

2001 OCT 15 A 10: 27

**IN THE MATTER OF FACT-FINDING  
BETWEEN**

**ASHTABULA COUNTY DEPARTMENT )  
OF JOBS AND FAMILY SERVICES )**

**CASE NO. 01-MED-05-0524**

**AND )**

**FINDINGS  
AND  
RECOMMENDATIONS**

**AMERICAN FEDERATION OF STATE, )  
COUNTY AND MUNICIPAL EMPLOYEES )  
LOCAL 14 )**

**JAMES M. MANCINI, FACT-FINDER**

**APPEARANCES:**

**FOR THE EMPLOYER**

**Gary C. Johnson, Esq.**

**FOR THE UNION**

**Deborha Bindas  
Mark Carlson**

## SUBMISSION

This matter concerns fact-finding proceedings between the Ashtabula County Department of Jobs and Family Services (hereinafter referred to as the Employer or County) and the American Federation of State, County and Municipal Employees, Local 14 (hereinafter referred to as the Union or AFSCME). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The fact-finding proceedings were held on August 22 and September 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.

The bargaining unit consists of employees in the Department of Jobs and Family Services. There are approximately 125 employees in the unit.

This fact-finder in rendering the following findings of fact and recommendations on 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.

## 1. WAGES

The Union proposes to reduce the number of steps on the Wage Scale from the current fourteen steps to six steps in the first year of the Agreement. In addition, the Union proposes to increase the hourly rate for all bargaining units by \$1.00 per hour effective September 1, 2001, with additional \$1.00 per hour increases in each of the last two years of the Agreement. Under the Union's proposal, there would be wage increases amounting to approximately 32% over the three-year term of the Agreement. The Union also proposes an additional signing bonus which is to be received each year in the amount of \$850.

The Employer proposes an elimination of steps by compression from either end of the scale. This is accomplished by increasing the scale by 3% at the base and 3% at the top step, eliminating one step, and then dividing by a number one less than presently exists for the number of steps. By the third year of the Agreement, there would be eight steps under the County's proposed wage scale. Under the Employer's proposal, employees at the top step would receive 3% wage increases in each year of the Agreement with those who are not at the top step receiving greater increases due to the compression of the wage scale. Employees would also be guaranteed a minimum of a 3% increase when they are placed on the new scale. The Employer also proposes to drop pay range 26 with all the employees in that pay range moving to range 27. In addition, the computer operator in range 27 is to be moved to pay range 28. The Employer opposes any payment of an additional signing bonus for the bargaining unit.

The Union contends that its wage proposal is justified based upon comparable wages found in other similarly situated agencies. Currently the wages here, especially with respect to entry level hourly wages, fall below the average wage for comparable employees in other counties. The Union submits that the wage increases which it has proposed are needed in order for bargaining unit employees to achieve parity with other similar agencies in the state.

The Employer contends that its wage proposal would in many instances provide significant wage increases for bargaining unit members. 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 base wage changes which are reflected on the attached Appendix A. That is, effective on September 1, 2001, 3% is to be added to each step 1 and end steps to create steps 1 and 10 under a new compressed wage scale. Wage increases would be spread evenly through steps 2 through 9. Employees in step 1 would go to the new step 1, and employees at the end step would go to the new top step. All other employees will be placed on the new wage scale at the lowest step which would provide an increase in pay. However, employees whose placement on the new scale would result in an hourly rate increase of less than 3% shall receive a minimum

guarantee of a 3% increase until the employee's anniversary date when such employee shall move to the step immediately greater than the wage rate being paid to the employee. Employees with steps remaining would move on their next step date. In the second and third year of the Agreement, there is to be a further compression of the wage scale to nine and eight steps respectfully. It should also be noted that under the proposal recommended herein, in the first year of the Agreement pay range 26 would be dropped with all those employees in that pay range moving to pay range 27. In addition, the computer operator currently in range 27 is to be moved to pay range 28. This fact-finder would also recommend that there be a first year signing bonus of \$400 provided to each bargaining unit member.

It is apparent that the proposed wage scale will provide most bargaining unit members with above average increases in wages over the term of the Agreement. The evidence showed that with the proposed three-year change in the base wage under the new scale, the wage increases will range from 9.2% to 29.8% with average increase being 15.5% for unit employees. The hourly wage increases under the new pay scale would range from \$.99 to \$2.71 per hour with average hourly increase being \$1.69 over the term of the Agreement. In the first year of the Agreement, the proposed wage scale will provide employees with an average increase of 3.5% between steps. With further compression of the wage scale in the second and third years of the Agreement, the average wage increases between steps would be 3.9% and 4.5%, respectfully.

