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STATE EMPLOYMENT
RELATIONS BOARD

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**IN THE MATTER OF FACT-FINDING
BETWEEN**

**SUMMIT COUNTY CHILDREN'S)
SERVICES BOARD)
)
)
AND)
)
)
**COMMUNICATION WORKERS)
OF AMERICA, LOCAL 4546)****

CASE NO. 05-MED-10-1278

**FINDINGS
AND
RECOMMENDATIONS**

JAMES M. MANCINI, FACT-FINDER

APPEARANCES:

FOR THE UNION

Larry Vuillemin, Esq.

FOR THE EMPLOYER

Gary C. Johnson, Esq.

SUBMISSION

This matter concerns fact-finding proceedings between the Summit County Children's Services Board (hereinafter referred to as the Employer or Agency) and the Communications Workers of America, Local 4546 (hereinafter referred to as the Union or CWA). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The fact-finding hearing was held on February 23, 2006 in Akron, Ohio.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

The bargaining unit consists of multiple job titles running the gamut from case worker to custodian to secretary, and the like. There are approximately 350 employees in the unit.

This fact-finder in rendering the following findings of fact and recommendations on the issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117-14(G)(6)(7). Therefore, the following recommendations on issues at impasse are hereby submitted.

BACKGROUND

There is a dispute as to what is considered to be the current Contract between the parties. The Employer takes the position that the document which serves as the base Collective Bargaining Agreement for the fact-finding proceeding is that which is identified as Employer Exhibit 1. Specifically, the Employer refers to a document dated on November 12, 2004 which incorporated new language awarded by a conciliator's decision. The Union basically submits that this fact-finder should consider the previous Collective Bargaining Agreement, the 2000-03 CBA, to be the current Contract for purposes of this fact-finding proceeding. The Union maintains that the conciliator's award rendered in the previous matter should not have any effect because it was not issued in a timely or proper manner.

This fact-finder has reviewed the various arguments presented by the parties as to what Agreement should be considered to be the base Contract for purposes of this fact-finding proceeding. During the last negotiations following a five and one-half month work stoppage, the parties agreed to submit their unresolved issues for the 2003-06 CBA to conciliation. Subsequently, Mr. David Pincus was duly appointed conciliator and he issued his award on June 10, 2004. There has been no appeal of the conciliator's decision in any court and as a result this fact-finder must deem Conciliator Pincus' rulings to be binding on the parties. It was shown that the Awards duly issued by Conciliator Pincus

have been incorporated into the Collective Bargaining Agreement, identified as Employer Exhibit 1.

It was also established that the 2003-06 Collective Bargaining Agreement identified as Employer Exhibit 1 has been utilized by the parties to govern their employment relationship over the last two years. That Agreement has been used for establishing wage increases for bargaining unit employees as well as for administering approximately twenty-seven grievances during that time. Therefore, this fact-finder has determined that it is appropriate to consider the 2003-06 Collective Bargaining Agreement referred to as Employer Exhibit 1 as the base contract to be used in this fact-finding proceedings. Except as otherwise set forth in this report, this fact-finder is recommending that all provisions set forth in Employer Exhibit 1 be retained without any change or modification.

RECOMMENDATION

Except as otherwise set forth in this report, this fact-finder recommends that all provisions of the 2003-06 Collective Bargaining Agreement set forth in Employer Exhibit 1 shall be retained without any change or modification.

1. WAGES

The Union proposes that effective April 1, 2006 each bargaining unit employee is to receive a \$.60 per hour increase in their current salary. Effective April 1, 2007, each employee is to receive a \$.55 per hour increase. Effective April 1, 2008, there is to be a \$.50 per hour increase for all employees. The Union also proposes to delete that provision which provides for lump sum payments in lieu of a base salary increase for those employees whose pay rate exceeds the maximum of their salary range.

The Employer proposes that there be a 2% increase in wages in each year of the Contract effective the first full payroll period in January of each year. The Employer also proposes to retain the current provision which states that any employee whose pay rate exceeds the maximum of the range are to be paid a lump sum in lieu of a base salary increase.

The Union contends that it is reasonable to provide for a cents per hour increase rather than percentage wage increases. The Union notes that it has had percentage increases over the past six years and now it would be appropriate to go to a cents per hour method for pay increases. The Union further maintains that due to the conciliator's decision, approximately one-half of the employees in the bargaining unit who are at or over the top of their pay scales have received bonuses instead of raises during the past three years. According to the Union, such an approach has a detrimental affect on the employees' P.E.R.S. accounts. Finally, the Union submits that the Agency can afford the

raises it has proposed considering that it has the highest carry-over balance of any Children Services Board in the state.

The Employer maintains that the 2% increases which it has proposed are generous in view of the Agency's financial condition. The Employer acknowledges that it currently has a significant carry-over balance but that there are concerns about the possible loss of revenue if a levy expires. The Employer further submits that the wages paid to its employees is higher than that provided to comparable employees both in Summit County and throughout the State of Ohio. The Employer cited several Summit County contracts which provided employees with similar 2% wage increases as that proposed in the instant matter.

ANALYSIS – This fact-finder would recommend that there be 3% wage increases granted in each year of the Contract. Such pay increases would become effective during the first full payroll period in January of each year. This fact-finder would however recommend that for the second and third years of the Agreement, employees whose pay rate exceeds a maximum of the range are to be paid a lump sum in lieu of a base salary increase. In other words, this fact-finder believes that it would be appropriate for the first year of the Agreement to also provide a 3% wage increase to those employees whose pay rate exceeds the maximum of their pay range.

