

STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD 7:03 JUN 16 A 10: 12

IN THE MATTER OF
FACT-FINDING BETWEEN:

CLERMONT COUNTY COMMISSIONERS

CASE NO. 02-10-1080

AND

AMERICAN FEDERATION OF STATE, COUNTY,
MUNICIPAL EMPLOYEES AFL-CIO
OHIO LABOR COUNCIL 8

JERRY HETRICK
FACT-FINDER

FACT-FINDING REPORT
AND
RECOMMENDATIONS

APPEARANCES

FOR THE COUNTY

Paul Berninger, Attorney
Brenda Gilreal, JFS
Jennifer Rose Adminisstrator
Michael Pride, Financial Officer
Tim McCartney, DJFS

FOR THE UNION

Walter J. Edwards, Representative
Julie Morehouse, P resident
Therese Bunnell, Vice President
Betty Wessel, Member

BACKGROUND

This matter came up for hearing on May 19, 2003 before Jerry Hetrick, appointed as fact-finder pursuant to Ohio Rev. Code Section 4117.14. The hearing was conducted between the Clermont County Commissioners Department of Job and Family Services and AFSME, Ohio Council 8 and Local 3536. The bargaining unit consists of one hundred fifty seven (157) employees engaged in clerical, administrative, investigative, and social work. Bargaining unit employees are assigned to three major divisions, Income Maintenance, Child Support Enforcement, and Children's Protective Services.

The unresolved issues set forth in the respective briefs and discussed at the hearing are as follows:

1. Article 13. Hours of Work (Two Issues)
2. Article 15. Vacation and Holidays. (Two Issues)
3. Article 19. Sick Leave Conversion
4. Article 25. Health Insurance
5. Article 29. Wages (Two Issues-Increase plus Longevity)
6. Article 30. On Call Pay
7. Article 37. Drug Testing
8. Appendix 8. Pay Schedule

Tentative agreement has been reached on Article 4, Non-Discrimination, Article 5, Union Business, Article 7, Grievance Procedure, Article 9, Personnel Files, and Article 35, Probationary Period. The fact-finder incorporates by reference into this report and recommendations all resolved and tentative agreements reached between the parties.

In making the following recommendations, the fact-finder has reviewed the arguments and evidence presented by the parties both at hearing and in their position statements. By mutual agreement, the parties requested the fact-finder proceed directly to fact-finding rather than efforts at mediation.

FACT-FINDING CRITERIA

In the determination of facts and recommendations, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14 (C) (4) (e) as listed in 4117.14(G)(7)(a)-(f) and Ohio Administrative Code Section 4117-9-05(K)(1)-(6) as follows:

- (1) Past collectively bargained agreements, if any, between the parties.
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classifications involved.
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effects of the adjustments on the normal standard 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 agreed upon dispute settlement procedures in the public service or in private employment.

FINDINGS OF FACT AND FINAL RECOMMENDATIONS

Issue Number 1- Hours of Work. The Union proposes to change the hours of work provision, Section 13.1 to define the workweek as Monday through Friday rather than forty (40) hours as provided by the current labor agreement. The Union proposal would also define the work day of eight hours for employees assigned to a Monday-Friday work week and ten hours for employees assigned to a four ten hour work day schedule.

The Union seeks to provide for overtime compensation at time and one half for work performed on Saturday and Sunday. In support of its position the Union argues that its proposal is reasonable and should be recommended for the following reasons:

The employer has required employees to take a day off during the workweek to attend training sessions on Saturday to avoid overtime premium.

The employer says it needs flexibility in scheduling because of the department's activities. The child support division generally works a standard schedule and works Saturday or Sunday on orders of the Governor. The Income Maintenance Division generally works a standard schedule and is rarely affected by overtime. The Child Protection Unit changes daily as children are often in the hospital and requires waiting for them to be attended. It would be rare for a standard schedule for this division to occur.

