

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-finding between:

Louisville Education Association : Case No. 2016-MED-04-0435
Ohio Education Association/NEA

and : Report and Recommendations

Louisville City School District : Margaret Nancy Johnson
Board of Education Fact-finder

Statement of the Case

This matter came on for fact-finding at 9:00 a.m. on September 27, 2016 in a conference room at the Comfort Inn in Canton, Ohio, and reconvened at 2:00 p.m. in a conference room of the Stark County Educational Service Center in Canton Ohio. Affiliated with the Ohio Education Association, (“OEA,”) and the National Education Association (“NEA,”), the Louisville Education Association, (“LEA”) was represented by OEA Consultant Gary Kovach. The School District Board of Education, (“BOE,”) was represented by Mary Jo Slick, General Counsel for the Stark County Educational Service Center. Both parties had the opportunity to present testimonial and documentary evidence in support of their respective bargaining positions. A transcript of the proceedings at the hearing was prepared by Carina C. Meszaros, Registered Merit Reporter with Court Reporters, Inc.

In attendance for the Board of Education were: Derek Nottingham, Treasurer; Joe Chaddock, Superintendent, Stark County Education Service Center; Anna Minor, Assistant Superintendent; Jason Greathouse, Assistant Principal, Louisville High School; and Michele Shaffer, Superintendent. Bargaining Committee members for the Association in attendance were: Kristopher Bleininger, Laura Esposito, Mike Kostur, and Kory Swope, who also serves as the President for the Louisville Education Association.

Issues

Both parties submitted proposals for modifications to the current contract which expired on June 30, 2016. Some of these proposed changes involve the moving and renumbering of Articles. For the purposes of this report, the Fact-finder has identified all proposed modifications by referencing the current Article in which the applicable language is found.

Criteria

In rendering these recommendations the fact-finder has been guided by the statutory criteria included in the Ohio Collective Bargaining Act, such as comparability and ability to pay. In addition, the fact-finder has considered factors traditionally relied upon by neutrals, including the principle that a proponent of language change should justify its proposal.

Tentative Agreements/Non-Economic Recommendations

In the course of negotiations and fact-finding the parties reached tentative agreement on a number of outstanding non-economic issues which are identified by Article and incorporated into these recommendations as if fully rewritten. Although a number of these changes are deemed “housekeeping” items modifying terminology, in others new concepts are implemented. Some

provisions on which the parties reached agreement were not addressed at fact-finding. These are not referenced in this Report, but the same are incorporated herein as if fully rewritten.

To the extent language is agreed upon but the proposal involves renumbering and/or different placement within the Agreement, the fact-finder recommends current numbering and placement. In negotiating changes, it is incumbent upon the party proposing the change to justify its position. Absent justification, current numbering and placement is recommended unless the incorporation of new language requires different numbering. Recommendations are offered when the parties have reached tentative agreement on most of the language but there remains some unresolved terminology.

ARTICLE I RECOGNITION

101 The parties agree to identify affiliation of the LEA with both the OEA and the NEA, and to replace the term “regularly employed” with “certified.”

102 The parties agree to replace the term “teacher” with “bargaining unit member.”

103 This section refers to rights and benefits of tutors and the Association proposed a new Article entitled Tutors for the language set forth regarding tutors. As stated, these recommendations maintain the current contract structure but incorporate changes to contract language. The parties agreed to increase the hourly rate for tutors to twenty-two dollars and fifty-seven cents (\$22.57) and to provide the same percentage increase as the BA-0 step base “each school year.” Subsequent language in Section 103 remains the same with the elimination of captions.

ARTICLE II NEGOTIATIONS PROCEDURE

201.A. The parties agree to retain current language.

201.B. The parties agree to replace current language with:

Within twenty (20) days after receipt of such notice an initial meeting will be held at which each party will submit, in writing, its proposal(s). Thereafter, additional items shall not be submitted by either party unless the other party consents.

201.C. The parties agree to replace current language with:

Representation at negotiation meetings shall be limited to six (6) representatives of the Board which includes the Board representative, and six representatives of the Association, which includes the OEA/NEA Labor Relations Consultant. The Board and the Association mutually pledge that the representatives selected by each shall have all the necessary power and authority to present relevant data, exchange point of view, make proposals and counter-proposals, to initial tentative agreements, and to effectively recommend acceptance of an agreement by the parties.

201.D. Replace “member of the bargaining unit” with “bargaining unit member.”

202. The parties agree to retain current language in 202 A. and 202 B, pertaining to Agreement.

203 For its impasse provisions currently in 203, the parties agree to delete current language and insert the following language:

203. A. If agreement is not reached within forty (40) days prior to expiration of this Agreement, either party may request the services of a mediator from the Federal Mediation and Conciliation Service. The request shall set forth the names and addresses of the parties the issues involved, and the expiration date of the Agreement.

203.B. The mediator shall have the authority to call meetings for the purpose of promoting an agreement between the parties. Negotiation meetings shall be closed to the press and the public. All costs incurred for such services shall be shared equally by the Board and the Association.

204 (206) Exclusivity of Procedures: The parties agree to add the following language:

The negotiations procedure set forth in this Article supersedes and takes precedence over any inconsistent time limits or procedures set forth in Section 4117.14 of the Ohio Revised Code. Mediation, as set forth in 203 constitutes the parties mutually agreed upon exclusive dispute settlement procedure and shall operate in lieu of any and all of the settlement procedures set forth in Section 4117.14 of the Ohio Revised Code. In the event mediation does not result in an Agreement by the expiration date of this Agreement (or such subsequent date as the parties may mutually agree upon) Section 4117.14(D)(2) of the Ohio Revised Code will apply.

