to the agreements they reach or promises which bind them. In the present case Fact-Finder does not believe that either the Board or Association has engaged in such unacceptable conduct. Without a hearing that would allow the undersigned to make

significant credibility determinations, it would be a difficult task at best to attribute bad motive to either party. Rather, the undersigned has concluded that the impasse over the salary structure has resulted from several factors, not the least of which is that the parties were not using the same nomenclature to describe their goals for the negotiations.

It is the view of the Fact-Finder that it would be appropriate for the members of the bargaining unit to receive compensation that amounts to a 3% increase in each of the next three years. Such an increase is consistent with the kind of increases previously received by the members of the bargaining unit. A 3% increase is also consistent with the amount of increase received by the other collective bargaining unit on the property--the teachers. In addition, a 3% increase would not cause a hardship upon the Board and it would keep the members of this bargaining in line with the comparables developed by the parties for the Fact-Finders to consider, albeit in an enhanced posture.

The 3% increase for each year of the three year agreement is consistent with the Association's ultimate goal with respect to the compensation. It must be noted that the Association sought to accomplish two tasks in the negotiations. First, the Association sought a base increase. Additionally, the Association sought to

adjust the salary structure by developing step progressions for certain classifications that did not have step progressions and to bring a certain uniformity to other progressions that did exist. Finally, the Association sought to move employees within the step progressions. However, the Association wanted to stay within the 3% increase in accomplishing these goals.

The salary structure proposed by the Association meets the test. The parties have already agreed to an across the board base increase of 2% a year for each of the three years of the contract. That agreement allows the Association to allocate 1% per year in each of the three years of the contract in its effort to address the inequities of the existing salary structure.

The Association's proposed salary structure meets this standard according to the materials submitted. Given the Fact-Finder's determination that a 3% increase in the compensation for the bargaining unit members is appropriate and the Association's proposal meets the test, it is recommended that the Association's proposed salary structure be adopted.

With respect to the movement of employees within the salary structure, the Fact-Finder recommends the Association's proposal. The movement and wage adjustments should be made in accordance with

the Association's written submission which is attached hereto as Exhibit C.

  
\_\_\_\_\_  
Daniel N. Kosanovich  
Fact-Finder

Dated: May 23, 1998

CCVASE PROPOSAL														
Steps	Adps	Class I-A	Class II-A	Helpers	1st Cook	Class I-C	Class II-C	Class III-C	Class IV-C	Class I-S	Class II-S	Class III-S-C	Class IV-S	Class V
1	8.27	8.00	8.00	7.00	8.50	9.33	9.84	11.36	11.55	9.33	10.30	11.09	11.66	12.22
	1.0000	1.00		1.00	1.00	1.00	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000
2	8.89	8.00	8.00	7.21	8.76	9.61	10.17	11.79	12.21	9.65	10.65	11.36	12.02	12.67
	1.0750	1.03		1.03	1.03	1.0340	1.0340	1.0340	1.0340	1.0340	1.0340	1.0340	1.3400	1.0340
3	8.33	8.50	8.50	7.42	9.01	9.96	10.50	12.16	12.29	9.96	10.99	11.73	12.44	13.17
	1.1280	1.06		1.06	1.06	1.0670	1.0670	1.0670	1.0670	1.0670	1.0670	1.0670	1.6700	1.0670
4	9.76	8.50	8.50	7.64	9.27	10.29	10.85	12.57	12.71	10.26	11.33	12.09	12.83	13.57
	1.1790	1.09		1.09	1.09	1.1030	1.1030	1.1030	1.1030	1.1000	1.1000	1.10	1.1000	1.1000
5	10.17	8.50	8.50	7.87	9.52	10.60	11.18	12.95	13.09	10.56	11.66	12.44	13.20	13.97
	1.2300	1.12		1.12	1.12	1.1360	1.1360	1.1360	1.3600	1.1320	1.1320	1.1320	1.1320	1.1320
6	10.57	8.50	8.50	8.05	9.78	10.93	11.52	13.35	13.49	10.88	12.01	12.81	13.60	14.33
	1.2784	1.15		1.15	1.15	1.1710	1.1710	1.1710	1.1710	1.1660	1.1660	1.1660	1.1660	1.1660
7	10.97	8.50	8.50	8.26	10.03	11.23	11.85	13.73	13.73	11.10	12.34	13.16	13.97	14.78
	1.3268	1.18		1.18	1.18	1.2040	1.2040	1.2040	1.2040	1.1980	1.1980	1.1980	1.1980	1.1980
10	11.37	8.50	8.50	8.47	10.29	11.55	12.18	14.06	14.30	11.56	12.67	13.75	14.45	15.30
	1.3748	1.21		1.21	1.21	1.2380	1.2380	1.2380	1.2380	1.2390	1.2390	1.2390	1.2390	1.2390

