

STATE EMPLOYMENT  
RELATIONS BOARD

2001 JUL 12 A 10: 37

IN THE MATTER OF FACT-FINDING

BETWEEN

COSHOCTON CMHA

AND

AFSCME AFL-CIO  
OHIO COUNCIL 8, LOCAL 343

BEFORE: Robert G. Stein

SERB CASE NO. 00 MED 01-0040  
(Decision delayed due to filing of  
election petition, and vote, Case #  
00-REP-09-0181, See Appendix 1)

PRINCIPAL ADVOCATE FOR THE UNION:

Stevan P. Pickard, Staff Representative  
AFSCME Ohio Council 8  
1145 Massillon Rd.  
Akron OH 44306

and

PRINCIPAL ADVOCATE FOR THE EMPLOYER:

Jonathan J. Downes, Esq.  
DOWNES & HURST  
300 South Second Street  
Second Floor  
Columbus OH 43215-5095

## INTRODUCTION

On May 30, 2000, a fact-finding hearing was held, and the parties presented to the Fact-finder six unresolved issues. Both Advocates represented their respective parties well and clearly articulated the position of their clients on each issue in dispute. The Fact-finder assisted the parties and mediated a settlement to all the unresolved issues in dispute. On June 5, 2000, the Union held a ratification session on the tentative agreement reached in mediation/fact-finding. The vote was split, 50% for and 50% against the tentative agreement. The parties subsequently asked the fact-finder to issue recommendations based upon the facts presented at the May 30, 2000, hearing.

However, prior to the Fact-finder completing and issuing his report, a decertification petition was filed with the State Employment Relations Board (SERB). The petition placed a stay on further work on the Fact finder's report. SERB ruled upon the petition, a certification election was held on February 28, 2001, and AFSCME remained the sanctioned bargaining unit representative (See Appendix 1). It has been more than one year since the fact-finding hearing, the filing of the petition, and the subsequent ruling by SERB.

In order to expedite the issuance of this report, the Fact-finder shall not restate the complete text of the parties' proposals on each issue but will instead reference the Position Statement of each party. The Union's Position Statement shall be referred to as UPS and the Employer's Position Statement shall be referred to as EPS.

## CRITERIA

### OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for Fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

**ISSUE 1      Article 11      VACATIONS**

**Union's position**

SEE UPS. Current language is ten (10) years and up. The Union is proposing an additional week of vacation at 15 years. The Union has proposed a similar increase in past bargaining.

**Employer's position**

SEE EPS. Maintain current level. The Employer points out that only two people would benefit from an increase in vacation. The Employer argues that the current schedule is already accelerated. This agency is funded by federal dollars and the Employer argues it works with counties but is not funded in the same manner. The Employer argues that the bargaining unit employees have a 35-hour workweek.

**Discussion**

After 10 years of service, employees receive 4 weeks of vacation. When compared to other employees in the State of Ohio, this is a competitive benefit. It is not uncommon for public employees to have to wait until their 15<sup>th</sup> year of employment or later to be at the 4-week level. However, it is also not unusual to have an additional vacation benefit for employees who achieve substantially more tenure with Ohio public employers. For example, the City of Coshocton (UX 8) provides 5 weeks of vacation after 18 years of service and 6 weeks of vacation after 23 years of service for full-time employees (40 hours per week).

The Employer made an effective point that the bargaining unit in CMHA works a 35-hour workweek and this should be considered when using comparable data. However, employees are still required to be at work during the same days as a 40-hour employee. When they get vacation it is based upon 35 paid hours and not 40 hours. More importantly, the parties did not appear to use this fact in past bargaining to arrive at the current vacation schedule. The vacation levels at one to four years, five through nine years, and over ten years appear to be no different than the schedules of other bargaining units where employees work a 40-hour workweek. Two people have the type of seniority that make them eligible for more vacation within a reasonable amount of time. Although this is a small aggregate number it represents more than 22% of the bargaining unit.

