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STATE OF OHIO  
STATE OF EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT  
RELATIONS BOARD

2002 OCT 15 A 10: 23

IN THE MATTER OF: :  
**AFSCME, OHIO COUNCIL 8, AFL-CIO :**  
**LOCAL #3387**

Case Number: 02MED-05-0559

Employee Organization : Jack E. McCormick  
Fact-Finder

and :  
**THE PIKE COUNTY JOB AND FAMILY :**  
**SERVICES**

Issued: October 15, 2002

Employer :

On October 8, 2002, at 10:00 a.m., a fact-finding was called pursuant to the authority of the State Employment Relations Board at the Pike County Administration Offices at Waverly, Ohio.

Present at the fact-finding were the following:

For: The Union

- Rebecca Good
- Kathy Burnside
- Tamara Carsey
- Gary Arnold
- Frank Perry
- Lori Jeffers
- Lori Ratliff
- and
- Eunice Distel

For: The Employer

- Robert W. Cross
- Fred Wood
- Bill Whitfield
- Valerie Riley
- Linda Massie
- Barbara Hoffman
- Nancy Carter
- and
- Sondra Lawhorn

The parties were fully informed of the applicable rules and regulations surrounding fact-finding and mediation, as well as the law that the Fact-Finder would be applying. The Fact-Finder offered to the parties his services as a mediator and both parties declined, indicating that mediation had been held on October 7, 2002, and that although some issues were resolved, there were remaining issues on which they mutually agreed should be submitted to fact-finding. Those issues are as follows:

- Article 8 - Promotions, Bidding and Transfers
- Article 12- Hours of Work
- Article 14 - Earned Sick Leave and Earned Personal Leave
- Article 15 - Earned Vacation Leave
- Article 27 - Hospitalization Insurance
- Article 28 - Wages.

The parties have agreed to the termination date of this contract prior to the fact-finding.

#### **BACKGROUND**

The bargaining unit consists of thirty-nine individuals occupying positions in maintenance, clerical, income maintenance, social services, employment services, and investigations for the Pike County Job and Family Services Department.

The parties have engaged in collective bargaining with successful signing of contracts since 1987.

The current Agreement was in effect from August 1, 1999 and expired on July 31, 2002. The parties met on June 19, July 16, July 30, September 10, September 12, and on October 7 (mediation), 2002, and have signed off on sixteen articles, with no changes and three articles with changes.

Pike County is a small county in southern Ohio with a 2000 census population of 27,695. The funding for the Employer is somewhat unique within the county, but not within the State of Ohio. The Employer receives a combination of federal and state funds on an annual basis and the state "match" is based on a complex formula of population and clients being served. However, like any other employer, the Department's funds are allocated on an annual basis and, therefore, although it may sign a three-year bargaining agreement, it cannot precisely determine its funds through the full three-years of any agreement. Thus, while their funding mechanism is unique within the county, it is not unique as it relates to the fact that this Employer, as virtually every other government employer, has a year to year budget. The Fact-Finder will comment further on this particular issue as the discussion regarding economic issues proceeds in this report.

**ARTICLE 8 - PROMOTIONS, BIDDING, AND TRANSFERS**

The current contract provides that promotions will be based on merit. In this regard the Employer proposes no change in the current language, while the Union proposes that the word "merit" be

stricken and that the words "qualifications and seniority" be inserted, and further that a new provision stating that the bargaining unit members certified by the Department of Administrative Services with the qualifications and seniority shall be promoted.

Also, the current contract states that a bargaining unit member who receives a promotion under the previous section must pass the Civil Service examination for the position when it is offered unless the employee becomes "grandfathered" under another article. The Union proposal is to strike the words: "when it is offered unless" and insert the words: "if the test is given when the employee is on probation." The Union's concern in this matter is that the word "merit" is far too subjective, as well as vague, and would allow for arbitrary decisions to be made by the Employer when it comes to promotions. It is noted that when a test is given the Employer is restricted to promoting those who scored in the top ten of the list.

