

IN THE MATTER OF FACT-FINDING 2001 OCT -5 AM: 15
BETWEEN

LAKE COUNTY DEPARTMENT)	
OF JOB AND FAMILY SERVICES)	CASE NO. 01-MED-03-0275
)	
AND)	<u>FINDINGS</u>
)	AND
)	<u>RECOMMENDATIONS</u>
COMMUNICATIONS WORKERS)	
OF AMERICA)	

JAMES M. MANCINI, ARBITRATOR

APPEARANCES:

FOR THE AGENCY

Gary C. Johnson, Esq.

FOR THE UNION

Ed Phillips

SUBMISSION

This matter concerns fact-finding proceedings between the Lake County Department of Job and Family Services (hereinafter referred to as the Employer or Agency) and the Communications Workers of America (hereinafter referred to as the Union). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. Fact-finding proceedings were held on August 10 and 27, 2001.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse with several being tentatively agreed upon by the parties. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

This fact-finder in rendering the following findings of fact and recommendations on the issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117-14(G)(6)(7). Further, this fact-finder has taken into consideration all reliable evidence presented relevant to the outstanding issues before him. The parties waived a formal hearing and agreed that this fact-finder could issue his recommendations in summary fashion. Therefore, the following recommendations are submitted in accordance with that understanding.

1. WAGES

The Union proposes a 6% wage increase in the first year of the Agreement, 5% in the second year, and 4% in the third year of the Agreement. These increases would be for employees in Groups A, B, and D classifications as well as for those who are off scale. With respect to Group C employees, the Union agrees with the Employer's proposal submitted during mediation. The Employer's wage proposal is for increases of 3.5% for each year of the Agreement.

The Union argues that its wage proposal is justified based upon comparable wages found in other similarly situated agencies. Currently, the wages here fall below the average wage for comparable employees in the area. The Union submits that it has attempted to address the high turnover rate within the Agency. In addition, the wage scale proposed would induce highly qualified employees to remain with the Agency.

The Employer contends that its wage proposal is reasonable and in line with the general increases provided in the region. The Employer submits that its wage offer is more than adequate based on the average wages paid to comparably situated employees in the area. It also notes that the inflation rate has been relatively low and therefore no further increase beyond that proposed is justified.

DISCUSSION AND RECOMMENDATION – Based upon a careful review of the evidence and arguments presented by the parties, this fact-finder would recommend the wage increases which are reflected on the attached Appendix D. That is, effective July 1, 2001 all employees should receive a wage rate increase of 4% or the wage rates

contained in the Salary Schedule set forth in Section 1 of Appendix D. Effective July 1, 2002 all employees are to receive a wage increase of 4% or the wage rates contained in the Salary Schedule set forth in Section 2. It should be noted that a new Step 3 is being added to the Salary Schedule in the second year of the Agreement. Finally, effective July 1, 2003 employees should receive an increase of 4% or the wage rates set forth in Section 3 of the Salary Schedule. A new Step 4 is added to the Salary Schedule in the third year of the Agreement.

This fact-finder has determined that the recommended wage increases would serve to bring the wages of the bargaining unit here in line with the average wages provided to those in comparable positions in the region. In most instances, the new wage schedule would provide significant increases to those in the unit. In making the recommendations, this fact-finder has also attempted to address the concern over the high turnover rate within the Agency. This fact-finder believes that the recommended wage increases would not only address that problem but also would serve to induce highly qualified employees to remain with the Agency. Considering the current state of the economy which indicates that there could be a prolonged recession and possible reduced revenues for the Agency, this fact-finder believes that the recommended wage increases are more than reasonable.

RECOMMENDATION

It is the recommendation of this fact-finder that there be general wage rate increases in each year of the Agreement as set forth in the attached Appendix D.

APPENDIX D

Section 1: Effective July 1, 2001, all employees will receive a wage rate increase of four percent (4%) or the wage rates contained in the below salary schedule, as appropriate.

