

STATE EMPLOYMENT RELATIONS BOARD  
FACT-FINDING REPORT

STATE EMPLOYMENT  
RELATIONS BOARD

2005 JUN -1 A 11: 24

Montgomery County Ohio

and

SEIU District 1199 The Health Care and Social Service Union,  
Stillwater Center

SERB CASE NO: 04-MED-07-0709

Fact-Finding Hearing: April 1, 2005  
Fact-Finding Report: April 20, 2005

Union Representative: Jeffrey D. Narten

Employer Representative: Brenda Thomas

Fact-Finder: Ann. C. Wendt, Ph.D., SPHR

**STIPULATION 1**

The parties stipulated that the instant dispute is properly before the Fact-Finder.

**STIPULATION 2**

The parties stipulated that all tentative agreements concluded during their negotiations and/or through mediation shall continue if either party rejects the Fact-Finders Report. The following three (3) issues were presented by the parties:

Article 26	Wages
Article 27	Evaluations and Merit Increases
Article 28	Duration of the Contract

**STIPULATION 3**

The parties stipulated that all SERB reporting requirements have been fulfilled.

## CRITERIA

Pursuant to 4117-9-05(J) State Employment Relations Board, the findings of FACT and Recommendations presented in this Fact-Finding Report are based on reliable information relevant to the issues before the Fact-Finder.

## BACKGROUND

Montgomery County is comprised of 462 square miles located in the southwestern portion of Ohio. The population is 559,062 with an employed workforce of 270,600. (<http://lmi.state.oh.us>) The main sectors of employment are services, followed by trade, manufacturing, and government. Montgomery County is currently in the top 50% out of the eighty-eight counties in unemployment with a rate of 6.2 percent. Montgomery County has a median household income of \$40,156. (<http://quickfacts.census.gov>)

Montgomery County Stillwater Center's goal is to operate one of the best residential programs for persons with profound mental retardation/developmental disabilities in the State of Ohio. Stillwater serves the most severely disabled in Montgomery County and specializes in persons who have profound MR/DD, are totally self-care dependent, and who have the concurrent need for significant medical services. Ninety percent (90%) of Stillwater residents are wheelchair bound. Stillwater maintains a 99 - 100% occupancy rate, with an age range of five (5) to eighty (80).

## ECONOMIC AND FINANCIAL CONDITIONS

Montgomery County's financial health is closely tied to the economic health of the metropolitan area. The declining county population, the increasing unemployment and the relatively low median income of its residents creates an uncertain environment concerning the county's financial wellbeing.

The 2004 Budget for Montgomery County illustrates that over 32.5% of the revenue budget comes from Intergovernmental revenues. These revenues are funds received from state and federal grant programs. The Local Government Funds represent 7% (\$15,256,140) of Intergovernmental revenues. Recently, the Ohio House of Representatives passed Budget Bill 66 which includes cutting these funds to local county governments such as Montgomery County. In addition, Budget Bill 66 addressed reducing the amount of Medicaid support to Ohioans.

Stillwater Center generates \$10,061,522 from Medicaid. This amount represents 98% of the revenue for Stillwater Center. Stillwater generates only 2% from private charges for services. Stillwater Center's Projected Revenue and Expenses with change in 2005-2006 Medicaid Revenue Projections (Employer's Binder, Tab G) shows that the 2004 actual budget expenses exceeded the revenues by over \$900,000. The 2005 budget expenditures are calculated to exceed the revenues as well. With the reduction of state support for Medicaid and the little private revenue generated, Stillwater Center must concentrate on reducing expenditures and increasing revenues.

## TENTATIVE SETTLEMENTS BY THE PARTIES

The parties submitted documentation that the following articles have been tentatively agreed to during negotiations and mediation:

Article 1	Recognition
Article 2	Management's Right
Article 3	Union Membership, Check-off Dues and Fair Share Fee
Article 4	Union Business
Article 5	Filling of Vacancies
Article 6	Seniority
Article 7	Lay-off and Recall
Article 8	Rest Periods
Article 9	Personnel Records
Article 10	Grievance Procedure
Article 11	Labor Management Committee
Article 12	Discipline
Article 13	Non-Discrimination
Article 14	Health and Safety
Article 15	Work Rules
Article 16	Savings Clause
Article 17	Printing of Contract
Article 18	Entire Agreement
Article 19	Successor Clause
Article 20	Holidays and Holiday Pay
Article 21	Vacation
Article 22	Sick Leave
Article 23	Leave of Absence
Article 24	Insurance
Article 25	Hours of Work and Overtime
Article 28	Duration of the Contract
Article 29	Definitions

