

STATE EMPLOYMENT
RELATIONS BOARD
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STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

FACT-FINDING PROCEEDING
03-MED-12-1433

INTERNATIONAL UNION, :
UNITED AUTOMOBILE AEROSPACE :
& AGRICULTURAL IMPLEMENT :
WORKERS, UAW LOCAL 658 :
Employee Organization :
and :
CLARK COUNTY BOARD OF :
MENTAL RETARDATION AND :
DEVELOPMENTAL DISABILITIES :
Employer :

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER
ISSUED: SEPT 10, 2004

Appearances:

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REPORT AND RECOMMENDATIONS

I. Procedural History

The bargaining unit in this case is comprised of all employees in the classifications of Unit Counselor and Recreational Instructor. The bargaining unit employees are direct care providers who provide care to the mentally retarded and the developmentally disabled. The Residential Care Facility consist five (5) "family homes" and three (3) "cottages". The family homes are designated A, B, C, Sunset and Woodlawn. Each of the family homes houses eight (8) residents, except Woodlawn, which houses six (6) residents. The three (3) cottages are referred to as Red, Yellow and Blue. The Red cottage houses seventeen (17) residents. Yellow houses eleven (11) residents. (Currently, Red and Yellow are licensed together by the Ohio Department of MRDD and certified together through the Department of Health.) The Blue cottage houses eighteen (18) residents. The number of employees in the bargaining unit providing care for the residents has fluctuated between 103 and 115 workers.

The collective bargaining agreement expired on its terms on March 11, 2004. In an attempt to negotiate a successor agreement, the parties met on February 13, February 17, March 1, March 2, March 4, March 8, March 10, March 11, and March 12, 2004. On March 12, 2004, the parties reached a tentative agreement and the matter was submitted to the bargaining unit for a ratification vote. The tentative agreement was rejected. Thus, the parties engaged each other in mediation on April 9, 2004.

The undersigned was appointed to serve as the Fact-Finder on June 14, 2004. In order to allow the parties a full opportunity to successfully negotiate a successor labor

agreement, a mediation session was conducted with the Fact-Finder on August 18, 2004.

The parties came to that mediation with the following issues unresolved.

1. Article 13 – Job Security;
2. Article 19 – Universal Leave;
3. Article 20.1 – Holidays;
4. Article 23.3 – Delegated Nursing;
5. Article 33 – Wages;
6. Article 34 – Shift Differential;
7. Article 35 – Tenure Bonus;
8. Article 36 – Insurance Coverage.

The parties reached agreement on Article 19 – Universal Leave and Article 20.1 – Holidays during the mediation session. Shortly thereafter, the parties resolved Article 13 – Job Security and Article 36 – Insurance Coverage.

The Fact-Finding hearing was conducted on August 23, 2004. At the conclusion of the hearing, the parties agreed that the Fact-Finder's Report and Recommendations would issue on September 10, 2004.

II. Criteria

In Compliance with Ohio Revised Code Section 4117.14 (G) (7) and the Ohio Administrative Code 4117 – 9 – 05 (J), the Fact-Finder considered the following criteria in making the recommendations contained in this Report.

1. Past collectively bargained agreements between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining units with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and the classification involved;
3. The interest 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;
4. Lawful authority of the public employer;

5. Stipulations of the parties; and
6. Such factors not confined to those listed above, which are normally or traditionally taken into consideration.

III. Findings and Recommendations

ISSUE 1 Section 23.3 Assignment of Employees, Delegated Nursing Tasks

Employer's Position:

The Employer proposes two (2) changes to this section of the collective bargaining agreement. The first change proposed is the deletion of the phrases “family homes” and “cottages.” Further, the Employer proposes that these phrases be replaced with the following: “locations as defined in Chapter 5123 of the Administrative Code.” According to the Employer, referencing this chapter of the Administration Code will ensure compliance with state law and avoid future contract changes. Additionally, the law permits that delegated nursing in residential facilities have sixteen (16) or fewer beds. Each of the family homes has sixteen (16) or fewer beds and permits delegated nursing. However, the contract does not permit delegated nursing in any of the cottages, notwithstanding the fact that one (Yellow) currently has less than sixteen (16) beds. Moreover, the Employer points out that the number of residents housed in the cottages has reduced significantly over the last three (3) years. One cottage has closed and the number of residents has been reduced from sixty-four (64) to Forty-six (46). “As the numbers of residents housed in the cottages drop below sixteen, delegated nursing may become appropriate in the cottages as well as the family homes. Current contract language does not provide for that possibility.”

