Mutually Agreed To Dispute Resolution Proceeding
State of Ohio
and the
Ohio Civil Service Employees Association, AFSCME, Local 11

In the Matter of
Fact Finding
between
the State of Ohio
and
the Ohio Civil Service Employees Association, AFSCME, Local 11

Fact-Finder:
Thomas J. Nowel, NAA

Appearances for the Union

Christopher Mabe	President
Buffy Andrews	Chief Spokesperson
Mark Murphy	Researcher/AFSCME

Appearances for the Employer

Jonathon Downes	Chief Spokesperson
Kristen Rankin	Office of Collective Bargaining
Aimee Szczerbacki	Office of Collective Bargaining

OCSEA AFSCME LOCAL 11 AFL-CIO
Ohio Civil Service Employees Association

FACT FINDER'S REPORT

AND RECOMMENDATIONS

JUNE 19, 2024

Fact Finder's Report and Recommendations

In the Matter of Fact Finding
between
OCSEA/AFSCME Local 11
and
the State of Ohio

FACT FINDER:

Thomas J. Nowel, NAA

CHIEF PRESENTERS:

For OCSEA/AFSCME Local 11:

Christopher Mabe (President), Buffy Andrews (Chief Spokesperson), Mark Murphy (Researcher/AFSCME)

For The State of Ohio:

Jonathon Downes (Chief Spokesperson), Kristen Rankin (Office of Collective Bargaining), Aimee Szczerbacki, (Office of Collective Bargaining)

SUMMARY OF THE FACT FINDER'S REPORT AND RECOMMENDATIONS

Negotiations between OCSEA and the State of Ohio began December 13, 2023. Contract issues that were successfully negotiated are contained in the Tentative Agreement sent to members earlier this month. However, the two sides could not reach agreement on six contract articles, including wages, Pick-a-Post and telework. An impasse was declared and those articles were sent to Fact Finding in March. Following four hearings that included testimony from witnesses, each side submitted briefs and evidence. Fact Finder Thomas J. Nowel issued his recommendations on June 19, 2024.

Fact Finder Thomas Nowel recommended annual pay raises over the next three years of 5%, 4.5% and 3%. The total pay raise of 12.5% over the length of the contract is the largest negotiated by OCSEA in nearly 40 years.

Other recommendations include:

- The Fact Finder rejected management's proposal to change the Pick a Post process and Podium Pick for the Department of Rehabilitation and Corrections and the Department of Youth Services. Instead, the Fact Finder issued a "Memorandum of Understanding" directing the parties to form special labor management committees for DRC and DYS to discuss Podium Pick. The parties are directed to meet over a 90-day period and engage in an Interest Based Bargaining process. The committee can make recommendations for changes, but the changes cannot be implemented unless mutually agreed to by both parties and ratified by the members.

- The Fact Finder recommended a new section in the contract (13.17) regarding Telework/Remote Work/Hybrid Schedule. The new section requires management to put in writing the reason for the denial of a request for telework, remote work or hybrid schedule. Furthermore, management must give advance notice and provide a detailed reason for the termination of approved telework, remote work or hybrid schedule. Management has always argued that this is not a mandatory subject for bargaining and the Fact Finder has shown that it is and language was added to our contract.

- The Fact Finder rejected a proposal by management to expand the use of Letters of Agreement (LOAs) to allow more agencies to explore alternative compensation programs. OCSEA successfully argued that insisting on the use of LOAs undermines the collective bargaining process and the authority of the CBA. Our contract is clear on terms and conditions of employment which include wages. Management can no longer issue supplemental pay just to their selected individuals. It must be negotiated.

- The Fact Finder also recommended new contract language for sick leave policy. Previous language said an agency head "will" pursue progressive discipline. The recommendation changes "will" to "may" and deletes the words "for all future illnesses" from Article 29.04, sub paragraph III Procedure. The Fact Finder said this enhances the level of fairness sought by the Union.

The following document contains all the Fact Finder recommendations for the six articles that went to Fact Finding. As a reminder, contract voting begins June 24 and ends at noon on July 5. All voting must be conducted in person with your local chapter and only active members can vote. Voting times and locations can be found here.

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Background on Article 36: Wages

Both parties submitted their wage proposals during the first day of negotiations in December 2023. The Union did not change its stance on wages throughout the process, advocating for members, arguing that Ohio's public employee union members deserved a substantial increase. OCSEA proposed a 10-10-10 percent wage package. The State proposed a 4-3-2 percent package, which the Union adamantly denounced from the start.

The Union's arguments focused on cost of living, recruitment and retentions, and comparables with regional states. OCSEA argued that a three-year wage proposal of three (3)10 percent general wage increases for the term of the bargaining agreement was justified and affordable by the State. The Union's rationale included Ohio tax revenues more than $3 billion as compared to the previous collective bargaining term; the State's budget with 2023 carry-overs of $309.2 billion; and record level annual surplus increases of $2.3 billion. The Union argued that its wage proposal was designed, in part, to recruit and retain employees and that Ohio's wages lag those of other states.

In the end, while the Fact Finder reported that both sides provided excellent evidence to support their positions, SERB data won out in the end. Despite indicating that the Union made a well-prepared case regarding the Employer's ability to fund and afford the 30 percent wage package over the life of the contract, the Fact Finder landed on a wage package of 12.5 percent over the life of the contract (5%, 4.5%, 3%). Recent SERB data indicates that wage increases have generally been in the 3 percent range and in line with the State's wage proposal, wrote Fact Finder Nowel. "One cannot argue with numbers," he wrote. The report also referenced midterm wage increases and one-time payments granted to a significant number of bargaining unit employees during the previous contract. Despite not receiving the wage increase the Union proposed, Fact Finder Thomas Nowel recommended annual pay raises over the next three years of 5%, 4.5% and 3%. The total pay raise of 12.5% over the length of the contract is the largest negotiated by OCSEA in nearly 40 years.

