

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
FACT FINDING PROCEEDINGS

STATE EMPLOYMENT  
RELATIONS BOARD  
2003 NOV 28 A 10:36

REPORT & RECOMMENDATION  
OF THE FACTFINDER

AS ISSUED  
NOVEMBER 19, 2002

IN THE MATTER OF:

Portage County Jobs and Family Services )  
(Employer) )  
-and- )  
AFSCME, Ohio Council 8 )  
Local 1696 )  
(Union) )  
SERB Case No.: No. 03-MED-03-~~0330~~ 0339

APPEARANCES:

On Behalf of the Employer:

Ronald J. Habowski	Attorney
Lynn D. Leslie	HR Director
John Witkosky	J & FS Director

On Behalf of the Union:

Stevan P. Pickard	Staff Representative
Sheila L. Grega	Union President
Joan M. Meloy	Negotiating Member
Judy S. Scott	Union Treasurer

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## **SUBMISSION**

The Parties in the present negotiation have had an ongoing collective bargaining relationship culminating in an Agreement that obtained until June 30, 2003. Pursuant to the provisions of Ohio Revised Code 4117.14(C)(3), the undersigned was appointed Factfinder in the matter, effective May 30, 2003. Mutually agreeing to an extension of the statutory deadlines, the Parties met in negotiations toward a successor contract on a number of occasions prior to reaching impasse on the issues enumerated below.

Having reached impasse, the Parties requested the Factfinder to attempt mediation of unresolved issues prior to holding an evidentiary hearing on October 30, 2003 at the offices of the Employer. Prior to hearing, pursuant to OAC 4117-9-05(F), *et seq.* the Parties submitted to the Factfinder written statements of their respective positions. Efforts to reach agreement on all issues at impasse proved unsuccessful, and an evidentiary hearing was held at which the Parties were afforded an opportunity to present evidence and testimony, and to cross examine witnesses. The matter was declared closed as of the date of hearing, with the Parties mutually requesting issuance of the Report and Recommendations of the Factfinder to correspond to the meetings of the Portage County Commissioners.

## **ISSUES AT IMPASSE**

The Parties identified and presented the following issues as unresolved:

- Article XIV - Temporary Vacancies
- Article XXIV - Expense Reimbursement
- Article XXV - Wages, Longevity, PERS pickup
- Article XXVI - On-Call Pay
- Article XXVII - Insurance
- Union Orientation
- Retroactivity

## **CURRENT CONTRACT LANGUAGE AND TENTATIVE AGREEMENTS**

The Parties retained the current contract language or tentatively agreed upon successor provisions in the following:

Cover Page*	
Agreement*	
Article I	Purpose
Article II	Union Recognition
Article III	Probationary Employees
Article IV	Dues Check-Off
Article V	Management Rights
Article VI	Union Representation
Article VII	Pledge Against Discrimination and Coercion
Article VIII	No Strike
Article IX	Disciplinary Procedure
Article X	Grievance Procedure
Article XI	Union Bulletin Board*
Article XII	Seniority
Article XIII	Vacancy, Promotions and Transfers
Article XV	Layoff and Recall
Article XVI	Labor-Management Conference
Article XVII	Hours of Work and Workweek
Article XVIII	Overtime
Article XIX	Sick Leave
Article XX	Leaves of Absence*
Article XXI	Military Leave
Article XXII	Holidays
Article XXIII	Vacations
Article XXIV	Expense Reimbursement*
Article XXVI	On-Call Pay*
Article XXVIII	Retirement
Article XXIX	Health and Safety
Article XXX	Work Rules
Article XXXI	Job Descriptions , Job Audits and Evaluations
Article XXXII	Job Security
Article XXXIII	Miscellaneous Provisions
Article XXXIV	Application of State Civil Service Law
Article XXXV	Sexual Harassment
Article XXXVI	Total Agreement
Article XXXVII	Obligation to Negotiate
Article XXXVIII	Successors
Article XXXIX	Duration of Agreement*
Schedule C	Longevity
	Sexual Harassment Policy

\* Indicates issues to which temporary agreement was reached prior to or at hearing.