The second Employer proposed change is to “clarify language regarding hospital stays and medical or dental appointments.” The Employer asserts that it is sometimes necessary for a bargaining unit member to accompany a resident to the hospital or to a medical appointment in order to quell the resident’s fears. Accompanying a resident for this purpose does not involve delegated nursing tasks. “The employer asserts that no reason exists to distinguish medical appointments from other types of resident outings.”

Union’s Position:

The Union proposes to modify the language of Section 23.3 of the contract to provide that bargaining unit members would perform delegated nursing tasks on a voluntary basis. Specifically, the language proposed is:

“Employees, *on a voluntary basis*, may be assigned delegated nursing tasks. This delegation is determined by employees passing a course, participating in periodic training, and review provided by a qualified registered nurse. These delegations will include passing of medications in family homes. This may include accompanying residents on *hospital stays or* medical and dental appointments on a voluntary basis. Employees working in family homes who have had certification to pass medications withdrawn according to established procedures will be reassigned to an open position in the cottages.”

This change to the contract is proposed to deal with the ever increasing complexities of the Unit Counselor’s position. New clients are arriving who are severely challenged individuals. These clients require “total care” and “total eyes on” attention. “These additional duties obviously take away from the time a Unit Counselor would have to perform delegated nursing duties. Couple this with the fact that when delegated

nursing was entered into the agreement the only tasks the Unit Counselors were required to perform were passing a few medications and a very limited amount of topical treatments. Those tasks have now grown to the current list that demands more responsibility, liability and skill sets that are better suited being performed by a nurse...”

Finally, the current agreement does not provide for the Board to purchase insurance for the bargaining unit members to protect them from liability.

Findings and Recommendation

Each of the suggested changes sought by the parties has a significant impact upon the bargaining unit and the terms and conditions that are found in the work place. On one hand, the Employer seeks the flexibility of extending delegated nursing care to cottages and to further define the duties associated with such care. On the other, the Union is resisting the effort to extend delegated nursing care to the cottages ostensibly for two reasons. First, the Union identifies the demands placed on the bargaining unit members as ever increasing without an adequate adjustment in the level of compensation which is typically seen as the *quid pro quo* for the addition of such duties. This is particularly true with the newest client set that requires more “eyes on” and “total care” from the care givers. Also, the Union appears to be asserting that with such a change the Employer has no incentive to staff the facilities with the appropriate compliment of registered nurses. In fact, to the contrary, the Employer argued at the Fact-Finding hearing that there are too few nurses and that there is already a reason to recommend the changes it seeks.

Currently, it is voluntary for an employee to become trained to provide delegated nursing care. With the training, an employee is eligible to work in both the family homes and the cottage facilities. Without the training, an employee is eligible to work only in

the cottage setting (or some other place) where such duties are not required. Some bargaining unit members are trained delegated nursing care providers and others are not. To adopt the Employer's position would threaten the job security of those not trained (who are trainable) and severely limit the job options for those not trained.

Moreover, the Employer was very direct at the Fact-Finding hearing that an employee assigned to perform delegated nursing care that missteps is subject to discipline. In fact, if the employee is found to be unqualified to perform delegated nursing tasks, that individual will be reassigned to a position where delegated nursing tasks are not necessary. The cottages are such residential facilities. Adopting the Employer's first proposed change effectively eliminates such a reassignment and presumably may provide termination as the only option. The change simply is not warranted given the present circumstances.

The Employer's second proposed change stands on a different footing. It is evident that the parties disagree as to whether accompanying a resident to a doctor's appointment or the hospital is "delegated nursing care." Ohio Administrative Code 5123:2-6-03 provides that MRDD personnel may perform health related activities, may administer oral topical prescribed medications, and may perform routine tube feedings. The statute does not contemplate accompanying a resident on a doctor's visit or to a hospital as delegated nursing care. The contract should not do so either. Therefore, it is recommended that the Employer's proposed second change be adopted.