Fact Finder's Recommendations ARTICLE 36 - WAGES

36.02 - General Wage Increase

Both parties provided excellent evidence to support their positions including testimony, data, documentation and comprehensive pre-hearing and post hearing briefs. Both parties submitted their wage proposals during the first day of negotiations in December 2023. Neither party modified their original proposals during negotiations which included ten bargaining sessions, seven sessions with the appointed mediator and one mediation session with the Fact Finder prior to the commencement of the Fact Finding hearing. There was little movement on a variety of issues until the end of the last day of the fact finding hearing (4 day hearing). So it is understandable that original proposals were not modified or made a part of "supposals."

The Union makes a well prepared case regarding the Employer's ability to fund and afford its proposal of three 10% wage increases during the life of the new three year collective bargaining agreement. The fact that bargaining unit employees realized no wage increases from 2009 through 2014 is an important factor for a Fact Finder to consider. This Fact Finder is aware that, during a few of these years, employees did not receive step increases as well. The parties bargained successfully for successor collective bargaining agreements which included wage increases following the last wage freeze in 2014. The Union ratified those agreements. Both sides did what they could to make up for six years of wage freezes. Nevertheless, the data which illustrates that bargaining unit wages have not maintained equity with the cost of living, have fallen behind average SERB wage increases, lag behind wages paid in regional states, and have fallen behind wages as reported by Bloomberg BNA, must be considered by the Fact Finder.

Both the Union and Employer made agruments regarding issues of retention and recruitment. The Employer stated that the State has maintained an adequate level of employment and that unemployment data supports this proposition. The Union argues that its wage proposal will be key, now and in the future, to maintaining and attracting an appropriate number of workers. The Employer presented data which illustrated the high turnover of employees within the first and second years of employment. The turnover of short term employees has exasperated the Employer's concerns regarding the Podium Pick issue in DRC and DYS. We heard testimony regarding staff shortages which have caused significant issues regarding mandated overtime, a concern which probably has impacted the resignations of short term employees as current generations value time away from the job more than previous ones. Recently this Fact Finder has heard cases at grievance mediation which concern staff shortages and significant incidents of mandated overtime. These concerns are real and must be considered in this recommendation for general wage increases.

This Fact Finder has heard a number of fact finding and conciliation cases during the past few years, as public employers have struggled to recover from COVID. The Employer in this case points to the recent SERB data which indicates that wage increases have generally been in the 3% range and in line with the State's wage proposal. One cannot argue with numbers. Nevertheless, police, corrections, fire department bargaining units have been granted significant wage increases during the past three years in an attempt to recruit and retain as vacancies have been numerous and difficult to fill. Recognizing this, the State granted mid term wage increases and one-time payments to a significant number of bargaining unit employees. Many jurisdictions in Ohio's public sector

have utilized lump sum payments through the collective bargaining process. There are a number of collective bargaining agreements which have provided lump sum payments in each of the three years. SERB data does not necessarily recognize negotiated payments of this nature. A number of recent public sector contract settlements in the Columbus and Cleveland areas have resulted in wage increases which exceed reported SERB average data.

The Employer argues that its proposal is in line with the guidelines outlined in the Ohio Administrative Code and Revised Code. This is generally true. The Employer points out that it provides an affordable health care plan with no increase in cost to employees during the term of the new Agreement. The Employer is to be commended for designing and providing for a cost effective plan, and the Fact Finder takes note as the cost of health care is open a contentious issue at fact finding and conciliation.

The Fact Finder has spent a great deal of time reviewing and analyzing the data, information and testimony provided by the parties regarding the general wage increase for the new Agreement. It is unfortunate that the parties were unable to engage in detailed discussion in a problem solving manner regarding general wage increases. The proposal submitted by the Union is unsustainable over the long run. And the Employer points out that, this being the first negotiations in the cycle involving four other Unions, the Report and Recommendation may set a pattern. Most Fact Finders, including this one, write a Report and Recommendation with the goal of bringing the parties together and concluding the bargaining process in an amicable manner. The parties in the instant matter know that a Report, which includes the Union's general wage proposal, will be quickly rejected by the State authority.

Nevertheless, the Union's arguments regarding cost of living, recruitment and retention, comparables with regional states have been considered. The Employer's position, that the recommendation should be in conformance with the OAC and ORC, is also well taken and has been considered. Therefore, the recommendation for Article 36, Section 36.02, General Wage Increase is as follows:

- Effective with the pay period which includes July 1, 2024, the pay schedules shall be increased by five (5%) percent.
- Effective with the pay period which includes July 1, 2025, the pay schedules shall be increased by four and one-half (4.5%) percent.
- Effective with the pay period which includes July 1, 2026, the pay schedules shall be increased by three (3%) percent.

The following reflects contract book updates based on those recommendations:

ARTICLE 36 – WAGES

36.02 - General Wage Increase

Effective with the pay period which includes July 1, 202~~1~~**4**, the pay schedules shall be increased by ~~three (3%)~~ **five (5%)** percent.