## ARTICLES IN DISPUTE

### Article 26 WAGES

#### ***COUNTY'S POSITION:***

#### SECTION 1

Contingent upon and only if tentative agreement is accepted and ratified by the union membership on or by October 31, 2004, wage increases during the term of this agreement shall be as follows:

- A. Effective October 1, 2004, each step in the existing pay plan will increase by one and one-half (1½%) percent.
- B. Effective upon October 1, 2005, each step in the existing pay plan will increase by one and one-half (1½%) percent.
- C. Re-open negotiations on 2006 step increases and wages only.

#### SECTION 2

#### Shift Differential

- A. When a regular full-time or regular part-time employee works fifty percent (50%) or more of his/her regularly scheduled shift, excluding overtime, between the hours of 2:00 p.m. and 10:00 p.m., that employee is entitled to one dollar (\$1.00) an hour shift differential for all hours worked in addition to his/her base rate pay.
- B. When that person works fifty percent (50%) or more of his or her regularly scheduled shift, excluding overtime between the hours of 10:00 p.m. and 6:00 a.m., that employee is entitled to fifty cents (.50¢), an hour shift differential for both his/her regularly scheduled work hours and holidays pay.
- C. When an employee is scheduled to work on a holiday, as part of his/her regularly scheduled shift, that employee shall receive the shift differential for both his/her regularly scheduled work hours and holiday pay.
- D. A weekend shift differential of one dollar (\$1.00) per hour shall be paid to regular full-time and regular part-time employees for each hour worked on a regularly scheduled shift between the hours of 6:00 a.m. Saturday and 5:59 a.m. Monday.

***UNION'S POSITION:***

**SECTION 1**

Wage increases during the term of this agreement shall be as follows:

- A. Effective October 1, 2004, each step in the existing pay plan will increase by three (3%) percent.
- B. Effective upon October 1, 2005, each step in the existing pay plan will increase by three (3%) percent.
- C. Effective upon October 1, 2006, the wages will be re-opened along with the rest of the contract (see article 28 below).

**SECTION 2**

**Shift Differential**

- A. When a regular full-time or regular part-time employee works fifty percent (50%) or more of his/her regularly scheduled shift, ~~excluding overtime~~, between the hours of 2:00 p.m. and 10:00 p.m., that employee is entitled to one dollar (\$1.00) an hour shift differential for all hours worked in addition to his/her base rate pay.
- B. When that person works fifty percent (50%) or more of his or her regularly scheduled shift, ~~excluding overtime~~ between the hours of 10:00 a.m. [sic] and 6:00 a.m., that employee is entitled to fifty cents (.50¢), an hour shift differential for both his/her regularly scheduled work hours and holidays pay.
- C. When an employee is scheduled to work on a holiday, as part of his/her regularly scheduled shift, that employee shall receive the shift differential for both his/her regularly scheduled work hours and holiday pay.
- D. A weekend shift differential of one dollar (\$1.00) per hour shall be paid to regular full-time and regular part-time employees for each hour worked on a regularly scheduled shift between the hours of 6:00 a.m. Saturday and 5:59 a.m. Monday.

***WAGE INCREASES ANALYSIS:***

Following negotiation with the Union in 2001, Management at the request of the Union, engaged a consultant to conduct a salary survey and to include Union input in the development and process of the same survey (Employer's Binder, Tab C). The survey was conducted and a final report presented to the Union and to Management in 2003. The survey revealed that County wages were comparable to similar entities and is competitive in both local and regional markets. Further, a telephone survey was conducted in September 2004 to update wage data from comparable entities in the local areas (Employer's Binder, Tab D). The data revealed that the County is not only

competitive, but that the minimum rate at Stillwater Center is in the top 5% of the organizations surveyed and that the maximum pay rate at Stillwater was the highest currently offered in the area.