The Union's proposed language changes constitute an effort to swing the pendulum with regard to delegated nursing duties too far in the opposite direction. To provide for delegated nursing on a voluntary basis is completely unmanageable,

particularly in light of the Board's effort to gain more flexibility out of the existing work force. This proposal simply does not resonate with the undersigned and, therefore, cannot be recommended.

RECOMMENDATION:

Clarify the language of the contract regarding hospital stays and medical or dental appointments. See Exhibit "A" attached hereto.

Issue II. Article 33 – Wages

Union's Position:

The Union's position with respect to wages is simple and straightforward. The Union is seeking a \$.50 (fifty cents) per hour across the board wage increase for all bargaining unit employees effective July 1, 2004; a \$.50 (fifty cents) per hour across the board wage increase for all bargaining unit employees effective July 1, 2005; and a \$.55 (fifty-five cents) per hour across the board wage increase for all bargaining unit employees effective July 1, 2006.

The Union's rationale as set forth in its pre-hearing statement is as follows. "The Union is requesting this change be recommended because it is consistent with previous agreements the bargaining unit has entered into with the Board and is consistent with the increases the Board has granted in negotiations with other bargaining units. The Union's position is the Board has a surplus and could afford this increase." In addition, the Union points out that increased insurance premium cost equates to \$.29 (twenty-nine cents) per hour, and it is necessary to have a sufficient wage increase to offset the increased cost of insurance.

Employer's Position:

The employer begins its argument by pointing to the state of the economy throughout Ohio and Clark County, in particular. Initially, the Board points out that the County itself has experienced stalling tax collection over several years and an unemployment rate that is currently well above the national average at 7.1%.

In its pre-hearing submission, the County sites a number of fact-finding reports by various Fact-Finders who have identified the economic picture as one of hardship and one that cannot support the "business as usual" wage and benefit bargaining atmosphere typically found in negotiations.

Next, the pre-hearing submission directs the Fact-Finder's attention to the external and internal comparables relative to Clark County. The Clark County Commissioner's gave their employees a 1.5% increase in 2004. The Commissioner's also allocated a 1.5% increase in salary accounts for other elective officials. The Clark County AFSCME/Utilities workers received a 1.5% increase in 2004 and the Sheriff's Office Command Staff received a 1% increase in 2004. The Sheriff's Office Nursing Staff received 0%. The MRDD non-union employees received a 2% increase in July 2004. The MRDD PGO nurses received a 4.7% increase of actuals in 2004. However, that contract was negotiated in 2002 and expires in 2005. The only other contract at the MRDD, the driver's who are represented by the Teamster's, received an increase that ranged from 2.0% - 2.6%. That contract expires in 2005.

The external comparables submitted by the employer in this case indicate that the employees performing duties for the Jefferson County MRDD have a minimum pay rate of \$6.50 per hour as compared to Clark County MRDD minimum rate of \$8.40 per hour.

In addition, the Jefferson County MRDD employees receive a maximum pay rate of \$14.47 per hour, whereas, the Clark County MRDD employees receive the maximum pay rate of \$15.61 per hour. Clark County also receives shift differential of \$.25 (twenty-five cents) for second shift and \$.25 (twenty-five cents) for third shift. The Jefferson County MRDD employees receive no shift differential.

With respect to private organizations, the external comparables indicate that the starting rate for Seminole employees is \$6.50 per hour with a maximum of \$9.55 per hour. The Sharonview employees minimum pay rate is \$7.50 per hour with a maximum of \$9.00 per hour. The Columbia House minimum rate is \$7.50 per hour with a maximum rate of \$8.50 per hour. The employer asserts based on this information that the Clark County MRDD employees compare favorably to external organizations outside. Therefore, the Board's position on wages is reasonable.