Effective with the pay period which includes July 1, 202~~2~~**5**, the pay schedules shall be increased by ~~three (3%)~~ **four and half (4.5%)** percent.

Effective with the pay period which includes July 1, 202~~3~~**6**, the pay schedules shall be increased by three (3%) percent.

Background on Article 13: Work Week, Schedules, and Overtime

While management still has a right to make telework assignments, a newly added section requires management to put in writing the reason for the denial of a request for telework, remote work or hybrid schedule. Furthermore, management must give advance notice and provide a detailed reason for the termination of approved telework, remote work or hybrid schedule. With that in mind, this newly added language is the first in the Union contract's history to focus on alternative work schedules as a subject of bargaining and could open the door for future conversations on telework that benefit Union members.

The Union proposed that overtime be paid for work beyond a normally scheduled shift rather than after 40 hours in a calendar week. Additionally, the Union proposed removal of language that states that sick leave is not considered as active pay status for purposes of computing overtime. The Employer rejected these proposals. The Fact Finder recommended maintaining current contract language with no changes. Additionally, the Union argued that adjustments for pre-medical appointments and/or the trading of shifts for pre-medical appointments should be grievable. The Fact Finder recommended maintaining current language.

Fact Finder's Recommendations
ARTICLE 13 - WORK WEEK, SCHEDULES, AND OVERTIME

13.10 - Payment for Overtime

The Union's argument, that recruitment and retention will be aided and improved by allowing the overtime rate to be paid after a standard shift as opposed to a 40 hour work week, is generally unsubstantiated. Recent history shows that rates of pay, including entry level rates, are the drivers in this area. Further, the proposal to include sick leave in the definition of active pay status is contrary to bargaining history. Sick leave was deleted from the list of active pay status by agreement of the parties during the 1997 negotiations as part of a package

which increased the payment of sick leave to 70% after the second forty hours of usage in a year. The package increased the end of the year conversion rate as well. The Employer's argument is convincing that comparables in Ohio's public sector, including the State, do not support the Union's proposal and position.

The recommendation is current contract language in Article 13, Section 13.10.

13.13 - Flextime/Four Day Work Week

The Union argues, appropriately, for the fundamental right of employees to manage their health care and medical needs. The collective bargaining agreement supports these rights in Section 13.13. As the Employer suggests, if a request is made to adjust a schedule or trade a shift assignment and it is denied by management, an employee would have the ability to use a form of leave, sick or comp. What is important in the fact finding process is for the party, requesting a change to long standing language and practice, to illustrate specific issues, concerns, denials or arbitrary decisions in order to convince the fact finder that language change is necessary. That has not occurred in this case.

The recommendation is current contract language in Article 13, Section 13.13.

13.17 - Teleworking/Remote Work/Hybrid Schedule

The Employer's position and argument, that telework assignments are generally a management right in the absence of language in the collective bargaining agreement to the contrary, is accurate. The Employer argues that it has the right to adopt policies regarding teleworking/remote work and has the right to modify such policy as needed. The Employer cites the award of Arbitrator Sellman, a member of the National Academy of Arbitrators, who agreed that the State had the right to modify policy regarding certain payments for teleworking. This was a case involving State employees. This is also true as long as the implementation or modification of such policies do not conflict with the CBA and are not arbitrary and capricious. The Employer stated that an employee always has the right to file a grievance, and this is true in the event of an arbitrary and capricious decision on the part of management. At the same time, the Union's position regarding fairness and good communication when making teleworking assignments has merit as well. Testimony by Union members during the fact finding hearing supported the importance of adequate communication by management with those employees so assigned. With these concepts in mind, the recommendation recognizes the Employer's management right to assign but also allowing for employees to request a teleworking assignment and to receive a written reason why such request is denied. The Union's proposal, that an employee be provided with the reason for the termination of an approved teleworking schedule, is also reasonable. The recommendation, therefore, is for new Section 13.17 as follows:

Article 13, Work Week, Schedules and Overtime. Section 13.17, Telework/ Remote Work/Hybrid Schedule

Employees may request a teleworking, remote work, or hybrid schedule. Denials of teleworking, remote work, or hybrid schedule requests must include the reason in writing to the requesting employee and the Union. An employee must be provided a detailed reason for the termination of an approved teleworking, remote work, or hybrid schedule arrangement in writing in advance of the termination. The Union will be provided a copy of the notice. Issues and concerns regarding teleworking, remote work, or hybrid schedules are appropriate matters to be discussed at labor management meetings.

The following reflects contract book updates based on those recommendations:

ARTICLE 13 – WORK WEEK, SCHEDULES, AND OVERTIME

13.17 - Telework/Remote Work/Hybrid Schedule

Employees may request a teleworking, remote work, or hybrid schedule. Denials of teleworking, remote work, or hybrid schedule requests must include the reason in writing to the requesting employee and the Union. An employee must be provided a detailed reason for the termination of an approved teleworking, remote work, or hybrid schedule arrangement in writing in advance of the termination. The Union will be provided a copy of the notice. Issues and concerns regarding teleworking, remote work, or hybrid schedules are appropriate matters to be discussed at labor management meetings.

Background on Article 29: Sick Leave

The Union proposed that aunts and uncles be added to the sick leave language, arguing that these family members play vital roles in providing care and support within families. The Fact Finder's decision to not include those family members was based on the history of the parties' negotiated comprehensive list of "immediate" family members and relatives since 1992.