	<u>Step 1</u> <u>Probationary</u>	<u>Step 2</u> <u>Non-Probationary</u>
GROUP A		
Skill Level 1	\$13.73	\$14.42
Skill Level 2	\$14.44	\$15.17
Skill Level 3	\$15.22	\$15.99
GROUP B		
Skill Level 1	\$10.26	\$10.78
Skill Level 2	\$11.35	\$11.92
Skill Level 3	\$11.70	\$12.29
GROUP C		
Skill Level 1	\$8.61	\$9.04
Skill Level 2	\$9.33	\$9.80
GROUP D		
Skill Level 1	\$ 9.91	\$10.41
Skill Level 2	\$12.77	\$13.41

APPENDIX D (cont.)

Section 2: Effective July 1, 2002, all employees will receive a wage rate increase of four percent (4%) or the wage rates contained in the below salary schedule, as appropriate. Employees to be placed on Step 3 after one (1) year at Step 2.

	<u>Step 1</u> <u>Probationary</u>	<u>Step 2</u> <u>Probationary</u>	<u>Step 3</u>
GROUP A			
Skill Level 1	\$13.73	\$14.42	\$15.15
Skill Level 2	\$14.44	\$15.17	\$15.93
Skill Level 3	\$15.22	\$15.99	\$16.79
GROUP B			
Skill Level 1	\$10.26	\$10.78	\$11.32
Skill Level 2	\$11.35	\$11.92	\$12.52
Skill Level 3	\$11.70	\$12.29	\$12.91
GROUP C			
Skill Level 1	\$8.61	\$9.04	\$ 9.50
Skill Level 2	\$9.33	\$9.80	\$10.29
GROUP D			
Skill Level 1	\$ 9.91	\$10.41	\$10.93
Skill Level 2	\$12.77	\$13.41	\$14.08

APPENDIX D (cont.)

Section 3: Effective July 1, 2003, all employees will receive a wage rate increase of four percent (4%) or the wage rates contained in the below salary schedule, as appropriate. Employees to be placed on Step 4 after one (1) year at Step 3.

	Step 1 Probationary	Step 2 Non-Probationary	<u>Step 3</u>	<u>Step 4</u>
GROUP A				
Skill Level 1	\$13.73	\$14.42	\$15.15	\$15.76
Skill Level 2	\$14.44	\$15.17	\$15.93	\$16.57
Skill Level 3	\$15.22	\$15.99	\$16.79	\$17.47
GROUP B				
Skill Level 1	\$10.26	\$10.78	\$11.32	\$11.78
Skill Level 2	\$11.35	\$11.92	\$12.52	\$13.02
Skill Level 3	\$11.70	\$12.29	\$12.91	\$13.43
GROUP C				
Skill Level 1	\$8.61	\$9.04	\$9.50	\$ 9.88
Skill Level 2	\$9.33	\$9.80	\$10.29	\$10.71
GROUP D				
Skill Level 1	\$ 9.91	\$10.41	\$10.93	\$11.37
Skill Level 2	\$12.77	\$13.41	\$14.08	\$14.65

2. PROBATIONARY PERIOD

The Employer proposes to increase the probationary period from the current four months to six months. The Union proposes to retain existing language.

The Employer contends that there is not enough time to properly train employees within the current four-month probationary period provided. As a result, the remaining time under the current four-month probationary period for the review of a new employee's work product is in some cases less than one month. Basically, the Employer contends that it needs six months to properly train and then evaluate an employee's job performance.

The Union maintains that there have been no problems with the current four-month probationary period. The Union submits that there is simply no need to extend the probationary period to six months as proposed by the Employer. As a result, the four-month probationary period currently provided should be retained.

DISCUSSION AND RECOMMENDATION - This fact-finder would recommend a change to a six-month probationary period. The Employer was persuasive in arguing that the current four-month probationary period does not provide enough time to properly train and then to evaluate the job performance of new employees. It was shown that in some instances under the current four-month probationary period there is insufficient time to properly review an employee's work product. As a result, this fact-finder finds that there was a basis established to extend the probationary period to six months.

