

STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD

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In the matter of	*	04-MED-12-1305
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Fact-finding between:	*	
	*	
Erie County Department of Job And Family Services	*	Fact-finder Martin R. Fitts
	*	
and	*	
	*	
AFSCME Ohio Council 8, AFSCME Local 3616	*	July 19, 2005
	*	
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REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For Erie County Department of Job & Family Services (the Employer):

Lori Torriero, Attorney
 James A. Sennish, Erie County Human Resource Director
 Vicky L. Lyons, Assistant Director, Erie County DJFS
 Debra Haer, Fiscal Administrator, Erie County DJFS

For AFSCME Ohio Council 8, AFSCME Local 3616 (the Union):

Cheryl Tyler-Folsom, Staff Representative, AFSCME Ohio Council 8
 Pamela Hall, AFSCME Local 3616
 Victoria Strawn, AFSCME Local 3616
 Donna Bretz, AFSCME Local 3616
 Jennifer Gale, AFSCME Local 3616
 Trudy Riddle, AFSCME Local 3616
 Judith Lane, AFSCME Local 3616
 Linda Pugh, AFSCME Local 3616

PRELIMINARY COMMENTS

The bargaining unit consists of all employees in the Account Clerk, Cashier, Clerk, Clerical Specialist, Data Processor, Employment Services Interviewer, Family Service Aide, Income Maintenance Aide, Income Maintenance Worker, Investigator, Paralegal, Social Service Aide, Social Service Worker, Telephone Operator, Typist, Word Processing Specialist and Intermittent classifications of the Erie County Department of Job and Family Services. There are approximately 86 employees in the bargaining unit. The State Employment Relations Board (SERB) appointed the undersigned as Fact-finder in this dispute on February 4, 2005. The parties conducted negotiating sessions on January 7, 14 and 21, 2005. SERB Mediator Dale Zimmer provided mediation for the parties on March 8 and April 26, 2005. The fact-finding hearing was held on June 21, 2005 at the Erie County Services Center in Sandusky, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. There were eight major issues at impasse: Wages; Hospitalization/Major Medical; Personal Days; On-Call Pay; Vacation; Longevity; Sick Time Buy-out; and Paid Union Leave. Thus these issues (including sub-issues) were submitted for fact-finding.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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;
3. The interest and welfare of the public, and 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. The lawful authority of the public employer;
5. Any stipulations of the parties; and
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented in writing to the Fact-finder at the June 21, 2005 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Wages

Positions of the Parties

The Union proposed an across the board wage increase of 4% the first year, 4% the second year and 4% the third year. It also proposed that the wage increase for 2005 be retroactive to March 1, 2005.

The Employer proposed an across the board wage increase of 2% the first year, 2% the second year and 2% the third year. It also proposed that either both the first year wage increase and the Employer's proposed insurance premium contribution be retroactive to March 1, 2005, or that neither be retroactive.

Discussion

The Employer provided significant data in support of its proposal for a 2% annual increase in each of the three years of the contract. The evidence showed that the funding sources for the agency have changed some of the rules governing how various monies can be spent, leaving the Employer with no ability to shift funds around from different areas to cover shortfalls. The Employer also made a compelling case that the County has experienced some fiscal difficulties making it an unlikely source of additional revenue for the agency.

There is a definite connection between wages and the Employer's proposal for the employees to contribute to health insurance premiums. As the Fact-finder will discuss and recommend below, the Employer's proposal for those employee contributions is compelling. However, fairness dictates that a wage increase offset that contribution to a degree, especially in the first year. The Employer's wage proposal simply falls short in the first year of providing a fair wage increase in light of those health coverage contributions recommended below. Given the uncertainty facing the agency's future revenues, the Employer's proposals for the second and third years of the agreement are fair and reasonable.