The Union proposed to increase the rate of pay after the first 40 hours from 70 percent to 100 percent, meaning all sick leave would, therefore, be paid at 100 percent. The Union argued that the current sick leave provision and policies have placed employees in precarious financial and health situations and that the Union proposal would foster a more equitable and healthier workplace and correct unfair practices. The Fact Finder found there was no sufficient rationale to make changes to this language.

The Union did achieve a significant win when the Fact Finder made modifications to sick leave policy regarding the physician verification process. The update changes "will" to "may" regarding agency-heads pursuing progressive discipline and deletes the words "for all future illnesses." The Fact Finder said this will enhance the level of fairness sought by the Union.

Fact Finder's Recommendations
ARTICLE 29 - SICK LEAVE

29.02 - Sick Leave Accrual

Section 29.02 of the agreement provides, based upon agreement of the parties, a comprehensive list of those members of the family for whom paid sick leave is granted. Any given employee may consider numerous relatives, whether distant or close (blood), as their aunts and uncles. This may be the reason that most collective bargaining agreements do not include aunt and uncle in the list of employees for whom an employee is granted paid sick leave. The parties negotiated a comprehensive list of family members and relatives in 1992. There is insufficient rationale to add aunts and uncles. The recommendation is current contract language.

29.02 - Sick Leave Accrual

This Fact Finder has reviewed the Report and Recommendation issued by Arbitrator Pincus. After a great deal of discussion with the parties, in which even the Union was willing to consider a reduced rate of pay for sick leave usage between 40 and 80 hours, Arbitrator Pincus essentially designed and recommended the provisions contained in Section 29.02 pertaining to the rate of sick leave pay and the conversion provision contained in Section 29.05. The Employer's argument, that the Union's proposal ignores what was the companion issue and now provision in Section 29.05, the conversion rate to convert accumulated sick leave annually to cash, is compelling. Arbitrator Dr. Pincus' recommendation has been incorporated in the Agreement since 1997. There is no sufficient rationale to make change to Section 29.02 in respect to the 70% rate of paid sick leave. It is noted that paid sick leave between 40 and 80 hours is paid at 100% for issues involving hospitalization. The recommendation is current contract language for Section 29.02 of the Agreement.

29.04 - Sick Leave Policy

The contract language is fairly tight, and it provides the Employer with the right to control the physician verification process. But what is important here in the fact finding process is the history of bargaining. The fact that the parties developed the current language during a labor management meeting process leading up to collective bargaining negotiations and then included what they had hammered out is critically important today. Perhaps both parties wished to ensure the use of sick leave in a legitimate and appropriate manner as this was and is in the best interest of the Union and management. This is certainly not to say that a substantial number of bargaining unit employees abuse sick leave. Just the opposite is true. But uncontrolled use of sick leave causes an increase in mandated overtime in certain bargaining unit departments, and there are staff shortages during this period of time. In considering comparables, as guided by the OAC and ORC, most public sector collective bargaining agreements contained some form of guidelines regarding sick leave including physician verification. The recommendation is, therefore, for the retention of most of the language in Sub Sections II and III, language which the Union wishes to delete. Nevertheless, a few minor modifications may enhance the level of fairness sought by the Union. The recommendation is for the deletion of the words "for all future illness" as found in sub paragraph III (A). This wording is vague and suggests no ending point. The second recommended modification is in sub paragraph III (B) in the last sentence which states, in part, that the agency head "will" proceed with progressive discipline. The recommendation is to substitute "may" for "will." It is recommended that the first sentence in sub paragraph III (A) read as follows;

> At the Agency Head or designee's discretion, in consultation with the Labor Relations Officer, the employee may be required to provide a statement, from a physician, who has examined the employee or member of the employee's immediate family.

It is recommended that the last sentence in sub paragraph III (B) read as follows:

> If the above does not produce the desired positive change in performance, The Agency Head or designee may proceed with progressive discipline up to and including termination.

Except for the recommended modifications as noted above, the recommendation is current contract language for the remainder of the sub sections.

The following reflects contract book updates based on those recommendations:

ARTICLE 29 – SICK LEAVE

III. Procedure

A. Physician's verification

At the Agency Head or designee's discretion, in consultation with the Labor Relations Officer, the employee may be required to provide a statement, from a physician, who has examined the employee or the member of the employee's immediate family, ~~for all future illness~~. The physician's statement shall be signed by the physician or his/her designee. This requirement shall be in effect until such time as the employee has accrued a reasonable sick leave balance. However, if the Agency Head or designee finds mitigating or extenuating circumstances surrounding the employee's use of sick leave, then the physician's verification need not be required.

Should the Agency Head or designee find it necessary to require the employee to provide the physician's verification for future illnesses, the order will be made in writing using the "Physician's Verification" form with a copy to the employee's personnel file.

Those employees who have been required to provide a physician's verification will be considered for approval only if the physician's verification is provided within three (3) days after returning to work.

B. Unauthorized use or abuse of sick leave

When unauthorized use, or abuse of sick leave is substantiated, the Agency Head or designee will effect

corrective and progressive discipline, keeping in mind any extenuating or mitigating circumstances.

When progressive discipline reaches the first suspension, under this policy, a corrective counseling session will be conducted with the employee. The Agency Head or designee and Labor Relations Officer will jointly explain the serious consequences of continued unauthorized use or abuse of sick leave. The Agency Head or designee shall be available and receptive to a request for an Employee Assistance Program (EAP) in accordance with Article 9. If the above does not produce the desired positive change in performance, the Agency Head or designee ~~will~~ **may** proceed with progressive discipline up to and including termination.