The employer argues for continued flexibility to meet family and children needs.

Employees who work over forty hours are paid each pay period or given flex time off.

FINDING AND RECOMMENDATION

The fact-finder's function is to put the parties into the same position they would have occupied but for their inability to reach full agreement. This issue is both economic and affects the scheduling and direction of the work force. The issue comes to the front

burner when employees are scheduled for training on Saturday and then required to take flextime off. Both parties acknowledge that it has occurred on two or three occasions during the life of the agreement. Apparently the training undertaken required the suspension of services and all employees in attendance at the same time. Suspending departmental activities for training purposes during the week would affect the department's ability to provide necessary and often unscheduled services. A review of SERB Data, Employer Exhibit 5, indicates that external comparables supports the employer position on this issue. No internal comparables were provided by either party. Based on the minimal disruption to lifestyles, the employer's proposal to maintain the current language of 13.1 is recommended.

The Union also proposes amending Section 13.2 to provide for the inclusion of sick leave and compensatory time to be considered as time worked for purposes of overtime compensation. The Employer recommends no change in the current contract language. Since compensatory time off is typically an employee option the Union's proposal to include such time for purposes of the overtime premium is unreasonable. No support for inclusion of sick leave was shown. While not adopting the Union's proposal to pay overtime for Saturday or Sunday as such, the Employer's occasional scheduling of training on Saturday, coupled with reducing one day from the normal work week, interferes with leisure time of employees. The Fact-Finder recommends amending Section 13.2 as follows: Non-worked hours shall not be considered as time worked for the purpose of determining overtime compensation entitlement. Time spent on approved vacation, approved personal day, paid vacation and a day lost during the normal work

week as a result of a layoff imposed by the Employer shall be considered as time worked for the purpose of determining overtime compensation.

ISSUE 2 VACATION & HOLIDAYS

The Union proposes to provide additional vocational benefits to employees attaining twenty-five years of service. Article 15 would be modified to provide that employees with twenty (20) years but less than twenty-five (25) years would receive 200 hours of vacation. Employees completing twenty-five (25) years or more would receive 240 hours of vacation pay. The Union believes its proposal is not unreasonable to seek an increase in vacation benefits for long service employees and would not be a hardship to the employer's ability to provide efficient services to the community.

The employer recommends continuation of the current vacation schedule.

FINDING AND RECOMMENDATION

The Union's proposal for increased vacation benefits is not supported by the record. Nothing advanced by the Union suggests that it is out of step with other county employees nor disadvantaged with external comparisons. In contrast the SERB data, Exhibit 5, indicates the employer's vacation benefit is comparable to external comparisons. The Union is correct that a minimal number of employees would be eligible and would have a minimal effect on departmental efficiency. That reasoning is insufficient for the fact-finder to adopt the union's proposal. It is recommended that the current vacation provision be incorporated in the new collective bargaining agreement.

HOLIDAYS

The Union proposes to increase the number of holidays from ten (10) with the addition of Columbus Day and Employee Birthday. The Union recommends acceptance of its proposal as reasonable as employee birthdays are common in labor agreements while Columbus Day is a national holiday. No supporting data was provided by the Union to suggest that it is out of step with other county employees or common with external comparables. The party seeking to make a change in benefits must provide persuasive support for that position to prevail. That is especially significant when the proposal adds cost, impacts service, or both.¹ The employer argues for the current holiday schedule and is supported by the SERB data, exhibit 5. The employer also notes that it previously traded Columbus Day for the Day after Thanksgiving and is now asked for its reinstatement without a quid pro quo or supporting data. Adding the employee birthday represents a scheduling issue as the service must be provided and covered by other employees. It is recommended that the current holiday provision be incorporated in the new collective bargaining agreement.

ISSUE 3 SICK LEAVE CONVERSION

Currently unused sick leave credits earned on or after January 1, 1984 shall be converted at one fourth (1/4) of the value of the accrued credits. The aggregate value of accrued but unused credits shall not exceed the value of thirty (30) days accrued but unused sick leave.

