

STATE EMPLOYMENT  
RELATIONS BOARD

2001 AUG 23 A 10: 35

FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
August 21, 2001

In the Matter of: )  
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 )  
The Holmes County Department )  
Of Human Services )  
 )  
and ) 01-MED-02-0091  
 )  
AFSCME Local 2336 )  
 )  
 )

APPEARANCES

For Local 2336:

Stevan Pickard, AFSCME Staff Representative  
David Williams, Local 2336 Bargaining Unit Representative  
Taryn Hanna, Local 2336 Bargaining Unit Representative

For the Department of Human Services:

Elizabeth Davis, Bargaining Representative  
Gortz and Associates  
Dan Jackson, Director Department of Human Services  
Cassandra Holtzmann, Attorney Department of Human Services

Fact Finder: Dennis M. Byrne

## Background

The parties to this Fact Finding are the employees of the Holmes County Department of Human Resources represented by AFSCME Local 2336 and the Holmes County Department of Human Resources. Prior to the formal Fact Finding Hearing there were numerous negotiating sessions between the parties; however, they were unable to come to an agreement and eleven (11) issues remain unresolved. The issues include 1) wages, 2) the wage schedule allocation list, 3) step increases on the pay scale, 4) pay supplements, 5) longevity pay, 6) standby pay, 7) earned time, 8) long term leave, 9) calculation of the years of service, 10) AFSCME care, and 11) Fair Share Fee. There was an extended mediation session conducted prior to the hearing, and a tentative agreement was reached on the issues. The Fact Finding Hearing was conducted at the Holmes County Department of Human Services on July 26, 2001. The hearing was convened at approximately 10:00 AM and adjourned at 4:15 PM.

The Fact Finder wishes to state that he appreciates the courtesy with which he was treated. Additionally, both parties conducted the Hearing with the greatest professionalism, and the conduct of the parties toward the Fact Finder and each other was exemplary.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria, which are set forth in Rule 4117-9-05, are:

- (1) Past collectively bargained agreements, if any.
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
- (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
- (4) The lawful authority of the public employer.
- (5) Any stipulations of the parties.
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agree-upon dispute settlement procedures in the public service or private employment.

The Report is attached and the Fact Finder hopes the discussion of the issues is sufficiently clear to be understandable. If either or both of the parties require a further discussion, however, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

## Introduction:

There are two reasons why the parties could not come to an agreement. First, they have a philosophical disagreement over the payment of a "Fair Share Fee." A number of the employees do not belong to the Union, and the Department Administration does not believe that these individuals should be required to pay the Fair Share Fee that the Union proposes.

The issues surrounding the payment of a Fair Share Fee are contentious. Unions always believe that all individuals who gain from the efforts of the Union when it negotiates a contract should contribute to that effort. That is, the Union sees the fee as a payment for services rendered. In addition, the Union pointed out that in the case of a grievance the affected person has the right to representation. Therefore, the Union sees Fair Share Fees as a matter of equity. Moreover, the Union pointed out that there is always some friction present within the labor force when some employees are dues paying members while some employees pay no dues, and they work side by side.

Management, on the other hand, always sees the issue as a matter of free choice. Management believes that there is no reason to force a person to join a Union if he/she does not want to become a member. This point of view equates the payment of a Fair Share Fee with the imposition of union dues on individuals who do not wish to join a Union. Philosophically, the Department Administration believes that it is each employee's right to choose whether or not to join the Union, and the Administration emphatically stated that it would not be a party to abrogating a person's right to choose.

These universal positions mirror the positions of the parties in this case. The Union wants all people who benefit from the collective bargaining process to contribute to the Union. Management simply believes that it should not be a party to coercing individuals who do not want to belong to the Union into paying money to the Union, regardless of whether the contribution is called dues or a Fair Share Fee.

The second reason why the parties could not come to an agreement is a disagreement over wages and benefits. The membership contends that they have been falling behind economically over the last few years, and they want to catch up. On the other hand, the Department is facing severe budgetary cuts and believes that it must hold the line on raises, etc., in order to guarantee that it will be able to fulfill its mission over the next few years. The Department stated that it faces cuts of up to twenty-five percent (25%) over the next two years and there is a possibility of further cuts in the third year of the prospective agreement. This spectre was ever present during the negotiations and affects most issues that remain unresolved between the parties. Consequently, the size of the wage and benefit package and other economic considerations are the main issues dividing the parties in their attempt to finalize a new contract.