Background on Article 36: Wages

See wage summary *(36.02 - General Wage Increase)* at the start of this report.

The Fact Finder recommended the Union's position regarding the termination of the existing Letter of Agreement (LOA) on alternative compensation programs pursuant to Section 36.05 (C) and rejection of the Employer's proposal to expand that LOA.

Despite the Union's arguments that 36.10 be retained, the Fact Finder recommended the deletion of the section because the language is no longer relevant.

While the Union is deeply committed to recruitment and retention strategies, an Employer proposal regarding supplements would have given agencies authority to determine which positions would be chosen and the amounts of those supplements. This would have taken the Union out of the equation. The Union argued, and the Fact Finder agreed: the rates of pay for bargaining unit employees must be negotiated by the parties. This is a mandatory subject of bargaining and should not be up to the discretion of the Employer. This proposed process would also violate the Ohio Revised Code.

Fact Finder's Recommendations ARTICLE 36 - WAGES

36.05 (C) - Alternative Compensation Pilot LOA

Evidence suggests that previous LOAs, which were developed between the parties pursuant to Section 36.05 (C), Alternative Compensation Pilot, were successful and in particular for the Department of Taxation. This Fact Finder, as a former advocate on both sides of the table, often favored "thinking outside the box," alternative approaches. This is especially true now when new challenges to recruitment and retention exist. Nevertheless, the Union's rejection of the expanded and existing LOAs, which have been developed pursuant to Section 36.05 (C), has merit. Sections 43.03 and 43.04 of the CBA support the Union's position. Section 36.05 will remain as an integral part of the collective bargaining agreement, and this is also true of Paragraph C. During the term of the successor Agreement, the parties may renew or develop new LOAs regarding alternative compensation programs, but this will be based on bargaining between the parties.

The Union's position regarding the termination of the existing LOA and rejection of the Employer's proposed LOA is recommended.

36.10 - Agency Specific Agreements

The Union admits that the language is history. There is no evidence that this section of the Agreement has any relevance at this time and as it pertains to the successor agreement. The deletion of Section 36.10 of the collective bargaining agreement is recommended.

36.12 - Recruitment/Retention Supplement

The Employer's proposal is well intended. The Employer has found it difficult to recruit and retain employees in certain classifications, facilities and work areas. While testifying regarding other issues at impasse, Union witnesses discussed issues of recruitment and retention. Being short staffed in a number of agencies has caused unwanted, in many cases, mandated overtime, and evidence indicates that resignations among new staff has increased during the past two years due to the consequences of being short staffed. Clearly, a program aimed at reducing staff turnover and enhanced recruitment is necessary, and both parties must be involved. This Fact Finder has recommended a general wage increase which is a bit more than that proposed by the Employer with the issues of retention and recruitment in mind.

While the Fact Finder completely understands the issues and possibilities raised by the Employer's proposal, the Union's objection to it must be taken seriously. The rates of pay for bargaining unit employees must be negotiated by the parties. This is a mandatory subject of bargaining. In the absence of an agreement by the Union to allow for the Employer to unilaterally determine the who, what and why for pay supplements, the unilateral implementation of such could very well be considered contrary to Sections 4117.01(G) and 4117.03(A)(4) of the Ohio Revised Code. "Public employees have the right to bargain collectively with their public employers to determine wages, hours, terms and other conditions of employment . . ." Clearly, pay supplements are a mandatory subject of bargaining. While the two State collective bargaining agreements, which have been cited by the Employer (Employer Exhibits 49 and 50) allow for the Employer to determine pay supplements for the purpose of recruitment and retention, the right of the State to make these determinations was bargained and agreed upon by SEIU District 1199 and OEA. Through the collective bargaining process, the parties mutually agreed to allow the Employer to determine pay supplements. As the Union in the instant matter has cited, the State's right in this area is limited in the SEIU CBA in Section 43.11. Again, this is what the parties agreed upon during their negotiations for previous collective bargaining agreements. In the instant negotiations, mediation

and fact finding process, the Union, OCSEA, is not willing to agree to the Employer's proposal which involves unilateral implementation of supplements. The Employer's proposal includes, in part, the following language. "The Agency shall have the sole authority to designate any position to which a supplement will apply and to discontinue its use." "The Agency shall have the sole authority to designate the percentage amount of any supplement for any particular position or group of positions." And so on . . . Without the Union's agreement to these terms, the Fact Finder is reluctant to recommend the Employer's proposal which may be considered contrary to the spirit and provisions of the Ohio Revised Code. Although the Employer's proposal states that the Union may file a grievance over a dispute regarding pay supplements, the language allows the Employer full discretion in such decision making. Except for an argument regarding arbitrary or capricious decision making, such grievance would likely not be sustained. The Employer's proposal bars arbitration which generally would not be an approach in any event as the language permits unilateral decision making by the State. It is noted that, during the now expiring collective bargaining agreement, the parties agreed to provide monetary increases for purposes of recruitment and retention without new Section 36.12. The Employer's data indicates that 8300 employees received pay range increases and 2600 employees received lump sum payments. As recruitment and retention are important concerns and issues in the public sector following COVID and in the current economic environment, it is hoped that the parties will again work collaboratively during the term of the successor agreement as these concerns impact both Employer and Union. A recent news report, May 21, 2024, for example, indicated the difficulty cities in Northeast, Ohio are facing as they attempt to fill vacancies in Firefighter positions.