This fact-finder finds that the proposed new wage scale is more than reasonable especially considering the current state of the economy and the effect which it could have upon Agency revenue. The Employer indicated that there has already been a significant reduction in sales tax revenue for the County. While the Union is correct in pointing out that much of the revenue for this Agency comes from the State and not the General Fund of the County, it should be noted that the State too has been experiencing severe revenue shortfalls. There is every indication that we are in for a prolonged recession with possible reduced revenues for the Agency which could impact the bargaining unit here. In light of the economic uncertainties facing the Agency, this fact-finder must find that the recommended wage proposal which includes the new wage scale is more than satisfactory.

Moreover, this fact-finder has taken into consideration the Union's concern that employees will have to contribute towards their health insurance premium cost. As discussed hereinafter, it will be recommended that employees pay 10% of the premium of the Health Care Plan. In effect, employees with family coverage will have to contribute approximately \$65 per month towards the current premium cost of their basic health insurance. In order to help alleviate some of the additional burden of having to contribute towards health insurance, this fact-finder would recommend that employees be provided with the lump sum payment of \$400 in the first year of the Agreement. This would roughly be equivalent to almost a 2% wage increase based upon the average wage in the unit. Also as discussed more fully in the next section of

this report, this fact-finder would recommend a change in longevity pay for the bargaining unit which in effect would provide employees with an additional 1% increase in pay in the first year of the Agreement. With the increases in longevity pay as well as the one time lump sum payment to the bargaining unit, employees will be able to offset the cost of their healthcare contribution which in turn would allow them to fully realize the wage increases previously discussed.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that there be wage increases provided in each year of the Agreement as more fully set forth below:

#### **WAGES**

**Effective on September 1, 2001, 3% is to be added to each Step 1 and End Steps to create Steps 1 and 10 under a new compressed wage scale. Wage increases would be spread evenly through Steps 2 through 9. Employees in Step 1 would go to the new Step 1, and employees at the End Step would go to the new Top Step. All other employees will be placed on the new wage scale at the lowest step which would provide an increase in pay. However, employees whose placement on the new scale would result in an hourly rate increase of less than 3% shall receive a minimum guarantee of a 3% increase until the employee's anniversary date when such employee shall move to the step immediately greater than the wage rate being paid to the employee. Employees with steps remaining would move on their next step date. In the second and third year of the Agreement, there is to be a further compression of the wage scale to nine and eight steps respectfully.**

**See attached Appendix A for complete recommended new Wage Scale.**

**Also in the first year of the Agreement, pay range 26 would be dropped with all those employees in that pay range moving to pay range 27. In addition, the computer operator currently in pay range 27 is to be moved to pay range 28.**

**A first year signing bonus of \$400 shall be provided to each bargaining unit member.**

**CURRENT WAGE SCALE - IN EFFECT SINCE 9/1/2000**

| Range | Step 1 | Step 2 | Step 3 | Step 4 | Step 5 | Step 6 | Step 7 | Step 8 | Step 9 | Step 10 | Step 11 | Step 12 | Step 13 | Step 14 |
|-------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|---------|---------|---------|---------|
| 2     | 7.53   | 7.73   | 7.94   | 8.16   | 8.38   | 8.61   | 8.85   | 9.08   | 9.34   | 9.60    | 9.86    | 10.14   | 10.42   | 10.71   |
| 4     | 8.16   | 8.38   | 8.61   | 8.85   | 9.08   | 9.34   | 9.60   | 9.86   | 10.14  | 10.42   | 10.71   | 11.21   | 11.71   | 12.21   |
| 5     | 8.53   | 8.78   | 9.00   | 9.25   | 9.51   | 9.77   | 10.04  | 10.32  | 10.61  | 10.90   | 11.21   | 11.57   | 11.89   | 12.23   |
| 26    | 8.84   | 8.88   | 9.12   | 9.37   | 9.63   | 9.90   | 10.17  | 10.45  | 10.74  | 11.04   | 11.35   | 11.67   | 12.23   | 12.57   |
| 27    | 9.04   | 9.29   | 9.54   | 9.81   | 10.08  | 10.36  | 10.65  | 10.95  | 11.25  | 11.57   | 11.89   | 12.23   | 12.57   | 13.25   |
| 28    | 9.62   | 9.78   | 10.05  | 10.33  | 10.62  | 10.92  | 11.22  | 11.54  | 11.86  | 12.19   | 12.54   | 12.89   | 13.25   | 14.02   |
| 29    | 10.06  | 10.34  | 10.63  | 10.92  | 11.23  | 11.54  | 11.87  | 12.20  | 12.54  | 12.90   | 13.26   | 13.64   | 14.02   | 14.42   |