ARTICLE III GRIEVANCE PROCEDURE

301. A. The parties agree upon current contract language.

301.B. Insert the following language: If the administrator approached is not the appropriate one, that administrator will direct the grievant to the appropriate administrator at the lowest possible level.

301.C. Because days are defined elsewhere in this Article, the word “school” is deleted in reference to days and the following language is included:

In the event a grievance cannot be resolved before the commencement of Winter or Spring Recess, further attempts at resolution shall be postponed until the return to school following the recess, unless the parties otherwise agree (the parties shall so agree where irreparable injury would result from a postponement).

302. Definitions The parties agree to delete 302.A.2 from the Agreement.

302.B. The parties agree to current contract language.

302.C. The parties agree to current contract language.

302.D. The definition of “days” in this Article shall be workdays. During the summer months days shall be defined as week days exclusive of holidays.

302.E. The parties agree to current contract language.

302.F. is deleted from the Agreement.

303 Right to Assistance and Counsel. The parties agree to retain current language in 303 and add 303.D. as follows:

A bargaining unit member may not be represented by any union/organization other than the Association in any grievance or concern initiated pursuant to the provisions of this Agreement.

304. The parties agree to delete the current Informal Procedure and rename 304 as the Formal Procedure to include the following:

A. Level One

If a grievant wants to move forward with a grievance he/she must file it according to the timelines in Section 301.C. The grievant may present a formal grievance in writing (attached as Appendix C) to the Principal or the Principal's designee (hereinafter "Principal"). The Principal shall, within five (5) days after receipt of the written grievance, render his/her decision and the reasons therefore in writing to the grievant with a copy to the representative, if applicable, and the Association President.

B. Level Two At Level Two the parties agree to delete the word "school" in relation to days and to require a meeting between the Superintendent and the grievant and/or representative within five days after receipt of a grievance, by eliminating the words "at the option of either party."

C. Level Three The parties agree to the following language:

If the grievant is not satisfied with the disposition at Level Two within ten (10) days the Association may request a hearing by an Arbitrator. Such request shall be in writing. Not later than ten (10) days after such notice is given, representatives of the Board and of the Association shall meet to select a third party arbitrator. If unable to agree, the Arbitrator shall be selected pursuant to the Voluntary Labor Arbitration Rules of the American Arbitration Association. Either party may reject the first panel of names and demand that a second panel be submitted from which an arbitrator will be chosen. Decisions of the arbitrator shall be binding on all parties. The cost for the services of the arbitrator and the transcript shall be borne equally by the Board and the Association.

The parties agree to delete an Alternative Level Three.

306 Stipulations The parties agree to delete the word "school" in current 306. A. as well as current 306.D. in its entirety.

ARTICLE IV – MANAGEMENT RIGHTS

While the parties agree to retaining current contract language, the Association proposes moving, renaming and renumbering this Article as Article XIII, Effects of Agreement. As discussed above, absent justification for the proposed renumbering, the fact-finder recommends current Article numbering and caption.

The Association has proposed a definition of days to which the Board has not agreed. Absent a justification for the language, the fact-finder does not recommend the same.

ARTICLE V- ASSOCIATION RIGHTS

The parties have agreed to modifications proposed by the Association in Article 501.A, B, E, and F.

Current language in C and D is retained. The parties have also agreed to modifications in 502.A. and B.

The Association shall:

501.A. Receive advance copies electronically of the Board agenda prior to the Board meeting. Any related attachments will be given at the meeting.

501.B. Be provided electronically a copy of the Board minutes after the minutes have been approved by the Board.

501.C. Current language

501.D. Current language

501.E. Have use of school mail and email for:
(current purposes)

However, there is no expectation of privacy in the Association's use of email.

501.F. On the first workday of the school year, the Association will be granted thirty (30) minutes of that workday for the purpose of meeting with bargaining unit members.

502. The Labor Relations Consultant for the Association shall be entitled to meet with bargaining unit members in school buildings provided:

A. that the Labor Relations Consultant first announce his/her presence to and obtain the approval of the Building Principal or such Principal's designee; and

B. That such visits shall not in any way interfere with or interrupt instructional programs and/or assigned duties of bargaining unit members. Approval will not unreasonably be withheld under this provision and the Association will not excessively use this visitation privilege.

503 Fair Share Fees

The parties have agreed to maintain current contract language except for 503.E which shall read: Payroll deductions of such fair share fees shall begin when the President so advises the Treasurer.

504 Association President Release Time

504.A. Current Language

504.B. If the Association President is an elementary school teacher, he/she shall be released for the first and/or last one half (½) hour of the regular work day. Additionally, the President shall be scheduled for resource teachers, as often as possible, during the last period of the day, and he/she will be free to use this time for Association business.

504.C. Current language

505 Release for Association Business

No more than five (5) days shall be granted each school year to the Association to conduct Association business. The Association President shall notify the Superintendent electronically prior to the commencement of the release. Notification via the AESOP reporting system, shall be fifteen (15) days in advance. Costs, if any, incurred by this leave, except for required substitutes shall be assumed by the Association.

The parties have agreed to a new 506 entitled Availability of Information as follows:

506.A. The accurate names and building assignments of all certificate staff members shall be provided to the Association within ten (10) days of the submission of such request from the Association. Such requests shall not exceed two times per year. The names of all new members hired after the start of the school year, upon request of the Association President, shall be provided to the Association.

506.B. The Superintendent or designee shall provide the Association President, upon request, a copy of the seniority list. Such request may not occur more than twice a year. This list shall include:

1. A member's specific area of certification
2. A member's employment date
3. A member's contract status specifying either continuing or limited

ARTICLE VII – LEAVES

The parties agree to modifications of the sick leave provisions in Section 701 of the Agreement.