The Fact Finder recommends rejection of the Employer's proposal to create Section 36.12. Without agreement of the Union to all or a portion of the proposal, it may be in conflict with ORC Section 4117 and may cause rejection of the Fact Finding Report and Recommendation which could set the conclusion of the bargaining process back.

Background on Article 43: Duration

The Fact Finder recommended that the three-year collective bargaining agreement have an effective date of July 1, 2024, and an expiration date of February 28, 2027. Furthermore, the effective dates of annual wage increases are the pay periods that include July 1 in each year of the agreement.

Fact Finder's Recommendations
ARTICLE 43 - DURATION

43.01 - Duration of Agreement

The parties have agreed to a three year collective bargaining agreement with an effective date to be determined. The recommendation regarding effective dates of the general wage increase are the pay periods which include July 1 of each year of the Agreement beginning in 2024. Section 43.01 of the expiring collective bargaining agreement, 2021 – 2024, states that the effective date is April 21, 2021 with an expiration of February 29, 2024. Similarly, the recommendation for the successor agreement is an effective date of July 1, 2024. The recommendation for the expiration date is February 28, 2027. The recommendation for Section 43.01 is as follows:

> Article 43 – Duration
> 43.01 – Duration of Agreement
> This Agreement shall continue in full force and effect for the period July 1, 2024, through February 28, 2027, and shall constitute the entire Agreement between the parties. All rights and duties of both parties are specifically expressed in this Agreement. This Agreement concludes the collective bargaining for its term, subject only to a desire by both parties to agree mutually to amend or supplement it at any time. No verbal statements shall supersede any provisions of this Agreement.

Background on Appendix L: Pay Ranges

The Union proposed creating a new Step 1 for all starting pay scales to aid in recruitment of new employees and two additional steps at the high end to aid in retention. Both sides agreed to continue wage increases related to recruitment and retention that were negotiated during the expiring collective bargaining agreement. Management opposed the new step increases proposed by the Union.

The Fact Finder recommended keeping the wage increases that were negotiated mid-contract. He rejected the Union's proposal for step adjustments calling it unsustainable, but he stated the general wage increases he recommended may address the issues of recruitment and retention.

Fact Finder's Recommendations
APPENDIX L - PAY RANGES

As mentioned above, the modifications made to the pay ranges during the term of the terminating collective bargaining agreement are recommended and are a part of this Report and Recommendation. The parties will reorganize the pay ranges to include these modifications along with the general wage increase.

This Fact Finder knows from experience, as a SERB fact finder and conciliator, that the primary selling point for an effective recruitment program is monetary, starting wage and steps. This is likewise true for issues of retention. Fact Finders have found that Employers are willing to consider expanded wage proposals and lump sum payments based on concerns surrounding recruitment and retention. This is particularly true for law enforcement, firefighters, corrections and other public sector areas of employment. Nevertheless, just as the Union's general wage increase proposal is non-sustainable, so is the proposal to eliminate Step 1 and then to add two steps to pay ranges across the entire bargaining unit. The Employer

has calculated the cost over the term of a three year collective bargaining agreement. During the term of the terminating Agreement, the parties selectively negotiated modified pay ranges where issues of recruitment and retention were most critical. This is an approach which may serve the parties well, if needed, during the term of the successor agreement. To collaborate in this area is of the best interest of the parties. But it must be a collaborative effort as opposed to a unilateral one as proposed by the Employer in its proposed new Section 36.12 and which has been rejected as part of the Fact Finding Report and Recommendation. Many of the concerns of the Employer must be recognized. The concerns regarding compression and "leapfrogging," as raised by the Employer, are compelling. This Fact Finder's recommendation for a general wage increase is predicated, among other factors such as cost of living and 0% wage increases over a previous period of time, on issues of recruitment and retention. The recommended wage increases during the first two years of the Agreement may improve the recruitment and retention climate.

The Union's proposal for Appendix L, Pay Ranges, is not recommended.

Background on Appendix Q, Agency Specific Agreements: DRC & DYS

The State proposed eliminating Pick-a-Post and Podium Pick for the Department of Rehabilitation and Corrections in Appendix Q. Management also put forth a proposal to delete Pick-a-Post and modify Podium Pick for the Department of Youth Services. During negotiations on these issues, Management kept repeating its theme of "the right person, at the right place, at the right time." The State also cited safety concerns and job retention as reasons for seeking changes to Appendix Q.

The Union countered by pointing out that management did not provide data to support its proposal and that the State did not bring its concerns on these issues to the Union's attention during a number of labor management forums prior to collective bargaining negotiations.

The Fact Finder recommended no changes to Appendix Q. But, he did recommend a "Memorandum of Understanding" that directs the parties to form special labor management committees for both DRC and DYS. The committees will meet over a 90-day period to consider issues relating to Podium Pick using an Interest Based Bargaining process. The committee can make recommendations for changes, but the changes cannot be implemented unless mutually agreed to by both parties and ratified by the members.