Next, the Board asserts that there have been cuts to the budget within the last year which impacts the financial ability to support the kinds of wage increases that the bargaining unit is seeking. "The first, Ohio Department of the MRDD provides subsidies to the county Board's MRDD for providing services to adults and infants. This is generally based on adults enrolled in the Adult Program and infants enrolled in the Early Intervention Program during the first full week of October each year.

The infant subsidy is \$900 per individual per year; whereas the adult subsidy varies from \$1,000 to \$1,500 per person per year depending on certain criteria such as whether they are enrolled in the CAFS Program or work in the shelter workshop.

Due to budget cuts at the state level, the amounts were not paid based on the enrollment data or based on the adult criteria. The Board was simply given a lump sum

that was less than has been budgeted based on the prior formula. These cuts were effective FY 2003 (July 2003 – June 2004). The Clark County Board of MRDD realized a cut in funding of \$282,021 in adult and infant subsidies. Other cuts were also experienced in Case Management subsidies.

Further, County MRDD Boards were informed that there was an additional 1% cut in the overall MRDD budget which will be passed on to the County Boards. The exact impact is unknown at this time.”

Finally, the information supplied in a supplement to the record of the Fact-Finding hearing submitted by the Employer indicates that Federal funding for active treatment and skill development, which were previously reimbursable using CAFS funding, is going to be adversely impacted according to the Federal Center for Medicaid Services. The Clark County MRDD originally anticipated a shortfall or reduction of \$499,500. However, it appears that the impact is going to be greater and will equal the amount of \$1,313,299 in losses for 2004.

Findings and Recommendation

The MRDD operates as a Special Revenue Fund within the financial structure of Clark County, Ohio. The MRDD is considered a Special Revenue Fund because it operates from revenue generated not just from the taxpayers of Clark County, but also, from Medicaid reimbursements.

The MRDD finances are comprised of seven different funds. The General Fund is the largest of the funds. The other funds are the F.F. Mueller Residential Fund, the Capital Improvement Fund, The Community Residential Fund, the Trust Fund, the Bequest Fund, and the Risk Management Fund.

The MRDD General Fund receives revenues from local funding sources, for example, levy monies. The Board concedes that it does not anticipate any problem with getting this source of funding. There is also state funding provided to the General Fund. The state funding comes from Case Management subsidies, Family Resources, POS Services Coordination, SERMAK, Waiver Administration subsidies, Operating subsidies, Tax Equity, and Capital Assistance Grants. The Federal funding component of the General Fund is comprised of TCM, CAFS, and Title XX.

The F.F. Mueller Residential Fund revenue sources include Local Revenue, General Fund transfer monies, and carryovers. There are also state and federal revenues.

While there are carryover monies from year to year, the record demonstrates that those monies are necessary to offset any downturns in funding which may be experienced by the Board. Moreover, the record demonstrates that the Board will experience a significant shortfall as a result of the position articulated by the Federal Center for Medicaid Services with respect to federal funding for active treatment and skill development. This shortfall of \$1,313,299 is in excess of twice as large as the original projection of \$499,500.

The Board's wage proposal represents a fiscally reasonable approach and said proposal is hereby adopted. It is recommended that the employees receive a 2% wage increase of actual wages beginning July 1, 2004. An additional increase of 2% of actual wages will be implemented on July 1, 2005 and an additional 2% increase of actual wages implemented on July 1, 2006.

The Union's request for a \$.50 (fifty cents) per hour across the board wage increase for all employees in 2004; a \$.50 (fifty cents) per hour across the board wage

increase for all employees in 2005; and a \$.55 (fifty-five cents) per hour across the board wage increase for all employees in 2006 is simply unsupportable given the financial situation facing the MRDD.

RECOMMENDATION:

Effective July 1, 2004, the employees shall receive a 2% increase based on actual hourly rate earned. Effective July 1, 2005, the employees shall receive a 2% increase in wages based on their hourly rate earned. Effective July 1, 2006, the employees shall receive a wage increase of 2% of actual wages based on their hourly rate earned.

Issue III. Article 34 – Shift Differential

Union's Position:

The Union proposes to increase the current shift differential from \$.25 (twenty-five cents) per hour to \$.35 (thirty-five cents) per hour beginning July 1, 2004. This shift differential will be for all hours worked on second and third shift operations. This shift differential to be paid is determined by the shift on which the employee performs the majority of his/her work.