701. A Each bargaining unit member shall be entitled to accumulation of sick leave up to and including three hundred twenty-five (325) days. Leave is granted at the rate of one and one-fourth (1 ¼) days for each calendar month to a total of fifteen (15) days per year. Members who work extended days shall be able to accumulate additional sick days based upon contracted day according to the following formula:

Maximum from above X (Contracted Days)

184

701. B. If a bargaining unit member resumes regular nine (9) month contractual status, i.e. without extended service, the member will also immediately assume maximum accumulation of sick leave limits in A above.

701.C. Each newly hired bargaining unit member and any member who has exhausted his/her sick leave shall be advanced five (5) days of sick leave each school year. If any of these five (5) days of sick leave are used, they shall be deducted from the sick leave accumulated during that contractual year or, if necessary, the following contractual year. If the member ends employment using the advanced leave and not earning the same, he/she shall have the per diem amount deducted for the advanced sick leave from the last paycheck issued by the Board.

701.D. Bargaining unit members may use sick leave for the following reasons: personal illness/injury, pregnancy, exposure to contagious disease, and illness/injury/ death in the immediate family.

701.E. Immediate family is defined as currently, with the term teacher replaced with “bargaining unit member.”

702. Personal Leave

702.A First sentence of 702.A. is current language

702.B. The parties agree to a new section B which incorporates language in the current agreement, paragraphs 2 and 3, Section 702. A. with modifications which provide that personal leave shall not be approved “to accept other gainful employment (except interviews), on in-service days, and during parent/teacher days, unless for emergency reasons.”

Limitations on unrestricted personal leave include that not more than two (2) bargaining unit members or ten percent (10%) of the assigned teaching staff may be on leave at any time within any school building.

702.C. Bargaining unit members who do not utilize their unrestricted personal leave days each school year shall have the unused days added to their sick leave balance – day for day – ½ day to ½ day etc. by August 1.

702. D. Personal Leave notification must be completed electronically via AESOP reporting system, forty-eight hours in advance of the leave. If circumstances make advance notification impossible, a bargaining unit member shall notify the Superintendent of the reason(s) for leave under this Section as soon as possible.

Personal leave will not be granted on the day preceding or following a holiday, vacation or prior to any scheduled days when students are not in session (as per Board adopted school year) except by approval of the superintendent or if the employee is required to appear in court pursuant to a lawfully issued subpoena.

Current 702.C. is deleted.

703. Legal Leave

Except for replacing “teachers” with bargaining unit member in paragraphs A and B of this Section, the parties agree to current contract language. In 703.C. the parties agree that on a case by case basis the Superintendent may grant leave for grievance proceedings as outlined in Article III.

704. Attendance at Professional Meetings

704.A. Bargaining unit members are encouraged by the Board, to the extent that funds are available, to attend professional and educational meetings, workshops, and exhibits during the school year to aid them in improving the instructional progress and procedures of the District.

704.B. All professional leave must receive prior approval by the Superintendent, and the members attending approved activities will be reimbursed in accordance with Board policy.

704.C. Deleted.

705 Assault Leave

The parties agree to adjustments in terminology in Sections A through G of 705, including replacing the term “teacher” with “bargaining unit member.” Additionally, the parties agree to specify **work** days in 705.B.; and in 705.C the parties agree to delete “nature of disability and its duration” referring to a certificate from a physician, and to replace those terms with “possible duration of the member’s absence.”

706 Child Care Leave

706.D. Application may be made by the teacher on child care leave at any time during the school year and the teacher may be reinstated by mutual agreement. However, in the event of loss of a child or the unforeseen loss of a majority of the spouse’s financial support, the member may request to come back from child care leave earlier than anticipated. In any case, the teacher will be reinstated not later than the beginning of the next succeeding school year.

706.H. In addition, a maximum of ten (10) accumulated sick leave days may be used for adoption.

707. Extended Illness

The parties agree to replace “Any member of the certificated staff” with “A bargaining unit member.”

708. Professional Organizational Leave

The parties agree to delete “”member of the certified staff” and replace it with “a bargaining unit member.”

709 Sabbatical Leave

The parties agree to replace “teacher” with “bargaining unit member” and “Louisville City School System” with “District.”

710. renamed: Family Medical Leave

Current language is replaced with:

A bargaining unit member may use unpaid leave for the purposes and on the conditions set forth in the federal Family and Medical Leave Act of 1993 and its 2009 amendments. For more information on eligibility, requirement, and all other questions, bargaining unit members shall contact the District Treasurer. FMLA shall run concurrently with the use of sick leave.

ARTICLE VIII – TEACHING ENVIRONMENT

801. Length of Work Year

While the Association has proposed changes to 801.A. and 801.B. relating to a reduction of the school year by the number of calamity days, no evidence was presented to justify the proposed changes. In the absence of a rationale for changes to collectively bargained language, the fact-finder recommends current contract language for 801.A and 801.B. , with the exception of replacing “regular teachers” with “bargaining unit members.”

802. School Calendar

802.A. The parties agree to replace “certified staff” with bargaining unit members.

802.B. The parties agree to replace “teachers” with bargaining unit members.

802.C. The parties disagree as to contract language for calamity days, an issue emanating from the “arctic freezes” and extreme weather conditions experienced in Ohio in the last several years. While the Union phrases the matter as one of “practice,” in reality, calamity days are due to conditions beyond the control of the parties, not a mutually accepted practice. And, while the Board certainly has concerns “for students standing at bus stops during frigid weather,” it should also be concerned about staff driving in blizzard conditions or on icy/snow covered roads. Calamity days are a matter of safety for both students and staff.

The fact finder acknowledges that calamity days result in lost hours which the Board seeks to minimize. Nonetheless, the work teachers are paid to perform is to educate students-- and when students are not in school, teachers can't perform.