**PROPOSED WAGE SCALE - 1ST YEAR**

| Range | Step 1 | Step 2 | Step 3 | Step 4 | Step 5 | Step 6 | Step 7 | Step 8 | Step 9 | Step 10 |
|-------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| 2     | 7.76   | 8.03   | 8.30   | 8.57   | 8.84   | 9.11   | 9.38   | 9.65   | 9.92   | 10.18   |
| 4     | 8.40   | 8.68   | 8.98   | 9.27   | 9.56   | 9.85   | 10.14  | 10.43  | 10.72  | 11.03   |
| 5     | 8.78   | 9.10   | 9.41   | 9.72   | 10.03  | 10.34  | 10.65  | 10.96  | 11.27  | 11.55   |
| 27    | 9.31   | 9.71   | 10.11  | 10.51  | 10.91  | 11.31  | 11.71  | 12.11  | 12.51  | 12.95   |
| 28    | 9.81   | 10.24  | 10.67  | 11.10  | 11.53  | 11.96  | 12.39  | 12.82  | 13.25  | 13.65   |
| 29    | 10.36  | 10.86  | 11.36  | 11.86  | 12.36  | 12.86  | 13.36  | 13.86  | 14.36  | 14.85   |

**PROPOSED WAGE SCALE - 2ND YEAR**

| Range | Step 1 | Step 2 | Step 3 | Step 4 | Step 5 | Step 6 | Step 7 | Step 8 | Step 9 |
|-------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| 2     | 7.99   | 8.30   | 8.61   | 8.92   | 9.23   | 9.54   | 9.85   | 10.16  | 10.48  |
| 4     | 8.65   | 8.98   | 9.33   | 9.67   | 10.01  | 10.35  | 10.69  | 11.03  | 11.36  |
| 5     | 9.05   | 9.41   | 9.77   | 10.13  | 10.49  | 10.85  | 11.21  | 11.57  | 11.90  |
| 27    | 9.68   | 10.06  | 10.53  | 11.00  | 11.47  | 11.94  | 12.41  | 12.88  | 13.34  |
| 28    | 10.10  | 10.60  | 11.10  | 11.60  | 12.10  | 12.60  | 13.10  | 13.60  | 14.06  |
| 29    | 10.67  | 11.25  | 11.83  | 12.41  | 12.99  | 13.57  | 14.15  | 14.73  | 15.30  |

**PROPOSED WAGE SCALE - 3RD YEAR**

| Range | Step 1 | Step 2 | Step 3 | Step 4 | Step 5 | Step 6 | Step 7 | Step 8 |
|-------|--------|--------|--------|--------|--------|--------|--------|--------|
| 2     | 8.23   | 8.59   | 8.95   | 9.31   | 9.67   | 10.03  | 10.39  | 10.77  |
| 4     | 8.91   | 9.31   | 9.71   | 10.11  | 10.51  | 10.91  | 11.31  | 11.70  |
| 5     | 9.32   | 9.74   | 10.16  | 10.58  | 11.00  | 11.42  | 11.84  | 12.26  |
| 27    | 9.88   | 10.43  | 10.98  | 11.53  | 12.08  | 12.63  | 13.18  | 13.74  |
| 28    | 10.40  | 10.96  | 11.56  | 12.14  | 12.72  | 13.30  | 13.88  | 14.48  |
| 29    | 10.99  | 11.67  | 12.35  | 13.03  | 13.71  | 14.39  | 15.07  | 15.76  |

## 2. LONGEVITY PAY

The Union proposes a longevity plan of \$.25 after five years, and then \$.04 more per hour up to thirty years. The County proposes a longevity plan of \$.25 after five years and then \$.05 more for twenty years. Currently, employees with six years of service with the County receive a longevity pay supplement in the amount of one-half of 1% of the longevity base for their particular pay range based upon each year of service not to exceed a maximum of 10%.