RECOMMENDATION

It is the recommendation that the probationary period be increased to six months.

PROBATIONARY PERIOD – Change to six (6) months.

3. OVERTIME AND PREMIUM PAY (Section 29.01)

The Employer proposes to delete the current provision which provides for overtime after eight hours for employees at the Caley Home. The Union argues that the current overtime provision for Caley Home workers should remain the same without any change.

The Employer argues that all other Agency employees have a forty-hour per week standard for overtime purposes. According to the Employer, it is inappropriate to have some fifteen employees at the Caley Home remain on an eight-hour per day overtime standard. As a result, the Employer proposes that the employees at the Caley Home be placed on the same overtime calculation requirements as the rest of the employees in the bargaining unit which is that overtime is based upon hours worked in excess of forty hours in a week.

The Union argues that overtime and premium pay should remain as currently provided. The Union contends that Caley Home workers would be negatively impacted by double backs which is where employees work sixteen out of twenty-four hour periods without any overtime. The Union believes that the current eight-hour overtime provision for the Caley Home has acted as a penalty to preclude the Agency from requiring the doubling back of employees at the Caley Home.

DISCUSSION AND RECOMMENDATION – It is the recommendation of this fact-finder that the Caley Home employees be placed on the same overtime basis as other employees in the unit. That is, they should be provided with overtime pay for all hours

worked in excess of forty hours in a one-week period. The current provision which provides for overtime after eight hours at the Caley Home appears to be inappropriate considering that all of the one hundred or so other Agency employees have a forty-hour per week standard for overtime purposes.

It is also important to point out that the parties previously entered into a tentative agreement which would appear to address one of the concerns raised by the Union concerning double backs for Caley Home employees. That is, the parties agreed that an employee's posted work schedule "shall not be modified" for the sole purpose of avoiding overtime. As a result, this agreed upon provision should be sufficient to avoid the Caley Home workers' concerns that they suddenly will be asked to work more double backs due to the change.

RECOMMENDATION

It is the recommendation of this fact-finder that with respect to the Overtime and Premium Pay Provision, Section 29.01 be deleted as proposed by the Employer. As a result, Caley Home employees would receive overtime compensation on the same basis as all other employees in the Agency if they work an excess of forty hours in a week.

OVERTIME AND PREMIUM PAY (Section 29.01)

Current provision deleted.

New Section 29.01 – All employees shall receive time and one-half (1½) their regular rate of pay for all hours worked in excess of forty (40) hours in one (1) week during the period provided for.

4. OVERTIME AND PREMIUM PAY (Section 29.03)

The Employer proposes that sick leave not be used for overtime computation purposes. The Union proposes that the current provision should be retained.

The Employer contends that the Agency is currently experiencing a significant abuse of sick leave. As a result, it believes that sick leave should not count in the calculation of overtime.

The Union counters that the current provision which includes sick leave for purposes of overtime calculation is reasonable. There was no showing made that would justify its removal from the overtime calculation.

DISCUSSION AND RECOMMENDATION – This fact-finder has determined that there was a sufficient basis established for the change proposed by the Employer. The Agency persuasively demonstrated that it has been experiencing a significant amount of abuse of sick leave. As a result, it would be reasonable to remedy the sick leave abuse problem which exists by providing that sick leave not be counted in the calculation of overtime. Therefore, this fact-finder would recommend that sick leave not be used for the purpose of computing overtime pay for bargaining unit employees.

RECOMMENDATION

With respect to Section 29.03 of the Overtime and Premium Pay Provision, this fact-finder would recommend that sick leave not be counted for overtime calculation purposes.

OVERTIME AND PREMIUM PAY (Section 29.03)

Remove sick leave for the purpose of computing overtime pay.