Fact Finder's Recommendations APPENDIX Q - DEPARTMENT OF REHABILITATION AND CORRECTION

Paragraph B - Pick-A-Post

Among the many issues at impasse following negotiations and then submitted to the fact finding process, there have been three or four unresolved most critical proposals. In addition to wages, the State's proposals regarding Podium Pick and similar issues impacting the Department of Youth Services have been the most controversial. Evidence suggests that neither party considered counter proposals or "supposals" regarding these two issues involving the Podium Pick matter. There was no interest in determining common interests or common ground. The Employer has presented arguments which have some level of reasonableness. The Employer illustrated the concern of newer COs, those with less seniority and experience, being assigned, based on seniority, to difficult and challenging posts. The Employer raises the concerns of safety and security of staff and inmates. It makes sense. On the other hand, the Union argues that the Employer did not provide data or specfics to support its proposal and position to eliminate podium pick and never brought their concerns to the Union prior to negotiations. This argument has merit as well. No specific incidents regarding the lack of safety and security were brought forward. The Employer argues that the Fact Finder must base the Report and Recommendation on statutory factors and evidence. The Employer's position on the removal of Podium Pick has a level of reasonableness based on staff shortages and less senior COs being assigned to and exposed to challenging posts and assignments, but there was little in the way to illustrate specific examples of safety and security failures. The Employer emphasizes its bargaining theme of "the right people, in the right place, at the right time" and in particular regarding its Podium Pick proposal. The Fact Finder agrees that this underlining theme is well taken, but issues of this nature must also be subjects of collective bargaining. Evidence is clear that the parties have negotiated and implemented, based upon mutual agreement, the Podium Pick process to fill vacant and relief posts and assignments. Throughout the Employer's pre-hearing and post hearing briefs, the Fact Finder was reminded that significant consideration be given to the Ohio Administrative Code, Section 4117-09-05(K)(1). "The fact finding panel [historically one Fact Finder is generally appointed to hear and write a Report and Recommendation], in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117 of the Revised Code: (1) Past collectively bargained agreements, if any, between the parties;" The Employer has argued this point regarding a number of proposals by the Union which might change the status quo. The same is true here regarding the proposal to end Podium Pick. The Fact Finder cannot ignore the fact that this provision has a bargaining history going back to 2015 along with the negotiated agreements between the parties at the various correctional facilities across the state. The Fact Finder also takes note that the Employer's concerns regarding Podium Pick were not brought to the attention of the Union in a number of labor management forums prior to the instant collective bargaining negotiations.

All of this being considered, the Employer's proposal includes reasonable points as does the Union's response. The Employer's proposal to increase the cleaning fee based

on agreement to delete Podium Pick was not an equal trade. Nevertheless, it would have been advisable if the parties would have found a way to resolve this issue, to find some reasonable accommodation to concerns and issues. The Union rejected all elements of the Employer's proposal. It is possible that a recommendation at fact finding for one or the other position of the parties could resuilt in rejection of the Report and Recommendation.

With Section 4117-09-05(K)(1) as a guide for fact finding recommendations, the Fact Finder recommends current contract language for all provisions of Appendix Q related to Podium Pick with this qualification. This recommendation specifically includes a "Memorandum of Understanding" directing the parties to form a special labor management committee which will consider the Employer's proposals regarding provisions in Appendix Q related to Podium Pick; will consider the Union's objections and concerns regarding the issues raised by the Employer; and will consider bargaining history. Since this is a difficult and controversial matter, and also one of great importance, the recommended Memorandum of Understanding directs the parties to meet over a 90 day period to consider issues pertaining to Podium Pick. The parties will not engage in the traditional bargaining approach but will instead employ the Interest Based Bargaining process including one day of training in IBB for members of the special labor management committee. In typical IBB fashion, the interests of each party will be considered along with the development of solutions. Reaching consensus based on the IBB process will be utilized. The Memorandum of Understanding includes facilitation provided by a neutral/mediator who is skilled in this approach to dispute resolution. While facilitation is a part of the Memorandum of Understanding, the parties may select the facilitator of their choice. The Letter of Agreement is as follows:

MEMORANDUM OF UNDERSTANDING

PODIUM PICK LABOR MANAGEMENT COMMITTEE

DEPARTMENT OF REHABILITATION AND CORRECTION

The parties agree to the establishment of a special Labor Management Committee to consider issues raised during the most recent collective bargaining negotiations regarding Podium Pick as it applies to the Department of Rehabilitation and Correction, Appendix Q Paragraph B of the collective bargaining agreement. The parties shall engage in the Interest Based Bargaining (IBB) process as opposed to a traditional approach to bargaining and discussion. The parties agree to a neutral facilitator who is experienced and skilled in the Interest Based Bargaining process. The parties agree further that the first session shall involve training in the Interest Based Bargaining process as provided by the facilitator. The special labor management committee shall be comprised of six members appointed by OCSEA and six members appointed by the State in addition to the IBB facilitator. The special labor management committee shall meet no less than once every other week commencing November 15, 2024 and ending February 15, 2025. The term of the committee may be extended by mutual agreement of the parties. It is understood that modifications to Appendix Q, reached by the committee, require the appropriate ratification by the parties. It is also understood that current contract language shall be maintained for the term of the collective bargaining if the work of the special labor management committee does not result in modifications to Appendix Q.

The parties are free to select the facilitator of their choice if there is agreement to this recommendation. The Fact Finder recommends two possible facilitators. Both are aware that they have been recommended by the Fact Finder as possible IBB facilitators.