This is clearly a lean economic time for Montgomery County. The cost of the Union's proposal is clearly beyond the County's ability to pay a three (3%) percent increase in 2004 and 2005. The parties have tentatively agreed to a wage re-opener only in 2006 as shown in the previous tentative agreement section of this report.

***RECOMMENDATION:***

**SECTION 1**

Wage increases during the term of this agreement shall be as follows:

- A. Effective October 1, 2004, each step in the existing pay plan will increase by one and one-half (1½%) percent. (retro-active from the effective date of the agreement)
- B. Effective upon October 1, 2005, each step in the existing pay plan will increase by one and one-half (1½%) percent.
- C. Effective upon October 1, 2006, the step increases and wages only will be re-opened for negotiation.

***SHIFT DIFFERENTIAL ANALYSIS:***

The proposed changes in shift differential were tentatively approved. The Union's proposal to include overtime is totally out of character from typical payments for shift differentials. The basic purpose of a shift differential is to compensate employees for working at undesirable times. Overtime is traditionally excluded from shift differential calculations.

At this time, Montgomery County faces lean economic times. Therefore, the suggestion that shift differentials should apply to overtime is clearly beyond the County's ability to pay.

***RECOMMENDATION:***

**SECTION 2**

Shift Differential

- A. When a regular full-time or regular part-time employee works fifty percent (50%) or more of his/her regularly scheduled shift, excluding overtime, between the hours of 2:00 p.m. and 10:00 p.m., that employee is entitled to one dollar (\$1.00) an hour shift differential for all hours worked in addition to his/her base rate pay.

- B. When that person works fifty percent (50%) or more of his or her regularly scheduled shift, excluding overtime between the hours of 10:00 p.m. and 6:00 a.m., that employee is entitled to fifty cents (.50¢), an hour shift differential for both his/her regularly scheduled work hours and holidays pay.
- C. When an employee is scheduled to work on a holiday, as part of his/her regularly scheduled shift, that employee shall receive the shift differential for both his/her regularly scheduled work hours and holiday pay.
- D. A weekend shift differential of one dollar (\$1.00) per hour shall be paid to regular full-time and regular part-time employees for each hour worked on a regularly scheduled shift between the hours of 6:00 a.m. Saturday and 5:59 a.m. Monday.

**Article 27**  
**EVALUATIONS AND MERIT INCREASES**

**PARTIES' POSITION:**

Neither party presented written or verbal arguments concerning this article. The only reference to Article 27 was made by the County Representative who indicated that Article 27 remains open because it is tied to Article 26 – Wages which remains in dispute.

**RECOMMENDATION:**

Article 27 – Evaluations and Merit Increases shall be consistent with the settlement of Article 26 – Wages.

**Article 28**  
**DURATION OF THE CONTRACT**

**COUNTY'S POSITION:**

This Agreement shall become effective as of the ratification of both parties and shall remain in full force and effect for the covered employees until September 30, 2007.

**UNION'S POSITION:**

This Agreement shall become effective as of the ratification of both parties and shall remain in full force and effect for the covered employees until September 30, 2006.

***ANALYSIS:***

The Union's proposal to change the agreement from a three year contract to a two year contract is inconsistent with the other collective bargaining contracts between the Board of County Commissioners and Montgomery County. All these contracts are three year contracts. Since the analysis for Article 26 – Wages previously revealed that the LPN's at the Stillwater Center are highly competitive with LPN's in the region, there is no compelling reason to re-open the entire contract in 2006. A review of the contract history further reveals, that over the years the contract has been in existence, numerous changes have occurred in contract terms and contract language. Clearly, there is no compelling reason for this bargaining unit to have a two year contract instead of a three year contract.

Furthermore, the Union previously agreed to a three year contract as indicated in the list of tentative agreements in the Fact-Finding Report. The Union notified the County of its intent to request a two year contract in its March 31<sup>st</sup> fax of open articles sent to the Fact-Finder and the county.

***RECOMMENDATION:***

This Agreement shall become effective as of the ratification of both parties and shall remain in full force and effect for the covered employees until September 30, 2007.

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Ann C. Wendt, Ph.D., SPHR  
Fact-Finder

Date: \_\_\_\_\_  
April 20, 2005