It must be stated, however, that the parties have a strong, viable relationship. The parties realize that they have common goals when dealing with the public. Consequently, there is little of the rancor that often accompanies arduous negotiations. Both sides strongly stated and defended their positions;

however, they also treated each other with dignity and respect. Both sides understand that they must work together over the coming years for the betterment of themselves, the Department, and their clients.

**Issue:** Article 20 – Section 1: Years of Service

**Union Position:** The Employer's proposed language is acceptable to the Union.

**Department Position:** The Employer wishes to clarify the language in Articles 20 and 26 so that a year of service is defined as 26 biweekly pay periods.

**Discussion:** This falls under the heading of "housekeeping." The current contract references the wrong section of the Ohio Revised Code when discussing years of service. The Employer's suggested language will clearly define a year of service. The Union agrees with the Department's logic and position on this issue.

**Finding of Fact:** The suggested language simply clears up a possible ambiguity in the contract and makes no substantive change in the agreement.

**Suggested Language:** Article 20 – Section 1:  
\*"Years of Service" is defined as the employee's whole years, twenty-six (26) consecutive bi-weekly pay periods, as calculated from the date of hire."

**Issue:** Article 20 – Section 2: Earned Time.

**Union Position:** The Union demands that the maximum number of hours that can be accrued go from 280 hours to 320 hours.

**Department Position:** The Department's demand is for current language.

**Discussion:** The parties have instituted an Earned Time policy. Many contracts contain various paid time off provisions. For example sick leave, vacation leave, etc., are often contained in separate articles. In this contract all paid leaves are subsumed under the heading earned time. Therefore, the employees accrue time that is placed in a bank and that time is used whenever the employee is absent from work for any reason. The Union's demand is for an increase in the Earned Time from two hundred and eighty (280) hours to three hundred and twenty (320) hours. The Union believes that the employees have a need for time off in case of illness, vacation, or for other personal reasons. The Union pointed out that it had demanded an increase in both holiday time and the accrual rate for earned time and had taken those demands off the table because of the employer's financial position. However, the Union argued that there is a need for

earned time and that its demand amounts to eight (8) weeks of potential pay time away from the job.

Eight (8) weeks paid time off seems like a large amount of paid time off. But, if an employee has worked long enough to have earned a number of weeks of vacation; and if, for example, in the same year he/she gets the flu, then the earned time bank may be depleted very quickly. The Union argues that the demand has relatively little cost to the employer because most of the hours in the earned time bank are used during the course of the year.

The Department argued that an increase in the earned time benefit would increase the employer's unfunded liability. This is true. However, the Union's demand is not excessive considering the number of ways that earned time can be used. Given the fact that all paid time off in this contract is placed in an earned time bank, the Fact Finder believes a maximum of three hundred and twenty (320) hours is reasonable.

**Finding of Fact:** The parties have agreed to have all paid time off accrued under the heading of "Earned Time." This time is used for vacation, illness, personal time, etc. Given the myriad uses of earned time, the Union's demand for an increase in the earned time bank is reasonable.

**Suggested Language:** Article 20 - Section 2:  
Effective May 31, 2001, Earned Time will accrue to a maximum of three hundred and twenty (320) hours. Employees who reach the maximum three hundred and twenty (320) hours of Earned Time shall not accrue any additional time until they have reduced, through usage, their total Earned Time bank.

A second consideration arises at this point. The parties agreed to increase the Earned Time Bank so that employees with a need for more time off would have a bank of hours to draw on. However, a question arises about the disposition of these hours when an employee leaves the employ of the Department of Human Services. The parties did not make any change in the current buyout provision of the contract; therefore, the buyout is capped at two hundred and eighty hours.