## STATUTORY CONSIDERATIONS

In weighing the positions presented by the Parties, the Factfinder was guided by the considerations enumerated in OAC 4117-9-05(K), *et seq*, specifically:

- 4117-9-05(K)(1) Past Collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- 4117-9-05(K)(3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- 4117-9-05(K)(4) The lawful authority of the public employer;
- 4117-9-05(K)(5) Any stipulations of the parties;
- 4117-9-05(K)(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## **BACKGROUND AND CONSIDERATIONS**

There are approximately 112 employees of the Portage County Department of Jobs and Family Services in the present bargaining unit. Their duties range from clerical and administrative services to social work, in approximately eight pay ranges varying in rate according to years of service to the County. The PCDJFS has experienced an unusually high turnover of employees.

In March of 2002, an organizational audit of the PCDJFS, known as the McVey report, was completed and submitted to the Employer. While most of the report's findings are not directly germane to these proceedings, it should be noted that on the basis of, "a superficial salary survey of contiguous counties and other human services agencies within Portage County" PCDJFS wages were generally below those of similar agencies in nearby Stark and Summit Counties. The McVey report went on to urge an in-depth study of comparable wages in other social service agencies.

On the basis of the McVey recommendations, a Salary Team consisting of employees from across the PCDJFS met in retreat, "[t]o create a fair and competitive salary package that will benefit all contract employees." The package developed by the Team retained the ten-step schedule for each position in the bargaining unit and recommended specific wage adjustments for each. For the most part, the Team used information on starting wages for each position, and averaged wages at somewhat less than the five year level. For each position in the PCDJFS, these figures were compared with salary and benefit information obtained from similar agencies in 27 counties on a "Wage and Benefit Matrix." The results of that Package form the basis for the salary proposal presented by the Union.

The present bargaining unit and a smaller unit represented by AFSCME, alone among County employees, currently is provided a supplemental health insurance plan through AFSCME and known as the "Ohio AFSCME Care Plan". The Care Plan is administered by a fourteen-member Board of Trustees composed of equal representation by employers and AFSCME. In 1999 the Board amended its Trust Agreement to provide "that benefits of the Care Plan are available to non-AFSCME Bargaining Units where Employers are making contributions to the Care Plan on behalf of an AFSCME Bargaining Unit.

There was no assertion that the County was unable to pay proposed increases in compensation, as contemplated by OAC 4117-9-05(K)(3).

## **FINDINGS AND RECOMMENDATIONS**

### **I. Article XIV - Temporary Vacancies**

#### **Union Proposal:**

Local 1696 proposes language requiring that its officers or representatives receive copies or other notification of bargaining unit members who are temporarily transferred to different positions. Employees are currently assigned to other various County buildings, the Union says. As a result, Union officials are not adequately informed of transfers that might implicate contractual provisions or restrictions.

#### **Employer Position:**

The County argues that this is a relatively small and cohesive bargaining unit, in which the members and their assignments are well known to one another. Additionally, the number of temporary transfers is small. At present, regular reports of personnel changes, including temporary assignments, are provided to the Commissioners, and are available to AFSCME representatives.

#### **Findings and Recommendation:**

The evidence indicates that bargaining unit members are temporarily transferred from their positions infrequently. When employees are transferred, there is no evidence that the present reporting methods prejudice contract enforcement. The evidence did indicate that additional contractual reporting requirements would be administratively burdensome.

Accordingly, the Union's proposal is not recommended.

### **II. Article XXIV - Expense Reimbursement**

#### **Union Proposal:**

The Union proposes changes to the existing expense reimbursement provisions of Article XXIV. Specifically, it seeks a change at Section 24.01(A) that would tie mileage reimbursement to the current amount allowed under IRS regulations. In Section 24.01(B), Local 1696 would increase the present \$18.00 meal allowance with an overnight stay to \$36.00; and increase the current \$8.00 to \$12.00 in other cases. Finally, it proposes that the cap on overnight expenses currently set at \$75.00 in Section 24.01(C) be eliminated altogether.

These changes, says the Union, are necessitated by increases in the true cost of expenditures and should therefore be recommended.

**Employer Position:**

The County agrees that increases in expense reimbursements are warranted by current economic conditions, and it accordingly agrees to set mileage reimbursement rates at the current IRS standard. However, it proposes that increases in meal reimbursements be set at \$24.00 per day overnight and \$12.00 per in other circumstances. It agrees to increase the overnight allowance from the current \$75.00 to \$100.00 per night, but rejects AFSCME's proposal to uncap such reimbursements.

