



**FACT-FINDING REPORT
 STATE OF OHIO
 STATE EMPLOYMENT RELATIONS BOARD
 October 10, 2006**

STATE EMPLOYMENT
 RELATIONS BOARD

2006 OCT 12 P 12: 01

In the Matter of)
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The Jefferson County Engineer)
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)
And)
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)
Communications Workers of America,)
Ohio Labor Council)

06-MED-03-0282

APPEARANCES

**For the Jefferson County Engineer
 Michael L. Seyer, Account Manager
 Clemans, Nelson & Associates, Inc.**

**For the Communications Workers of America
 William Bain,
 District 4, Staff Representative**

Fact-Finder, Marc A. Winters

BACKGROUND

The Fact-Finding involves the Jefferson County Engineer, (hereafter referred to as the "Employer") and the Communications Workers of America, (hereafter referred to as the "Union"). The Union's bargaining unit is comprised of approximately 31 full-time employees working in various classifications within the County Engineers department, as described in Article 2 of the parties Collective Bargaining Agreement, which is in accordance with SERB rules. The State Employment Relations Board duly appointed Marc A. Winters as Fact-Finder in this matter.

The parties began negotiating a successor collective bargaining agreement in which their prior agreement ended on June 29, 2006. The parties met on several occasions and were able to reach agreements on all issues with the exception of one. Impasse was declared on the one issue and the parties proceeded to Fact-Finding.

The Fact-Finding Hearing was conducted on Wednesday, September 20, 2006, in the County Engineer's Offices, Wintersville, Ohio. The Fact-Finding Hearing began at 9:00 A. M., and was adjourned at approximately 3:00 P. M. At the beginning of the Fact-Finding Hearing mediation was requested and an attempt was made to mediate the one issue at impasse. A serious effort was made, by all, at mediation, which occurred for almost the entire session.

Although the mediation, at face value, was unsuccessful, it gave the Fact-Finder a thorough understanding of each parties respective position on the issues at hand. Because of that understanding, the parties, were able to be brief and were able to get straight to the point, with their respective arguments, on the one remaining issue.

The Fact-Finder would like to convey his appreciation not only for the courtesy and cooperation given to the Fact-Finder by both parties, but to each other as well.

The Hearing was conducted in accordance with the Ohio Public Employee Bargaining Statute set forth in rule 4117. Rule 4117-9-05 sets forth the criteria the Fact-Finder is to consider in making recommendations. The criteria are:

1. Past collectively bargained agreements, if any.
2. Comparisons of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, given 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 issue proposed and the effect of the adjustments on the

normal standards of public service.

4. The lawful authority of the public employer.
5. Any stipulations of the parties.
6. Such other factors, not confined to those listed above which are normally or traditionally taken into consideration in the determining of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

The following issue was considered at the Fact-Finding Hearing on September 20, 2006.

1. Article 23, Sick Leave.

The testimony given and the evidence presented, taking into consideration the Ohio Rule 4117 criteria, internal and external parity, and the City's finances, will be the basis for the following recommendation. However, this Fact-Finder assures the parties that their position books were thoroughly read, studied and relied upon.

ISSUE #1 - ARTICLE 23, SICK LEAVE

EMPLOYER POSITION:

The Employer, in an attempt to curb excessive sick leave usage, for which they believe is being misused, and the need to reduce the high cost, proposes the following changes to Article 23, Sick Leave:

Add the following language to Section 3 after the first sentence.

Employees shall provide the Employer at least forty-eight (48) hours advanced notice of prescheduled appointments described in Section 7(2) herein. The employee shall provide the Engineer/designee a statement describing the type of appointment (i.e., nature of illness/injury), the location of the appointment, and the scheduled time of the appointment.

Add the following language to the end of Section 7(2).

Sick leave requested for examinations/treatments may be granted in blocks of time (i.e., two (2) or three (3) hour blocks depending on the time/place of examination/treatment);

In addition, the Employer offered a Letter of Understanding, which was used to settle a

grievance to be part of this new Agreement. The LOU will be discussed later in this report.

The Employer's justification for the above changes is that during the term of the current agreement, employees in the bargaining unit have the opportunity to earn 4.6 hours of sick leave for every 80 hours in paid status. This equates to approximately 120 hours per contract year. These same employees, 33 employees, used sick leave at the following rates:

2003	3,724 hours	average 113 hours per employee
2004	4,295.5 hours	average 130 hours per employee
2005	3,942.25 hours	average 119 hours per employee

And as of September 15, 2006, 31 employees:

09/15/06 2,271 hours of sick leave used.

In many instances, an employee will report off for duty for the entire day although he may have a doctor/dentist appointment scheduled for early in the morning or late afternoon. This causes staffing problems for the supervisors. The absence of these individuals is also a significant cost factor to the Department, with an average hourly wage of \$15.65, year 2005 cost the Department \$61,711 in lost wages.

UNIONS POSITION:

The Union, in an attempt to help the Employer reduce their sick leave misuse and costs, have accepted the Employer's language change to Section 4 which is illustrated in the italicized portion below;

Section 4. Prior to returning to work from a sick leave of more than three (3) days, an employee *shall* be required to furnish a statement from a licensed physician or medical practitioner notifying the Employer that medical attention was required or that the employee was unable to perform his duties. Whenever the Employer has cause to suspect the *abuse and/or a pattern of abuse* of sick leave, *such as but not limited to the use of sick leave immediately before/after scheduled vacation leave* the Employer may require proof of illness in the form of a physicians statement or other evidence to verify an employee's claim of illness.

