

Submission

The Parties in the present negotiation have had an ongoing collective bargaining relationship culminating in an Agreement that obtained until December 31, 2003, and was extended by mutual agreement of the Parties. Pursuant to the provisions of Ohio Revised Code 4117.14(C)(3), the undersigned was appointed Factfinder in the matter. Mutually agreeing to an extension of the statutory deadlines, the Parties met in negotiations toward a successor contract on fourteen occasions from June, 2004 to February 2005, prior to reaching impasse on the issues enumerated below.

Having reached impasse, the Parties requested that the Factfinder issue this Report & Recommendations, pursuant to ORC 4117.14, *et seq.*, and an evidentiary hearing was accordingly convened on March 21, 2005 at the Rhodes Office Tower in Columbus, Ohio. The matter was declared closed as of the date of hearing.

ISSUES AT IMPASSE

The Parties identified and presented the following issues as unresolved:

1. **Article 15, Section 2 – Non-Standard Work Schedule – Minimum Staffing**
2. **Article 15, Section 2 – Non-Standard Work Schedule – Scheduling***
3. **Article 15, Section 3 – Flex and Part Time**
4. **Article 15, Section 6 – Overtime**
5. **Article 17, Section 3 – Tuition Reimbursement**
6. **Article 30, Section 6 – Vacation**
7. **Article 30, Section 7 – Limitation of Provision**
8. **Article 31, Section 1 – Sick Leave Accrual**
9. **Article 31, Section 2 – Transfer of Sick Leave***
10. **Article 31, Section 5 – Abuse of Sick Leave**
11. **Article 38, Section 1 – Step Movement**
12. **Article 39, Section 1 – Longevity Pay**
13. **Article 40, Section 2 – Damaged Property Limitations**
14. **Article 45, Section 1 – Wages**
15. **Article 45, Section 2 – Professional Dues**
16. **Article 45, Section 3 – Clothing Allowance (New)**
17. **Article 50, Section 2 – Ratification Payment**
18. **New Article – Adoption/Childbirth Leave**

All other Articles and obtaining contract provisions mutually agreed to by the Parties are incorporated herein by reference.

*Resolved at hearing by mutual agreement of the Parties.

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 STATUTORY CONSIDERATIONS

The bargaining unit in the present negotiations represents some 80 members working in eight classifications in the Ohio Attorney General's Bureau of Criminal Investigations Forensic Laboratory. Although these Employees contribute significantly to law enforcement efforts, they are not sworn peace officers, nor is the laboratory organized in a paramilitary fashion; members of the present bargaining unit are clearly civilian support personnel. As such, other employees performing comparable tasks in the Attorney General's Office are compensated at marginally lower base wage rates than those enjoyed by the present bargaining unit. Accordingly, no wage adjustment is necessary in order to achieve parity under the statutory and administrative code considerations.

Despite budget forecasts submitted by the Union projecting slight increases in Sales and Use Tax General Fund Revenues¹, and equally despite its assertion of a bright economic future, it is clear that the Employer's financial situation continues to reflect the observation of several neutrals that, "the fiscal condition of the State is dreadful"². At present there is little indication that the State's revenue prospects will improve substantially within the term of the Agreement presently under negotiation, and as a consequence, contemplation of the Employer's ability to pay significant economic benefit increases would be imprudent at this time. The Union quite correctly argues that increased investigations precipitated by the security measures imposed in the name of national and state security actually provide an additional revenue source to this particular department. While the FOP's contention is true, it is also true that this revenue requires at least some additional expenditures. Moreover, it is not sufficiently stable as to support encumbrance for purposes providing primary economic benefits to bargaining unit members.

Due to the State's fiscal situation, the Employer urges the Factfinder to sustain a patterned economic package supported, with one negotiated exception, by neutrals in virtually all previous State impasse resolution processes. Not surprisingly, the Union argues that the single exception breaks the pattern, and that accordingly the Factfinder should not be

¹ See Governor's Forecast; Executive Budget for FY 2006 and 2007

² Arbitrator Stein, quoting Arbitrator Graham, in OCSEA/AFSCME –and- State of Ohio (2003)

held to its provisions for other bargaining units. As are many neutrals, this Factfinder is generally resistant to the notion of imposed patterned resolutions; normally, each bargaining unit's circumstances are unique, and one size does not equitably fit all. However, the State's current economic circumstances are sufficiently dire as to militate for economic solutions allowing it to maintain necessary public functions until such time as it is able to again enjoy increased revenue. Therefore, however reluctantly, in consideration of his mandate to contemplate the Employer's ability to pay as well as the public welfare, the Factfinder will maintain the established pattern with regard to primary economic benefit increases.