5. OVERTIME AND PREMIUM PAY (Section 29.04)

The Employer proposes that holiday pay not be paid to employees unless they work their last regularly scheduled day before the holiday and their first scheduled work day after the holiday. The Union proposes to retain current language which does not contain any such restriction.

The Employer contends that due to the absenteeism problem which it has at the current time, it needs the proposed change requiring the employees to work the day before and the day after a holiday in order to be entitled to holiday pay. The Employer submits that too many times during the year, employees have called in sick before or after a holiday in order to lengthen their holiday vacation. This causes an undue burden on the Agency as well as the other employees who are required to fill-in for those who are inappropriately absent.

The Union states that the Employer's proposal would not accomplish the intended result which it desires. The change would actually punish outstanding workers with almost perfect attendance. The Union proposes that the existing language be retained with the Employer concentrating on its attendance problems through other contractual provisions which already exist.

DISCUSSION AND RECOMMENDATION – This fact-finder has determined that the Union was persuasive in arguing that there should be no change in the current provision. The Employer's proposal would seem to punish those employees who have good attendance records if they happen to be off on a workday preceding or following a

holiday. This fact-finder would agree with the Union's contention that the absenteeism problem which the Employer has could be better addressed through other provisions of the parties' Agreement. There simply was insufficient basis established by the Employer for the change which it proposed with respect to holiday pay.

RECOMMENDATION

It is the recommendation of this fact-finder that the current Section 29.04 of the Overtime and Premium Pay Provision be retained without change.

OVERTIME AND PREMIUM PAY (Section 29.04)

Current provision, no change.

6. DISCIPLINARY ACTION

The Employer proposes that the provision of Section 124.34 of the Ohio Administrative Code providing for the fining of employees not to exceed five days pay be incorporated into the parties' Agreement. The Union objects to fines being made a part of the disciplinary procedure.

The Employer contends that the disciplinary penalty of fines is needed in order to address its absenteeism problem. The Employer points out that the same provision which it proposes herein is in effect for all state employees. Because the department is partially administered and funded by the state, it would be appropriate to likewise have the bargaining unit employees here be subjected to the same disciplinary process as state employees.

The Union contends that fines of employees is new to Lake County and is viewed by membership as a negative proposal. The Union believes that the parties do not need fines to address any absenteeism problem which may exist in the Agency. Again, the Employer can resolve attendance problems through existing language.

DISCUSSION AND RECOMMENDATION – This fact-finder has determined that the Employer should be allowed to discipline employees in certain instances by fining them but not to exceed five days pay. The Employer was persuasive in arguing that an absenteeism problem does exist within the Agency which needs to be addressed. As the Employer noted, the same form of discipline has been applied to state employees

with considerable success. That is, since the state implemented the use of disciplinary fines, it has seen a dramatic reduction in its absenteeism rate.

Moreover, the department here is partially administered and funded by the State. Section 124.34 of the Ohio Administrative Code clearly provides for the fining of employees not to exceed five days. As a result, this fact-finder finds that it would be appropriate for bargaining unit employees to have the same disciplinary procedure as state employees and as provided by applicable law. However, it would be reasonable to also provide that any implementation of a new provision providing for the fining of employees as a form of discipline not be implemented by the Employer until the second year of the Agreement. That is, this fact-finder would recommend that at any time after July 1, 2002, the Employer may at its discretion adopt as a form of discipline a fine of employees not to exceed five days pay.

RECOMMENDATION

It is the recommendation of this fact-finder that the Employer be provided with the discretion to subsequently adopt a new provision providing for the fining of employees not to exceed five days pay at any time after July 1, 2002.

DISCIPLINARY ACTION

At any time after July 1, 2002, the Employer may at its discretion adopt as a form of discipline “a fine in an amount not to exceed five (5) days pay.”

CONCLUSION

In conclusion, this fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for his consideration. Further, this fact-finder incorporates all tentative agreement previously reached by the parties and recommends that they be included in the parties' Final Agreement.

OCTOBER 3, 2001



JAMES M. MANCINI, FACT-FINDER