The Union recommends adoption of its proposal that an employee with more than ten years of service with the Employer who retires from active service or an employee who

¹ Based on a \$14.50 ASTER, each holiday proposed adds approximately \$18,212 to employer costs Before any wage increase is considered. Two holidays would add approximately \$36, 424 to costs.

takes a disability retirement after five years of service, shall be paid for 100% of the value of their accrued but unused sick leave up to a maximum payment of sixty (60) days. Payment shall be made at the employee's current hourly rate.

The Union's proposal would result in the conversion of unused sick leave credits at full value and increases the number of paid days from thirty (30) to sixty (60) days. The union says the current compensation is inadequate for long service employees with a sizable unused sick leave bank.

The employer proposes maintaining the current contract provision. The employer points out that the parties discontinued the conversion of unused sick leave on an hour for hour basis. The party's grand fathered employee accounts earned before January 1, 1984. All sick leave accrued after that date would be converted at twenty-five (25) percent of its value with a maximum accumulation of two hundred forty (240) hours. It argues against a return to the former practice.²

FINDING AND RECOMMENDATION

The Union argues that sick leave is an earned benefit and employees would like to be compensated for time earned. The Union argues that an employee gets paid for sick days and should get paid on retirement if unused and the current provision is patently unfair.

The Employer counters that the sick leave is insurance for a catastrophic illness, not severance. It contends that there was a quid pro quo for the current provision and opposes a return to the former provision. The Employer it would require an actuarial study to get a cost of this proposal.

2. The parties were unable to identify the trade off made.

Neither party has provided internal or external data in support of its position. The Fact-Finder makes an assumption that neither internal or external data would support the Union's proposal for a sick leave conversion increase either in terms of the percentage or additional days. Sick Leave is typically not a benefit that is funded but exists as a self-funded mechanism to provide some income continuation for employees who are ill or injured. Employers typically tries to maintain uniform benefits among its bargaining units to prevent a whipsaw situation where each bargaining unit can make a case for increased benefit levels just because another unit has it without a unique situation for the requesting unit. Had the union offered some substantial quid pro quo or unique situation affecting its unit, there might be some basis for its position but that is not the case.

Accordingly the Fact-Finder finds the employer's position, given economic conditions, with respect to the sick leave conversion is more appropriate than that of the Union.

ISSUE 4 HEALTH INSURANCE

The Union has proposed certain changes to Article 25 Health Care. The current agreement caps the total premium for health care benefits at \$456.44 per month for the family plan and \$195.02 for single coverage. Any difference between premiums for these plans and the employer contribution is borne by employees. In no case shall the monthly premium be more than the total cost of monthly premium, even though the total cost is less than the Employer's maximum contribution.

The Union proposes the following: Effective January 3, 2003, the cost of hospital, surgical, and medical care paid by the Employer will be for HMO Coverage: \$238.56 per month for a Single Plan and \$735.97 for a Family Plan or, for PPO Coverage the Employer will pay \$271.64 per month for a Single Plan and \$701.42 per month for a

Family Plan. The difference, if any, between what the Employer pays and the cost of the health care shall be borne by the employee.

Additionally, the Union would modify Section 25.3 to include the \$45.70 per month the employer contributes for the AFSME Care Plan in the health care cap. Currently the AFSME Care Plan is included in the calculation of the Employer Cap.

The Union also seeks removal of the words “AFSME Rider” from employee paychecks. The Employer recommends retaining Article 25 unchanged. It seeks to retain common health care plans and contributions for all county employees, bargaining unit or non-bargaining unit employees.