Evidence of comparability supports the above wage rate recommendation. Both Franklin County as well as Lucas County Children's Services are providing 3% wage increases to their employees. Specifically, Franklin County Children's Services will be

providing 3% raises in February 2006 and 2007. Similarly, Lucas County Children's Services have provided their employees with 3% increases during the past three years. Within Summit County, the Board of MRDD has agreed to provide wage increases of 3% to its employees in 2004, 2005 and 2006. Even the Summit County Child Support Agency has in effect agreed to provide the equivalent of a 3% increase in October 2006 and again in October 2007 to its employees. The recommended 3% increases would also be in line with the wage increases granted to this bargaining unit during the previous contract.

This fact-finder finds that it would be more reasonable to provide across the board percentage increases as opposed to the cents per hour increases proposed by the Union. It was shown that during the past six years, there have always been percentage wage increases granted to the bargaining unit. Moreover in other comparable contracts, wage percentage increases are the norm.

As indicated, this fact-finder recommends for the second and third years of the Agreement the current language which provides that any employee whose pay rate exceeds the maximum of the range is to be paid a lump sum in lieu of a base salary increase. This particular provision was awarded by the previous conciliator and there has been no basis established for now changing the provision for those who are being paid "off the scale." Contrary to the Union's contention, it does not appear that bonuses in lieu of pay raises should affect the employee's P.E.R.S. However, this fact-finder has taken into consideration the Union's concern that employees at the top of their pay scales

have not received any increase in their hourly rate of pay for over three years. It is for that reason that this fact-finder recommends that in the first year of the Agreement those employees who are at the top of their pay scale also be provided with a 3% wage increase. Based upon the financial data submitted, it appears that the Agency has the ability to finance the recommended wage increases herein.

RECOMMENDATION

It is the recommendation of this fact-finder that there be 3% wage increases in each year of the Agreement. However for the second and third year of the Agreement, employees whose pay rate exceeds the maximum of the range of their pay scale are to be paid a lump sum in lieu of base salary increase.

ARTICLE 602, COMPENSATION

All Bargaining Unit salary scales will be divided into seven (7) equal steps. Employees who are not at or above the top of their assigned pay scale shall, on their anniversary date, receive a salary increase equal to one (1) step (per Schedule "C", "D" and "E", below) not to exceed the top of their assigned pay scales. For the second and third year of the Agreement, any employee whose pay rate exceeds the maximum of the range will be paid a lump sum in lieu of a base salary increase.

All pay rates in the Collective Bargaining Agreement shall be increased as follows:

Three percent (3%) increases in each contract year, effective the first full payroll period in January of each year.

2. MEDICAL CLINIC BEEPER

The Employer has proposed several changes to the current provision including the elimination of a sentence which states “carrying the Medical Clinic Beeper shall not be mandatory.” The other change is that nurses are to carry beepers to cover weekday hours of 6:00 p.m. to 8:00 a.m. The current language sets forth the time as 8:00 p.m. to 8:00 a.m. The Union proposes language which is set forth in a Supplemental Agreement reached on April 14, 2004 between Connie Humble, the Agency’s Executive Director, and Robin Schenault, Local Union President. The Union’s proposal includes the language which states that carrying the Medical Clinic Beeper shall not be mandatory. The Union does agree to change the after hours emergency call language to cover weekday hours of 6:00 p.m. to 8:00 a.m.

The Employer contends that allowing a nurse the option to decline the assignment to carry a Medical Clinic Beeper has proven to be unworkable. It is essential that a nurse be available at all times. As a result, the Employer proposes that the assignment be made on a rotating basis by order of seniority.

The Union submits that there has not been any administrative problems with the assignment of beepers to nurses. The Union does not believe that there has been any basis established for making Medical Clinic Beeper assignments mandatory.

ANALYSIS – This fact-finder finds that there has been a basis established for modifying the current Medical Clinic Beeper Provision. The evidence does indicate that there have been difficulties in providing after hours coverage by the Agency’s nursing

staff. It is evident that a nurse must be available at all times. Allowing a nurse the option to decline an assignment to carry a Medical Clinic Beeper apparently has created some administrative problems for the Agency. As such, this fact-finder finds that it would be reasonable to rotate by seniority a requirement that all nurses carry a Medical Clinic Beeper.

RECOMMENDATION

This fact-finder recommends certain modifications to the Medical Clinic Beeper Provision as more fully set forth below:

ARTICLE 602.09, MEDICAL CLINIC BEEPER

Nurses who carry the Medical Clinic Beeper shall be paid the beeper compensation rate as listed below:

Weekdays	\$30.00 per day
Weekends	\$40.00 per day (Sat. & Sun.)
Holidays	\$50.00 per day

Nurses carrying the beeper shall be on call to cover after-hours emergency calls during the hours of 8:00 p.m. and 8:00 a.m. on weekdays and twenty-four (24) hours per day on weekends and holidays beginning at 8:00 a.m.