The Union is requesting this change because the agreement would be consistent with the contract entered into with the Professionals Guild of Ohio (the nurses union). Once again, the Union maintains that the Board has a sufficient surplus and can afford this increase.

Employer's Position:

The Employer has taken the position that it has sufficient funds to pay for either the shift differential or the Union's position on tenured bonus, provided that the wage package sent forth in negotiations by the Board was accepted. The cost of this shift

differential is \$9,900 per year or \$29,700 over the life of the contract. The choice is the Union's.

Findings and Recommendation

The undersigned is faced with an unusual situation with respect to shift differential as it relates to tenured bonus. The Employer has agreed to fund either the shift differential demand or the tenured bonus proposal. The Union seeks both.

However, given the economic condition of the Employer, it does not appear to be a wise or reasonable position to attempt to fund both the shift differential and tenured bonus proposal for the entire life of the contract. Therefore, the recommendation is to increase the shift differential from \$.25 (twenty-five cents) per hour to \$.35 (thirty-five cents) per hour for all hours worked beginning July 1, 2006. This recommendation costs the employer \$9,900 over its original economic proposal. The Board can absorb this expense. The shift differential increase in the third year of the contract will allow the subject bargaining unit employees to keep pace with the MRDD PGO unit. Finally, a third year increase in the shift differential constitutes a modest offset toward increased insurance costs for some employees.

RECOMMENDATION:

Change the shift differential from \$.25 (twenty-five cents) per hour for second and third shift work to \$.35 (thirty-five cents) per hour effective July 1, 2006.

Issue IV. Article 35 – Tenured Bonus

Union's Position:

The Union proposes to increase the tenured bonus in the following manner. For ten to fourteen (10-14) years of service, the employee would receive \$.40 (forty cents)

per hour as a tenured bonus. For successfully completing fifteen to nineteen (15-19) years of service, the employee will receive \$.45 (forty-five cents) per hour. For accumulating twenty to twenty-four (20-24) years of service, the employee will receive \$.45 (forty-five cents) per hour. For successfully completed twenty-five (25) or more years of service, the employee will receive \$.55 (fifty-five cents) per hour.

The Union is requesting that this change be recommended because the Board can afford to fund this proposal financially, and the Transportation Bargaining Unit was given a considerably higher rate.

Employer's Position:

As noted above in the shift differential discussion, the Employer has steadfastly maintained the position that it can fund either the shift differential or the tenured bonus. The tenured bonus cost is \$39,936 over the life of the contract. The Employer maintains that it does not have sufficient funding for both of these increases, but if the wage proposal offered by the Employer is accepted, the Employer is able to fund one or the other of these increases proposed.

Findings and Recommendation

Theoretically, the tenured bonus is available to all employees who accrue the requisite years of service. In that respect, the tenured bonus has a potentially larger impact on the bargaining unit than the shift differential. As such, it is even a more equitable distribution of the monies available to the bargaining unit members. These increases can also go to enhancing the modest percentage wage increase (based on actuals) and offset (to some extent) the increase in health care costs without creating a financial burden on the employer.

The Fact-Finder recommends the Union's proposal on tenured bonus be adopted. This recommendation is a consistent responsible financial approach given the economic condition of the Employer.

RECOMMENDATION:

It is recommended that the Union's proposal be accepted.

Respectfully submitted,



Daniel N. Kosanovich
Fact-Finder

EXHIBIT "A"

RECOMMENDED LANGUAGE CHANGE

ARTICLE 23

Section 23.3 Delegated Nursing Tasks

Employees may be assigned delegated nursing tasks. This delegation is determined by employees passing a course, participating in periodic training, and review provided by a qualified registered nurse. These delegations will include passing of medications in family homes and other tasks identified in Ohio Administrative Code 5123: 2-6-03. Employees working in family homes who have had certification to pass medications withdrawn according to established procedures will be reassigned to an open position in the cottages.

Discipline initiated by the Employer regarding delegated nursing tasks will be applied in a consistent manner.