As to retroactivity of the wages, this Fact-finder believes that, absent any undue delays on the part of the Union, retroactivity of wage increases is fair and appropriate. The Employer undoubtedly anticipated wage increases for the entire first year of the contract when preparing its budget. The Employer's request that health insurance contributions also be retroactive will be dealt with below. However, a retroactive wage increase, even if offset to some degree by partial retroactivity of contributions for health insurance, still

provides the employees with the benefit of the increased wages for the calculation of PERS, and therefore the retroactivity of the wage increase to March 1, 2005 is desirable.

Findings and Recommendation

In consideration of the recommendations on the outstanding issues found below, the Fact-finder's opinion is that a modification of the Employer's wage proposal is required in order to be fair and reasonable to the employees.

Therefore, the Fact-finder recommends that **Appendix A: Wage Rates** be amended to provide for a 2.75% wage increase effective retroactively to March 1, 2005; an additional 2.0% wage increase in the second year; and an additional 2.0% wage increase in the third year.

Issue: Hospitalization/Major Medical

Positions of the Parties

The Employer proposed two changes in this Article. It proposed that all employees in this bargaining unit be included in the County's MedPlus 3 Plan, and it proposed that these employees be required to contribute \$35 per month for single coverage and \$50 per month for family coverage. It also proposed that either both the first year wage increase and the Employer's proposed insurance premium contribution be retroactive to March 1, 2005, or that neither be retroactive.

The Union proposed that the health care premium be phased in over the three years of the contract, and that the deductibles be reduced.

Discussion

The Employer noted that the employees in this bargaining unit are the only County employees left on the original MedPlus plan, with all other employees on either the MedPlus 2 or the more recent MedPlus 3 plan. It argued that these employees have had their health care untouched by changes during the life of the previous agreement while other employees, including those in a bargaining unit represented by this same Union have been changed. It argued that the AFSCME unit in the County Engineer's Office recently agreed to the same provisions it is proposing here. The Employer also argued that there are efficiencies in having all County employees participating in the same plan.

The Union acknowledged the need for the employees to increase their contribution toward health care, but expressed concern over the increased out-of-pocket costs and

deductibles proposed by the Employer. It argued that some families will be in the hole after paying these increases, even after a wage increase. It asked for a gradual transition for the increase in these deductibles.

The Fact-finder appreciates the concerns of the Union, especially with regard to the Employer's proposed increases for out-of-pocket costs and deductibles. However the Employer's argument for consistency among County employees in this regard is compelling. The costs of health care continue to rise everywhere, and this County has worked hard to provide good benefit levels for the employees while keeping the costs reasonable. The Employer's proposal does not unduly burden the employees, and represents a fair approach to sharing the cost of health care. In fairness to the Employer and the taxpayers, changes simply must occur in the contract to provide for greater employee contributions toward these benefits.

The Fact-finder believes that the first year wage increase recommended in this Report will keep an average user of health care from losing ground economically. In addition, the Fact-finder is recommending a modified date for retroactivity for the employee contributions, again providing additional economic cover for the employees in this transition year. Lastly, when factoring in the other gains for the employees recommended elsewhere in this Report, the Report in its entirety strikes a fair and reasonable balance.

Findings and Recommendation

Regarding the medical plan itself, the Employer's argument for the MedPlus 3 plan is compelling.

Therefore, the Fact-finder recommends that the employees all be included in the County's MedPlus 3 plan.

The Fact-finder finds the Employer's arguments for the employee contribution toward health care to be compelling and reasonable. However, in order to accomplish a smoother transition for the employees, the Fact-finder believes the employee contribution should be retroactive only to July 1, 2005.

Therefore, the Fact-finder recommends the Employer's proposal that the bargaining unit members contribute \$35.00 per month for single coverage and \$50.00 per month for family coverage, retroactive to July 1, 2005.

Issue: Personal Days

Positions of the Parties

The Union proposed an increase in personal days to 4 days up from the current 3 days, with employees with 25 or more years of seniority to receive 5 personal days, up from the current 3 days.

The Employer proposed the retention of current language, but expressed a willingness to grant one additional personal day if the proposals of the Employer for health care and wages are recommended.