The Union's concern is legitimate in that no employee wishes to have their fate decided by an undefined and arbitrary standard. However, the parties agree that at least since 1987, there has only been one grievance concerning this particular matter, and that this was withdrawn by mutual agreement of the parties. Furthermore, history indicates that these provisions were fairly bargained for in previous contracts. The party wishing to change the language (the Union) did not provide the Fact-Finder with any evidence that the current language is causing any problem. This particular Fact-

Finder takes the view that "If it ain't broke, don't fix it." This does not mean that future events might indicate that the current language is a problem, however, that can easily be adjusted at the next negotiations. In the meantime, the Fact-Finder finds no credible evidence to support the changes recommended by the Union.

**RECOMMENDATION**

There be no changes in the language under the current contract Article 8, Promotions, Bidding, and Transfers.

**ARTICLE 12 - HOURS OF WORK**

The parties have agreed that the language proposed by the Union at Article 12(B) shall be accepted and the words: "who volunteers" shall be inserted therein.

The remaining issue on this particular article, is whether or not, as proposed by the Union, the current lunch period for bargaining unit members of one-half hour unpaid, shall be changed to one hour paid.

The Union argues that since the relocation to its present building the members of the bargaining unit do not have as ready access to lunch facilities that they did have prior to that relocation. Also the Union believes this is a pay equity issue.

Management argues that the loss of an additional one-half hour work and the increase in salaries that the additional one hour per day per employee would have an adverse impact on both productivity, as well as their budget.

The Employer further notes that the change to thirty minute unpaid lunch from a previous forty-five minute unpaid lunch was fairly bargained for in 1993.

First, the Fact-Finder's personal observation is that there is a cluster of eating facilities which are within easy walking distance of the work site. However, even more compelling is the fact that the party proposing the change (the Union) did not provide any specific evidence of any problem which the current contract language is causing. The Fact-Finder, therefore, uses his same rationale as the one set forth in the previous recommendation in his adopting the Employer's position that no change should be made.

#### **RECOMMENDATION**

That the words: "who volunteers" shall be inserted as requested by the Union at Article 12(B) and that no other changes to the existing contract language be made.

ARTICLE 14 - EARNED SICK LEAVE AND EARNED PERSONAL LEAVE

At the fact-finding the parties agreed that the language in Article 14(B) should be changed to allow the employees to take sick leave in increments of one-half hour or more from the current language which reads one hour or more.

In addition, the parties have agreed that Article 14, paragraph M, providing for attendance bonus, should increase that bonus from the current language of \$125.00 to \$200.00.

The Union goes on to propose in Article 14(A) that sick leave be earned while on allowed time, that is, in active pay status. The current language indicates that the sick leave shall be earned at a rate of .0575 for each hour of work and work is defined to include holiday pay, personal leave, and funeral leave. The difference between the parties' positions is that under the Union's proposed language an employee would earn sick leave while on sick leave and vacation leave. The Employer indicates that the estimated cost for such a provision would be \$6,369.00. This is not an inordinate amount taken in any given year. However, since unused sick leave can accumulate without limit there would be a compounding factor on this cost. The compound factor is, of course, that the newly earned hours will not only begin to pile up, but as an employee receives step increases and other salary increases the cost of these accruing sick leave hours will escalate.

The Fact-Finder asked the party proposing this change (the Union) if any of their members had in the recent past, or at least since this contract, found it necessary to use up all of their available sick leave. The Union could not provide any such information.

In addition the Union proposes that the current granting of three days personal leave to the employees be increased to four days, and that language requiring that personal days be earned on an accrual basis rather than granted automatically be stricken from the current language.

The Employer argues that in view of the number of holidays which the Union receives (fourteen) and the underlying costs of an additional day off for each employee, which it estimates at \$41,074.56, this change is not justified.

The Fact-Finder was not presented with sufficient justification for burdening this Employer with these additional costs and, therefore, cannot recommend the Union's proposal.

#### **RECOMMENDATION**

That Article 14 of the current contract reflect at paragraph (B) that employees shall be allowed to take sick leave in increments of one-half hour and that at paragraph (M) the bonus for unused sick leave shall be changed to \$200.00, but all other existing language remain unchanged.

**ARTICLE 15 - EARNED VACATION LEAVE**

The Union proposed changes in section A and section C(2) are increases in annual vacation entitlement. The Union proposes to lessen the years of services before obtaining additional weeks of vacation and has proposed an additional week of vacation for employees who have completed twenty-five years of service.