To resolve the dilemma, the fact-finder recommends the following for inclusion as 802.C:

Up to five (5) calamity days will be deducted from the work year when a school or the District is closed due to inclement weather or for other emergency situations. Bargaining unit members shall not be required to report to work and will not suffer any loss of pay on these days. If a school or the District incurs more than five (5) calamity days and the District determines that students will make-up these days, the make-up will occur at the end of the school year.

803. Normal Workday

803.A. The Board seeks to modify language defining a normal workday so as to provide more flexibility to accommodate student arrivals and school transportation. Since school bus schedules are a matter beyond the purview of this proceeding and in the absence of any additional justification for changing the work day, the Fact-finder recommends current contract language with the inclusion of “for all bargaining unit members.”

803.B. The Association seeks language modifying current terminology and adding language. While there is no justification for the additional language, the fact-finder recommends the changes in terminology, specifically replacing “Members of the bargaining unit” with bargaining unit members” and “personnel” with “members.”

803.C. Current language

803.D. Preparation Period. Both parties submitted proposals for modification to 803.D., relative to “continuous” or “aggregate” preparation time. Currently, middle and high school teachers are given forty-five (45) continuous minutes of preparation time and elementary school teacher preparation time is in the aggregate. Absent justification for any change, the fact-finder recommends current contract language.

803.E. The parties are in agreement that the lunch period for teacher should be “duty-free.” The Association, however, seeks to clarify “duty-free” with additional language to the effect that the lunch period should be exclusive of travel time in escorting of students. While the fact-finder recognizes the concern of the Association, the additional “duty-free” language should address the matter. Failure to provide an uninterrupted duty free lunch period would constitute a grievable infringement. Additional language not only is unnecessary but potentially opens the door to other possible encroachments on the lunch period, suggesting that only “travel time” is excluded.

The fact-finder recommends:

All teachers will have a minimum uninterrupted duty free lunch period of thirty (30) continuous minutes.

803F. The Association has proposed language to the effect that the work day prior and after the student day will be teacher driven. The Fact-finder does not recommend the inclusion of this language.

804. Curriculum Study.

The parties agree to changes in language for 804.D. and those modifications are incorporated herein.

805. Instruction Load.

805. A. The parties agree to delete 805.A. from the Agreement.

805.B. Except for deleting, "Beginning 2014-2015," the Fact-finder recommends current contract language for this paragraph which shall be renumbered 805.A.

805.B. The Association has proposed language on "College Credit." Although all districts provide College Credit plus, no evidence was submitted as to contractual language on the issue. In the absence of justification or comparability, the fact-finder does not recommend inclusion of this provision.

805.B. The parties agree to changes in 805.C. as follows:

The standard teaching load for middle school teachers will be five (5) classes, one (1) preparation period, one (1) duty, and a lunch, or six (6) classes, one (1) preparation period and a lunch. If the District utilizes a block schedule, each bargaining unit member shall only be required to submit one (1) grade for each student for each blocked class. However, a lab and a class count for two classes.

805. C. The Association has proposed modifications to this provision as well as additional language limiting the scheduling of meetings called by the Administration for Middle School teachers. Given the "Watch" designated on a District Middle School, the Board argues its need to schedule team planning meetings. The fact-finder recommends current contract language with the addition of the following:

The bargaining unit members on each middle school team, in conjunction with the administration, shall determine the daily agenda for their team planning period. The Administration agrees to schedule only those Administrative meetings during team planning each month that are deemed necessary to effect school needs.

806. New Programs

Except for modification of terminology the parties agree to retain current contract language.

807. Department Chairs

Except for identifying department heads as bargaining unit members, the parties agree to current contract language.

811. Resident Educator Program. The parties agree to modifications to 811.

820 Co-Teaching Assignments

Arguing that co-teaching should be voluntary and that such assignments require training, the Association proposes new language for co-teaching assignments. The Superintendent explained the thought that went into co-teaching assignments. No evidence was elicited as to difficulties encountered in such assignments, or undue burdens due to co-teaching. In the absence of a justification, the Fact-finder does not recommend such language.

ARTICLE IX- TEACHER RIGHTS

Considerable discussion about the evaluation process occurred in the course of the hearing, with the Board voicing concerns over a prior situation involving evaluations with a former Superintendent. The Board argues that the right to evaluate employees is a basic managerial right. Citing the collaborative efforts of the Association and the Administration in the evaluation process, the Union argues it seeks to incorporate practice into the Agreement. Recognizing that evaluation is inherently managerial but that method or process can benefit from employee perspective, the fact-finder recommends the following:

901. Evaluations

901.A. Evaluations

The evaluation process and procedures of teachers is found in the District Evaluation Handbook which is on the District Website.

901.B. Evaluation Committee

The evaluation committee composed of an equal number of individuals appointed by the LEA and an equal number appointed by the Superintendent, must reach agreement by a majority vote of its full membership. The Committee shall include the President and the Superintendent.

The Association and the Board agree that the Evaluation Committee shall meet on a regular basis each school year for the purpose of reviewing the evaluation handbook. If either party or the Evaluation Committee wishes to consider any change or revision to the evaluation handbook during the term of the Agreement, it will discuss the matter with the committee. If the discussion results in a recommendation by the committee to change or revise the evaluation handbook during the term of the agreement, then said recommendation shall be referred to the Superintendent. If the Superintendent agrees, such changes will be implemented. The Board agrees that the Superintendent shall not unreasonably or arbitrarily refuse to implement a recommendation of the committee or abuse discretion in this matter. The Association agrees it will not unduly prevent changes deemed in the best interests of the District.

902. Parties agree to current contract language

903. Right to Representation

At any meeting before the Board or Administration that foreseeably may become a matter of disciplinary record, the teacher to whom the meeting pertains may, at the teacher's request, be accompanied by one representative of the Association, an OEA Consultant, and legal counsel.