FINDING & RECOMMENDATION

Uniformity with respect to benefit plans is important to both the Employer and the Union. The Employer is not placed in a whipsaw position where each Union makes a case to obtain a benefit just because another bargaining unit has it. Often there is a cost advantage for both the Employer/Union when units are combined for health care plans. This is especially correct for small units. In this case, the Employer has multiple units with all county collective bargaining agreements containing essentially the same language. The Employer has provided assurance that should it increase the employer health care contribution for non-bargaining unit employees, it will do so for this unit. It's stated intent is for all county employees to enjoy the same health care benefits. The Employer has bargained for a fixed contribution for health care. It provides a variety of riders for dental, vision, and other benefits. The employee's cost depends on riders selected. The AFSME unit has bargained for its Care plan in lieu of the employer's plans. If the Union's proposal were adopted, this unit would have a significant improvement in

health care in comparison with other county employees and units. It would add approximately seventy-seven thousand dollars cost to the Employer and place the Employer in the position it seeks to avoid by having common health care provisions and contribution rates. To prevail, the Union must show a unique situation exists with this unit and no other. There are no indications that the Union is disadvantaged either internally or externally, by the employer's inclusion of the AFSME Care Rider in the calculation of the cap. It has shown no unique situation vs other internal or external comparisons that warrants adoption of its proposal. Accordingly, the Fact-Finder finds the Employer's position to be more appropriate than that of the Union and recommends the current provision of the agreement be incorporated in the new agreement without change.³

The Union proposed deletion of the AFSME Rider reference on the pay stub. However no deduction is made since the cost of the rider is computed in the Employer's contribution. The Employer has agreed to discuss the matter with its accounting department on how employees can be informed rather than placement on the pay stub. The agreement contains a provision for Labor-Management/Safety Meetings. The Fact-Finder recommends that within fifteen (15) days following ratification of the agreement, the Employer to advise the Union of a timetable for the removal of the reference to the AFSME Rider on employee pay stubs.

ISSUE 5 WAGES

The wage settlement dominates the issues. The Union proposes wage increases of eight (8), seven (7) and six (6) percent in addition to its proposal for additional step increases.

³ Exhibit 2 indicates the Employer's share has increased by 3% for employees moving to the PPO. Conversely, the employee's gain \$8.29 per pay period by moving to the PPO. Employer credits exceed the contractual cap due to voluntary increased contributions.

It bases its recommendation on an Employer memo regarding the county's reserve and the solvency of the county. The Union also notes the county received a three million dollar refund from Anthem and all supervisors and Directors received a salary increase. While the Employer initially proposed a Pay for Performance Plan, that proposal has been withdrawn. Currently the Employer has offered a one and one half percent (1.5 %) increase with employees who are not at the top step of the pay schedule to receive that step increase. The Employer proposes 2004 and 2005, salary adjustments equal to the same salary adjustment granted by the Employer to all non-bargaining unit personnel.

FINDING & RECOMMENDATION

The Employer contends that its initial offer of three percent was conditioned on implementation of the Pay For Performance Plan which it now says it could not fund. The Employer contends that it is faced with declining revenues and loss of state/local government funds make it necessary to revise its salary offer downward. The Union responds that the Employer's General Fund is healthy and could fund the wage increase. The Employer did not dispute that the general fund is healthy but notes that the general fund is not available for use to pay wages. The Employer argues that is competitive, if not better, than adjacent counties based on SERB data, Exhibit 5. Exhibit 5 reflects the following ranking:

| Classification | Rank |
|------------------------|------|
| Account Clerk | 2 |
| Cashier | 1 |
| Clerical Specialist | 2 |
| Clerk | 1 |
| Computer Operator | 1 |
| Data Entry | 2 |
| Emp Svc Interviewer | 1 |
| Family Svc Interviewer | 1 |

| | |
|----------------------|---|
| Income Aide | 1 |
| Income Maint Aide | 1 |
| Income Maint Wkr 2 | 1 |
| Income Maint Wkr 3 | 1 |
| Investigator | 2 |
| Mail Clerk/Messenger | 3 |
| Social Svc Aide | 2 |
| Social Svc Wkr | 2 |
| Social Svc 2 | 2 |
| Social Svc 3 | 1 |
| Tech Typist | 1 |
| Telephone Op | 2 |

The Employer ranks first in eleven of twenty comparable classifications and second in eight other classifications. Only the Mail Order Clerk ranks third among comparables.