1. Joe Trejo: Mr. Trejo is a federal mediator with the Federal Mediation and Conciliation Service. His office is in Columbus, Ohio. He has significant experience in the IBB process. He also is familiar with the State of Ohio bargaining process. 614-286-4888

2. Thomas Kruglinski: Mr. Kruglinski is a former mediator and facilitator with the former State of Ohio Labor Management Councils in Columbus and Cincinnati areas. He is very skilled in the IBB process. Mr. Kruglinski has recently become an FMCS arbitrator with business addresses in New York and Ohio. He currently resides in the State of New York. He assisted in the development of the labor management committee process between the State and OCSEA a number of years ago. 914-4753601

Fact Finder's Recommendations APPENDIX Q - DEPARTMENT OF YOUTH SERVICES

Section 13.02, Appendix N

The proposals here and arguments for and against are parallel to those raised regarding Podium Pick within the Department of Rehabilitation and Correction. Evidence suggests that, like the DRC matter, the issues were never brought to the Labor Management Committee. The first time the Employer brought its concerns to the Union was during collective bargaining negotiations. Evidence suggests that, during negotiations, neither party considered counter proposals or "supposals." There was little substantive give and take involving the DYS provisions in the collective bargaining agreement. As the Employer argued regarding a number of the Union's proposals involving modifications to long standing contractual provisions, the Fact Finder is obligated to consider Section 4117-09-05(K)(1) of the Ohio Administrative Code in relationship to the proposals regarding relief Officers and Podium Pick for DYS bargaining unit employees. The Fact Finder is hesitant to consider modifications to long standing issues which are the product of collective bargaining especially in light of the fact that there has been no substantive

discussions between the parties prior to or during the current cycle of negotiations over these critical issues. Like the issues regarding DRC Podium Pick, these issues require constructive bargaining and resolution by the parties.

The Employer's arguments definitely contain an element of reasonableness such as assigning less senior JCOs to housing units and other assignments which are less challenging and to also match newer Officers with experienced Juvenile Correction Officers. A greater level of rotation is important. The loss of new JCOs within the first few months of employment is a serious concern as is the high level of mandation. Mr. Dandridge's detailed testimony, regarding these issues, was compelling. On the other hand, there was testimony which suggested that the elimination of Podium Pick could result in a number of resignations among JCOs. The concern of the Union regarding favoritism, in the making of assignments by supervisors, is not clearly addressed by the Employer's proposals.

The Union has argued that, rather than focus on its attempts, through negotiations, to make modifications to provisions of the collective bargaining agreement regarding the process of making relief officer assignments, more attention by the Employer should be directed at solving the lack of sufficient staffing within the DYS facilities. This Fact Finder agrees. In working with the grievance mediation process, the Fact Finder is aware of the critical need to recruit and retain JCOs and the challenges of consistent mandation. In at least one of the larger DYS facilities, mandated overtime is a serious issue as work – life issues are challenging. DRC Correction Officers are brought in to cover open shift assignments, and the facility is making lump sum payments to cover open shift assignments. The facility has been without an LRO for a period of time. A level of chaos was observed. The Union's argument regarding focus has merit.

With OAC Section 4117-09-05(K)(1) as a guide for the fact finding recommendation regarding the various provisions of the collective bargaining agreement involving the relief officer assignment process and Podium Pick, the Fact Finder recommends current contract language for all involved contract provisions contained in the Employer's proposal. This recommendation also and specifically includes a "Memorandum of Understanding" similar to the recommendation involving Podium Pick within DRC facilities. The recommendation directs the parties to form a special labor management committee which will consider the Employer's proposals involving Issue # 29 and the Union's objections and concerns regarding same. As recommended for the DRC special labor management committee, the parties will not engage in the traditional bargaining approach but will utilize the Interest Based Bargaining process which will involve one day of training in IBB for members of the committee. The Memorandum of Understanding includes facilitation by a neutral/mediator who is skilled in this approach to dispute resolution. While facilitation is a part of the recommendation, the parties may select the facilitator of their choice. The Fact Finder has suggested two neutrals, who are very experienced as facilitators in the IBB process, Joe Trejo and Thomas Kruglinski. Their contact phone numbers are included in the DRC recommendation, page 49 of this Report and Recommendation. The recommendation for the DRC special labor management committee includes sessions over a 90 day period commencing November 15, 2024 and ending February 15, 2025 unless extended by the parties. The recommendation here includes sessions over a 90 day period commencing March 1, 2025 and concluding on May 31, 2025 unless extended by the parties. The recommendation is not to have the two special labor management committees to meet concurrently in order that the parties pay specific attention to each individually.

MEMORANDUM OF UNDERSTANDING
PODIUM PICK LABOR MANAGEMENT COMMITTEE
DEPARTMENT OF YOUTH SERVICES

The parties agree to the establishment of a special Labor Management Committee to consider issues raised during the most recent collective bargaining negotiations regarding Podium Pick and relief assignments as it applies to Juvenile Correction Officers assigned to the Department of Youth Services. This may impact Appendix Q, Section 13.02, and Appendix N of the collective bargaining agreement as initially brought forward by the Employer during the most recent collective bargaining negotiations. The parties shall engage in the Interest Based Bargaining (IBB) process as opposed to a traditional approach to bargaining and discussion. The parties agree to a neutral facilitator who is experienced and skilled in the Interest Based Bargaining process. The parties agree further that the first session shall involve training in the Interest Based Bargaining process as provided by the facilitator. The special labor management committee shall be comprised of six members appointed by OCSEA and six members appointed by the State in addition to the IBB facilitator. The special labor management committee shall meet no less than once every other week commencing March 1, 2025 and ending May 31, 2025. The term of the committee may be extended by mutual agreement of the parties. It is understood that modifications to the provisions of the collective bargaining agreement, as noted above, which are reached by the committee, require the appropriate ratification by the parties. It is also understood that current contract language shall be maintained for the term of the collective bargaining agreement if the work of the special labor management committee does not result in modifications to these provisions.