904. Non-renewal of Limited Contract Persons

904.A. As to limited contract bargaining unit members with more than one (1) school year of service in the District, the Building Principal is responsible for submitting to the Superintendent not later than the end of the first semester a written report concerning any such teacher or teachers having a negative teaching experience at such time to the extent that if the situation were to continue uncorrected, nonrenewal of the teacher's contract would be in order. Such report will not be submitted in the absence of a minimum of one (1) formal evaluation completed no later than January 15th. The report shall include the specific recommendations regarding improvements needed, but not corrected in the performance of the member being evaluated and the means by which the member has been recommended to obtain assistance in making such improvement. Upon completion of the report, a copy of the report shall be given to the member.

904.B. The parties agree to delete "teacher" and insert "bargaining unit member," and retain the date of the second written report due "not later than March 15" with a copy being given to the member by May 10.

904.C. If the Superintendent is considering a recommendation for nonrenewal, he/she shall confer with the Principal, the bargaining unit member and, if the member so chooses, with the Association President, prior to making his/her recommendation.

The parties agree to the following:

904.D. Bargaining unit members in their third year or more of employment in the District shall not have their contract non-renewed for arbitrary, capricious, or unreasonable reasons, or without just cause. Termination, however, shall be subject to 3319.16 and 3319.161 of the Ohio Revised Code.

905 Classroom Presentation

905.A. The parties agree that written lesson plans are to be developed by each "bargaining unit member responsible for instruction." They also agree that "lesson plans may be reviewed and copied at any time by the Administration..." The Board has proposed deleting the time during which such collection may occur, while LEA seeks current language. Since the plans may be reviewed and copied at any time, the hardship alleged by the Board is addressed and modification of the time limitation is not necessary. The fact-finder recommends current contract language on the collection of plans.

905. B. Deletion of "teacher" and use of bargaining unit member is agreed.

906 Transfers

The parties have agreed to modifications in 906.A., B., and C. These include changing "teacher" to bargaining unit member and requiring that "no member shall be transferred to a position for which he/she does not hold a certificate/license without the member's expressed written approval."

907. Vacancies

The parties disagreed as to whether the posting should be for ten or five days. Insofar as the posting is electronic, all unit members should have immediate access to the posting and there is no need to keep it "up" longer than previously required. The fact-finder recommends the following:

907.A. As soon as the administration determines that a job opening exists, job announcements shall be posted on the District website and sent via e-mail using the District's email system. Vacant and newly created bargaining unit positions will be posted electronically for a period of five school (5) days. Should a vacancy occur during the summer, it shall be posted for ten (10) calendar days subject to 907.C .

907.B. The parties agree to “bargaining unit members.”

907.C. The parties disagree as to the date for filling positions without posting. Given the earlier start of the school year, the fact-finder agrees that the Board should have the flexibility required to ensure that certificated/licensed staff are in place before school starts. Accordingly, the fact-finder recommends:

Nothing in this Section shall be construed as prohibiting the Board from filling a position forthwith without regard to this Article in the event a position is vacated or created between July 15th and the beginning of the school year or in the event of an emergency.

908 Committees

The parties agree that minutes of the meeting shall be published within five (5) days of the meeting.

909. Individual Contracts/Salary Notices

909.A.4. The parties agree to include “column on vertical step on the salary schedule” in 909 A.4.

909.B. The parties disagree as to the Sequence of Limited Contracts in 909.B. The Board seeks current contract language and the Association proposes eliminating two year limited contracts and remaining language in 909.B.

The fact-finder concurs with the Association that the length of time for the Administration to work with teachers prior to a three year limited contract is unduly extended. It does not appear to be in the best interests of students to retain a struggling teacher for an extended period of time. Accordingly, the following is recommended:

909.B. Sequence of Limited Contract

1. Upon initial employment, unless eligible for and offered a continuing contract, a bargaining unit member shall be issued a regular teaching contract as follows until eligible for and offered a continuing contract.

- a. 1st, 2nd, 3rd and 4th year members will receive a one-year limited contract;
- b. All succeeding contracts will be three year limited contracts.

910. Reduction in Number of Teachers and Restoration

Both parties submitted proposals for modifying contract language pertaining to Reductions. Some of these changes are “housekeeping” items, but others involve “rights” which both parties assert. Testimony establishes that while reductions have not been frequent, in the past, when a reduction did occur, the Superintendent and the Association President worked closely to minimize the impact of the reduction on both the staff and the student body. Recognizing that reductions are a hardship on the District and the Association, the fact-finder recommends the following:

910.A. When the Board deems it necessary to reduce the number of certified staff positions other than through attrition, it shall do so in the following manner:

1. The Superintendent will meet with the Association President to discuss the intended staff reductions at least thirty (30) days prior to the Superintendent’s recommendation to the Board for such action.

- 2.. The Superintendent will make available the following information to the Association President:
 1. A list of all bargaining unit members in the District by contract status, teaching field, continuous years of system-wide service and all areas of certification;
 2. A list of specific positions to be reduced in each building;
 3. A reduction in Force Personnel list; and
 4. A recall list.
3. Any bargaining unit member who is to have his/her contract suspended will be so notified in writing at least ten (10) days prior to Board action on the reduction. No member will have his/her contract terminated or non-renewed because of a planned reduction.