FACT-FINDER'S REPORT  
EXHIBIT #4

ARTICLE ELEVEN - APPENDIX B  
WAGES

Yr.	Before 2%												
	Alde	Cafeteria	1st Cook	Cust/Main/Warehs Mgr	Class I-C	Class II-C	Class III-C	Class IV-C	Sec/Clerk	Class I-S	Class II-S	Class III-S	Class IV-S
1	8.27	8.00	7.00	8.50	9.33	9.84	11.40	11.52	9.33	10.30	11.66	12.34	
2	8.60	8.00	7.21	8.76	9.47	10.17	11.74	11.85	9.47	10.65	12.02	12.71	
3	8.93	8.50	7.42	9.01	9.60	10.50	12.08	12.19	9.60	10.99	12.37	13.06	
4	9.26	8.50	7.64	9.27	9.75	10.85	12.41	12.53	9.72	11.33	12.74	13.50	
5	9.59	8.50	7.87	9.52	9.88	11.18	12.70	12.86	9.88	11.66	13.09	13.77	
6	9.92	8.50	8.05	9.78	9.88	11.52	13.08	13.20	10.02	12.01	13.54	14.13	
7	10.25	8.50	8.26	10.03	9.88	11.85	13.36	13.54	10.17	12.34	13.80	14.49	
10	10.57	8.50	8.47	10.29	10.01	12.18	13.65	13.88	10.30	12.67	14.16	14.84	

EXHIBIT B

*FACT - FINDER'S REPORT*  
*EXHIBIT B*



OHIO EDUCATION ASSOCIATION

FACT-FINDER'S REPORT  
EXHIBIT C

Michael Billrods, President  
Gary Allen, Vice President  
William Doney, Secretary-Treasurer  
Bill Sundermeyer, Executive Director

May 21, 1998

Mr. Daniel Kosanovich, Esq.  
28 East Rahn Road, Suite 209  
Dayton, OH 45429

Dear Mr. Kosanovich:

This schedule represents what I thought was the agreement. This schedule was not to exceed 3% total money for the bargaining unit members. The derivation of the schedule enabled employees to either move to a different column and/or have steps added to their schedule but no one would receive more than a three percent raise by this method. If a certain column within a classification would receive more or less than three percent, then the base was adjusted to reflect the three percent, however certain employees would receive the three percent on the schedule due to no movement to a different column. This schedule reflects that concept.

First, I will explain the placement of the employees on different columns within one classification.

## COLUMN MOVEMENT WITHIN A CLASSIFICATION

### CUSTODIANS

Classes I, III and IV were placed on the indexed column of Class II-C Custodians and there were two extra steps placed in this classification. My understanding was no one employee would receive one step in each of the first two years of the Contract.

The Custodians in Class I-C is a moot argument. First of all, the employees in the column do not work the entire day. Whether they are placed on Column II-C or not is irrelevant in that very little or no money would be involved in the movement. By placing Classes III and IV on the Class II column, employees in Class III would receive a slight increase above three percent. I adjusted the base downward by four cents (\$11.36) to bring this column in compliance with the three percent factor. The derivation of this base was made by multiplying the present Step 10 factor of Class III Custodians by three percent ( $\$13.65 \times 1.03\% = \$14.06$ ). My schedule shows them making \$14.11 which is five cents above three percent. By multiplying \$11.36 times the index factor of Step 10 - Custodians II index factor of 1.238 yields the \$14.06 factor.