As is reasonable in economic circumstances in which full staffing is not always possible due to budget constraints, the Employer here presents a number of proposals it feels necessary in order to reduce absenteeism, particularly due to sick leave utilization by bargaining unit members. While its objectives are laudable, it is necessary to consider that the present sick leave entitlements are the result of previously negotiated provisions. Absent a strong showing that such rights are subject to, and indeed have been, abused, there is no basis for rescinding an existing contract provision through impasse resolution fiat.

In consideration of the above factors, the following recommendations are respectfully submitted to the Parties, as provided in ORC 4177.14 (C)(5).

FINDINGS AND RECOMMENDATIONS

1. Article 15, Section 2 – Non-Standard Work Schedule – Minimum Staffing

FOP/OLC Proposal:

Seeking more flex time for bargaining unit members, the Union proposes language that would remove the current requirement rendering approval of a non-standard work schedule dependent on a fifty percent staffing level and a full range of services throughout the normal week at each of the Employer's facilities. In addition, the FOP proposes language – extracted from a proposed Memorandum of Understanding between the Parties – specifically enumerating the purposes for which bargaining unit members should be entitled to flex their schedules. The Union also proposes a Memorandum of Understanding providing for the establishment of a Labor-Management Committee to discuss expanded flexible scheduling arrangements.

The FOP maintains that the Employer will benefit from its proposal for more flex time in the reduced necessity to use sick and personal leave time; bargaining unit members will be able to accommodate family and personal schedules, without taking time off to do so. This reduction, says the Union, is supportive of the AG's desire to reduce Employee absences from the workplace.

Attorney General's Position:

The Employer argues that discussions of expanded flex time initiatives were held in conjunction with proposed performance standards. Scheduling the work force is a basic management right, and is appropriately a subject for bargaining. It would be improper and inappropriate, says the AG, to have that right modified in the course of impasse resolution.

Findings:

While the FOP's proposal might indeed seem to reduce the need for bargaining unit members to utilize other time off to attend to family and personal needs, the evidence also indicates that the proposal was discussed as a *quid pro quo* exchange for institution of performance standards. The Employer's argument that matters of scheduling and assignment of the workforce are management rights subject to bargained rather than imposed limitation is compelling. Moreover, the public interest - a statutorily mandated consideration - would seem best served by at least minimum staffing levels. Accordingly, current contract language is recommended.

Recommendation:

Retention of current contract provision is recommended.

2. Article 15, Section 2 – Non-Standard Work Schedule – Scheduling

Resolved at hearing by mutual agreement of the Parties.

3. Article 15, Section 3 – Flex and Part Time

FOP/OLC Proposal:

The Union proposes changes to the language of Section 15(3) to accommodate part-time and job share arrangements, a position it strongly endorses, in conjunction with its proposals for flex time scheduling.

Attorney General's Position:

The Employer maintains that, as no plan developed from the pilot program language of Section 15(3), the provision should be stricken from the Agreement. While it does not oppose establishment of a committee to review flex time in conjunction with productivity and performance standards, the Attorney General opposes expanded flex time provisions outside that context.

Findings:

The pilot program indicated as being under evaluation in Section 15(3) was subsequently not developed, and the specific language referencing it is therefore no longer appropriate. Additionally, as no provision for additional flex time is recommended at present, the present contract language is extraneous, and its deletion is accordingly recommended.