~~Beeper assignments will be for a period of seven (7) consecutive days; however, occasional deviations may be necessary should an unforeseen situation occur. Each seven (7) day assignment will begin on Friday at 8:00 p.m. and end the following Friday at 8:00 a.m. Once a staff person accepts a Medical Clinic Beeper assignment, he/she implicitly agrees to provide coverage for the complete weekly assignment. Individual daily assignments, when necessary, will begin at 8:00 p.m. and end at 8:00 a.m. the following day. On call assignments shall be rotated and offered equitably to applicable staff. Carrying the Medical Clinic Beeper shall not be mandatory.~~

~~Completion of initial hire probationary period is required prior to being placed on Medical Clinic Beeper assignments.~~

Nurses carrying the beeper shall be on call to cover after-hours emergency calls during the hours of 6:00 p.m. and 8:00 a.m. on weekdays and twenty-four (24) hours per day on weekends and holidays beginning at 8:00 a.m.

Once a staff person is assigned a Medical Clinic Beeper, he/she will provide coverage for the complete assignment. Individual daily assignments, when necessary, will begin at 6:00 p.m. and end at 8:00 a.m. on the following day. On-call assignments shall be rotated and offered in seniority order to applicable staff.

Completion of initial-hire probationary period is required prior to being placed on Medical Clinic Beeper assignments.

3. LONGEVITY PAY

The Union has proposed increases in the longevity benefit. The Employer opposes any change in the current Longevity Pay Provision.

The Union contends that there have been only minimal increases in longevity pay in recent years. The result has been that general increases in longevity have been largely absorbed by the increase in healthcare contributions. In addition, an increase in longevity pay is needed to give longer term employees financial incentive to remain with the Agency.

The Employer submits that most other county agencies do not provide longevity for their employees. The Employer also finds the Union's proposed increases in longevity pay to be totally unreasonable. The Employer maintains that there has been no basis established for increasing longevity pay at the current time.

ANALYSIS – This fact-finder does not recommend any change in the current Longevity Pay Provision. There was insufficient basis established for increasing longevity pay at the current time. There were no comparables cited to support the change in the current longevity pay benefit.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the current Longevity Pay Provision.

LONGEVITY PAY – Current language, no change.

4. TUITION REIMBURSEMENT PROGRAM

The Union proposes to increase the tuition reimbursement amount for full-time employees to cover the cost of two courses per semester/quarter for approved course work. For part-time employees, the tuition reimbursement under the Union's proposal would cover the cost of one course per semester/quarter for approved course work. The Employer proposes to retain current language. Currently, the Employer must provide full-time employees with tuition reimbursement not to exceed \$500 per semester/quarter for approved course work. For part-time employees, the tuition reimbursement is not to exceed \$250 per semester/quarter.

The Union points out that the amount of tuition reimbursement has not been increased since 1999. The Union also cites problems which employees have had in obtaining reimbursement for their course work. The Union cites tuition reimbursement provisions found in Franklin and Lucas Counties Children's Services Agencies.

The Employer claims that the Union's proposal is excessive. It also points out that when employees receive a Master's Degree they get promoted which means additional compensation for them. The Employer submits that the current tuition reimbursement program is adequate and should be retained.

ANALYSIS – This fact-finder has determined that there should be an increase in the amount of tuition reimbursement. The evidence showed that there has been no increase in this benefit since 1999. Obviously, the cost of tuition has risen dramatically since that time. For that reason, this fact-finder would recommend doubling the current

amounts set forth in the tuition reimbursement program. That is, the provision is to be modified to provide full-time employees with tuition reimbursement not to exceed \$1,000 per semester/quarter for approved course work. For part-time employees, the tuition reimbursement shall be increased to \$500 per semester/quarter for approved course work.

RECOMMENDATION

This fact-finder recommends an increase in the current Tuition Reimbursement Provision as more fully set forth below:

ARTICLE 601.14, TUITION REIMBURSEMENT PROGRAM

The Employer shall provide full-time employees with tuition reimbursement not to exceed \$1,000 per semester/quarter for approved course work.

The Employer shall provide part-time employees with tuition reimbursement not to exceed \$500 per semester/quarter for approved course work.

There is to be no other changes in the current Tuition Reimbursement Provision.

5. HOURS OF WORK

The Employer proposes several changes to this article. In Section 302.05, the Employer proposes to delete the provision allowing for a one hour paid lunch. Under Section 302.12, the Employer's proposal is to change the language to allow employees greater latitude in the selection of flex time.

The Union proposes to retain current language under Section 302.01 as well as the one hour paid lunch provision found in Section 302.05. However, the Union proposes a modification to Section 302.04 as well as 302.12 relating to work schedules. Basically, the Union proposes language which had been in existence in these two provisions prior to the conciliator's award.

The Employer cites comparable contracts of other agencies which do not pay employees for a lunch period. It also notes that the practice allowing a daily one hour paid lunch is extremely costly. With respect to flex time, the Employer submits that the time periods set forth in the CBA are too restrictive.

The Union argues that the prior contract language was reasonable. The Employer has failed to establish any need to eliminate the paid lunch hour.

ANALYSIS – With respect to Sections 302.01 pertaining to the definition of the basic workweek, as well as Section 302.05 regarding the one hour paid lunch period, this fact-finder would recommend that there be no change in current language. That is, the employees shall continue to have a one hour paid lunch period. This fact-finder would

also recommend no change in Section 302.04 as proposed by the Union. Again, there was no justification established for a return to the language which existed in this provision prior to the conciliator's award.