**Findings and Recommendations:**

There is no question that expenses associated with professional duties have increased, and so too should contractual provisions for their reimbursement.

It seems reasonable that mileage be set at the IRS rate, which is presumably based on current index scales; the Union's proposal is therefore recommended.

Section 24.01(A) Mileage, Parking and Tolls

1. Employees shall be reimbursed for actual miles while on Official county business, at the rate of ~~\$.30~~ **current federal amount** per mile, when using personal, rather than county vehicles. \* \* \*

Similarly, the rate reimbursed for meals taken in the scope and course of employment is appropriately increased. However, the Employer's proposed increase would sufficiently accommodate demonstrated actual expense increases, and is therefore recommended.

Section 24.01(B) Meals

- \* \* \* Reimbursement for meals shall not exceed ~~eighteen (\$18)~~, **twenty four (\$24.00)** dollars per day, if overnight stay is authorized. Otherwise, reimbursement shall be limited to ~~eight (\$8)~~ **twelve (\$12)** dollars per work day. \* \* \*

While the County agrees that reimbursement for overnight accommodations should be increased from the present \$75.00 per night to \$100.00, it rejects the Unions proposal to remove the cap altogether, arguing that it cannot support luxury accommodations for bargaining unit members at their discretion. The Union maintains that currently its members do not exercise discretion over where they stay when out of the county. The evidence indicates that in most, if not all cases, the Employer makes accommodation reservations on

behalf of its Employees. Accordingly, the recommendation is that the cap be removed when the County is responsible for arranging for the accommodations, and that in other cases the Employer's suggested \$100.00 limit apply.

Section 24.01(C) Overnight Expenses

**Expenses covering the actual cost of accommodations made or arranged by the County will be reimbursed in full when an employee travels out of the County on mandatory or Employer requested official county business requiring overnight stay. Accommodations made or arranged at the discretion of the Employee will be reimbursed at their actual cost, not to exceed one hundred dollars (\$100) per night**

**III. Article XXV - Wages, Longevity, PERS pickup**

**Union Proposal:**

The Union proposes varied increases across the ten-year multi-classification wage schedule. A copy of the proposed AFSCME schedule is appended to this report. Pointing to the "McVey" report and the subsequent, "Salary Team Wage and Benefits Package" the Union argues that Portage County J&FS employees in a number of classifications rank below the average of those in comparable counties across the state. Accordingly its proposed salary schedule seeks to bring each position in line with market rates.

**Employer Proposal:**

The County proposes wage increases of 4% in the first year of the Agreement, 4.5% in the second year, and 5% in the final contract year. It agrees with the Union that in most bargaining unit classifications, starting salaries are below those paid by comparable counties. However, it points out the maximum wages paid by Portage County are at or above comparable rates, due to the multi-step schedule. It also argues that the information relied upon by the Salary Team indicates base rates; individual employees may receive more due to longevity provisions.

The Employer maintains that the Union wage proposal affords an 18.7% increase the first year of the Agreement, with additional 3% increases in the final two years.

**Findings and Recommendation:**

The many and varied classifications, rates and longevity benefits afforded the Union result in a complex wage schedule. There is no doubt that the Salary Team made a great

effort to determine the appropriate rates of pay for each classification. However, the nature of the ten-step schedule – with 2%-3% increases at each step – is such that raises in entry level wages in each classification are increased exponentially, leaving the tenth step higher than appropriate. The complexity of the schedule itself thus makes comparison with other social service agencies and appropriate adjustment difficult.

The AFSCME proposal, based on the Salary Team Wage and Benefit Package does nothing to address this fundamental difficulty in the bargaining unit’s wage schedule. The result of the Union proposal would be wage increases of some 24% over the course of the Agreement, a considerable increase not supported by equally notable evidence that bargaining unit members, particularly at the upper levels, require such adjustment to bring their compensation in line with market wage rates. Nor was there evidence that wage rates were primarily responsible for the unusual turnover of PCDJFS employees; or that increases would affect the Employer’s ability to attract and retain qualified employees.

Accordingly, the County’s proposal to increase wages in all classifications and steps by 4.0% in the first year; 4.5% in the second year; and 5.0% in the final contract year is recommended.