910.B. The following guidelines for Reduction In Force shall apply:

- 1.. The number of persons affected by a Reduction in Force will be kept to a minimum by not employing replacements insofar as practicable, for bargaining unit members who retire or resign or whose limited contracts are not renewed.
- 2.. For 2016-2017. The reasons for reduction are one of those listed in ORC 3319.17. There may also be a reduction in staff of no more than one-half ($\frac{1}{2}$) of the personnel employed over the State Minimum Standards, if required by the State of Ohio as a result of State loan approval. Reduction not achieved by attrition shall be accomplished first by laying off teachers who do not have continuing contracts through suspension of contract, as appropriate, and second, if necessary, by suspending continuing contracts. Among teachers within each of these two groups, preference for retention shall also be given based on certification to teachers with longer continuous service to the District. The limitation on the Board's ability to layoff in the sentence above that says, "There may also be a reduction of staff of no more than one-half ($\frac{1}{2}$) of the personnel employed over the State Minimum Standards, if required, by the State of Ohio as a result of State loan approval" shall not apply for any reduction effective for the 2016-2017 school year.
- 3.. The Board shall consider all areas of certification when effecting a reduction.
- 4.. Bargaining unit members who are not teachers under OTEs shall be reduced strictly based on seniority.
- 5.. During layoff, persons will still have medical insurance continued. The bargaining unit member shall reimburse monthly the Treasurer of the District or his/her designee for the Board's COBRA cost of Hospitalization and Major Medical.
- 6.. Continuous service in the District shall mean length of continuous service, on a contracted basis and including approved leaves of absence in the District. Should a tie occur, seniority will be determined first by date of Board action on hire, and second, on date a continuing contract is issued. Thereafter, ties will be broken by discretion of the Board. Under ORC 3319,17 seniority may not be used unless evaluations are comparable. Comparable shall be determined on the basis of the two most recent evaluations within each of the categories: 1) accomplished; 2) skilled, and 3) developing.
7. For the 2016-2017 school year, a reduction in force may occur if the per pupil count drops below 3,025 on the October 2016 count or for financial reasons. The Association cannot institute any

grievance, administrative action or litigation regarding the decision to institute a reduction in force but only whether the correct individuals were reduced.

910.C. Rights While on Suspension

1. A bargaining unit member whose teaching contract has been suspended will be given preference in long-term substitute assignments within his/her area of certification.
2. The refusal of a bargaining unit member whose teaching contract has been suspended to accept an offer to substitute shall not waive his/her recall rights nor his/her right to preference in future assignments as a substitute.

910. D. The following guidelines for Recall shall apply:

1. Bargaining unit members suspended last and holding proper certification shall be restored first. No new teachers shall be employed so long as there are members with proper certification on the recall list. Only certification held at time of Reduction in Force shall be considered in determining restoration.

2. Persons to be restored shall be notified by certified mail and/or receipts methods to last known address. It is the bargaining unit member's responsibility to keep the Superintendent informed of his/her current address.

3. Any bargaining unit member who fails to respond in writing affirmatively to the Superintendent's Office within ten (10) work days, or week days during the summer months, or declines a full time position shall forfeit recall rights.

4. The Association is to receive a list of those in order of restoration.

5. The recall list is to be maintained for two (2) years.

6. All benefits to which a bargaining unit member was entitled at the time of the suspension of his/her teaching contract, including unused accumulated Sick Leave, will be restored to him/her upon his/her return to active employment. He/she will be placed on the proper step of the salary schedule according to his/her experience and education. A member will not receive increment credit of time spent on suspension nor will such time count toward the fulfillment of the requirement of acquiring tenure.

911 Personnel Records File

The parties agree to utilize "bargaining unit member" or "member" where appropriate.

ARTICLE XII- OTHER COMPENSATION

The parties agree to modifications to Article 1204 addressing Payroll Deductions.

1204.A.

The Board will make payroll deductions for dues/fair share fee of the Association and its affiliates from each pay. The Association is responsible for notifying the Treasurer in writing the amount of deduction by name of the teacher at least two weeks prior to the beginning of deduction. All such money so deducted shall be remitted biweekly (every two weeks) to the bank of the Association's choice. All deductions shall be made uniformly from each of the remaining pays.

With signed authorization of the bargaining unit member, the balance of the annual deduction shall be deducted from the final paycheck of a bargaining unit member resigning his/her position, receiving a leave of absence, or having his/her employment terminated after the date the Treasurer's office receives the authorization in any school year during the duration of this Agreement.

In Sections B through F, the parties agree to replace "teachers" with bargaining unit member.

The parties agree to delete G.

The parties agree to current language in current H, I, and J

ARTICLE XIV – NO RETALIATION CLAUSE

As part of the bargaining package presented to the Fact-finder, the Association has recommended two new contractual provisions to which the Board is opposed. These include sections captioned “Labor Peace” (1401) and “No Retaliation” (1402). As these were not presented as required, the Board argues the language is not properly before the Fact-finder for consideration. The Union, however, maintains that its proposed language arises from events subsequent to its earlier proposals and that these particularly contentious negotiations justify the additional language.

While intent of the Association in proposing these two sections may be to ensure efficient and effective implementation of a new Agreement, the language goes beyond the wages, hours, and working conditions contemplated by the legislature when enacting the impasse provisions in the State Collective Bargaining Act. Regardless of the fact that the proposals do not comply with the contractual negotiation procedures, fact-finders in Ohio do not recommend regulation of animus. As argued by the Board, there are other forums for addressing perceived injustices or unfair labor practices, including retaliatory actions. It is not the function of the fact-finder to do so.

Moreover, the Association has not presented the fact-finder with any comparable language in other Agreements between Boards of Education and Education Associations. Nor is there any evidence to justify the need for the inclusion of such language. Bargaining may be discordant and bargaining goals differ, but the motives and purposes of the parties are to best serve their constituents and to enhance the educational processes by which this purpose is implemented.

The fact-finder does not recommend the sections proposed by the Association.