This fact-finder does find merit in the proposal made by the Employer to modify the current Section 302.12 provision relating to flex time. First, the proposed change in Section 302.12 would allow employees working in the clinic, front desk, food service, callboard, and respite center to participate in the flex schedule which they currently are prohibited from doing. Moreover, the proposed amendment of Section 302.12 would provide greater latitude in the selection of flex time for both the employees and the Employer. Evidence showed that the time periods set forth in the current provision are too restrictive. As a result, it is reasonable to delete the current flex time hours set forth in the provision but to continue to allow employees to use flex time with the approval of the Employer.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in any provision set forth under the Hours of Work Article 302 except for the modification to Section 302.12 relating to flex time as more fully set forth below:

ARTICLE 302, HOURS OF WORK

Current language, no change in any provision except Section 302.12 which is modified as follows:

Section 302.12

Full-time employees may elect their hours of service, subject to operational needs as determined by the supervisor., ~~from among the following:~~

~~Monday through Friday:~~

~~7:00 a.m. — 3:00 p.m.~~

~~7:30 a.m. — 3:30 p.m.~~

~~8:00 a.m. — 4:00 p.m.~~

~~8:30 a.m. — 4:30 p.m.~~

~~9:00 a.m. — 5:00 p.m.~~

~~10:00 a.m. — 6:00 p.m.~~

~~11:00 a.m. — 7:00 p.m.~~

~~12:00 p.m. — 8:00 p.m.~~

~~Monday through Thursday or
Tuesday through Friday~~

~~7:00 a.m. — 5:00 p.m.~~

~~7:30 a.m. — 5:30 p.m.~~

~~7:00 a.m. — 3:00 p.m.~~

~~8:00 a.m. — 6:00 p.m.~~

~~8:30 a.m. — 6:30 p.m.~~

~~Employees in the following areas are not eligible to participate in the above Flex Time Plan: Clinic, Front Desk, Food Service, Callboard, Respite Center.~~

The Employer shall grant the schedules most desired by employees, if feasible. If scheduling conflicts arise, as many employees as possible shall be granted their most desired schedule based on Employer seniority.

For purposes of this Section, seniority shall be defined pursuant to Sections 109.04 and 109.05. At the employee's request, supervisors can permit daily variations from the schedule to meet the client demand in the sole discretion of the supervisor.

6. OVERTIME

The Employer proposes a change in Section 303.01 of the Overtime Provision which would provide for cash payment to employees for all overtime and the elimination of the option of compensatory time. The Union proposes to retain current language found under Section 303.01. However, the Union proposes a modification to Section 303.02 which would require the Employer to grant compensatory time off under certain circumstances when they work overtime. The Employer proposes to retain current language.

The Employer contends that it is reasonable to pay employees cash for all overtime worked and to eliminate the option of compensatory time. By doing so, the Employer will be relieved of maintaining compensatory time banks and reviewing requests for comp time which has created administrative difficulties.

The Union maintains that its proposal would allow employees greater flexibility in the use of comp time. The Union notes that its proposal actually helps the Employer in terms of managing overtime while at the same time ensuring the employee a fair opportunity to take time off.

ANALYSIS – This fact-finder does not recommend any change in the current Overtime Provision. There was insufficient basis established by either party for the proposals to modify the overtime provisions which they cited. In all respects, it appears that the current overtime provisions are reasonable and do not require any modification.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the current Overtime Provision.

ARTICLE 303, OVERTIME – Current language, no change.

7. SICK LEAVE

The Employer proposes that Section 305.01, paragraph 4 be amended to define immediate family as including parents, spouse and children. The Union proposes to retain current language.

The Employer contends that the definition of immediate family found in another section of the Contract which applies to bereavement leave has a much too broad definition of immediate family. The employees of Children's Services are permitted three days off without any deduction from their sick leave bank for the death in the broadly defined immediate family. There are also five additional days which can be taken off when there is a death in the employee's immediate family. The Employer's proposal limits the use of five additional days to the closest family members which is reasonable.

The Union maintained that the current language does not require any modification. It was not shown by the Employer that there have been any sick leave abuses associated with the provision relating to the death of a member of the employee's immediate family.

ANALYSIS – This fact-finder does not recommend any change in the current Sick Leave Provision. There was insufficient basis established by the Employer for the modification of Section 305.01(4) which it has proposed. It was not shown that there have been any problems which have developed with respect that provision.

RECOMMENDATION

It is the recommendation of this fact-finder that there be no change in the current Sick Leave Provision.

ARTICLE 305, SICK LEAVE – Current language, no change.

8. PROBATIONARY PERIOD AND PERFORMANCE EVALUATIONS

The Employer proposes to modify the provision so that it may terminate an employee's employment during the initial hire probationary period without any right to appeal being given to the Union or the employee. The Union proposes to maintain current language which provides that the Employer may terminate an employee after the first half of the initial probationary period and before the end of the second half of the initial hire probationary period.

The Employer submits that the current provision is unreasonable in that it requires management to continue the employment of a newly hired person through the first half of the probationary period no matter how poor the employee's performance. The Employer cites other comparable contracts which provide that an employee can be terminated at any time during their probationary period.

The Union maintains that the current provision has not caused any great difficulties for management. There was no basis established by the Employer for changing the current provision.