Other nearby comparables are the Coshocton County MRDD Board that provides its employees with 5 weeks of vacation after 26 years (UX 6). The Coshocton County Sheriff's bargaining unit is eligible for approximately 5 weeks of vacation after 15 years of service and 6 weeks of vacation after 25 years of service (UX 7). The Coshocton County Engineer bargaining unit must wait until 15 years of service to receive 4 weeks of vacation, but is able to achieve 5 weeks of vacation after 25 years of service (UX 9). The Tuscarawas County Department of Human Services and the Engineer's Office have the same vacation schedule (UX 2, 3). The Muskingum County Board of Commissioners/Department of Human Services provides employees with 5 weeks of vacation after 24 years of service. In Knox County Human Services employees receive 5 weeks of vacation after 23 years of service. On the average it appears that several neighboring comparable public sector jurisdictions provide for 5 weeks of vacation following another 10 years of service.

**Recommendation**

**Article 11.3 Accumulation of Vacation**

<b><u>Length of Service</u></b>	<b><u>Vacation</u></b>
<b>Less than one (1) year</b>	<b>No Vacation</b>
<b>One through four years</b>	<b>2 Weeks</b>
<b>Five through nine years</b>	<b>3 Weeks</b>
<b>Ten through nineteen years</b>	<b>4 Weeks</b>
<b>Twenty years and over</b>	<b>5 Weeks</b>

**ISSUES 2 Article 12 HOLIDAYS**

**Union's position**

SEE UPS. Add Martin Luther King (MLK) day. The Union points out that the Employer deals with Human Services departments in surrounding communities, and they have Martin Luther King Day off. The Union contends that some work is hindered because other entities are off on this day. Employees have problems with gathering information for interviews, argues the Union.

**Employer's position**

SEE EPS. The Employer contends that in July of 1985 the employees wanted to trade MLK day and Columbus Day for the day after Thanksgiving and an extra day at Christmas. The exchange was granted.

**Discussion**

The Employer's argument is persuasive in this matter, not because of what occurred more than 16 years ago, but because the bargaining unit already has a competitive number of holidays. The Employer cites past history in which Martin Luther King day was a benefit that was exchanged for other holiday time. However, this predated collective bargaining and there was no evidence presented that this decision was the equivalent of a ratification vote in a collective bargaining context. What supports the Employer's position more firmly is the current number of holidays (11). The bargaining unit has 11 holidays, which makes it competitive with neighboring public sector bargaining jurisdictions (UX 3-9). The Martin Luther King holiday is a very important holiday for a variety of reasons; however, at this point in time the comparative data does not support an additional holiday.

**Recommendation**

Maintain current language

<b>ISSUE 3 and 4</b>	<b>Article 15</b>	<b>SALARY AND PAYROLL</b>
	<b>New</b>	<b>AFSCME CARE PLAN PACKAGE</b>

**Union's positions**

SEE UPS. The Union agrees to 3% increases every year of the Agreement. Starting date of 4/1/00. The Union contends that the bargaining unit wants to establish the AFSCME CARE PLAN dental and vision benefits and are willing to give up a 2% crease

on wages to secure this benefit. The cost of the AFSCME Level II plan is approximately 22 cents per hour or about \$32.75 per month.

**Employer's position**

SEE EPS. The Employer is concerned about the cost of the coverage for the AFSCME healthcare benefit and the coverage available. The Employer argues that the AFSCME care plan passes on costs automatically. The Board is also concerned about the exclusionary nature of such a benefit.

**Discussion**

The parties have no disagreement over the level of wages over the next three years, nor do they disagree on retroactivity. Both parties agreed upon a 9% increase in pay over the life of the Agreement. The Union calculated that the AFSCME CARE PLAN would equal approximately 2% in wages to get established and be maintained. I find this calculation approximates the cost of the plan, considering the average salary is in the mid-\$19,000. The AFSCME healthcare benefits as proposed by the Union establish a fixed fee to be paid by the Employer. There is no indication that the benefit would be subject to increases that were not negotiated by the parties.