Recommendation:

~~*The parties recognize that the Employer is currently evaluating a pilot program on hours of work, flex schedules, part-time and job share arrangements. If the Employer adopts a more favorable permanent flexible work arrangement policy, Bargaining Unit 48 members will be permitted to participate under that program. If the Attorney General fails to formally adopt the pilot program, the current nonstandard work schedules provided for in this Article will remain in full force in effect.*~~

4. Article 15, Section 6 – Overtime

Attorney General's Proposal:

The Employer argues that it has a need to improve attendance and reduce sick leave usage, and in that effort proposes that hours taken as sick leave not be counted among those in "active pay status" for purposes of overtime calculation. This alteration of the current language of Section 15 (6) would provide a disincentive to sick leave use, the Attorney General maintains. Such exclusions of sick leave from "active pay status" would render this bargaining unit's overtime calculations consistent with virtually all other State employees.

FOP/OLC Position:

The Union contends that the data do not indicate that abuse of sick leave is a problem within the bargaining unit, and accordingly opposes the Employer's proposal. As an incentive to adoption of its flex time proposals, the Union offers language providing that sick leave usage of less than one day not be counted as part of active pay status.

Findings:

The Employer predicates its proposal on a desire to discourage sick leave use, an entirely reasonable management objective. However, sick leave is a duly negotiated contractual entitlement, and its inclusion in hours on “active pay status” for purposes of overtime calculation is likewise established practice. While the Employer presented some evidence regarding sick leave use, none indicated that the sick leave abuse was a problem of sufficient magnitude as to justify retraction of an existing contract right, despite that collective bargaining or administrative imposition had not afforded that right to other State employees.

Recommendation:

Retention of current contract provision is recommended.

5. Article 17, Section 3 – Tuition Reimbursement

FOP/OLC Proposal:

The Union proposes changes to Section 17(3) that would eliminate the per-course limits on tuition reimbursement. Particularly in the physical sciences, the requirements of fulltime work preclude bargaining unit members from utilizing the maximum tuition entitlement.

Attorney General’s Position:

No evidence was presented to support the Union’s proposal or the contention that bargaining unit employees have been adversely affected by the current limitations. Accordingly, the Employer proposes that current contract language be retained.

Findings:

Given recent increases in tuition, and the exigencies of fulltime employment, it is certainly reasonable to believe that bargaining unit members advancing their educations – particularly in fields enhancing their job performance – would incur costs approaching or exceeding the contractual maximum, while at the same time failing to meet the per-hour requirements of the present contract. Accordingly, removal of the per-course limit is recommended.

Recommendation:

The maximum reimbursement for degrees other than the physical sciences will be ~~forty-five dollars (\$45.00) for each quarter hour and sixty-five dollars (\$65.00) for each semester hour of course work up to seven hundred fifty dollars (\$750.00) per year for~~

each employee.

The maximum reimbursement for degrees in the physical sciences will be seventy dollars (\$70.00) for each quarter hour and one hundred twenty-five dollars (\$125.00) for each semester hour of course work up to seven hundred fifty dollars (\$750.00) per year for each employee.

6. Article 30, Section 6 – Vacation

Attorney General's Proposal:

Contingent upon recommendation of its proposal to exclude sick leave time from inclusion in "active pay status", the Employer proposes to allow those bargaining unit members having balances of at least two hundred hours of sick leave; and having used less than forty hours of sick leave in the previous year; and having used at least eighty hours of vacation leave, to cash in up to eighty hours of accrued vacation leave above a forty hour minimum. The provision will allow bargaining unit members to bring prior State service accruals to the Attorney General's office for vacation purposes, and the threshold levels will insure that Employees have sufficient balances of banked leave in case of emergency need.

FOP/OLC Position:

The Union thanks the Employer for its proposal, but argues that the allowance for prior service has negligible impact on members of the bargaining unit as it is presently constituted. The FOP argues that no benefit accrues to Employees, and urges that current contract provisions be retained.

Findings:

The Employer has not demonstrated a compelling need for its proposal sufficient to support recommendation of radical change to an existing contractual benefit. Moreover, the proposal is contingent on recommendation of the Attorney General's proposal to exclude sick leave from "active pay status" for purposes of overtime calculation. That proposal not having been recommended, neither can this offer; accordingly it is recommended that current contract language be retained.

Recommendation:

Retention of current contract provision is recommended.

7. Article 30, Section 7 – Limitation of Provision

Attorney General's Proposal:

Arguing that ORC §124.13 does not include all of the provisions relating to use of vacation leave, the Employer proposes the addition of “any other provision” to the language of Section 30(7).

