

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

SEAB OPINION 94-013

In the Matter of

American Federation of State, County  
and Municipal Employees, Ohio Council 8, Local 3759

Employee Organization,

and

Mahoning County Health Department,

Employer.

CASE NUMBER: 94-MED-03-0201

OPINION

POHLER, Chairman:

This case comes before the Board on a Motion to Reopen Mediation File and, in the Alternative, Notice of Rejection of Fact Finder's Report filed by the Mahoning County Health Department (Employer). The issues before the Board are the proper procedures a fact finder must follow when a typographical correction is discovered in the fact finder report or when a clarification of the report is requested, and a determination of the status of the prior votes conducted on the original report when a clarification is granted.

For the reasons stated below the Board grants the Employer's motion in part and denies it in part. The fact-finding report acceptance letter issued by the Board is withdrawn; however, the request to direct the fact finder to meet with the parties is denied. Pursuant to Ohio Administrative Code (O.A.C.) Rule 4117-9-05(L), the fact finder is directed to issue by July 29, 1994, all necessary adjustments to the report. A new voting period is established and the parties are directed to conduct a vote on the adjusted report within seven days of its issuance. The voting procedure set forth in O.A.C. Rule 4117-9-05(M) and (N) applies.

The Board normally will not entertain a motion to reopen fact-finding subsequent to a vote being taken over the objection of the other party. Since the fact finder in this case issued a written adjustment of the report, the Board recognizes this action as an admission of an error or an omission. Once an error or omission is determined, the matter comes under the jurisdiction of this Board.

I.

STATEMENT OF THE CASE

The Board appointed Margaret Nancy Johnson as fact finder in this matter on May 15, 1994. The parties had selected her from a panel supplied by SERB. The fact finder issued the fact-finding report on or before May 18, 1994. Based upon the initial vote conducted and certified by the parties, the Bureau of Mediation issued a fact-finding report acceptance letter on June 3, 1994.

The fact finder subsequently discovered a typographical error in the Public Health Nurse pay schedule. In the schedule for all positions, each consecutive year is higher than the year before and less than the following year, with the exception of the one classification of Public Health Nurse which read:

Entry	1 year	2 years	3 years	4 years	5 years	6 years
13.25	13.65	14.06	14.48	15.91	15.36	15.82

Year four should have read 14.91.

When the fact finder discovered the typographical error in the report after its issuance, she contacted the parties individually to disclose the error. When discussing the situation with the Employee Organization's representative, a request was made by the Employee Organization for the fact finder to supplement the report by submitting an outline of the longevity schedule to the parties to correspond with or clarify the fact finder's recommendation on longevity pay. In response, the fact finder submitted a clarification of the longevity pay.

II.

ANALYSIS

O.A.C. Rule 4117-9-05(L) states in pertinent part: "Any subsequent change or adjustment by the fact-finding panel in the fact-finding report must be based upon error or omission and must be submitted by the fact-finding panel to the board for consideration and imposition of new time periods."

53

A typographical error which is not substantive or is readily identifiable, is not an "error or omission" as referred to in the above Rule and, thus, may be corrected without a special authorization by this Board. Furthermore, the voting period does not change. In this case the preferred way of communication is by conference call or simultaneous facsimile followed immediately by an original corrected report.

Under the above stated Rule, other errors or omissions which are of a substantive nature, or which without clarification the parties may not have a "meeting of the minds," must be authorized by the Board. If authorized, the Board will impose new time periods to vote on the adjusted fact-finding report.

In the case at issue, the typographical error was of the first type. The mistake in the wage scale could be readily identified by anyone reading the report. The Board finds no problem with the fact finder correcting this typographical error without asking for authorization from the Board. Accordingly, there was no need for new voting periods. However, the Board finds that clarification in regard to the longevity issue was of the second kind. The report was vague on this issue and, thus, it was an "error or omission" under the Rule. The fact finder should have come to SERB prior to her issuance of the clarification. As a result, new voting periods were warranted. Therefore, the Board denies the motion as to the typographical error and grants the motion as to the "clarification" of the longevity schedule.

The Employee Organization questions SERB's jurisdiction to consider the pending motion based upon the finding in State ex rel City of Parma v. SERB, No. 53402 (8th Dist Ct App, Cuyahoga, 5-7-87).

The decision in State ex rel City of Parma v. SERB can be distinguished as to the facts and the applicable rules of procedure from the case at hand. The Parma fact-finding case did not involve a report with an error or omission as is found in the case before us. The applicable rule for addressing a report with an error or omission, Ohio Administrative Code Rule 4117-9-05(L), was not effective until May 18, 1987.

Pottenger, Vice Chairman, and Mason, Board Member, concur.