ARTICLE XIII – EFFECTS OF THE CONTRACT

While the Association seeks to make the Agreement retroactive to July 1, 2016, the Board seeks to make the new Agreement effective upon ratification through June 30, 2019, as it has consistently done in the past. The Board contends the parties are obligated to maintain the current language until a renewal. Nonetheless, to avoid the potential of non-coverage, the fact-finder recommends the Agreement be retroactive to July 1, 2016. Such a recommendation is consistent with legislated authority as well as with practices of Fact-finders in the state.

Economic and Disputed Issues

ARTICLE VI INSURANCES

601 Medical ARTICLE VI – INSURANCE

In contention in the Insurance language of the Agreement is the employee/employer contribution to the premium costs for the 2017-2018 and the 2018-2019 school years, the parties having agreed to a 13%/87% contribution for the 2016-2017 school year.

To the extent the County Schools Council (COG) has implemented changes in its insurance policies, those are to be implemented in the Agreement between the parties in Section 601. Additionally, the parties agree to maintain current language for Sections 602, 603, 604 and 605.

In contention is the percentage premium contribution of the Employer and the Employee for contract years 2017-2018 and 2018-2019. While the Association seeks to retain the 13% agreed upon for contract year 2016-2017, the Board seeks increasing the employee contribution to 15% for those years. The Board argues that its proposal is consistent with comparable units and that the change is necessitated by increasing insurance costs.

The Fact-finder notes the extensive insurance coverage provided to bargaining unit members by the District as well as its membership in an insurance consortium, which enables the District to provide health benefits consistent with approximately sixteen (16) neighboring school districts. In reviewing this data, the Fact-finder observes that the Louisville teachers have dental and vision coverage at no cost. Eleven (11) of the neighboring Districts provide no vision coverage; only two (2) have vision coverage on a par with Louisville. Teachers in the remaining three (3) districts pay 1.5% and 10% of their vision premiums, with these premiums increasing to 3% and 11% for school year 2017-2018.

The analysis is less disparate for dental coverage, with all districts providing coverage. Nonetheless, of the comparables, only seven (7) require no employee contribution and the remaining nine (9) require contributions ranging from 1.5% to 20%.

In terms of premium contributions for medical coverage for the current school year, nine (9) of seventeen (17) neighboring Districts require employee contributions greater than Louisville. Four (4) Districts have negotiated 1% increases in employee contributions for the 2016-2017 school year.

In analyzing the evidence, the fact-finder has taken into consideration a memo from the consortium Chairman regarding insurance. He cautions the membership to “remain conservative in your forecasting by using 10% rate increases and zero (0) premium holidays in your future budget forecast” (Board Exhibit 7). Also noted is the fact that the Board has in the past received at least one premium holiday and this past year it received three such holidays. Finally, the fact-finder observes that in spite of the COG recommendation, area districts have either retained current premium provisions or have, with some exceptions, negotiated incremental increases.

In considering the comparable data, the fact-finder recommends an increase in employee premium contributions but recommends the increase be implemented incrementally, 14% in 2017-2018 and 15% in 2018-2019. The fact-finder also recommends that this out of pocket increase for employees must be off-set by a salary increase for employees. It is not reasonable to expect this bargaining unit to pay more for their insurance without increasing the income for the members.

ARTICLE X – SALARIES

Addressing, then, the issue of salaries, some adjustment for this unit is appropriate. A principle contention, though, is step placement, unit members seeking step recovery by being placed “on the correct salary step they would be at had they not agreed to the freeze.” The Association made it clear that this was a primary goal in its contract negotiations with the Board.

The issue of the step freeze must be considered in its historical context. Like many school districts and public employers in the State of Ohio and, indeed, across the nation, this School District was severely affected by the financial crisis of 2008. Consistently, concessionary bargaining resulted in “step freezes” for union members whose contracts included a step progression. As did many school teachers in Ohio, the Louisville Association agreed to step freezes. Although steps are now “unfrozen,” in these current negotiations, the Association seeks advancement to the step a teacher would have been on had the freeze not occurred.

As part of its evidence, the Association cites the financial loss to the teachers from the step freezes (Union Exhibit 4). Although the fact-finder is mindful of the losses sustained by Association members, loss was, unfortunately, characteristic of the recession. Many Americans lost their homes, while a handful reaped a fortune from these losses. Others saw their life savings disappear when near or at retirement. For many, the upheaval and financial loss was devastating—and life will never be what it should have been.

Even so, in the words of our Nobel Prize winning bard, “The times, they are a’changing.” Financial data submitted in this proceeding indicates that financial recovery is underway in the District. Assessed value for 2016 exceed assessed value in 2007, and the source submitted by the Board (Board Exhibit

10), states “total assessed values are now back to where the peak was prior to the Great Recession” and that values “increased by over \$38 million.” Another indication of recovery is the “history of State Revenues” (Board Exhibit 9). While significant decreases in state revenue were experienced from 2010 through 2013, and the Board specifically cites the difference in receipt between 2009 and 2016, the overall decline has been arrested. Even without federal stimulus monies, in 2015 and in 2016, total aid has increased.

In terms of unrestricted aid, the Board points out declining student enrollment is a major concern regarding District finances since the funding derives from the number of students in the District (Board Exhibit 6). More than one-half of the total general fund revenue in 2016 was Unrestricted Aid. In spite of this concern, though, the District forecasts unrestricted aid remaining constant at \$14,289,415 from fiscal years 2017 through 2020 (Board Exhibit 5). The fact-finder concludes that for the duration of this contract, the finances of District are not as they were post 2007-2008 and that wage adjustments in this round of bargaining are warranted.

Dominant criteria in determining an appropriate wage for a bargaining unit in Ohio include financial ability of the employer and data on comparable units. As is required of Treasurers in the public sector, the Treasurer in this District has cautiously projected future revenue for the District while anticipating increasing expenditures. These include, for example, a 10% increase in insurance costs as has been recommended by the insurance consortium of which the District is a member.