FOP/OLC Position:

The Union maintains that the current language is both clear and sufficient. In addition, it contends that the Employer’s proposal could be in conflict with current case law, as interpreted by the Ohio Supreme Court’s opinion in *State ex rel. Ohio Ass’n of Pub. Sch. Emples. v. Batavia Lo...*, 89 Ohio St. 3d 191 (2000).

Findings:

The Employer’s proposal for inclusion of the term “ and any other provision” may indeed be overly broad under the *Batavia* decision. As the language proposed by the Attorney General lacks sufficient specificity, current contract language is recommended.

Recommendation:

Retention of current contract provision is recommended.

8. Article 31, Section 1 – Sick Leave Accrual

Attorney General’s Proposal:

In what it characterizes as an attempt to draw attention to the need for Employees to maintain minimal sick leave balances, the Attorney General proposes revision of the formula for calculation sick leave payment to reduce payments to bargaining unit members having sick leave balances of sixteen hours or less to 85% of their regular base wage rates. The Employer argues that its proposal would provide a proactive approach to discourage sick leave use, which adversely impacts the work environment of other employees. It rejects the Union’s argument that such a provision is disciplinary in nature.

FOP/OLC Position:

The Union maintains that the Attorney General’s proposal is disciplinary in nature, and that no evidence has been produced to support the need for alteration of an existing contractual provision which has obtained through previous impasse processes.

Findings:

As has been discussed supra, absent supportive evidence, the use of a contractual sick leave entitlement is a contractual right, and is not abusive per se. The Employer has not

demonstrated a compelling need rooted in widespread abuse for which economic sanction is warranted. Consequently, retention of current contract language is recommended.

Recommendation:

Retention of current contract provision is recommended.

9. Article 31, Section 2 – Transfer of Sick Leave

Resolved at hearing by mutual agreement of the Parties.

10. Article 31, Section 5 – Abuse of Sick Leave

Attorney General's Proposal:

It is important, the Employer asserts, to make bargaining unit members more aware of and responsible for their attendance and use of sick leave. To address this problem the Attorney General proposes modification of Section 31(5) to reduce conditions giving rise to the submission of a physician's statement from seven consecutive calendar days to three consecutive work days. This change, which the Employer argues only alters the time frame by two work days, is the most prevalent in State contracts.

FOP/OLC Position:

The Union maintains that the present provision adequately guards against sick leave abuse, and contends that the Employer has failed to demonstrate a need to change the requirement.

Findings:

As discussed supra, insufficient evidence of sick leave abuse, as opposed to legitimate and proper utilization of an existing negotiated contract right, was introduced by the Attorney General to support reduction of the existing entitlement; current contract language is recommended

Recommendation:

Retention of current contract provision is recommended.

11. Article 38, Section 1 – Step Movement

Attorney General's Proposal:

In consideration of the State's present financial situation, the Attorney General

proposes that step movements in wage scales be frozen for the years 2005 and 2006. Such freezes have been imposed on, accepted by, or awarded to virtually all State employees, and the present bargaining unit should be no exception.

FOP/OLC Position:

The Union recognizes that other State employees have experienced freezes in step movements, and acknowledges that the Employer's financial condition would warrant some such measure. However, the FOP proposes that the freeze be in effect only for the 2005 contract year, and revert to the contractual schedule thereafter.

Findings:

As with other major economic provisions, and as discussed in the Background and Statutory Considerations section supra, a two year freeze on step movements is necessitated by the Employer's financial situation, and is uniform among State employees. Therefore, a two year freeze on step movements is recommended

Recommendation:

During the period from January 1, 2005, through December 31, 2006, there shall be no non-probationary step movements, including any step movement provided for in other provisions of this Agreement. Step movement after December 31, 2006, is subject to the provisions of the subsequent Agreement between the parties. No retroactive movement shall occur for the two (2) years that have been skipped. Newly hired employees will move to the next step in their pay range after completion of one year of continuous service. In periods other than January 1, 2005, through December 31, 2006, subsequent step movement shall occur on an annual basis, subject to the requirements set forth in Article 45.

12. Article 39, Section 1 – Longevity Pay

Attorney General's Proposal:

As above, the Employer proposes a two year freeze on step advances in longevity pay to bargaining unit members. The Attorney General asserts the proposed freeze is consistent with provisions for other bargaining units and non-bargaining unit State personnel.