#### **IV. Article XXVI - On-Call Pay**

##### **Union Proposal:**

The Union proposes an increase in the stipend for bargaining unit members who are required to be “on call” from the present \$25.00 on weekdays and \$35.00 on weekends to \$50.00 for weekday coverage and \$75.00 on weekends.

##### **Employer Position:**

The County agrees to an increase, but argues that \$35.00 weekday and \$50.00 weekend stipends are sufficient.

##### **Findings and Recommendation:**

It is evident that some increase is warranted for bargaining unit members required to carry pagers and remain on call during off duty hours. However, the evidence presented indicates that the Employer’s proposal provides adequate compensation, and is accordingly accepted.

Section 26.01

When the Employer requires that an Employee in the "CARES" program be "on call", such Employee shall receive ~~twenty-five dollars (\$25)~~ **thirty-five dollars (\$35)**, for each Monday through Friday they are on "on call" status, and ~~thirty-five dollars (\$35)~~ **fifty (\$50)** for each Saturday, Sunday or holiday they are on such status, in addition to time and one-half (1 ½) the Employee's regular rate of pay for time worked during the on-call period.

**V. Article XXVII - Insurance**

**Union Proposal:**

The Union proposes continuation of the supplemental dental, life and hearing benefits provided under the AFSCME Care Plan, and consequent changes in the language of Section 27.02 to reflect an increase in the premium rate for the Plan from \$34.00 per month to \$42.00 per month that became effective in March of 2003.

**Employer Proposal:**

The County proposes deletion of Section 27.01 in its entirety and the insertion new language providing that bargaining unit members will receive the same medical insurance coverage and on the same terms as other County Employees.

The Employer opposes continuation of the supplemental AFSCME Care Plan. Almost no other County employees are covered by the Plan, it argues. Moreover, it has no control over Plan premiums, citing an increase in premium rates from the current \$34.00 per month to \$42.00 per month, an increase of some 23%.

The County proposes two alternatives to the Union's proposal. The first is that it would maintain the present AFSCME Care Plan at the current rate of \$34.00 per employee per month. Alternatively, the Employer would agree to the increased rate of \$42.00 per month for current members of the bargaining unit, but would not be obligated to enroll employees hired after September 1, 2003 in the supplemental plan.

**Findings and Recommendations:**

The Parties mutually agreed to the County's proposal to delete Section 27.01 and to insert the following:

**27.01 The Employer will provide to Employees the same medical insurance coverage, and upon the same terms and conditions, if any, as that provided by the Portage County Commissioners for their other County Employees.**

The County seeks to eliminate the supplemental coverage currently provided bargaining unit members under the AFSCME Plan. Among its objections to the Plan is that Care Plan Trustees control premium rates, and that the Employer is without ability to affect increases. However, Plan Trustees represent both AFSCME and employers equally, and are under clear statutory fiduciary responsibilities. Any breach of those duties is actionable under the law, as are those of any other health and benefit plan.

The County also objects to the Plan as covering only the members of this and a smaller AFSCME bargaining unit. However, the AFSCME Care Plan is offered to all employees in any jurisdiction in which it is made available to AFSCME members; any other County bargaining unit is allowed to negotiate for coverage under the Plan. That they did not wish to do so is a determination appropriate to each individual bargaining unit. Finally, the County objects to the increase in per employee premium from \$34.00 to \$42.00. While the \$8.00 increase does, as the Employer argues, represent a 23% increase over the previous rate, it is not inordinate relative to recent and foreseeable health coverage premiums. In addition, the County is protected from any additional increases for the next three years and the cost is accordingly predictable, budgetable and not burdensome.

The AFSCME Care Plan is a benefit currently enjoyed by this bargaining unit, and the actual cost is relatively modest for the supplemental coverage provided. The fiscal impact of the \$8.00 per employee per month increase is not sufficient to eliminate the benefit. Moreover, the Union understands and agrees that certain compensation, including recommendation of the County's wage proposal over the Union's, as well as no recommendation that wage increases be retroactive is a sufficient quid pro quo exchange. The Union's proposal is therefore recommended:

27.02 The Employer agrees to contribute to the Ohio AFSCME Care Plan, for the purpose of providing ~~various benefits~~, **Dental II, Life I and Hearing Aid** to eligible bargaining unit employees in accordance with the rules and regulations of the fund and all applicable federal and state law. Effective ~~December 1, 1997~~, **July 1, 2003**, contributions shall be made on the 1<sup>st</sup> day of the month at the rate of ~~\$34.00~~ **\$42.00** per month for each bargaining unit employee.