**Suggested Language:** Article 20 – Section 4:  
Earned Time used shall be paid at the employee's regular rate of pay. Upon separation from the Agency for any reason, including retirement or death, employees with a minimum of one (1) year of service may convert Earned Time to cash at the employee's current rate of pay *up to a maximum of two hundred and eighty (280) hours*. In the case where the separating employee is accepting other public employment, Earned Time may be converted to "sick leave" on an hour for hour basis

**Issue:** Article 20 – Section 5

**Union Position:** The Union submitted no language on this issue.

**Department Position:** The Department wishes to delete most of Section 5 because it is outdated.

**Discussion:** Article 20, Section 5 deals with the cash-out of Banked Sick Leave balances. During the last round of negotiations the parties eliminated the changed Banked Sick Leave program and replaced it with an Earned Time benefit. Section 5 outlines how the time in the Banked Sick Leave account could be cashed out, converted to Earned Time, or otherwise used. As such, Article 5 deals with a program that is no longer in place. Therefore, the Department's request to delete most parts of Section 5 is unobjectionable because it has no practical significance.

**Finding of Fact:** Article 20, Section 5 deals with Banked Sick Leave. Banked Sick Leave has been deleted from the contract and has been replaced by an Earned Time program.

**Suggested Language:** Section 20 – Section 5:  
Bargaining unit employees shall cease to accumulate Banked Sick Leave (BSL) as of May 31, 1998. BSL not cashed-out or converted, as of August 21, 1998, may be used to supplement Long Term Leave (See Section 6, below), cashed out at retirement (See Section 7, below) or, in the case where the separating employee is accepting other public employment, may be converted to "sick leave" on an hour for hour basis.

**\*Note:** There are still references to Banked Sick Leave at various places in Article 20. The Fact Finder recommends that the parties check to see if these references should remain in the contract.

**Issue:** Article 20 – Section 6: Long Term Leave.

**Union Position:** The Union did not propose language on this issue.

**Department Position:** The Department demand is that an employee must have completed one year (1) on the job to be eligible for long-term leave.

**Discussion:** The proposed contract specifies a one-year probationary period for certain job classifications. The current contract specifies that an employee is eligible for long term leave at the end of his/her probationary period. In order to insure that all employees are treated the same with regard to long term leave, the Department wishes to add a sentence to Article 20.06 that specifically states that the employee must have completed a year on the job, i.e., completed the probationary period in all cases to be eligible for long term leave. This one-year period mirrors the language on educational leave found in Article 21.

The Department's suggested language is similar to language found elsewhere in the contract. In addition, a one-year period on the job as a qualifying condition for payment of certain benefits is not at all unusual in contracts in both the public and private sectors. Furthermore, the parties to this agreement have used the one-year qualifying period elsewhere in their agreement. Consequently, the Fact Finder is suggesting inclusion of the language into the proposed agreement.

**Finding of Fact:** A one-year qualifying period for the payment of some leaves is the past practice of the parties to this agreement.

**Suggested Language:** Article 20 – Section 6. (Second Sentence)  
To be eligible for Long Term Leave, an employee must have completed one year (1) of employment with the Holmes County Department of Human Services, and submit proof of disability by a licensed physician indicating that the employee is disabled and unable to work, and estimating the date on which the employee may be able to return to work...

**Issue:** Article 22 – Section 5: AFSCME Care.

**Union Position:** The Union demands that an employee become eligible for AFSCME care on his/her sixty-first (61) day on the job.

**Department Position:** The Department demands the status quo on this issue, i.e., employees are eligible for the insurance after six (6) months on the job.

**Discussion:** Historically the parties' agreement specifies that a new employee is eligible for the AFSCME care insurance at the end of his/her one hundred and eighty day probationary period. However, during this round of negotiations, the parties have agreed to extend the probationary period to one (1) year for some job classifications. Therefore, under the new language in the proposed contract, some employees would be denied access to the supplemental insurance for a full year.

The Union's demand would allow probationary employees to be covered by AFSCME care after two months on the job. This does not follow the usual practice of the parties to this agreement. The testimony at the hearing showed that the past practice of the parties has always been that new employees become eligible for the benefit at the end of their one hundred and eighty day probationary period. It is possible that the new probationary period may work a hardship on some new hires with respect to supplemental health insurance. In recognition of this fact, the Department is offering to pay the AFSCME Care premium after an employee completes his/her probationary period or after one hundred and eighty (180) days whichever comes first. This offer mitigates any potential problems caused by the longer probationary period and conforms to the parties' usual practice.