FOP/OLC Position:

As discussed above, the Union acknowledges that other State employees are experiencing a two year freeze in longevity step advances, but argues that a one year freeze is appropriate for this bargaining unit, and accordingly proposes a freeze for 2005.

Findings:

As above, and for the reasons discussed in the Background section supra, a two year freeze on longevity pay is necessitated by Employer's ability to pay and uniform among State Employees; it is accordingly recommended.

Recommendation:

Beginning on the first day of the pay period within which an employee completes five years of total state service, each employee will receive an automatic salary adjustment which shall be a percentage of the employee's schedule rate of pay. The longevity pay percentage shall be one-half of one percent (1/2%) for each year of service, excluding any service time earned between January 1, 2005, and December 31, 2006. This amount will be added to the schedule rate of pay. A maximum accumulation of ten (10%) shall be applicable after 20 years.

13. Article 40, Section 2 – Damaged Property Limitations

FOP/OLC Proposal:

The increased replacement cost of clothing and property damaged in the course of job duties supports an increase in maximum reimbursement.

Attorney General's Position:

The Employer contends that the Union has provided no documentation for its proposal, and urges that current contract language be retained.

Findings:

The Union's contention that increased replacement costs support increased reimbursement ceilings is well founded; therefore, an increase in compensation to a maximum of \$100 per damaged wrist watch and \$200 per damaged prescription glasses is recommended.

Recommendation:

This Article applies only to clothing and other personal property reasonably necessary for the performance of an employee's official duties. It does not apply to radios and other entertainment systems, automobiles, jewelry, and normal wear and tear of clothing. No compensation shall be paid for clothing or personal property worn or used by an employee which is not appropriate for the activities involved in the performance of the employee's official duties. No compensation shall be paid if the Employer had available appropriate protective clothing or equipment which would have prevented the damage and if the employee neglected to use such clothing or equipment. No more than ~~\$75.00~~ \$100.00 shall be paid in compensation for damaged wrist watch. Compensation for damaged prescription glasses may be paid up to ~~\$80.00~~ \$200.00, but only to the extent that replacement of the glasses is not covered by the Employer's Optical Insurance Plan or worker's compensation.

14. Article 45, Section 1 – Wages

FOP/OLC Proposal:

For the reasons addressed supra, the Union maintains that there is little rationale for denying this bargaining unit a wage increase in 2005. It does, however, agree with the Employer's proposal for a 4% increase to the basic wage rate in 2006.

Attorney General's Proposal:

Consistent with what it argues is a pattern supported in virtually all impasse resolution proceedings across the State, the Employer proposes a freeze on wages for the first two contract years, and an increase equal to 4% of the base wage rate in 2006.

Findings:

As discussed above, members of the present bargaining unit are civilian employees rather than sworn police officers. Evidence indicates that their present wage rates are equivalent or comparable to employees performing similar duties; as a consequence, no substantiated need exists for unique measures in order to bring them into parity. Therefore, consistent with other recommendations and awards, a two year freeze on base wage rates in the first two contract years, with a 4% 2006 increase is recommended.

Recommendation:

a) ~~Effective the first pay period after ratification of this Agreement, employee pay schedules will be increased 3% the first year, 3.5%, the second year, and 4.5% the third year of the contract for a three (3) year period as provided in Article 50.~~

Effective the first full pay period that follows January 1, 2006, pay schedules will be increased by four percent (4%)

15. Article 45, Section 2 – Professional Dues

FOP/OLC Proposal:

The Union proposes language that would increase the maximum reimbursement for membership dues in professional organization from the current \$100 to \$200, an increase the FOP argues is necessitated by increased membership costs. The bargaining unit also proposes language authorizing it to establish a committee charged with submitting to the Employer's Human Resources department a list of professional organizations, membership in which

would constitute entitlement to reimbursement.

Attorney General's Position:

The Employer argues that the Union's proposal vests in the bargaining unit undue authority and control over which organizations should receive reimbursement entitlement; such list, it maintains, should be mutually derived by the Parties.