ANALYSIS – This fact-finder would recommend the changes proposed by the Employer with respect to the Probationary Period Provision. Comparables support the recommended change. It was established that comparable contracts from the Franklin, Lucas, Montgomery and Cuyahoga County Children's Services Agencies show that none of those agreements prohibit the employers from terminating an employee during the first half of their probationary period. The current language found here is out of step with that

which is commonly found in other comparable contracts. It should also be noted that the State of Ohio amended ORC 124.34 to eliminate the first half of a probationary period in 1997. In that just about every other public sector employer is entitled to immediately terminate an employee during their probationary period, this fact-finder finds that the recommended change is warranted.

RECOMMENDATION

It is the recommendation of this fact-finder that the Probationary Period Provision be changed as more fully set forth below:

ARTICLE 401.01, PROBATIONARY PERIOD AND PERFORMANCE EVALUATIONS

All newly hired employees must serve a probationary period. The length of the probationary period is as follows:

180 Calendar Days: All newly hired full-time staff or non-social work staff promoted into ~~Caseworker~~ Social Worker positions.

700 Work Hours: All newly hired part-time and intermittent employees.

The Employer may terminate an employee's employment during the initial hire probationary period, and neither the employee nor the Union shall have any right to appeal such termination through the grievance procedure contained herein or to any form of Civil Service Commission, including the State Personnel Board of Review.

~~The Employer may terminate employment after the first half of the initial hire probationary period and before the end of the second half of the initial hire probationary period, and neither the employee nor the Union shall have any recourse under this Agreement.~~

9. JOB POSTINGS, TRANSFERS AND PROMOTION

The Employer proposes to modify Section 403.06 to allow it to select the best qualified candidate of the three most senior applicants for a job opening. Under Section 403.09, the Employer proposes that a vacancy be filled with the most qualified candidate rather than the most senior full-time applicant as currently provided. The Union proposes to modify Section 403.03 to provide for more information to be included in a job posting. With respect to several other sections under this article, the Union has proposed to return to language which existed prior to the conciliator's award. Under Section 403.11 the Union proposes that there be a limit of two months placed on temporary assignments. The Union also proposes to return to language which existed prior to the conciliator's award with respect to Section 403.15 and 403.16. Those provisions relate to the time period which an employee must remain in a position before becoming eligible to apply for another posted vacancy. The Union also proposes to delete Section 403.18 which provides that the Employer retains the right to assign employees to positions within their job classification based upon the needs of the Agency.

The Employer contends that it should have the right to promote the most highly qualified candidate to openings. The requirement that the Employer promote the most senior candidate is outdated and out of step with other comparable contracts found in other counties. A review of Summit County contracts reveals that no other agency is required to promote the most senior applicant.

The Union opposes any change to the most qualified standard rather than the most senior applicant for a vacancy. The Union submits that this would open the door to subjective judgment being used to improperly deny a position to a senior employee. The Union also submits that certain language which was deleted by the conciliator's decision pertaining to an employee being temporarily assigned to a vacant position should be restored because it had worked well in the past. Moreover, the conciliator's decision granting the Employer the right to simply reassign employees to a vacancy at will, should be changed because it effectively negates the entire job posting and bidding article.

ANALYSIS – This fact-finder would recommend that Section 403.06 and Section 403.09 be modified to eliminate the requirement that the most senior qualified candidate be selected for a job opening. Rather, it would be more appropriate to provide that vacancies are to be filled by the best qualified candidate of the three most senior applicants for a job vacancy.

In virtually all of the comparable contracts cited by the parties, the Employer has the right to select the most qualified candidate for a job vacancy. In the contract between Montgomery County and AFSCME, the Employer can choose the best qualified candidate with seniority becoming a factor only if the qualifications of the applicants are equal. Likewise in Cuyahoga County, the employer is permitted to promote based upon the skill, ability and experience of the applicant with seniority once again only governing if qualifications are substantially equal. Moreover a review of Summit County contracts

shows that no other agency is required to promote the most senior applicant. It is clear that comparable contracts support the recommended change which provides that the Employer be given the right to select the best qualified candidate of the three most senior applicants for a job opening.

With respect to the changes proposed by the Union, this fact-finder finds that there was insufficient basis established to make any of the modifications suggested. For the most part, the Union seeks to return to language which existed prior to the conciliator's award. However, this fact-finder finds that the conciliator's decision was properly rendered after a full hearing and an opportunity given to both parties to present their position on the issues which are now being raised once again by the Union. There was no clear showing made that the conciliator's decision was erroneous. This fact-finder does not find that there has been any justification established for returning to contract language which existed under Article 403 prior to the conciliator's award. For that reason, he does not recommend any other changes except that previously discussed under this particular provision.

RECOMMENDATION

This fact-finder recommends for the reasons indicated a change in the current Job Postings, Transfers and Promotion Provision which would allow for the Employer to select the best qualified candidate of the three most senior applicants.

ARTICLE 403, JOB POSTINGS, TRANSFERS AND PROMOTION

Section 403.03 The ~~Agency~~-Employer position announcement shall state the following: 1) the position title; 2) the classification, grade and salary of the position; 3) the classification job description; 4) the required qualifications for the classification; 5) the current Line Supervisor; 6) the location (if a branch office); 7) the hours of work; 8) the person to contact if interested; and 9) the deadline for submitting application.

Section 403.06 – In considering any individual for a regular job opening, the Employer will select the best qualified candidate of the three (3) most senior, to bring into consideration considering skills, the Employer will ~~consider skills~~, aptitude, education, experience, training, seniority, record of efficiency and effectiveness of performance, and record of tardiness and absenteeism.