The Fact Finder understands the Union's position on this issue; however, without a showing that the current practice is causing or has caused a hardship on the employees, he does not believe that the Union proved a need for a change in the benefit. This is especially true because the demand will have some (small) financial impact on the Employer and the record shows that the Employer faces a financial problem in the coming years.

**Suggested Language:** Article 22 - -Section 5:

Effective June 1, 1998, the Employer shall pay to the Ohio AFSCME Care Plan thirty three dollars and twenty-five cents (\$33.25) per month for each eligible employee in the bargaining unit for the purpose of the plan providing each eligible employee with Dental Care Benefits Level II, Vision Care Benefits and Hearing Aid Benefits. The effective date of AFSCME Care Plan Coverage eligibility will be the first full month following the completion of six (6) months of employment. A Reconciliation Report on forms provided by the Plan shall be sent along with the contribution.

**Issue:** Article 26 – Wages

**Union Position:** The Union demands 4% per year in each year of the proposed contract.

**Department Position:** The Department is offering 2.5% in the first year, 2% in the second year, and 2% in the third year of the prospective agreement.

**Discussion:** Both parties strongly defended their positions on the wage issue. The Union argued that it had accepted raises in the past that seemed reasonable. However, because of changes in the medical plan that led to increased costs to the membership and the depressed state of the economy, the financial position of the membership has eroded over the last three years. The Union believes that it must achieve a substantial settlement to help the membership sees gains in their real (inflation adjusted) income.

The Department Administration admits that there is some merit to the Union's position. However, the Administration stressed that its budgetary problems constrained the size of any wage increase that it could fund. The Department believes that it would be fiscally irresponsible to meet the Union's demand or to increase the offer on the table. Management did not claim an inability to pay, but it did state on numerous occasions that it did not know where the money to pay raises would come from.

This is a situation where both sides have legitimate arguments to support their respective positions. The testimony showed that the Union membership's financial position has worsened over the last few years. Consequently, the bargaining committee argued strongly that the membership deserved a significant raise. On the other hand, the Department is facing a cut of approximately 25% over the next few years and the prospect of even deeper

cuts in the third contract year. As a result Management believes that the budgetary problems facing the Department preclude paying raises over 2% to 2.5%.

To their credit both sides attempted to find common ground and after arduous negotiations the Department administration recognized the legitimacy of the Union's position and raised its offer to 3% per year. The Union negotiating committee realized that the Department's financial condition limited what could be achieved. Therefore, they indicated willingness to compromise somewhat on their demands and grudgingly agreed that three percent (3%) per year is a reasonable raise, all things considered.

The Fact Finder recognizes the fact that the Union membership has seen a decrease in their relative position vis-à-vis other employees within the County and absolutely when compared to other employees in the private sector. However, the budgetary shortfall facing the Department over the next three years effectively limits what the Department can offer in terms of wage increases. Consequently, given the entire record, the Fact Finder believes that the Department's offer is fair.

**Finding of Fact:** The Department faces significant fiscal problems over the next few years that limit its ability to meet the Union's wage demands.

**Suggested Language:** The wage scale shown in Appendix A of the contract shall be increased by 3% per year.

**Issue:** Article 26 – Section 2: Wage Schedule Allocation List

**Union Position:** The Union was unwilling to agree to this demand until all the issues were settled.

**Department Position:** The Department wishes to modify job classification titles to agree with new Department of Administrative Services classification titles.

**Discussion:** The parties indicated that they had reached a tentative agreement to modify existing classification titles and add new classifications under the Recognition Clause (Article 2, Section 1). They have agreed to add four (4) new classifications to the bargaining unit and renumber the pay grade assignment designations to allow for two (2) new pay ranges at the beginning of the pay structure. In addition, Account Clerks will be reclassified to a higher-level position. Therefore, all references to employees in current pay ranges must be modified.

The Wage Schedule language must be changed to agree with the changes made under Article 2. The employer wishes to hire into new, entry-level positions during the life of the proposed contract and is willing to designate these positions as bargaining unit positions. This implies that it is necessary to add

two (2) new pay ranges at the bottom of the pay structure to allow for appropriate compensation for the two new entry-level positions.