DISCUSSION AND RECOMMENDATION – This fact-finder finds that it would be reasonable to provide employees with longevity pay of \$.25 per hour after five years of service and then \$.05 more up to twenty years of service. In effect, this would provide employees with an additional pay increase of approximately 1% in the first year of the Agreement. As a result, employees who are at the top step would receive another 1% increase from longevity pay which will give them a 4% wage increase in the first year. Once again considering the uncertain economic times facing the Agency, the recommended longevity pay plan is more than reasonable.

### RECOMMENDATION

With respect to Longevity Pay, this fact-finder would recommend the following:

#### LONGEVITY PAY (Effective September 1, 2001)

**Commencing after the fifth year of service, employees shall receive \$.25 per hour, with an additional \$.05 per year of service thereafter up to the twentieth year which would provide the maximum of \$1.00 per hour.**

### **3. MEDICAL INSURANCE**

The Employer proposes that employees continue to pay 10% of the premium for health care. In addition, the Employer proposes language which would allow it to change benefits, deductibles, co-pays and networks so that it can go out and bid a plan that will save money. The Union has proposed that employees be provided with a life insurance policy to be added on to the current AFSCME Care Plan. An improved Dental Plan is also being proposed.

The Employer contends that its proposal is justified due to the significant increase in insurance premiums which occurred on April 1, 2001. It notes that it is making a countywide proposal that employees contribute towards their health care coverage. Since May 1<sup>st</sup>, employees have been required to contribute 10% towards the health insurance premium.

The Union maintains that the Employer's proposal for an employee co-pay towards premium costs would place an unfair burden on the bargaining unit. The Union submits that the contribution requested by the Employer is excessive. It also contends that its proposals regarding life insurance and an improved dental plan are reasonable.

**DISCUSSION AND RECOMMENDATION** – This fact-finder finds that there was a basis established by the Employer for requiring employee contributions towards their health care coverage. The evidence showed that on April 1, 2001, the

Employer was given an almost 35% increase in insurance premiums. This amounted to approximately a 1 million-dollar increase in the cost of providing health care for county employees. As a result, the Employer has submitted a countywide proposal which would require all employees to contribute towards their health insurance cost.

Certainly, such a proposal is reasonable considering the rather dramatic increases which the Employer has seen in insurance premiums.

Therefore, this fact-finder has determined that it would be appropriate to require employees to contribute towards their health care costs as proposed by the Employer. The recommendation would be that employees contribute 10% of the premium for their particular health care plan. It was indicated that currently for family coverage, employees would have to contribute approximately \$65 per month towards the current premium. This amount could fluctuate as a result of any changes in annual premiums in the future. It should be noted that such an employee contribution is in line with that paid by other similarly situated county employees in the state. SERB's most recent insurance report indicates that 76% of state-wide county employees are required to contribute towards the cost of a family medical plan. The SERB report indicates that when county employees pay a portion of the premium cost for medical coverage, their monthly contributions average \$98 for family coverage or 16% of the monthly family premium. Therefore, it is evident that the employee contribution asked for in the instant case actually falls below the average employee contribution found state-wide for other county employees.

This fact-finder would also recommend that the Employer be given the opportunity to change plans in order to save money. To that end, this fact-finder would recommend the same contract language which has been agreed to by two other bargaining units pertaining to insurance changes. The OPBA in a recent settlement agreed that the Employer may change carriers and plans in the basic hospitalization and medical plan with certain restrictions. This fact-finder would recommend that the same provision be included in the parties' Agreement here. Hopefully any change in plans would result in a reduction in cost for the County which in turn could possibly eliminate the employees' 10% co-pay. This would occur if the County obtains a new plan where the premium falls to less than what the premium was prior to April 1, 2001.

This fact-finder would not recommend the additional benefit enhancement changes proposed by the Union because they appear to be cost prohibitive. There was evidence produced that both the State as well as the County are facing possible significant revenue shortfalls for the upcoming year. Due to the uncertain economic times, the benefit increases for life insurance and dental care proposed by the Union would appear to be unwarranted at the present time. However, this fact-finder would recommend that the Employer's contribution be increased to maintain present benefits of the AFSCME Care Plan. There was an indication that this would cost the Employer approximately \$4.00 more per month for each participating employee.