The Union also proposes a change to delete the first sentence of section C(3) which adjusts vacation earned by lessening any time less than eighty hours a paycheck. In other words, the Union wants vacation to accumulate while an employee is in active pay status. Currently the earning of vacation is adjusted based upon the number of hours worked in a particular pay period. Also the Union wishes to add a provision providing that for persons with twenty-five years of service be provided thirty working days or 240 hours of vacation.

It is noted that the current contract language appears to be identical with that in the Scioto County Department of Job and Family Services negotiated by AFSCME.

In addition to this, the Union did not provide the Fact-Finder with any compelling arguments to justify this change and more importantly, did not provide the Fact-Finder with a cost analysis of these proposed changes.

The Employer indicates that the current language tracks that of ORC Section 325.19, as well as the Adams and Scioto County contracts.

The Union's inability to provide the Fact-Finder with a cost analysis makes any fact-finding recommendation concerning this proposal impossible.

**RECOMMENDATION**

There be no change to current language in the contract at Article 15.

**ARTICLE 27 - HOSPITALIZATION PROPOSALS**

In this particular article the Union proposes that among other things the contract language be changed from a stated amount paid by the Employer to 100% of the monthly premiums. Furthermore, the Union proposes that the paragraph concerning dental, vision, etc., be increased from the current language from \$40.75 to \$61.00 per month to provide enhanced vision coverage and prescription drug coverage.

The Employer, in contrast, proposes that the County increase its cap on single plan from \$300.00 to \$360.00, family plan from \$560.00 to \$640.00 in 2002; and then increasing such plans to \$375.00 and \$670.00 in the year 2003; and \$390.00 and \$700.00 in 2004.

Both parties agree that the life insurance plan provided by the County shall increase from \$5,000 to \$15,000.

Next to wages these issues are always thorny ones for any Fact-Finder. On the one hand, the Fact-Finder must sympathize with the employees who find themselves in a situation where health costs are ever escalating. Likewise an employer is constantly seeking some certainty in its budget through the use of fixed cost maximums. Unfortunately, in today's society, certainty in health care premiums is at best elusive. While this Fact-Finder finds the employees' concerns extremely legitimate he hesitates to saddle this Employer with an open-ended obligation for the next three years.

However, the Fact-Finder does find the increase for the benefits listed in paragraph (E) to be quite reasonable. Somehow the Union has located a policy which would allow it to add prescription drug coverage for what appears to this Fact-Finder to be a quite reasonable premium increase.

#### **RECOMMENDATION**

That the proposed language change in Article 27 set forth by the Employer attached hereto as Exhibit 1, be adopted. That the proposed language set forth by the Union at paragraph (E) of Article 27, attached hereto as Exhibit 1A, be adopted.

## ARTICLE 28 - WAGES

As indicated above the Fact-Finder cautioned the parties that any economic recommendations must, by law, be supported by the Fact-Finder's certification that such recommendations could be carried out through the availability of funds of the Employer. The inherent problem in all multi-year contracts is that no employer which is on an annual budgetary basis can accurately predict the availability of funds over the entire life of the contract. Therefore, all Fact-Finders must carefully scrutinize each party's proposal to determine not just equity, but in addition, availability of funds.

At the conclusion of the fact-finding hearing, the Fact-Finder left the record open for the parties to provide to him financial data that might assist him in this examination of the facts. All of this data, as well as the data provided at the fact-finding, was carefully reviewed by the Fact-Finder.

The positions of the parties are at great variance. At the fact-finding the Union proposed a \$2.00 per hour wage increase the first year of the new contract, a \$1.00 per hour wage increase in the second year, and \$0.75 per hour wage increase in the third year.

The Employer, at the fact-finding, increased its initial fact-finding proposal to a three percent raise for each year of the contract.

A rough calculation of the cost of the Union's proposal would be \$200,000 the first year, an additional \$98,000 in the second year, and an additional \$75,000 in the third year. This contrasts with the Employer's cost analysis, which indicates that the first year of their proposal would cost \$76,235, and would compound by three percent per year for the following two years. The Employer's proposal would provide the employees with a total raise over three years of 9.27%. It is the Employer's position that as it currently stands, it expects to have \$212,000 available which may be "pushed forward" and, in effect, fund their proposal over the life of the contract.