## **VI. Union Orientation**

### **Union Proposal:**

The Union asks that its President or other representative of the bargaining unit be scheduled to address all employees hired the previous month. It asks that County facilities be made available for the purpose, and that the representative be compensated for one hour at his or her normal rate. Employees are entitled to enroll in the AFSCME provided CARE Plan as an option in the County benefits plan. Consequently, says the Union, Employees should be informed of their rights and options.

### **Employer Position:**

The County argues that it should not be required to compensate Union officials for what it characterizes as bargaining unit business. Accordingly, it rejects the Union proposal, and urges the Factfinder not to recommend its acceptance.

### **Findings and Recommendation:**

The CARE plan provided through AFSCME, and discussed at greater length elsewhere, is a benefit option offered in conjunction with the County's cafeteria benefits plan. For that reason, it is reasonable to conclude it entirely appropriate that the County provide information regarding the plan to new Employees. It is further appropriate that AFSCME representatives presenting the information be compensated at their normal rates. However, if the evidence does not indicate that a presentation of the CARE information would require an hour.

#### **New Article**

Once each month, the President or his or her designee shall be scheduled by the County to meet with all employees hired the prior month for one-half (1/2) hour, to provide said Employees with information regarding the AFSCME CARE benefits plan. If the aforementioned meeting is not scheduled during normal business hours, the President or his or her designee shall be compensated for up to one-half (1/2) at his or her regular rate of pay. For meetings scheduled outside normal working hours, no compensation to new Employees is required.

## **VII. Retroactivity**

### **Union Position:**

The Union presents a signed agreement between the Parties, providing for extension of the statutory fact finding time limits. That agreement expired on August 31, 2003. The Union argues that the delay beyond the time limits prescribed by the extension agreement were not due to bargaining unit delays, and it urges the Factfinder to recommend that wage and other compensation under this Agreement be made retroactive to July 1, 2003.

### **Employer Position:**

The County argues that no precedent exists for retroactive compensation. The agreement to extend the timelines for fact finding in the present case expired on August 31, 2003 without a successor Agreement having been reached. Accordingly, the Employer urges that the Union request for retroactivity be denied.

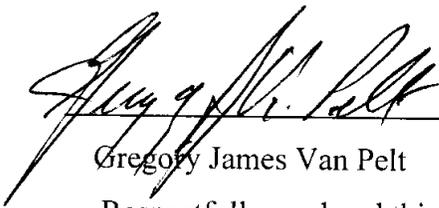
### **Finding and Recommendation:**

For a number of factors not attributable to this bargaining unit – indeed not necessarily attributable to either Party here – a successor Agreement was not accepted prior to termination of the Parties’ last extension agreement on August 31<sup>st</sup> of this year. Consequently, retroactive compensation would normally be recommended.

However, the bargaining unit also expresses its understanding and willingness to make some quid pro quo exchange of compensation in order that it maintain access to the CARE plan provided through AFSCME. While the Parties’ positions with regard to the CARE plan is discussed elsewhere, in deference to its preference elsewhere, the Union’s request for retroactivity is not recommended here.

**SUMMARY**  
**FINDINGS AND RECOMMENDATIONS**

- Article XIV - Temporary Vacancies  
*Not recommended*
- Article XXIV - Expense Reimbursement  
*Mileage at IRS rate; Meals \$24/\$12;*  
*County arranged accommodations at actual cost*  
*Employee arranged accommodations capped at \$100.00*
- Article XXV - Wages, Longevity, PERS pickup  
*4%/4.5%/5%*
- Article XXVI - On-Call Pay  
*Increased to \$35/\$50*
- Article XXVII - Insurance  
*§ 27.01 delete and provide for County-wide plan*  
*§ 27.02 AFSCME Care Plan recommended*
- Union Orientation  
*½ hour for Union Representative at regular hourly rate*
- Retroactivity  
*Not recommended*



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Gregory James Van Pelt

Respectfully rendered this 19th day of November, 2003  
At Shaker Heights, Cuyahoga County, Ohio