## RECOMMENDATION

It is the recommendation of this fact-finder that the Medical Insurance Provision be modified as follows:

### MEDICAL INSURANCE

- 1. For the term of this Agreement, the Employer agrees to provide medical insurance programs as provided to other County employees under the County's group insurance plans.**
- 2. Effective September 1, 2001, the Employer will pay ninety percent (90%) of the Aetna HMO Plan premium for the primary plan (basic health insurance plan) for full-time employees. The employee shall pay the remainder of the premium. If the premium costs of basic health insurance becomes equal to or falls below one hundred ninety-five dollars (\$195.00) for the individual premium and five hundred thirty-five dollars (\$535.00) for the family premium, the Employer shall pay all the premium costs.**
- 3. The Employer may change carriers and plans in the basic hospitalization and medical plan that causes changes in deductibles, co-pays and network, providing that such changes do not result in maximum annual out of pocket costs to employees for deductibles and co-pays exceeding seven hundred fifty dollars (\$750.00) for an individual and one thousand five hundred dollars (\$1,500.00) for a family plan, except that office co-pays shall not exceed fifteen dollars (\$15.00) per visit. Prescription drug card deductibles shall remain at the present limits. (\$10.00 Generic Formulary, \$15.00 Brand Name Formulary, \$30.00 Non-Formulary).**
- 4. An Advisory Committee of Union Officials, one (1) per Union, shall recommend and review plans and bids of insurance carriers each year.**

**5. The Employer shall reimburse employees for health insurance premium payroll deductions taken from April 1, 2001 through August 31, 2001 in lump sum payment within thirty (30) days of execution of this Agreement.**

**6. The stipend for not using the County's healthcare plan shall be terminated on December 31, 2001.**

**It is further recommended that an increase in the Employer's contribution be provided in order to maintain present benefits of the AFSCME Care Plan.**

#### **4. GRIEVANCE PROCEDURE**

The Union proposes the addition of a grievance mediation step which is opposed by the Employer. The County proposes that FMCS be deleted as a method of obtaining arbitrators and that a permanent panel be included in the contract.

The Union proposes a grievance mediation step because it believes that it is needed in order to repair and enhance labor/management relations at the Agency. Mediation in many cases would provide room for the parties to compromise on the issues presented.

The Employer submits that the establishment of a permanent panel of arbitrators is the commonsense approach to remedying the problems with the selection process through FMCS. The Employer strongly opposes any additional mediation step as requested by the Union as being unnecessary and too costly.

DISCUSSION AND RECOMMENDATION – This fact-finder would recommend that a mediation step be provided only if both parties agree to it on a case by case basis. The Union's proposal that there be a formal grievance mediation step should not be adopted until the parties determine that such an approach to resolving grievances is needed within the Agency. There was insufficient evidence presented to require a formal mediation step at this time.

This fact-finder would recommend that a permanent panel of arbitrators be established and included in the parties' Agreement. There was an indication that the parties have had problems with the selection of arbitrators through FMCS. Arbitration

panels are commonly found in other public sector agreements and the parties generally find such panels to be a better and more efficient way of selecting an arbitrator to hear a grievance.

### **RECOMMENDATION**

With respect to the Grievance Procedure changes requested by the parties, this fact-finder would recommend the following:

#### **GRIEVANCE PROCEDURE**

- 1. Grievance mediation shall be attempted on a case by case basis only by mutual agreement of the parties.**
- 2. The reference to FMCS for selection of an arbitrator shall be deleted and a permanent panel of arbitrators is to be included in the Contract.**

## **5. VACANCIES, PROMOTIONS AND TRANSFERS**

The Union proposes that for bidding purposes within the same pay range or below, years of service at the Agency equates to an educational degree. The Employer rejects the Union's proposal and instead proposes that it have the ability to hire a more qualified applicant from outside the bargaining unit. The Employer also proposes that a promoted or transferred employee who is serving a probationary period shall not have the ability to appeal a demotion as a result of an unsatisfactory performance. It should be noted that the Union withdrew at the hearing another proposal which was to have an employee receive the higher rate of pay on the first day of assuming a new position.

**DISCUSSION AND RECOMMENDATION** – This fact-finder has determined that there was insufficient basis established for the proposal made by the Union that years of service with an agency equate to an educational degree. This fact-finder has determined that such a provision as requested by the Union would be most unusual, and lacking any evidence to support the proposal, it should not be included in the parties' Agreement.