**Finding of Fact:** Given the changes that the parties have already agreed to in Article 2, it is necessary to change the Wage Schedule Allocation List to come into agreement with the new job classifications.

**Suggested Language:** The language in Article 26, Section 2 shall be amended to show:

<u>Pay Grade</u>	<u>Job Title</u>
10	Mail Clerk/Messenger, Unit Support Worker 1
11	Telephone Operator, Unit Support Worker 2, Vehicle Operator
10	Custodial Worker, Clerical Specialist 1
11	Eligibility/Referral Specialist 1, Investigator 1, Fiscal Specialist, Clerical Specialist 2
10	Eligibility/Referral Specialist 2, Investigator 2, Social Services Worker 1, Account Clerk 1
12	Social Services Worker 2, Management Information Specialist, Account Clerk 2

**Issue:** Article 26 - Section 3: Step Increases

**Union Position:** The Union's position on this issue mirrors its position on the Wage Schedule List. That is, the Union has no real objection to the proposed language, but is unwilling to agree to the changes in Article 25.03 until there is an agreement on all outstanding issues.

**Department Position:** The Department proposes changing the current language so that bargaining unit members will be eligible for a step increase if they have completed six (6) months on the job by January 1<sup>st</sup>.

**Discussion:** Historically the probationary period for bargaining unit positions has been six (6) months. The parties have agreed to change the probationary period to one (1) year for some positions. Therefore, the purpose of the proposed language is to allow bargaining unit members to earn a step increase consistent with the parties' past practice.

**Finding of Fact:** The proposed change allows union members to earn a step increase after six (6) months on the job, which is their current practice.

**Suggested Language:** Article 26 – Section 3, Paragraph 2.

"Newly hired or promoted employees shall advance to the next step of the pay grade at the start of the first pay period which includes January 1 which succeeds *the first six (6) months of employment.*"

**Issue:** Article 26- Section 3 and Section 8: Pay Supplements

**Union Position:** The Union agreed with the Department's proposal on this issue, but was unwilling to agree to this issue until all the open issues were resolved.

**Department Position:** The Department has proposed increasing the Master's Degree supplement to \$1.00 per hour and the professional pay supplement for Licensed Independent Social Workers and Licensed Social Worker to \$2.00 per hour.

**Discussion:** The Department has faced some problems with hiring and retaining qualified personnel necessary for the functioning of the agency. The Department believes that it must increase the pay of both Licensed Social Workers and those employees who have earned a Master's degree in order to be competitive in the labor market. In addition, the Department believes that the cost of this payment to the employer will be minimal because there will be lower turnover, training, and advertising costs. That is, lower charges in these areas will offset the higher labor cost.

From the Union's point of view, this is a pay increase for certain classifications. In addition, it is an incentive for current staff to increase their human capital. In many ways this is a "win-win" situation.

**Finding of Fact:** The Department needs to increase the pay of more highly educated employees in order to be able to hire and retain a competent staff.

**Suggested Language:** Article 26 – Section 3, paragraph 4.

An employee in Pay Grade 10 who holds a Bachelor's degree from a nationally accredited and recognized institution will receive an hourly pay supplement of forty cents (\$.40) per hour, effective with the start of the pay period following the date the degree is verified by the Employer. Employees in Pay Grade 12 who earns a Master's degree or Juris Doctorate degree from a nationally accredited and recognized institution will receive an hourly pay supplement of one dollar (\$1.00) per hour effective with the start of the pay period following the date the degree is verified by the Employer.

**Suggested Language:** Article 26 - Section 8. Professional Supplements  
Upon presentation to the Employer of acceptable professional credentials, employees in Pay grades 10 or 12 shall receive hourly pay supplements of twenty-five (\$.25) for valid and current certification as a Licensed Social Worker (LSW) by the State of Ohio.

Upon presentation of acceptable professional credentials to the Employer, employees in pay Grade 12 shall receive hourly pay supplements of two dollars (\$2.00) for valid and current certification as a Licensed Independent Social Worker by the State of Ohio.