The Fact-Finder calculates that the total cost for the Employer's proposed increase over the life of the contract would be \$235,718, which is slightly more than the projected available fund of \$212,000.

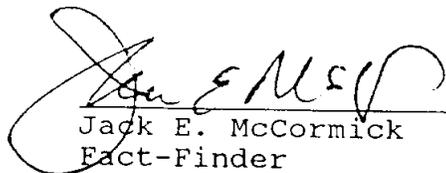
The Employer's proposed wage increases appear to be in line with the wage increases negotiated in other SERB contracts in the recent years. With the current cost of living being under two percent, the Employer's proposed raises, coupled with the fact that all of these employees receive annual step increases, more than provides them protection from inflation and grants them a modest increase in wages.

Meanwhile, the Fact-Finder calculates the approximate cost of the Union's proposed wage increases to be \$371,280 over the three year period. This means that the Employer must continue to accrue surpluses over the life of the contract.

However, in adopting the Employer's proposals on this article, the Fact-Finder would add the following caveat: inasmuch as the Fact-Finder is adopting the Employer's proposal on this particular issue, should this fact-finding be accepted, in the Fact-Finder's opinion, the Employer is estopped from not providing the necessary monies to fund this wage increase from wherever available, including, but not limited to, general revenue of Pike County. In other words, in the Fact-Finder's opinion, the adoption of the Employer's wage proposal by the Fact-Finder is, in effect, a certification not only by the Fact-Finder that there are available funds, but also by the Employer that it shall do everything possible to fund that proposal. This may very well mean that Pike County may have to appropriate funds not necessarily dedicated to the Department of Job and Family Services in order to accomplish this Agreement.

**RECOMMENDATION**

That the Employer's proposal for a wage increase effective August 1, 2002 and continuing to and through August 1, 2004, of three percent per annum for bargaining unit members be adopted.

  
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Jack E. McCormick  
Fact-Finder

October 15, 2002  
Columbus, Ohio

EXHIBIT I

The Pike County Department of Job and Family Services  
And  
AFSCME, Ohio Council 8 Local 3387,

Dated Proposed: September 10, 2002

Proposal #: #3

**ARTICLE 27: HOSPITALIZATION INSURANCE**

- A. In accordance with the following chart, the County shall pay up to the stated amount toward the monthly premium of a single or family hospitalization, surgical, major medical plan. The County shall be solely responsible for determining the carrier of the plan and will do so under the provision of state law.
1.
    - a. Effective August 1, ~~2002~~ 2002 ~~1999~~, the County shall pay up to Three Hundred ~~Sixty~~ Sixty Dollars (~~\$360.00~~) toward the cost for a single plan for full-time, non-probationary employees.  
  
Effective August 1, ~~2002~~ 2002 ~~1999~~, the County shall pay up to ~~Six Hundred Forty Dollars (\$640.00)~~ Six Hundred Forty Dollars (\$640.00) ~~Five Hundred Sixty Dollars (\$560.00)~~ toward the cost of a family plan for full-time, non-probationary employees.
    - b. Effective August 1, ~~2003~~ 2003 ~~2000~~, the County shall pay up to Three Hundred ~~Seventy-Five~~ Seventy-Five Dollars (~~\$375.00~~) toward the cost of a single plan for full-time, non-probationary employees.  
  
Effective August 1, ~~2003~~ 2003 ~~2000~~, the County shall pay up to ~~Six Hundred Seventy Dollars (\$670.00)~~ Six Hundred Seventy Dollars (\$670.00) ~~Five Hundred Eighty-Five Dollars (\$585.00)~~ toward the cost of a family plan for full-time, non-probationary employees.
    - c. Effective August 1, ~~2004~~ 2004, the County shall pay up to Three Hundred ~~Ninety-Three~~ Ninety-Three Dollars (~~\$390.00~~) toward the cost for a single plan for full-time, non-probationary employees.  
  