The fact that the Class III is reduced by four cents these employees would not get a raise on the base, however, they would receive the step increase. The Class IV employees would receive a three cent raise on the base and a step increase.

CLARK COUNTY, FAR WEST, GREENE COUNTY, LAND'S END, MIAMI VALLEY AND WESTERN UNISERV OFFICES  
4035 Colonel Glenn Highway, Suite 325, Beavercreek, OH 45431-1601 ■ Phone: (513) 426-7446 or 1-800-423-7179 ■ FAX: (513) 426-2708

An Affiliate of the National Education Association

Mr. Kosanovich  
Page Two  
May 21, 1998

Class II Custodians would receive the base increase and the step. By providing the movement from one index factor to Class II and adding an extra step would enable all employees in this classification to receive the same salary increases.

#### SECRETARIAL

I placed all sub-classifications in this area to the Class II index factor. I did not touch Class I and Class II regarding movement from one column to another.

By moving the employees in Class III to Class II - the top of the schedule exceeded the three percent. I reduced the base to comply with the three percent factor. By multiplying the Step 10 of Class III on the existing scale (\$13.35) by the three percent gives a new salary of \$13.75. The base salary of these employees would have to be raised by eleven cents on the hour in order to attain the \$13.75 amount. When multiplying the base salary of \$11.10 times the index factor of Step 10 of Class two (1.239), it yields the \$13.75 which reflects the three percent raise. If an employee in this classification would receive a step up on the scale as proposed by the Association, it would be granted.

#### MEDIA AIDES

Media Aides schedule was not changed. There were two steps on the scale. One step was to be granted the first and second steps of the Contract. There was no change in the index as it is the best in the District. These employees would get the base increase plus one additional step.

#### CLASS II AIDES

I am not certain the employees in this sub-classification meet membership criteria to belong to the Union. Thus, the Union has presently takes the position that there be no need to discuss this area.

#### CAFETERIA

##### Helpers

The only change in this classification was to add steps and a base increase. There is one employee who is at step 3 and would receive a pay deduction on the Board's proposal. Her present wage rate is \$7.89 per hour. If she were to be placed on step 3, she would receive a wage of \$7.64. I know we do not want to do this to an employee. She should be placed on the next highest salary, \$8.05 and the base increase and a step. If there is an employee who is making more than she was suppose to, then that employee should be placed on the schedule nearest her present hourly wage rate, however, she should receive a step increase. Her only increases over the next two years are the step increases over the next two years.

Mr. Kosanovich  
Page Three  
May 21, 1998

**CUSTODIAN/ET AL**

Custodian I is for part-time employees. These type of employees do not work enough to be considered full-time employees. The Association feels there is no need to discuss this area of the salary schedule.

Custodian II - The employees on this scale did not receive an index increase because they stayed on the same column, thus they should get one step increase for the next two years and the base increase.

Custodian III - Class III employees were placed on the Custodian II index scale. Two additional steps were added to their scale. The amount of money they should receive is the movement on the index one step for the next two years.

The amount of money these employees are receiving at step 10 is greater than three percent, therefore, I decreased the base by four cents per hour (\$11.36) in order to prevent an increase greater than the three percent.

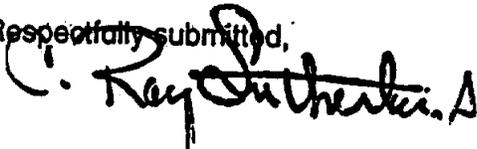
Custodian IV - These employees are to be placed on Class II index and two steps. The steps would be received the first two years of the Contract.

When calculating the increases for these employees, the movement in the increase was less than three percent. Thus, the base was increased to \$11.55 to give these employees the three percent raise.

The Class III employees in the Secretary classification was agreed to as a sixty-eight cent an hour differentiation. However, if this was implemented, some of the Class III employees would lose up to seventy-five cents per hour.

These facts represent what the Negotiations Team and I thought was going to be the schedule.

Respectfully submitted,



C. Ray Sutherland, OEA/NEA

c: Ed Ostrowski  
Abbie Powell, President CCVASE