Section 403.09 – After Section 403.08 has been complied with by the Employer, and the vacancy has not been filled, then upon receipt of the application and completion of screening in accordance with Section 403.05 and Section 403.06, the first consideration shall be given to those timely, in-Agency applicants who desire the position as a promotion (as defined in Section 403.12-11) or a transfer (as defined in Sections 403.14 12 and 403.13). The vacancy shall be filled with the most ~~senior full-time applicant~~ qualified candidate per Section 403.06, above. If there are no full-time applicants who desire the position as a promotion or a transfer, then the vacancy shall be filled with the best qualified ~~most senior~~ part-time or intermittent applicant.

10. GRIEVANCE PROCEDURE

The Employer proposes a modification to Section 504.06 to provide that no remedy in an arbitration is to be effective prior to the date the grievance is filed. The Employer also requests that this fact-finder recommend names for an arbitration panel if the parties cannot do so within ninety days. The Union proposes to return to the use of an arbitrator from FMCS rather than having a permanent panel of arbitrators.

The Employer maintains that the adoption of its proposal will assure prompt filing and resolution of grievances. A permanent panel of arbitrators should be selected by the parties in accordance with the conciliator's prior ruling.

The Union maintains that the language found in the previous contract prior to the conciliator's decision should be included in the Agreement. That is, the parties are to use FMCS for the selection of an arbitrator when necessary.

ANALYSIS – This fact-finder would recommend the change proposed in Section 504.06 to provide that no remedy which is awarded is to be effective prior to the date the grievance is filed. Such contractual provisions are commonly found in other public sector contracts.

Moreover, this fact-finder would recommend that the current language pertaining to the creation of a panel of arbitrator's be retained. It is recommended that if mutual agreement cannot be reached, then the parties are to obtain a list from SERB of the twenty most utilized fact-finders which shall be used for selection of the parties'

permanent panel of arbitrators. This would appear to be a reasonable approach for the parties to select the five arbitrators for its panel.

RECOMMENDATION

With respect to the Grievance Provision, this fact-finder recommends the following:

ARTICLE 504, GRIEVANCE PROCEDURE

Section 504.06 – The written grievance shall state the specific Article(s) and Paragraph(s) of this Agreement alleged to have been violated, a brief set of facts, and the relief requested.
No remedy will be recognized or awarded that is effective prior to the date filed on any the grievance is filed.

The parties shall once again attempt to agree on the names to be placed on their panel of arbitrators. If the parties cannot agree, then they shall select arbitrators for their panel from a list provided by SERB of its twenty most utilized fact-finders.

11. HEALTH INSURANCE AND PRESCRIPTION CARD

The Employer recommends that certain outdated language relating to its seeking bids for an alternative health plan prior to December 1, 2004 be removed from the Agreement. The Union is not opposed to the removal of such language.

ANALYSIS – This fact-finder does not find that there is any dispute concerning the Health Insurance and Prescription Card Provision. Both parties agreed to eliminate the last paragraph of Section 601.06 which is outdated and relates to matters which were to take place prior to December 1, 2004. This language is clearly no longer needed in the Agreement. The remaining portion of the provision as currently constituted is recommended herein.

RECOMMENDATION

With respect to the Health Insurance and Prescription Card Provision, this fact-finder recommends the deletion of the last paragraph of the current provision with the remaining sections being retained without any change.

ARTICLE 601, HEALTH INSURANCE AND PRESCRIPTION CARD

Section 601.06 – Current language, but delete last paragraph.

12. FAMILY AND MEDICAL LEAVE

The Employer proposes that the entire Section 601.15 be eliminated and replaced with one sentence obligating it to follow the Family Medical Leave Act as set forth at Title 29 USC Section 2601 et seq. The Union proposes to retain current language.

The Employer contends that it is reasonable to provide that the provision simply state that the Agency must comply with FMLA instead of reciting all of the benefits provided by that particular federal law. The Union objects to any change in the current language because it claims that employees would be giving up certain rights under the provision if there is only a reference to FMLA.

ANALYSIS – This fact-finder does not recommend any change in the current Family and Medical Leave Provision. The current provision sets forth in detail an employee's entitlement to use Family and Medical Leave benefits under certain conditions. There was insufficient basis established for deleting the entire section and substituting a statement that the Employer is to abide by the applicable statutory requirements. For this reason, this fact-finder does not recommend any change in the current provision.

RECOMMENDATION

It is the recommendation of this fact-finder that the current Family and Medical Leave Provision be retained without any change.

SECTION 601.15, FAMILY AND MEDICAL LEAVE

Current language, no change.

13. LAYOFF PROCEDURE

The Union proposes to delete the current layoff procedure which was awarded by the conciliator's decision and is found in Employer Exhibit 1. The Union proposes to return to the previous language which utilized the Ohio Revised Code for layoff and recall procedures. The Employer proposes to retain current language.

The Union contends that the layoff procedure in place is confusing and allows the Agency to discriminate against employees in layoff situations. The current provision also allows the Employer to layoff or abolish positions for any reason whatsoever. The Union maintains that it would be more appropriate for this bargaining unit to return to utilizing the Ohio Revised Code for layoff procedures because then appeals could be made to SPBR rather than to the more costly arbitration process.

The Employer contends that the current layoff procedure is based upon widely accepted principals. It is reasonable in that it allows layoffs to be accomplished by seniority within classification series. The Employer submits that the Union has failed to demonstrate why the parties should now return to utilizing the Ohio Revised Code for layoff purposes.