Discussion

As with several other Union proposals, the Employer is expressed that it would be agreeable to this one if its proposal for wages and health insurance were recommended by the Fact-finder. The Fact-finder notes that on this issue the Employer expressed that conditional agreement only for one additional personal day, not for the union's proposal for a second additional personal day for those with more than 25 years of service. The Fact-finder believes that proposal for the second additional day is excessive in any event, and is not recommending it. However in light of recommendations made elsewhere, the remainder of the Union's proposal has merit.

Findings and Recommendation

As with other Union proposals seen by the Employer as "doable" depending on the other recommendations of the Fact-finder, this one is reasonable based upon the totality of the other recommendations contained herein.

Therefore, the Fact-finder recommends that the Section 18.01 of the collective bargaining agreement be amended to provide for thirty-two (32) hours of personal time off in each contract year.

Issue: On-Call Pay

Positions of the Parties

The Union proposed that the contract be amended to provide for an additional \$20/week of On-Call pay.

The Employer proposed the retention of current language, but expressed a willingness to agree to the additional \$20/week the economic proposals of the Employer for health care and wages are recommended.

Discussion

The collective bargaining agreement currently provides for On-Call pay of \$170/week, and the Union's proposal is to raise it to \$190. On-Call pay is compensation for the employee being available outside of normal business hours to attend to work that cannot be done during the regular work day, such as responding to an emergency crisis, conducting after-hours drop-ins, and responding to emergency requests from law enforcement agencies.

The Employer provided no argument in opposition to this proposal, stating that it could support if its other economic proposals were adopted. It is the Fact-finder's opinion that the recommendations made with regard to those proposals are close enough to the Employer's proposals as to merit the recommendation of the Union's proposal here.

Findings and Recommendation

Given the totality of the recommendations contained within this Report, the Fact-finder believes that it is both fair and reasonable to find in favor of the Union's proposal.

Therefore, the Fact-finder recommends the Union's proposal to amend for an increase in the On-Call pay to \$190/week.

Issue: Vacation

Positions of the Parties

The Union proposed increasing the vacation schedule in Article 16 by compressing the years required to achieve each vacation step, and adding a 6-week vacation step at 25 years of more of service.

The Employer proposed the retention of the current vacation schedule.

Discussion

The Union's main argument for a revised vacation schedule calling for additional time off was that the added time off will be beneficial to the employees' health as it will help reduce the stress of their jobs.

The Employer noted that the current vacation schedule is identical to that in the County's collective bargaining agreement with the other AFSCME bargaining unit, as well as that for other county employees except for those in the Sheriff's Office.

The Union's supporting information was general in nature and fails to provide a compelling reason for improving the vacation schedule. The Employer's argument that it is inappropriate to grant additional vacation time at a time when the County is faced with finding ways to reduce costs has considerable merit.

Elsewhere in this Report is a recommendation to increase the number of personal time available to the employees. That recommendation represents a more supportable gain in time off for the bargaining unit members than does this one.

Findings and Recommendation

The Fact-finder finds no compelling reason for improvements to the vacation schedule.

Therefore, the Fact-finder recommends the Employer's proposal for the retention of the current vacation provisions in the agreement.

Issue: Longevity

Positions of the Parties

The Union proposed an increase to longevity pay of \$200 at each level, and proposed adding a longevity payment of \$1,500 for employees with more than 25 years of service.

The Employer proposed that current language be retained.

Discussion

The Employer noted that longevity was increased in the last contract, and already rewards the employees for time of service. While the Union argued that service time should be rewarded, the Fact-finder cannot find a compelling reason to recommend an increase at

this time. There was simply no concrete evidence that the Employer is unable to retain senior employees, or that the employees in the bargaining unit are unfairly compensated.

Findings and Recommendation

The Fact-finder finds no compelling reason for any change in longevity at this time.

Therefore, the Fact-finder recommends the Employer's proposal that current contract language be retained.

Issue: Sick Time Buy-out

Positions of the Parties

The Union proposed that employees with over 800 hours of unused sick time be allowed to cash-out 15% of any hours over the 800.