**Issue:** Article 26 – Section 6. Longevity

**Union Position:** The Union's original demand was for the following language. "For the purpose of determining Longevity Pay "Years of Service" will be equivalent to a calendar year, determined by the employee's date of hire with the Agency (anniversary date). Changes in Longevity Pay shall occur at the beginning of the first pay period following the employee's (accrual) anniversary date of hire."

The second part of the Union's demand is that longevity pay shall be accumulated starting on day one (1) of employment with the Department versus the current system that begins the accrual on the first anniversary date of hire. That is, the Union demands that the calculation of time for the payment of longevity begins on the first day on the job as opposed to the current system that starts the accrual after the employee has been on the job one year.

**Department Position:** The Department wants to modify the language to clarify that a whole year of employment is twenty-six (26) biweekly pay periods. Other than that change the Department desires no change to the current language.

**Discussion:** The first part of the Union's demand is related to how the parties calculate years of service. This issue has been clarified by the agreement to define a year as twenty-six (26) biweekly pay periods. That is, rather than specify the anniversary date as the benchmark for a year of service, the parties have agreed to use twenty-six (26) biweekly pay periods to define length of service. In this specific situation the two approaches should have the same result.

The second part of the Union's demand relates to the length of time that must be worked before the employees receive longevity pay. The current contract specifies that the employees begin to receive longevity payments at the end of five years of employment, i.e., there is no payment for 0 to 4 years service. The Union's demand would have the effect of starting the payment one year earlier.

The Department objects to this for two reasons. First, there is a cost consideration. The Department faces a budgetary problem in the coming years and increasing the longevity payout would worsen an already bad situation. Second, the Department believes that the current schedule rewards loyal service and that the current scale is reasonable. That is, the Department argues that paying longevity after five years on the job is reasonable. The Department

believes that reducing the time needed to collect longevity pay weakens the argument that a person is being rewarded for years of loyal service.

There is some merit to both of the Department's objections to the Union's demand. However, a long discussion of the issue is not needed at this time because the current longevity scale listed in the contract is not unreasonable when compared to other contracts in both the public and private sectors. In addition, the Department's financial condition is such that the Fact Finder cannot recommend an increase in the longevity payment at this time.

**Finding of Fact:** The Union did not prove that the longevity scale in the current contract requires the membership to wait an unusual amount of time to collect longevity payments. In addition, the Department's financial position precludes a recommendation for an increase in an ancillary payment without a showing that there is an overwhelming need for such an increase.

**Suggested Language:** 1) \* Years of Service is defined as the employee's whole years as of December 31 of each year. One whole year of Service is equivalent to twenty-six (26) biweekly pay periods. The rate of longevity for each calendar year shall be effective with the first pay period that includes January 1.

2) No change in the current accrual rate for longevity pay.

**Issue:** Article 26 – Section 7: Standby Pay

**Union Position:** The Union agrees with the Department's position on this issue, but was unwilling to sign off on the language until all the outstanding issues were settled.

**Department Position:** The Department desires to add an on call supplement of \$.50 per hour to the pay of the employees who are on call for Child Abuse Protective Services (CAPS). In addition, the Department offers to increase the stand by pay to \$25.00 per day for weekdays and \$40.00 for Saturdays, Sundays, and holidays for individuals on stand by for CAPS.

**Discussion:** The Department pointed out that the CAPS team members are expected to be on call for a high number of days per month. When on-call the team is expected to show independent judgment in high-risk situations. The combined stress of frequent on-call days and the personal liability concerns stemming from the need to exercise independent judgment are seen as negative factors in recruiting and retaining CAPS staff. The Department believes that some incentive is needed to help compensate the CAPS team members for the stress they face daily.

The Union agrees with this position. The real discussion came down to a debate on whether the incentive should be \$.75 or \$.50 per hour. The Department stated that it wished it could afford \$.75 per hour, but it argued that

with a wage package of 3% per year for each year of the proposed contract that it cannot afford \$.75 per hour. After hearing the entire discussion the Fact Finder agrees with the Department on this issue.

**Finding of Fact:** CAPS team members face an inordinate amount of stress in performance of their duties. In order to compensate them for this stress and to reduce turnover, there is a need to increase their pay.