There was also insufficient evidence produced to support the Employer's proposal which would allow the Agency to have the ability to hire more qualified applicants from outside the bargaining unit. However, there was a basis established for its proposal that promoted or transferred employees who are serving a probationary period should not have the ability to appeal demotions through the grievance procedure

or to the State Personnel Board of Review. As the Employer noted, there would be no effective probationary period if an employee could appeal a demotion during a probationary period. Moreover, such provisions prohibiting appeals are found in other public sector contracts. As a result, this fact-finder would recommend the new language proposed by the Employer.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that the only change in the Vacancies, Transfers and Promotions Provision be as follows:

#### **VACANCIES, TRANSFERS AND PROMOTIONS**

##### **12.09 New Provision**

**Any employee who has been promoted or transferred, and who is serving a probationary period shall have no right to appeal a demotion as a result of unsatisfactory performance through the grievance procedure or to the State Personnel Board of Review.**

## **6. DISCIPLINE**

The Employer proposes to lengthen the time which records of discipline for serious misconduct can be used in subsequent disciplinary actions. All disciplines are currently active for two years. Under the Employer's proposal, disciplinary action that results in a loss of pay, time or demotion shall remain active for five years. The Employer also proposes to delete the paragraph that requires the Agency to impose discipline within three days of the Employer's first knowledge of the incident. The Union opposes both of the proposals submitted by the Employer for a modification of the Discipline Provision.

DISCUSSION AND RECOMMENDATION – This fact-finder would not recommend any change in the length of time which more serious disciplinary actions remain active for use in subsequent disciplinary actions. Comparable evidence produced by the Union shows that it is fairly common for more severe discipline actions to remain active for a period of two years. There simply was no basis established for extending the time limit beyond the two years currently provided in the parties' Agreement.

However, there was a basis established for changing the current provision which requires the Employer to notify the employee of charges made against them within three working days of the incident giving rise to discipline, or within three working days of the Agency's first knowledge of the incident, whichever is later. The Employer convincingly made an argument that the current time limit is much too short for purposes of completing an investigation of alleged misconduct on the part of an employee. As the

Agency noted, many contracts either have no limitation or possibly a six month limit with an exception of no time limit for criminal investigations. This fact-finder finds that a reasonable approach would be to use investigation time limits like those set forth in State contracts. That is, it would be reasonable to provide that the Agency make a final decision on a recommended disciplinary action by no later than forty-five days after the incident occurs. However, the forty-five day requirement will not apply in cases where there is a criminal investigation. The forty-five day limitation should provide the Agency with more than sufficient time to complete any investigation.

### **RECOMMENDATION**

With respect to Discipline, this fact-finder would recommend only one modification to the current provision as follows:

#### **DISCIPLINE**

**The Employer will notify the employee of charges that have been made against him/her within forty-five (45) working days of the incident giving rise to the discipline or within forty-five (45) working days of the Employer's first knowledge of the incident, whichever is later. At the discretion of the Employer, the forty-five day requirement will not apply in cases where a criminal investigation may occur.**

## **7. HOURS OF WORK AND OVERTIME**

The Employer proposes that the assignment of overtime should first be offered to employees within a supervisory unit and that the Agency may designate certain employees to perform the work notwithstanding the overtime allocation language of the Agreement. The Union opposes any change in the current Overtime Provision which states that all overtime is to be offered first to employees within the classification, and within the work unit in the same shift involved in the order of seniority.

**DISCUSSION AND RECOMMENDATION** - The parties during the hearing basically entered into an agreement to have this particular issue discussed at a labor-management meeting. If the parties are unable to resolve their dispute over this issue, then this fact-finder's jurisdiction would be re-invoked and a hearing would be held. Therefore, this fact-finder would recommend the agreement entered into by the parties and will retain jurisdiction for a period of ninety days over this matter.

### **RECOMMENDATION**

With respect to the Overtime Issue, this fact-finder would agree to the terms of the parties' agreement considering that matter as follows:

#### **OVERTIME**

**The issue in dispute concerning overtime assignment shall be deferred to the Labor/Management Committee for possible resolution. If necessary, the parties may re-invoke this fact-finder's jurisdiction over this matter within a period of ninety days.**

## **8. SICK LEAVE**

The Employer proposes a modification in the definition of immediate family for purposes of sick leave use. The Employer proposes that only an employee's spouse and children be included in the definition of immediate family for sick leave purposes. The Union proposes a new section that would permit an employee to donate accrued sick leave to a co-worker that could be used in such cases such as catastrophic illness. The Employer opposes such a provision.

The Employer contends that there is a serious sick leave abuse problem within the Agency. It submitted data which shows that many of the employees use most if not all of their accrued sick leave each and every year. In order to address the sick leave abuse problem, the Employer proposes to limit the use of sick leave to employee illnesses and for those of one's spouse or children. The Employer also opposes the Union's proposal with respect to donating accrued sick leave to a co-worker because that would further aggravate the abuse of sick leave problem and cost the Agency money in terms of increased absenteeism.