Findings:

The increase in professional dues sought by Union would seem warranted, based on notice taken by the Factfinder as to increases in professional organization dues; it is accordingly recommended. However, unilateral bargaining unit determination of professional organizations whose dues must be reimbursed by the Employer would not seem warranted; retention of current contract language with regard to prior approval by Human Resources, with advice of Union is recommended.

Recommendation:

The Employer agrees to reimburse each employee in the bargaining unit up to \$100 \$200. each year for work related professional dues with prior approval from Human Resources.

16. Article 45, Section 3 – Clothing Allowance (New)

FOP/OLC Proposal:

Arguing that members of the bargaining unit perform duties both in the laboratory and in court appearances that require maintenance of a work wardrobe, the Union proposes new language providing for a \$350 annual clothing allowance in the final two contract years. Such allowances, says the Union, are consistent with benefits afforded other law enforcement bargaining units. The FOP also proposes language that would create a joint labor-management committee to examine and report on matters regarding work attire.

Attorney General's Position:

The Union's proposal is a new economic item, the need for which it has failed to document or otherwise support; consequently, the Attorney General urges that the FOP's proposal not be recommended. The Employer also argues that discussion of matters regarding work attire are more appropriately addressed through the current labor-management meetings, and urges rejection of the Union's proposal on those grounds.

Findings:

Existing contract protections provide for compensation for clothing and other property of bargaining unit members destroyed in the line of duty. Institution of a new economic benefit to cover work attire is unsupported by any documentation by the Union. Despite the FOP's assertion otherwise, this unit is civilian in nature and, unlike sworn officers, does not work in any required uniform. While it is entirely possible that the duties of bargaining unit members would support an allowance for the maintenance of a work wardrobe, no specific uniform was proposed, nor was documentation of cost proffered. Moreover, the Employer's argument that discussion of work attire issues is best undertaken, at least initially, by existing labor-management mechanisms is well taken. Consequently, the Union's clothing allowance proposal is not recommended.

Recommendation:

Not recommended.

17. Article 50, Section 2 – Ratification Payment

FOP/OLC Proposal:

While it supports the one-time Ratification Payment proposed by the Attorney General, the Union argues that the payment should be reflected as an increase in the base wage rate.

Attorney General's Proposal:

As an element of what it contends is the overall economic package, the Employer proposes a one-time, lump-sum payment equal to an annualized 2% of the top step of each Employee's pay range at time of ratification.

Findings:

Consistent with economic benefits afforded other State bargaining units, a one-time, lump-sum payment equal to 2% of the top step of each bargaining unit member's pay range at the time of ratification of the Agreement to be made in pay period that includes May 15, 2005, is recommended.

Recommendation:

In consideration of ratification of this Agreement, employees who are covered by this Agreement and in active pay status and working as of the date of execution of this Agreement shall receive a one-time, two percent (2%) lump sum ratification payment in the pay period that includes May 15, 2005. This two percent (2%) lump payment

shall be based on the annualization of the top step of the pay range in which the employee is in on the date of execution of this Agreement and is not to be included in the wage base. Less than fulltime employees shall receive a prorated amount based on the number of hours in the twenty-six (26) pay periods preceding May 15, 2005. This payment shall not be subject to PERS withholding (subject to approval by PERS).

18. New Article – Adoption/Childbirth Leave

FOP/OLC Proposal:

The Union proposes a new article providing it with the same entitlement to paid leave for adoption or childbirth as is afforded non-bargaining unit employees of the Attorney General's Office.

Attorney General's Position:

The Employer opposes the "me-too" provision sought by the Union, arguing that the bargaining unit has opposed other such provisions with regard to sick leave and attendance. Accordingly, it urges the Factfinder not to recommend the proposal.

Findings:

The Union proposes that it receive the same Adoption/Childbirth leave as is afforded non-bargaining unit civilian employees of the Attorney General's office; in this, the Employer is not bound to maintain specific leave entitlements, and is at liberty to alter, or seemingly even eliminate, such benefits, as long as it provides the same benefit to bargaining unit members. No evidence indicates such provision would impose an undue burden on the Attorney General. Moreover, as civilian employees, it seems reasonable that bargaining unit members should be equally protected with regard to such family leave matters. Accordingly, the "me-too" provision proposed by the Union is recommended.