Even with caution, however, the District has a demonstrated ability to pay a reasonable wage increase for this unit. The actual fund balance in 2016 was \$4,278,270. Projected fund balances are \$5,690,038 in 2017, \$5,163,300 in 2018, and \$3,114,116 in 2019.

Starting in 2018, the forecast includes expenditures exceeding revenues with a negative cash balance in 2020. When revenue from a renewal levy is factored in, however, the fund balances increase. Although the Board cites the fact that the levy was defeated twice before passage in 2013, its passage was secured by a substantial 62% of the electorate –and when previously defeated, the November 2012 rejection was by (a heart-breaking) 153 votes (Board Exhibit 13). Certainly, levy passage is not and should not be considered a given. Nonetheless, the Board has the responsibility of securing the monies necessary to maintain its educational function, including promoting to the public its financial needs.

On the issue of ability to pay, the Association has cited salary increases for Administrative Staff and the fact that teachers have been hired with significant credit for teaching experience. Judgment of the District on these matters is not questioned. The Administration must secure the best teachers it can for its student population, and administrative staff certainly earn their salaries. Such managerial decisions, however, undermine an argument that the District lacks the ability to pay this bargaining unit a wage increase.

Not only does the fact-finder observe an ability to pay a modest wage adjustment, but she also determines that the comparable data justifies an increase. Both parties submitted extensive documentation on comparability. This evidence has been carefully scrutinized by the Fact-finder.

In Board Exhibit 18, the average teacher salary in all districts in Ohio is listed, showing the teachers in this District receiving approximately \$1,300 more than the average in the state. Averages, however, tend to skew data. Taking the more affluent urban communities, such as Beachwood (\$82,792) or Upper Arlington(\$80,069) and averaging them with rural Districts such as Monroeville(\$27,473) or Ledgement (\$33,867), distorts comparability. When only the Districts in Stark County are considered, the range (\$45,998 to \$62,695) is quite different, putting this District (\$55,716) almost in the middle.

Similarly, in terms of District Expenditure per Pupil (Board Exhibit 12), no school District in Stark County comes close to Beachwood at \$21,165 per pupil. The highest expenditure per pupil in

Stark County is made by Canton City Schools. Expenditure per pupil in Louisville is quite similar to Tuslaw, Minerva, Plain, Osaburg, Lake, and Jackson Local School Districts.

The Board also argues that certified staff receives almost 83% of total General Fund expenditures in salary and benefits, higher than the State average of 75% (Board Exhibit 15 and 16). There is, however, no evidence that this percentage has deprived the District of making expenditures in areas of need. Moreover, the percentage is not inconsistent with the percentages of other Stark County Districts., ranging from 87% to 71%.

The most common measurement of comparability is a percentage increase, employers and unions having already bargained to establish a given wage taking into account demographics, geographic location, and socio-economic factors. Considering wage settlements in school districts in Stark County, the fact-finder notes increases have consistently been bargained in the 2% range, some higher, others lower. Minerva negotiated 3% and North Canton, a 1% lump sum and 1% lump sum contingency (Union Exhibit 15). In recent collective bargaining in Stark County School Districts, parties are removing the step and salary freezes which were characteristic of bargaining from 2011 through 2015.

The Board stressed that percentage increases compound and that the step increases in the Agreement alone provide significant wage adjustments. But, the Board negotiated the steps currently in the collective bargaining agreement. Those are in the Agreement because of prior bargaining. And, the compounding of percentage increases is how wage adjustments are typically made, unless the parties agree to a lump sum payment in lieu of a base increase. The 3% negotiated by Minerva and the 2% negotiated by Lake will compound over the course of the Agreement.

Typically, when steps are “unfrozen,” there is no recovery for prior years. This appears to be true of the districts in Stark County. When queried about how other districts may have implemented a step recovery, the fact-finder was advised that it has been done. One instance of step recovery apparently was tied to a levy. Nonetheless, without actual contract language and evidence as to the negotiation process, it is difficult to recommend a similar approach for this unit.

The fact-finder is troubled by the contentious “bargaining” that has given rise to this hearing. Without placing blame, there were multiple matters on the table, detracting from the core financial issues. In fact, at the hearing, it was after 3:00 p.m. before the financials were addressed. In the course of the hearing, it became apparent that the Board had never “costed out” the step proposal of the Union. That should be done before a proposal is rejected.

Accordingly, the fact-finder recommends the following: for contract year 2016-2017, a 1% increase on the base effective January 1, 2017. For contract years 2017-2018 and 2018-2019, the fact-finder recommends that the parties explore and discuss the proposal of the Union for a step recovery in lieu of a base increase. In the event steps are not recovered according to an agreed upon plan, the fact-finder then recommends that effective with the 2017-2018 school year a 1.5% increase on the base be implemented and for the 2018-2019 school year, a 1.5% increase on the base be implemented.

Two other financial issues were never addressed at the hearing: Supplemental Salaries and Severance. The Association has agreed to the Supplemental Salary language proposed by the Board but has additional language. Agreed upon language is incorporated. In the absence of any evidence on the issue, the fact-finder deems the additional language unnecessary. As to the Severance Pay language, the fact-finder recommends current contract language, again, in the absence of any evidence.

Prior to printing, the contract will be reviewed to determine whether the use of the word “days” requires further clarification.

Respectfully submitted,

s/s Margaret Nancy Johnson

A copy of the foregoing final report has been issued by e-mail this 28th day of October, 2016, upon the School District through its counsel, Mary Jo Shannon Slick at maryjo.slick@email.sparcc.org; on the Louisville Education Association, through its Labor Consultant, Gary Kovach, at kovachg@ohea.org; and on SERB at med.serb.oh.us.