The Union argues that there is no sick leave abuse problem which exists within the Agency. Because a majority of the workforce consists of female employees, it is apparent that they must use sick leave in order to take time off to care for their children when they are ill. The Union also cites comparable evidence to support its proposal which would permit employees to donate accrued sick leave to co-workers on a voluntary basis.

DISCUSSION AND RECOMMENDATION – This fact-finder would recommend that there be a clear definition of the immediate family set forth in the parties' Agreement. Currently, the only definition is found under the Bereavement Leave Section of the Sick Leave Provision. A reasonable definition of immediate family for purposes of sick leave usage would be to include one's spouse, children and parents. That is, it would be appropriate to provide that employees may use sick leave if there is an illness or injury to a spouse, children or parents. This fact-finder has determined that such a definition of immediate family for purposes of sick leave usage is especially appropriate here considering the evidence which shows that there could be a sick leave abuse problem within the Agency. In that regard, it was established that many employees in the bargaining unit have during the past two years used all or most of their accrued sick leave.

Because there was evidence establishing possible abuse of sick leave by employees in the bargaining unit, this fact-finder would not recommend at the present time the Union's proposal which would permit the donation of accrued sick leave to a co-worker. Such a provision could allow those who currently abuse sick leave to have additional sick leave available to them if they run out of their own accrued sick leave. As the Employer noted, a provision permitting the donating of accrued sick leave to a co-worker could actually stimulate further abuse of sick leave by certain employees and result in increased absenteeism within the Agency.

## **RECOMMENDATION**

With respect to Sick Leave, this fact-finder would recommend the following definition of immediate family for purposes of sick leave usage. However, the Union's proposal pertaining to a provision allowing the donation of accrued sick leave to co-workers is not recommended.

### **SICK LEAVE**

**Definition of immediate family: For purposes of sick leave usage, the definition shall include an employee's spouse, children and parents.**

## **9. HOLIDAYS**

The Union has requested two floating holidays which can be used as personal days. The Union is willing to have the two personal days deducted from accrued sick leave. The Employer proposes a new provision whereby employees would be required to work the last scheduled day before and after a holiday in order to receive holiday pay. The Union opposes this proposal.

The Union argues that there are currently no personal days provided for in the Agreement. It claims that in other comparable contracts, there typically are several personal days provided. It reemphasizes that it can agree to deduct two personal days from an employee's sick leave accrual.

The Employer opposes any additional holidays in that no other bargaining unit employees in the County are going to receive any such increase in holidays. The increase proposed by the Union would represent a significant financial cost to the Employer of approximately seven-tenths of one percent. With respect to its own proposal, the Employer believes that it is reasonable to require employees to work the last scheduled day before and after a holiday in order to receive holiday pay. This proposal would serve to reduce sick leave abuse in the Agency.

**DISCUSSION AND RECOMMENDATION** – This fact-finder finds that there was a basis established for requiring employees to work the last scheduled day before and after a holiday in order to be entitled to receive holiday pay. However, it would be reasonable to provide as the Union suggests that an employee could be excused from this

requirement if they are on authorized sick leave the day prior to or following a holiday.

In a case where an employee is on authorized sick leave on the day prior to or following a holiday, proof of illness would be required.

The above change in the Holiday Provision is recommended herein based upon evidence presented by the Employer that there has been a possible abuse of the holiday benefit. There was an indication that some employees have taken off the day before or after a holiday without proper authorization in order to give them more days off. The change recommended is needed in order to reduce the abuse in the Agency of the Holiday Provision. However as indicated, this fact-finder has taken into consideration the Union's concern that some employees may actually be off on the day before or after a holiday due to a legitimate illness. For that reason, there should be a provision which would allow an employee to receive holiday pay if they are on authorized sick leave the day prior to or following a holiday.

This fact-finder would have to agree with the Employer's contention that any additional floating holidays for the bargaining unit would be inappropriate at the current time. It was shown that such an increase in the number of holidays would represent a significant cost factor for the County. Moreover, this fact-finder has determined that it would be inappropriate to have personal days deducted from sick leave accrual because it was shown that there could be a possible sick leave abuse problem within the Agency. Finally, it should be pointed out that no similar provision is found in any other County contract at the current time.