Effective August 1, ~~2004~~ 2004, the County shall pay up to ~~Seven Hundred Dollars (\$700.00)~~ Seven Hundred Dollars (\$700.00) ~~Six Hundred Ten Dollars (\$610.00)~~ toward the cost of a family plan for full-time, non-probationary employees.
  2. If at any time the bargaining unit member's amount paid by the Department of Human Services (A-1 above) would be less than the contribution level of the county general fund for the general fund employees covered by it, then the Department will pay the contribution level at the general fund level.

3. The employer shall continue the Fifteen Thousand Dollars (\$15,000.00) ~~Five Thousand Dollar (\$5,000.00)~~ life insurance plan provided under the hospitalization carrier at no cost to the employee.
- B. The County shall continue to try to make available to nonretired bargaining unit members and their eligible dependents substantially similar group health and hospitalization insurance coverage and benefits as existed in the County's conventional insurance plan immediately prior to the signing of this Agreement. The County reserves the right to change or provide alternate insurance carriers, health maintenance organizations, or benefit levels or to self-insure as it deems appropriate for any form or portion of insurance coverage referred to in this Article, so long as the new coverage and benefits are substantially similar to the conventional insurance which predated this Agreement. The County will not be responsible for changes unilaterally imposed by an insurance provider in benefits, co-payment provisions or deductibles so long as the County uses its best efforts to minimize changes by incumbent insurance providers from one plan year to another. During the terms of this Agreement, if changes to the benefit insurance policies provided by the County are instituted for employees not covered by this Agreement, the County agrees to additionally grant those changes to bargaining unit members covered by this Agreement.
- C. The parties agree to study and institute cost containment measures relative to insurance coverage so long as the basic level of insurance benefits remains substantially similar to the current coverage which may include but not be limited to:
1. mandatory second opinions for elective surgery;
  2. pre-admission and continuing admission review;
  3. scheduling of admissions except in emergency situations; and
  4. outpatient elective surgery for certain designated surgical procedures.
- D. The extent of coverage under the insurance policies referred to in this Agreement shall be governed by the terms and conditions set forth in said policies or plans. Any questions or disputes concerning said insurance policies for plans or benefits thereunder shall be resolved in accordance with the terms and conditions set forth in said policies or plans. The failure of any insurance carrier(s) or plan administrator(s) to provide any benefit for which it has contracted or is obligated shall result in no liability to the County, nor shall such failure be considered a breach by the County of any obligation undertaken under this or any other Agreement. However, nothing in this Agreement shall be construed to relieve any insurance carrier(s) or plan administrator(s) from any liability it may have to the County, bargaining unit member or beneficiary of any bargaining unit member.

EXHIBIT IA

Pike Cnty J&FS &  
AFSCME Local #3387  
2002 Negotiations  
Union Proposal

liability it may have to the County, bargaining unit member or beneficiary of any bargaining unit member.

- E. The Employer agrees to pay ~~\$40.75~~ ~~\$6,100~~ per month per bargaining unit member for the cost of the following coverages provided by the AFSCME Health Care Plan. The coverage shall be Dental II, Vision II, Hearing Aid, and Life Insurance: and prescription drug.

For the Employer

For the Union

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\_\_\_\_\_

Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Fact-Finder's report in the above referenced matter was mailed, postage prepaid, this 15th day of October, 2002, to the following:

Robert W. Cross  
Cross Management Consulting Services, Inc.  
631 7th Street  
Portsmouth, Ohio 45662

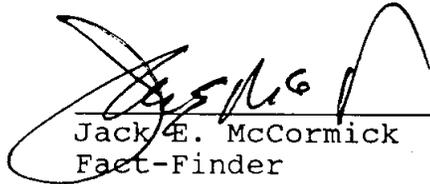
Employer Consultant

Gary Arnold  
AFSCME, Ohio Council 8, Local #3387  
36 South Plains Road  
The Plains, Ohio 45780

Employee Representative

and

Dale A. Zimmer  
Administrator  
Bureau of Mediation  
State Employment Relations Board  
65 East State Street, 12th Floor  
Columbus, Ohio 43215-4213

  
\_\_\_\_\_  
Jack E. McCormick  
Fact-Finder

October 15, 2002  
Columbus, Ohio