While neither party provided data on wage settlements in adjacent or external comparisons, the controlling factor is the ability to finance the wage settlement based on conditions facing Clermont County. Based on the ability to finance factor, the Finder finds no support for the Union's wage proposal. Public sector wage increases declined in 2002 for the first time in seven years and given the economic climate, can be expected to do so for 2003 settlements.

Employer Exhibit 6 details the financial position/ issues facing the Department of Jobs and Family Services as a result of funding cuts and reduced income streams. State and Federal consolidated allocations for SFY 2003 are down 5.05%. The Child Support Division has overspent its budget in 2002, is projected to do so in 2003 and faces reductions in 2004 and beyond. The General Fund is liable for placement costs which continue to increase. The General Fund is also responsible for non-reimbursable income maintenance expenditures. Next fiscal year the Employer must reduce costs by \$285,000 and will no longer earn incentives. Given the uncertainty of the future revenue stream the

Employer has proposed a 1.5% pay increase in year one and offers a salary adjustment in 2004 and 2005 equal to the salary adjustments granted all non-bargaining unit employees. The record shows that non-bargaining unit employee payroll costs will increase by 3%. While some non-bargaining unit employees will receive more than 3% increases, others will receive none or less. The result is a three percent increase in compensation costs for non-bargaining unit employees. The Employer proposal provides no opportunity for the Union to engage in meaningful bargaining over the wage package. The Fact-Finder recommends a three percent increase effective January 1, 2003 with a wage re opener for years 2004 and 2005.⁴

LONGEVITY PAY

The Employer proposes to eliminate the Longevity Pay Schedule in the second year of the proposed agreement. For a Grade 8 employee with five (5) years of service, the employer proposal represents a pay reduction of \$416 or approximately 1.2%. For Grade 8 employees with ten (10) years service, the pay reduction equals \$832 or 2%, less than the offered employer pay increase. Employer Exhibit 1 indicates two (2) external comparables provide longevity pay. Adams County provides a twenty (20) year employee a longevity benefit of 10%. Green County provides a flat \$27 per year of service. Butler and Hamilton Counties do not include longevity pay in their total compensation package. Among the Employer's internal comparables, no other bargaining unit is provided longevity pay.⁵

Free collective bargaining usually produces a quid pro quo when a party seeks to change or eliminate a benefit, particularly a monetary benefit such as longevity pay. In this case,

⁴ Based on an ASTE of \$14.50, the difference between the employer/fact-finder recommendations is approximately \$71,000 based on a payroll of \$4,735,120.

⁵ Based on Fact-Finder research

it is offered as a cost reduction effort. Given the uncertainty of the future, the Fact-Finder recommends the following modification to Article 29 Section 2 (D):

(D). Employees hired on or before the effective date of this agreement shall continue to receive longevity payments set forth in Appendix C. Longevity payments shall not apply to employees hired on or after January 1, 2004.

ISSUE 6 ON CALL

Both the Union and Employer propose changes to the process of how the 24 hour, seven day a week service, referred to as beeper duty, is provided. Article 30 provides that the Employer shall be responsible for assigning the on-call rotation schedule. Employees assigned on-call duty may trade with another qualified employee, provided the employer has approved, in advance, and has had seven (7) days advance notice.

The Union proposal increases the options of employees, requiring the employer to first seek volunteers. Next, management will off the on-call pay on a rotational basis to employees whose duties normally include such work, prior to making such work mandatory, provided it is assigned in a fair and equitable manner.

The Employer proposes to amend the current language to amend the recognition clause to include part-time employees and to amend the on-call procedure to include a new provision to assign beeper duty to part-time employees.