ANALYSIS – This fact-finder would recommend that there be no change in the current Layoff and Recall Provision which have been identified as being Sections 109.04 through 109.17 as found in Employer Exhibit 1. This fact-finder has reviewed the current provision and finds that it is consistent with the kind of layoff provisions found in other public sector contracts. The current provision allows for employees to be laid off

according to their relative seniority within the affected job classification. It also allows for laid off employees to bump others with less seniority in their job classification. Recalls are in the inverse order of layoff. Certainly in all respects, the current provision pertaining to layoffs and recalls appears to be reasonable.

Moreover, this fact-finder does not find that it would be useful for the parties to return to utilizing the Ohio Revised Code for layoffs. It is true that utilizing state law allows appeals to SPBR rather than arbitration. However, this fact-finder is aware of the rather confusing statutory provisions and various disputes which arise through appeals to SPBR. Rather, it would be much more efficient for the parties to use the grievance and arbitration process to resolve disputes concerning layoffs or recalls. This fact-finder simply does not find any basis for deleting the current Layoff and Recall Procedure Provisions.

RECOMMENDATION

With respect to the Layoff and Recall Procedures, this fact-finder recommends that current language be retained.

SECTIONS 109.04 THROUGH 109.17, LAYOFF PROCEDURE

Current language, no change.

14. UNION RIGHTS

The Union's proposal for Section 201.05 incorporates the Supplemental Agreement entered into between the Executive Director and Local Union President. The language proposed by the Union would allow its Local President or their designee a maximum of twenty hours per month away from their normal work time in order to perform responsibilities of the Union President function. The Employer proposes to retain the current language which was awarded by the previous conciliator's decision and found in Employer Exhibit 1. Under the current provision, the Union President or his/her designee is entitled to a maximum of one hour per day to handle union business. It also states that such time is to be scheduled at the end of the President's work shift. It provides that the Union President may be released from work an additional fifteen hours per week with the Union reimbursing the Employer for all costs on a monthly basis.

The Union contends that the Supplemental Agreement entered into clearly modified the conciliator's award. The parties therefore are bound by the agreement which was entered into by the Executive Director and the Local Union President which allows for the maximum of twenty hours per month of release time. The Union notes that both parties have followed the modified provision during recent months.

The Employer contends that the Supplemental Agreement entered into by the Executive Director was done without the Board's approval and therefore is null and void. The Employer claims that the Executive Director had no authority to enter into any

agreement which modified the conciliator's award. The Employer also notes that the Board specifically rejected this Supplemental Agreement.

ANALYSIS – This fact-finder does not recommend any change in the current Union Rights Provision. The current language found in Section 201.05 as contained in Employer Exhibit 1 was awarded by the conciliator on June 10, 2004. The attempt by the Union President and Executive Director to modify the conciliator's award as it relates to Section 201.05 does not have any force and effect for several reasons. The Executive Director had no authority to enter into any such agreement. As more fully discussed in another section of this fact-finder's report, in order for the Agreement to be binding by the parties, it had to be ratified by the Board. This was not done in the instant case. To the contrary, the Board specifically rejected the agreement cited by the Union for modifying the conciliator's award as it relates to Section 201.05. This fact-finder simply does not find that there was any basis established for changing the provision in question as currently written and incorporated into Employer Exhibit 1.

RECOMMENDATION

It is the recommendation of this fact-finder that the Union Rights Provision set forth under Section 201.05 be retained as set forth in Employer Exhibit 1.

ARTICLE 201, UNION RIGHTS

Section 201.05 – Current language, no change.

15. CORRECTIVE ACTION

The Union has proposed language under Section 404.01 which would state that the Employer cannot take any form of corrective action against an employee except for good cause reasonably related to the seriousness of the employee's proven offense. In addition, the Union proposes under Section 404.03 that the Employer must administer corrective action in a progressive manner and consider mitigating circumstances including the employee's record of service. The Employer proposes to retain current language.

The Union argues that a recent Court of Appeals opinion in effect held that an arbitrator had exceeded his authority by applying the usual seven tests for establishing just cause. Due to this recent court decision involving a former employee, the Union believes that its proposed language is necessary.

The Employer submits that there has been no basis presented to change the current Corrective Action Provision.

ANALYSIS – This fact-finder recommends that the current language be retained without any change. As both parties stipulated, any arbitrator has the authority to determine just cause for termination under the Labor Agreement. While there is some question as to the exact holding in the Court of Appeals decision referred to by the Union, it is apparent that arbitrators will continue to have the authority to apply the typical just cause standards to any disciplinary case. This would include, if applicable, a review of the employee's prior work record. It should be noted that the current Section 404.03

requires the Employer to administer all corrective actions in a progressive manner and for just cause which is to be uniformly applied. Clearly, the current language as set forth in Employer Exhibit 1 is reasonable and provides the typical type of due process protection for employees in disciplinary cases. This fact-finder therefore finds no basis for modifying the two corrective active sections in question in the instant matter. The Union has also proposed changes in other sections found under Article 404. However, this fact-finder finds no merit to the Union's proposal to return to language which existed prior to the conciliator's award with reference to those particular sections. The current language found in Section 404.04, 404.05, and 404.06 are to be retained without any change as set forth in Employer Exhibit 1.

RECOMMENDATION

It is the recommendation of this fact-finder that the current Corrective Action Provision be retained without any change.