An attractive aspect of the AFSCME CARE PLAN is that it is a not for profit entity that is controlled jointly by a board of employer and employee representatives. It is not a for-profit insurance company that the parties have no control over. Healthcare is a major issue in the country and part of the problem is the fact of fewer providers with greater leverage over employers. Without viable healthcare alternatives employers will

find it exceedingly more difficult to even provide basic health coverage. In this case, the bargaining unit is willing to buy its own additional healthcare coverage. The Employer argues that the AFSCME CARE PLAN is exclusionary. However, that is the nature of contractual benefits and provisions in a collective bargaining context.

**Recommendation**

<b>Effective 4/1/00 (retroactive)</b>	<b>3% increase across the board</b>
<b>Effective 4/1/01 (retroactive)</b>	<b>1% increase across the board*</b>
<b>Effective 4/1/02</b>	<b>3% increase across the board</b>

**\*NEW ARTICLE                      AFSCME OHIO CARE PLAN**

- A. Effective August 1, 2001 the AFSCME Healthcare Plan shall be implemented for the purpose of providing Dental II and the Vision Care Plan to all eligible bargaining unit employees. Commencing the sixty-first (61<sup>st</sup>) day of employment all newly hired bargaining unit employees shall be covered by the Plan in accordance with the rules and regulations of the fund and all applicable federal and state laws.**
- B. Effective August 1, 2001 contributions to fund the plan shall be made by the Employer at a rate of \$32.75 per month per bargaining unit employee.**

## **ISSUE 5      EQUITY INCREASE**

### **Union's position**

SEE UPS. The Union argues that the Employer had a Section 8 Assistant and a Public Housing Assistant and it combined the positions creating a Program Assistant. The salary was averaged between the former two positions, contends the Union. The Union argues that the Employer never gave credit to the Program Assistant for having to possess the knowledge of the two positions.

### **Employer's position**

SEE EPS. The Employer wishes to maintain current language.

### **Discussion**

If an employee is expected to understand and perform work in two areas instead of one, it only stands to reason that they must acquire knowledge and expertise in both areas. The Union argues that the position of Program Assistant should be paid at the level of the Section 8 Coordinator/the Low Rent Coordinator. What is not clear, however, is whether an Assistant has the equivalent level of responsibility and similar duties to that of a Coordinator.

If a Program Assistant performs duties formerly performed by the Section 8 Assistant and the Public Housing Assistant it may not follow that this person is doing higher level work. However, the value of having to possess broader knowledge and making decisions based upon it may justify a higher salary than that which was previously provided. It is also not clear what amount of analysis the Employer made to determine a

proper rate of pay when the positions of Section 8 Assistant and Public Housing Assistant were combined. Inequity increases require careful examination. Without additional data, it is impossible for this Fact-finder to make a recommendation for an equity increase at this time. However, the parties need to address this issue with some finality.

### **Recommendation**

**The issue of an inequity adjustment for the position of Program Assistant shall be discussed by the parties within 30 calendar days (or another date mutually agreed to by the parties) following ratification of this Agreement. If the parties are unable to arrive at a resolution to this issue within 30 calendar days following this discussion, either party may refer the issue back to the Fact-finder for a formal recommendation.**

## TENTATIVE AGREEMENTS

All other issues tentatively agreed to prior to fact-finding are considered to be part of this report and are recommended to the parties.

The Fact-finder respectfully submits the above recommendations to the parties this 11<sup>th</sup> day of July 2001 in Portage County, Ohio.



Robert G. Stein, Fact-finder

*Carolyn M. Smith 7-11-01*

CAROLYN M. SMITH, Notary Public  
Residence Summit County  
Statewide Jurisdiction, Ohio  
My Commission Expires Nov. 30, 2003