

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
May 22, 2007

In the Matter of the Fact-Finding Between:

The Darke County Board of Commissioners
and The Darke County Department
of Jobs and Family Services

And

American Federation of County, Municipal
Employees, Ohio Council 8, Local 3225,
Darke County Department of Jobs and
Family Services

Case No: 06-MED-03-0426

APPEARANCES:

For the Employer:

Brett Geary	Management Consultant
Grace Ratliffe	Director, DCJFS
Kelly Babcock	Management Consultant
Sherry Hathaway	Business Administration, DCJFS
Kevin Brumbagh	Assistant Program Administrator, DCJFS

For the Union:

Marcia Knox	Regional Director, AFSCME, Ohio Council 8
Andrea Frank	Union President
Monica Fourman	Union Secretary
Jackie West	Union Treasurer

BEFORE RICHARD J. COLVIN J.D., FACT-FINDER

Darke County Department of Jobs and Family Services
Greenville, Ohio

INTRODUCTION

The Fact-Finder received his appointment on April 25, 2007 in compliance with Ohio Revised Code Section § 4117.14 I (3). The parties jointly agreed to a hearing date of May 22, 2007 and such hearing was duly convened as scheduled at 10:15 A.M. and was adjourned at 1:15 P.M. The parties mutually agreed and requested the Fact-Finder to mail his written report on June 15, 2007. The parties timely provided the Fact-Finder with their respective positions prior to the date of the hearing.

The parties' collective bargaining Agreement (hereinafter "Agreement") expired on June 30, 2006. Lengthy but productive negotiations resulted in many tentative agreements all of which are set forth in **Exhibit A.**, attached to and made a part of this Fact-Finding Report. It appears that the parties also agreed on the terms of a new Article that is to be titled **Inclement Weather** that would then be added to **Exhibit A.**

Before the parties argued their respective positions, they requested further mediation and the Fact-Finder agreed. Three additional Articles were tentatively agreed to and are set forth in **Exhibit B.**, also attached to and made a part of this Fact-Finding Report.

At the opening of the hearing, there were four unresolved Articles:

1. **Article 21 Wages**
2. **Article 23 Hours of Work and Overtime**
3. **Article 33 Group Insurance**
4. **Article 38 Duration**

CRITERIA

In making these recommendations upon the above four unresolved issues, the Fact-Finder has been mindful of and has been guided by the criteria set forth in Ohio Revised Code Section § 4117.1 I (4) (e) and Ohio Administrative Code § 4117-9-05 (K).

- “ (a). past collectively bargained agreements, if any, between the parties;
- “ (b). comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- “ 1. the interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- “ (d). the lawful authority of the public employer;
- “ (e). the stipulation of the parties;
- “ (f). such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment”

DISCUSSION

1. Article 21 Wages

The parties were unable to reach agreement on this issue.

The Unions' position on wages, as it was revised during this hearing, is as follows:

Effective July 1, 2006	A three percent (3%) increase to the wage scale
Effective July 1, 2007	A three percent (3%) increase to the wage scale
Effective July 1, 2008	A three percent (3%) increase to the wage scale

The Union points out that the Employer has not displayed the inability to pay the percentage as requested. The Employer in fact, on December 6, 2006, verbally proposed a five percent (5%) increase at the signing of the Agreement conditioned, however, on the Union relinquishing the step progression. This was declined by the Union. An offer of no retroactivity is, according to the Union, a punishment.

The Employer's position on wages is that for the past several years the Darke County Board of Commissioners has faced financial difficulties. This bargaining unit represents the only group of employees with a step system of compensation in addition to an annual wage increase. For those employees who have not reached the top of the pay range, each step represents a three-to-four percent (3-4%) increase, in addition to the regular annual increase. During the last contract period, while most employees received no increase at all in 2005, bargaining unit employees received a three percent (3%) increase plus a step increase (3-4%) for a total of six-to-seven percent (6-7%). The Board of Commissioners increases for non-bargaining unit employees in 2006 and 2007 averaged only 3% and 1.7% respectively.

The Employer proposes for 2006-2007, each employee who was employed on July 1, 2006 and remains employed as of the date of the execution of the Agreement shall receive a one-time lump sum payment of \$200.00, which shall not be included in calculating base pay.

For 2007 and 2008, the Employer proposes annual increases of three percent (3%) and two percent respectively, plus a step increase for eligible employees. This proposal results in a total possible increase of eleven to thirteen percent (11-13%) over the life of the Agreement. This is a significantly larger increase than non-bargaining unit employees have received for the past several years combined. Even the employees at the top of the pay range will receive the annual increases, which are at or above the average for the last two increases received by non-bargaining unit employees.

The Union's original proposal was for a retroactive increase of five percent (5%) to the step plan effective July 1, 2006, and a re-opener for 2007-2008 and 2008-2009. In light of the recent history, the Union has offered no reasonable justification for its position.

The parties do now agree on the wage increase to be effective July 1, 2007, three percent (3%). The amount of the first and third year increases is still disputed.