ARTICLE 404, CORRECTIVE ACTION

Section 404.01 – Current language, no change.

Section 404.03 – Current language, no change.

All other Corrective Action Provisions found under Article 404 are to remain the same without any modification.

16. LETTERS OF UNDERSTANDING - SUPPLEMENTAL AGREEMENTS

The Union has proposed that several supplemental agreements or letters of understanding which were entered into by the Union President and the Agency's Executive Director which attempted to modify the Pincus Conciliation Award should now be considered to be binding upon the parties. The Employer contends that with one exception, none of the supplemental agreements referred to by the Union which attempted to modify the conciliator's Award should be considered binding.

The Union contends that it was certainly appropriate under the circumstances surrounding the Pincus Conciliation Award for the parties to enter into several modifications of that award. The Union cites R.C. 4117.14(G)(11) which allows the parties at any time to modify a conciliator's award by mutual agreement. Moreover, the Union maintains that there has been a clear practice followed here of the parties engaging in the process of bargaining supplemental agreements. The Union produced a number of documents to that effect. The Union further submits that the Executive Director was given the apparent authority to bind the Agency. As the Union President stated, it was the Executive Director which initiated negotiations to address the practical failures of the Pincus Award. Without question, the Executive Director had the authority to enter into supplemental agreements and they should be upheld.

The Employer contends that all of the supplemental agreements signed by the Executive Director without the Board's approval and ratification are null and void. The Executive Director had no authority to enter into any agreement except as authorized

by the Agency. In this case, the Agency is defined as the County Children's Services Board. The Employer emphasizes that the Board never approved any of the side agreements which attempted to modify the Pincus Conciliation Award. The Employer notes that the Board specifically rejected certain of the side agreements which have been referred to by the Union.

ANALYSIS – This fact-finder has determined that with one exception, the supplemental agreements referred to by the Union which attempted to modify the conciliator's award do not have any force and effect. These particular supplemental agreements are null and void because the Executive Director had no authority to enter into any of the agreements with one exception. It should be noted at this juncture that the mutual agreement regarding the creation of a QSC is valid because it was signed by both the Executive Director as well as the Chair of the Children's Services Board. Although this particular agreement is binding on the parties, it should not be added to the Collective Bargaining Agreement because it deals with a subject that is not related to any provision of the Agreement.

With respect to the other supplemental agreements, the evidence presented clearly shows that none of the agreements were ever presented to the Board for approval. The County Children's Services Board is of course the "Agency" or legislative body which must approve or reject such supplemental agreements. In this case, the Board never approved any of the supplemental agreements in question.

As a result, for the reasons indicated this fact-finder must recommend that the Union's proposed modifications of the Pincus Conciliation Award are not to be adopted or included in the parties' Agreement. Those particular supplemental agreements which attempted to amend the Pincus Conciliation Award are to be considered null and void because they were not approved and ratified by the Board. Therefore as previously discussed, this fact-finder finds that the applicable current Agreement which was prepared following the Pincus Conciliation Award was not modified by the supplemental agreements referred to by the Union.

RECOMMENDATION

With respect to the Supplemental Agreements or Letters of Understanding referred to by the Union which attempted to modify the Pincus Conciliation Award, this fact-finder finds that they have no force and effect and are not to be included in the parties' Collective Bargaining Agreement.

LETTERS OF UNDERSTANDING AND SUPPLEMENTAL AGREEMENTS

Supplemental Agreements produced by the Union which attempted to modify the Conciliator's Award do not have any force and effect. These Letters of Understanding or Supplemental Agreements shall not be included in the parties' Collective Bargaining Agreement.

17. DURATION AND TERMINATION

The Union seeks to return to language which existed prior to the Conciliation Award. Under the Union's proposal, the Agreement is to take effect on April 1, 2006 and have an expiration date of March 31, 2009. The Employer proposes a three year Agreement commencing on January 1, 2006.

The Union contends that the language which had been in existence prior to the conciliator's award allowed for a ninety day extension for bargaining a successor Agreement. In addition, the current language opens the door for disputes between the parties relating to the Union's negotiating team. The Union submits that its proposal removes such possible disputes and fosters harmonious labor relations.

The Employer contends that its three year Contract proposal is reasonable. It cites other comparable contracts which have similar provisions.

ANALYSIS – This fact-finder finds that it would be appropriate to provide that the parties' Agreement take effect on January 1, 2006 and remain in effect through December 31, 2008. This is the typical type of duration agreement which is found in a vast majority of public sector contracts in Ohio. That is, the contracts are to take effect on the day following the expiration of the previous contract which in this case was December 31, 2005. There was insufficient basis established for a return to the language which existed prior to the conciliator's award.

RECOMMENDATION

With respect to Contract Duration, this fact-finder recommends the following:

ARTICLE 606, DURATION AND TERMINATION

Section 606.01 This Agreement shall remain in full force and effect from January 1, 2006 through December 31, 2008. Notice to negotiate a successor Agreement shall be given by either party no sooner than one hundred twenty (120) days, but no later than sixty (60) days, prior to the expiration date of this Agreement.

CONCLUSION

This fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for his consideration. It should be reiterated that except as otherwise noted in this report, this fact-finder recommends that current language be retained for all other provisions as set forth in the 2003-06 Collective Bargaining Agreement which has been identified as Employer Exhibit 1.

APRIL 10, 2006



JAMES M. MANCINI, FACT-FINDER