**Suggested Language:** Section 7. Standby Pay

Standby Pay is defined as payment for an assignment that requires an employee to be immediately available on a continuous basis during his/her normal off-duty hours. All employees assigned to the Child Abuse Protective Services team (CAPS) who are classified under current Department of Administrative Services Classifications as Social Service Worker 1 or 2 shall be considered in standby status.

A general standby supplement of fifty-cents (\$.50) per hour shall be added to the hourly rate of pay of all employees who are required to carry a pager, or other electronic communication device, as a regular and on-going condition of employment.

In addition, an employee on on-call status, having the primary on-call responsibility of contact and call out, shall receive on-call pay in the amount of twenty-five dollars (\$25.00) per day for weekdays, and forty dollars (\$40.00) per day for Saturdays, Sundays and holidays. Should an employee be called to work during his/her on-call status, he/she shall receive the appropriate rate of pay per hour, including general standby supplemental pay, in addition to call-in pay.

**Issue:** Article – New: Fair Share Fee.

**Union Position:** The Union demands that Fair Share Fee language be included in the contract.

**Department Position:** The Department rejects the Union's demand for a Fair Share Fee.

**Discussion:** The relative merits of Fair Share Fees have been discussed numerous times. The arguments pro and con have spawned numerous court cases, polemics, and articles in academic journals. The consensus of this discussion is that a Fair Share Fee is basically a fee for service and as such most commentators find payment of the fee unobjectionable. The reason is that without a fee for service there is a classic "Free Rider" problem, whereby a number of beneficiaries of the Union's efforts get the benefits of those efforts at

no cost. The argument against a Fair Share Fee is that it forces some members of the work force to "join" the Union and pay dues against their will. This viewpoint equates a Fair Share Fee with union dues. These classic positions are essentially the parties' positions in this case.

The Fact Finder believes that a fee for service is a reasonable payment. In some cases, the Union negotiates better terms for all employees than the employees could expect to receive in the absence of a union. In this particular negotiation, the wage increase negotiated by the Union is greater than the increase that the Department offered. If all the facts of the current situation are considered, it is questionable whether the employees could have achieved a 3% per year increase without the help of the Union.

Nonetheless, the department administration feels strongly, for philosophical reasons, that a Fair Share Fee is not acceptable. While the Fact Finder does not fully understand this position (again a fee for service seems reasonable), the fact remains that the parties have never had Fair Share Fee language in their agreement. Given this fact and considering the Department's strong objections to including Fair Share Fee language in the contract, the Fact Finder is not recommending such language at this time.

**Finding of Fact:** The parties have a stable relationship and have never had a Fair Share Fee clause in their contract. Consequently, given management's objections to the inclusion of the fee, the Union did not prove that the fee is necessary.

**Suggested Language:** None.

**Issue:** Retroactivity

**Union Position:** The Union demands that the new contract provisions be retroactive to June 1, 2001.

**Department Position:** The Department does not wish to pay wages and benefits retroactive to June 1, 2001.

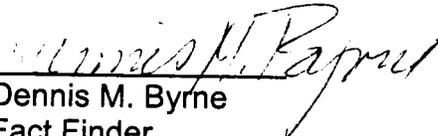
**Discussion:** A disagreement here is more apparent than real. Given the looming financial problems that face the Department, the Department administration argued that there was only so much money that it could offer. Consequently, the Department was not against paying retroactive wages and benefits, but in order to offer three percent (3%) in the third year the Department argued that it could not afford all of the improvements in the contract and retroactivity. The Union negotiating committee made the decision that extra money in the base wage and other improvements would be more valuable to the membership than a payment of two months retroactivity. Therefore, the decision was made by the parties to place the available dollars in the other areas and the

base rate. Therefore, the provisions of the contract will take effect upon ratification.

**Finding of Fact:** The Department's financial position compelled a tradeoff between retroactivity and increases in the base wage and other improvements in wages and benefits. The parties agreed to place the available dollars in the base rate and other improved benefits.

**Suggested Language:** Not Applicable

Note: The parties stated that they had reached agreement on a number of issues during the fact-finding hearing. All of these TA's and signed issues shall be included in the prospective contract.

  
Dennis M. Byrne  
Fact Finder