FINDING AND RECOMMENDATION

The Employer bases its proposal on discussions between employees and supervisors in the Children's Protective Division. The employer's proposal addresses a problem with the current method of providing on call services to the public. It does not represent an

undue burden on current full time employees and it reasonably provides a remedy to the method of “beeper duty”. The Employer’s proposal to amend Article 30 Section 30.3 is adopted as follows: The Employer shall be responsible for assigning the on-call rotation schedule. Employees assigned on-call duty may trade duty with another qualified Employee, provided the Employer has approved, in advance, and has had seven (7) days advance notice. Nothing in the Article is intended to restrict the right of the employer to assign on-call beeper duty to part-time employees.

Article 1 Section 1.1 Exclusions shall be amended as follows: All employees whose classification is not listed in Appendix A shall be excluded. Notwithstanding the other provisions of this Article, new employees during their probationary period, seasonal, confidential, management, and supervisory Employees shall be excluded from the bargaining unit.

ISSUE 7 DRUG TESTING

The Employer proposes to replace the current drug testing procedure with a random drug testing procedure to act as a deterrent to drug usage and reporting to work under the influence. The primary change would be that the employer could establish random drug testing procedures identical to that permitted to public employers who employee persons required to maintain Commercial Driver’s License. The Employer contends a professionally managed testing program would act as a deterrent to employees who might consider reporting to work under the influence. The Employer’s program focuses on treatment vs a punitive program. It would eliminate the “hoops” present in the current program.

The Union is not against providing a drug free environment as evidenced by the existence of the current provision on drug screening and testing. The current provision provides for employees to submit to drug and/or alcohol analysis where there is a reasonable suspicion to believe the employee is using, consuming or under the influence of an alcoholic substance, non-prescription controlled substance (other than over the counter medication) and/or non-prescription drugs while on duty. The parties have defined what constitutes reasonable suspicion, test procedures/standards, treatment and disciplinary action to be taken where reasonable suspicion of use or under the influence is suspected.

FINDING AND RECOMMENDATION

Fact-Finders should be reluctant to impose contract language changes as their role is to supplement the bargaining process rather than to supplant it. The burden is on the party proposing the change to show the present contract language has given rise to a condition that requires change and will not impose an unreasonable burden on the other party. Here the question is whether the Employer's proposal disturbs the balance between the public's interest in preventing drug usage by public employees and employee privacy issues.

The Employer has not met that burden. Both parties are in agreement that there has not been a drug/alcohol usage, reporting to work under the influence issue, harm to the public it serves or that having implemented the procedure it proved ineffective. Based on the foregoing, the Fact-Finder recommends retaining the current collective bargaining provisions of Article 35.

ISSUE 8 APPENDIX B

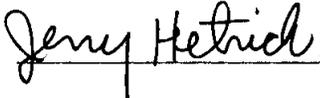
Appendix B sets forth the pay schedule, pay range and step increases. Currently employees assigned to pay ranges 7-11 reach the top of their pay range at step 7. The Union proposes to add Step 8-9-10 at the time computations are made to new contract percentages. The Union believes the proposal is reasonable as employees have not had an opportunity to increase their wage by more than the annual percentage increase for years. The Union proposal affects one hundred seventeen employees or seventy-five (75) percent of the bargaining unit.

The Employer proposes retaining the current steps of the pay schedule.

FINDING AND RECOMMENDATION

The addition of additional steps has significant cost implications for the future and at a time when the revenue stream is uncertain. A three percent increase for an extra step carries an approximate cost of \$47,800. Changes in the wage structure should be arrived at through bargaining rather than fact-finding. The Union has offered no persuasive reason for the additional step. It is not particularly supported by the comparables in employer Exhibit 5. There is no adverse affect on retaining the current step schedule. The Fact-finder recommends the current wage schedule and steps be retained in the new collective bargaining agreement.

Respectfully

 Fact-Finder

Dated: June 12, 2003