Recommendation:

It is understood and agreed that the Employer will extend to those employees in Unit #48 the Office Policy regarding Paid Adoption/Childbirth Leave, as is provided to the non-bargaining unit employees of the Employer. The parties agree and understand that the Employer will administer this plan through the Human Resources Department and all employees covered by the plan will be subject to all changes made by the Employer. Employees of Unit #48 will be provided notice the same as other covered employees and the parties agree that changes may be made at the discretion of the Employer.

SUMMARY

FINDINGS AND RECOMMENDATIONS

In consideration of the factors enumerated in OAC 4117-9-05(K), *et seq.*, as well as the testimony and evidence proffered by the Parties at hearing, the Factfinder recommends the following:

1. **Article 15, Section 2 – Non-Standard Work Schedule – Minimum Staffing**
Workforce scheduling management right not susceptible to imposition through impasse resolution process; Current contract language recommended
2. **Article 15, Section 2 – Non-Standard Work Schedule – Scheduling**
Resolved at hearing by mutual agreement of the Parties
3. **Article 15, Section 3 – Flex and Part Time**
Pilot program no longer applicable; Delete Section 15(3) provision for Pilot Program
4. **Article 15, Section 6 – Overtime**
Use of sick leave not abusive per se; Current contract language recommended.
5. **Article 17, Section 3 – Tuition Reimbursement**
Given tuition increases and exigencies of full-time employment, per-course limit found inappropriate; removal of per-course limit recommended
6. **Article 30, Section 6 – Vacation**
No demonstration of compelling need offered by Employer; Current contract language recommended.
7. **Article 30, Section 7 – Limitation of Provision**
Employer's proposal for "any other provision" may be overly broad; Current contract language recommended
8. **Article 31, Section 1 – Sick Leave Accrual**
No demonstration of compelling need for proposed change; Current contract language recommended
9. **Article 31, Section 2 – Transfer of Sick Leave**
Resolved by mutual agreement of the Parties
10. **Article 31, Section 5 – Abuse of Sick Leave**
Insufficient evidence of sick leave abuse to reduce existing right;
Current contract language recommended
11. **Article 38, Section 1 – Step Movement**
Two year freeze on step movements necessitated by Employer's ability to pay and uniform among State Employees; Two year freeze on step movements recommended
12. **Article 39, Section 1 – Longevity Pay**
Two year freeze on longevity pay necessitated by Employer's ability to pay and uniform among State Employees; Two year freeze on longevity pay recommended
13. **Article 40, Section 2 – Damaged Property Limitations**
Increased replacement cost supports increased reimbursement; increase compensation to \$100 per damaged wrist watch/\$200 per damaged prescription glasses recommended

14. Article 45, Section 1 – Wages

Bargaining unit members found to be civilians, with wage rates equivalent or comparable to peer employees; two year freeze, 4% 2006 increase necessitated by Employer's financial position and uniform among State Employees; 0%-0%-4% recommended

15. Article 45, Section 2 – Professional Dues

Increase in professional dues sought by Union is warranted; unilateral bargaining unit determination of professional organizations is not warranted; Increase in annual reimbursement to \$200 per Employee recommended; Current contract language with regard to prior approval by Human Resources, with advice of Union is recommended.

16. Article 45, Section 3 – Clothing Allowance (New)

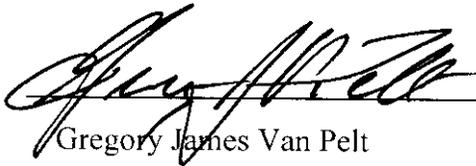
New economic benefit unsupported by demonstrated need; civilian bargaining unit not comparable to paramilitary units in uniform requirements; labor-management review of need recommended; Clothing Allowance proposal not recommended

17. Article 50, Section 2 – Ratification Payment

Payment of 2% lump sum of annualized top step at time of ratification to be made in pay period that includes May 15, 2005 recommended.

18. New Article – Adoption/Childbirth Leave

Adoption/Childbirth leave is afforded non-bargaining unit civilian employees of the Attorney General's office; no evidence indicates such provision would impose undue burden; me-too provision is recommended.



Gregory James Van Pelt

Respectfully submitted this 21st day of April, 2005
At Shaker Heights, Cuyahoga County, Ohio

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