The Employer proposed the retention of current language providing for no sick leave buy-out, but expressed a willingness to agree to the Union's proposal if the economic proposals of the Employer for health care and wages are recommended.

Discussion

The Union proposal is for the same kind of buy-out of accumulated sick leave over 800 hour that was granted at the beginning of the previous agreement. This seems like a reasonable reward for employees who do not excessively use sick leave. In addition, the Employer has indicated a willingness to agree to this benefit if its major economic proposals are recommended. It is the Fact-finder's opinion that the Employer's major economic goals have been met by the recommendations contained in this Report, and thus finds it fair to recommend the Union's proposal here.

Findings and Recommendation

Given the other recommendations contained in this Report, the Fact-finder believes that it is fair and reasonable to recommend the Union's proposal for this buy-out.

Therefore, the Fact-finder recommends the Union's proposal for a buy-out of 15% of any accumulated, unused sick leave over 800 hours, to be done in the same method and manner as was done under the previous agreement.

Issue: Paid Union Leave

Positions of the Parties

The Union proposed that the contract be amended to grant Union officers or designees up to 40-hours per year of "Paid Union Leave Time" to allow Union officials to attend meetings such as County Commission meetings or to participate on community boards and organizations without taking vacation time.

The Employer proposed the retention of current language relative to paid union leave.

Discussion

The Union argued that there were two separate issues that justified the adoption of its proposal. First, it argued that the bargaining unit should be represented at meetings of the County Commissioners. It maintained that the Commissioners have asked agency management personnel what the opinion of the bargaining unit is on some matters, and the Union believes that the bargaining unit members should be present to speak for themselves.

Secondly, the Union argued that Union members cannot hold positions on community boards and committees unless they take personal leave or vacation to attend meetings during the workday. It argued that management employees are often allowed to attend those types of meetings on County time, and if it is valuable to the agency for them to attend it should be valuable for bargaining unit members to participate in similar activities.

As to the first matter, the Union is not precluded from having representation at the County commissioner meetings. Further, nothing precludes the County Commissioners from requesting that a representative of the Union be present at its meetings, and requesting the agency management to allow them to be present. However, there simply can be no compelling case made that the Union officers or their designees should be allowed to be present on paid time absent being directed to attend by management. The bargaining unit members properly report to agency management, and the maintenance of that chain of command is important in any organization. As noted, the Union is not precluded from having representatives attend any County Commissioner meeting, just as any member of the general public is welcome. Further, the bargaining unit members have at their disposal many methods of communicating with County Commissioners just as they can communicate with any elected official. The Fact-finder can see no harm or disadvantage suffered by this bargaining unit by not having paid leave to attend the County Commissioner meetings on a regular basis.

As to the other argument of the Union, certainly its members have a variety and wealth of talent to contribute to the community. That does not mean that the taxpayers should be

forced to pay for those efforts, however. Management currently has the right to decide if the agency will benefit by the participation of any of its employees on community boards, committees organizations. That right is properly vested with management in order that taxpayer dollars are used to further the mission of the Erie County DJFS. If the Employer does not deem participation by a bargaining unit employee in such an endeavor as beneficial to the agency, it should maintain the right to not allow that participation on time paid by the agency. Once again the bargaining unit employees are not precluded from such participation, rather the agency is simply maintaining the right not to pay for such time if it does not deem it of value to fulfilling the agency's mission.

Findings and Recommendation

The Fact-finder finds no compelling reason for the adoption of the Union's proposal.

Therefore, the Fact-finder recommends the Employer's position for maintaining current language with regard to paid Union leave.

Additional recommendations of the Fact-finder

At the hearing the parties expressed to the Fact-finder that they had reached a verbal agreement on two other outstanding issues: Friday jeans days; and relaxing the flex time schedule.

The Fact-finder applauds the work of the parties in reaching those two agreements, and recommends them.

In addition to the above, the Fact-finder has reviewed all the other tentative agreements reached by the parties during their negotiations.

The Fact-finder recommends all tentative agreements reached by the parties during these negotiations.



Martin R. Fitts
Fact-finder
July 19, 2005