## **RECOMMENDATION**

It is the recommendation of this fact-finder that the Holiday Provision be modified as follows:

### **HOLIDAYS**

**To be entitled to holiday pay, an employee must work the last scheduled regular workday preceding the holiday and the first regular scheduled workday following the holiday unless their absence is excused because of a bona-fide illness. In the event an employee is on authorized sick leave the day prior to or following a holiday, proof of illness shall be required.**

**There shall be no new floating holidays.**

## **10. BARGAINING UNIT WORK**

The Employer proposes language which would require the Union to execute federally required agreements for the utilization of senior aides. The Union opposes such a provision. In addition, the Employer proposes to modify the first section of this article which would provide that non-bargaining unit employees will not be assigned to perform tasks normally performed by bargaining unit members for the sole purpose of displacing employees.

The Employer contends that during a mediation session held last spring, the Union agreed to execute the required agreements for the utilization of senior aides. There was no good reason established for the Union to avoid signing these documents. The Employer points out that many labor contracts require unions to sign similar agreements such as in the transportation industry.

The Union argues that it is not required to sign such documents which would allow for the utilization of the senior aide program. The Union is concerned that the senior aides could be used to displace bargaining unit employees if a layoff were to occur.

**DISCUSSION AND RECOMMENDATION** – It is the recommendation of this fact-finder that the proposal submitted by the Employer be adopted. The first provision should be modified to add the work “sole” in the first paragraph so that bargaining unit work will not be done by other individuals for the sole purpose of displacing bargaining unit employees. Certainly, this provision would actually serve to benefit unit employees.

This fact-finder has further determined that there should be contract language which requires the Union to execute all federally required agreements for the purpose of utilization of senior aides. There is absolute no reason why the Union should avoid signing the required agreements which would allow the Employer to utilize senior aides under the federally funded program. The Union in a mediation settlement agreement dated November 9, 2000 actually agreed to sign off on the senior aide contract. The Union should fulfill its promise under that settlement agreement and execute the required agreements which would allow for the utilization of senior aides. It should be noted that the concerns raised by the Union are addressed in the federal program guidelines provision which provide that the utilization of senior aides are not to result in the displacement of any employee.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that the Bargaining Unit Work Provision be modified as follows:

#### **BARGAINING UNIT WORK**

**30.01 Non-bargaining unit employees will not be assigned to perform tasks, which are normally exclusively performed by employees in the bargaining unit, for the sole purpose of displacing employees.**

**30.02 Notwithstanding any provisions of this Agreement, the Employer retains the right to utilize “senior aides” under the Senior Aides Program (Title V), providing such utilization does not result in the displacement of any employee. The Union shall sign and approve any documents that may be needed for the utilization of this program and any other programs requiring union approval and signature.**

## **11. EXPENSE REIMBURSEMENT**

The parties basically reached an agreement that expense reimbursement shall be provided to employees at \$35 per day. The Employer indicated that it could not for legal reasons provide advance payment for travel expenses. As a result, there was an indication that the Union agreed to withdraw the remaining portion of its proposal regarding expense reimbursement. Therefore, this fact-finder would recommend that there be an increase in meal allowance from the current \$32.50 to \$35 per day.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that there be an increase in the meal allowance from the current \$32.50 to \$35 per day.

### **EXPENSE REIMBURSEMENT**

**Increase to thirty-five dollars (\$35) per day.**

## **12. TOTAL AGREEMENT**

The Employer proposes to add a Zipper Clause to the Agreement. The Union opposes such a new provision.

**DISCUSSION AND RECOMMENDATION** – This fact-finder would recommend that a Zipper Clause be added to the parties' Agreement. Such provisions are commonly found in many other public sector agreements. Such a Zipper Clause benefits both parties in that it would be made clear that their respective rights are controlled solely by the negotiated Agreement.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that that a Total Agreement Provision be included in the parties' Agreement as more fully set forth below:

#### **TOTAL AGREEMENT**

**This Agreement represents the entire agreement between the Employer and the Union and unless specifically and expressly set forth in the express written provisions of this Agreement, all rules, regulations, benefits and practices previously and presently in effect may be modified or discontinued at the sole discretion of the Employer, without any such modifications or discontinuances being subject to any grievance or appeal procedure herein contained.**

## 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 agreements previously reached by the parties and recommends that they be included in the parties' Final Agreement.

OCTOBER 11, 2001

  
\_\_\_\_\_  
JAMES M. MANCINI, FACT-FINDER