In addition, the Union has agreed to the Employer's proposed language change in Article 13, Hours and Overtime, Section 6. This change calls for the employee to provide at least 48 hours advanced notice of pre-scheduled appointments.

The Union has also agreed to language in Article 29, Section 3, with regards to working the day before and the day after a holiday.

The Union argues that all the tentatively agreed changes above have a great potential to positively impact the sick leave usage.

The Union therefore opposes the Employer suggested changes for Section 3 and further disagree that any change is needed in Section 7(2) since the Employer already has that right in Section 2, of Article 23.

FACT-FINDER'S RECOMMENDATION:

It is apparent by the tentative agreements already agreed upon that the Employer and the Union are on the same page as far as wanting to curb sick leave usage where it is being misused. The positive affect is the cost savings to the Employer and sick leave being available to the employees to use for when they are actually sick.

The major disagreement is with the Employer's proposed changes to Section 3. The Employer's intent is to have employees use only partial sick time to cover doctor, dentist and optical appointments that are of a more routine nature that last only one to two hours, where an employee can work some part of that work day. The benefit to the Employer is the reduce cost of sick leave and better coverage for the supervisors. The benefit for the employee is they don't have to burn/use an entire sick day for a routine short term appointment. The time then will be available for when they need it the most, when they are injured or sick.

In private sector contracts and in most public sector agreements, doctor, dentist and optical appointments are usually covered by some type of paid time off other then being covered by sick time. To have these personal appointments covered by sick time, really inflates the sick time usage records. However, with any leave usage that is high or being misused, controls have to be in place to reduce such usage.

As far as the Employer's proposed change to Section 7(2), this Fact-Finder agrees with the Union. The language is redundant and it is not necessary. Section 2 of this Article already covers what the Employer is trying to do by using increments of one (1) hour.

However, based on the testimony given and the evidence presented, the sick leave usage numbers are still quite high and deserve more controls.

The language proposal for the change to Section 3 is opposed by the Union for a number of reasons. First, there is mistrust on how it will be administered. Second, there is the personal aspect to the proposal that normally no-one cares for.

In this instance a balance must be struck between the Employer's need to curb these kinds of sick time call offs and the employee's need to privacy.

While I will, once again reiterate that the intent of the Employer's change in Section 3 is to have

employees schedule routine doctor, dentist and optical appointments either earlier in the morning or later in the day, so they may work, if possible either after or before their appointments. If the time it takes to go to the appointment and return does not permit a person to return to work then they will not be required to return to work. With the above in mind and that this Fact-Finder is going to recommend language whereby the intent is not to adversely affect any employee, this Fact-Finder does not believe that nature of the illness is an appropriate requirement for this language at least at this time.

The type of appointment should be limited to only asking if the appointment is of a routine nature as a check up would be or if the appointment involves some form of treatment which will take longer than a routine check up, teeth cleaning or an eye glass fitting for examples.

At the Fact-Finding Hearing, there was limited discussion concerning a Letter Of Understanding that was used to settle a prior sick leave grievance. The Employer wanted to add it, with a slight change, to the new collective bargaining agreement. The Union opposed the first paragraph but said they would agree to the second paragraph. The Employer decided to pull the entire LOU.

It is not necessary, based on the limited discussions between the Union and the Employer to list the entire LOU here. However, this Fact-Finder is in agreement with the Union as to including the second paragraph. This Fact-Finder sees enormous value to adding the language whereby a cooperative effort can be utilized here to help curb excessive sick leave use. A good tool, to good to not give it a try.

Therefore, this Fact-Finder recommends the following to resolve Article 23, Sick Leave.

SUGGESTED LANGUAGE:

Section 3.

Add the following language to Section 3 after the first sentence.

Employees shall provide the Employer at least forty-eight (48) hours advanced notice of prescheduled appointments, described in Section 7(2) herein. The employee shall provide the Engineer/designee a statement describing the type of appointment (i.e., routine check up or treatment), the location of the appointment, and the scheduled time of the appointment.

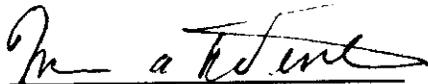
Section 4.

Changes to Section 4 as shown in italics.

Section 4. Prior to returning to work from a sick leave of more than three (3) days, an employee *shall* be required to furnish a statement from a licensed physician or medical practitioner notifying the Employer that medical attention was required or that the employee was unable to perform his duties. Whenever the Employer has cause to suspect the *abuse and/or a pattern of abuse* of sick leave, *such as but not limited to the use of sick leave immediately before/after scheduled vacation leave* the Employer may require proof of illness in the form of a physicians statement or other evidence to verify an employee's claim of illness.

Add new second paragraph to Section 4:

A meeting with the Engineer/designee, the Union Steward, and the employee whose sick leave usage allegedly demonstrates a pattern of abuse shall be held prior to the Employer implementing those punitive actions described in Section 5 below. The purpose of such meeting shall be to advise the employee that his/her sick leave usage is becoming unacceptable and if it continues to get worse, corrective action on the part of the employee may take place as described in Article 18, Corrective Action.



Marc A. Winters, Fact-Finder