Fact-Finders Conclusion and Recommendation:

During the hearing, Ms Ratliffe, in response to a Union question, said the County does not at this time, have a levy on the ballot nor do I want one as there will be a School Board levy and ours would be defeated. In addition, in discussing finances, she remarked that the "DCJFS funding is earmarked for certain things and that if the funding is not spent it is gone". The State implemented a rule that the DCJFS close every quarter. "The \$200.00 is the maximum the Commissioners will give me until June 30, 2007. We now have the 3% available for July 1, 2007 and the 2% available for July 1, 2008. We could go to the Board of Commissioners and ask for additional funding but I doubt they would give it to us."

When questioned about the number of employees in the bargaining unit now, Ms Ratliffe recounted that there were approximately 94 employees but in the layoff of December 2003, 12-13 employees were lost. In January of 2004, some 12 or so employees were on layoff, some have retired and were not replaced. There are now 42 employees in the bargaining unit with a total complement of 64-65. There are five employed in Administration. We did hire a security guard, but we used a grant for that. Ms Knox remarked that those remaining bargaining unit employees' caseloads have not lessened. Ms Knox said that the step system has been in their Agreement from the very beginning.

I conclude that, under existing financial conditions, giving weight to conditions as they might reasonably be presumed to exist during the life of this Agreement that the Employer's position is the more prudent approach to a settlement of the wage issue in the first and third years. The past and continuing benefit to the bargaining unit employees of the step progression system is also noted. It will be in the parties' welfare as well as the welfare of the public to resolve this matter at this time. The Employer's statistical analysis as to its present and future funding and finances was not disputed by the Union.

I recommend that: The Employer's wage proposal for the **first** and **third** years of the Agreement be adopted together with the Union's and the Employer's joint proposal for the **second** year and that **Article 21 Wages** be amended to reflect this:

21.1 Effective with the beginning of the first full pay period following execution of the Agreement, each employee, employed on July 1, 2006 and still employed as of the date of the execution, shall receive a one-time lump sum payment of \$200.00 which amount shall not be included in base salary calculations.

21.2. Each employee assigned to the pay scale contained in Appendix B herein shall advance to the next succeeding pay step in the applicable pay range at the beginning of the first full pay period following the anniversary of this Agreement in 2007 and 2008 until the maximum step within the pay range is obtained. The anniversary date of this Agreement will be July 1 of each year, except for the initial date set at the execution of this Agreement.

Section 38.3. Effective with the beginning of the first full pay period following July 1, 2007 bargaining unit employees shall receive a three percent (3%) increase to the wage scale, with eligible employees receiving their delayed step increases. This would continue through June of 2008. There would be no retroactive pay or step increases for the period before July 1, 2007.

Effective with the beginning of the first full pay period following July 1, 2008, bargaining unit employees shall receive a two percent (2%) increase to the wage scale, with eligible employees receiving their step increases. This would continue through June of 2009.

2. Article 23 Hours of Work and Overtime

The parties were unable to reach agreement on this issue.

The Union's Position remains as it was on December 26, 2006: All sections remain the same as the current Agreement except that they agreed to the Employer's proposal as follows:

"Breaks are a privilege, not a right. Any time beyond the approved fifteen (15) minutes must be noted on the employee's time card. Excessive breaks or overstaying breaks are grounds for disciplinary action." The Union argued that the bargaining unit employees want the time off, as their jobs are quite stressful. The Employer's proposal in fact represents a take-away and is not acceptable. All in all the terms and provisions of Article 23 are workable and should not be amended, other than as jointly agreed.

The Employer's position is that there are three issues that have to be resolved: compensatory time, breaks, and minimum standards under FLSA. The current Agreement permits the Employer to grant compensatory time off in lieu of overtime at its sole discretion. The accrual of compensatory time was originally inserted into the Agreement as a benefit to both parties because the Agency was unable to afford the overtime cost. Unfortunately, the use of the time has become a source of controversy on many levels and the Employer does not intend to exercise its discretion to grant such leave during the term of this Agreement; therefore, the language is superfluous and should be deleted.

The Employer proposes new language relating to the enforcement of approved break periods. The parties previously agreed to the proposed language as indicated by their respective positions.

Recent decisions interpreting the Fair Labor Standards Act have indicated that the Department of Labor calculates any damages based upon only a guarantee of the minimum standards. The Employer's proposed language merely seeks to incorporate the DOL standard so as not to open the door for a different interpretation in the unforeseen event of an audit.

Fact-Finder's Conclusion and Recommendation:

I find no compelling reason(s) to accept the Employer's position or its request to modify other terms and conditions of this Article 23. Claims of there being "sources of controversy" are not supported and the outcome of an unforeseen audit is speculative at best. The Union's arguments that these employees have stressful jobs and need/want the time off are reasonable.

With the joint adoption of language defining the intent and purpose of “breaks”, abuses are specifically targeted. I therefore conclude and recommend that only the jointly agreed to language below be written into Article 23 of the parties new labor Agreement.

“Breaks are a privilege, not a right. Any time beyond the approved fifteen (15) minutes must be noted on the employee’s time card. Excessive breaks or overstaying breaks are grounds for disciplinary action.”

3. Article 33 Group Insurance

The parties were unable to complete a signed tentative agreement on this issue.

The Union’s position continues to be that the level of benefits not change during the life of the new Agreement, without a mutual agreement between the Employer and the Union. They also proposed language stating what the current practice is: a family pays 15.5% of the premium and Singles pay 5.5% of the premium.

The Union also proposed adding language intended to protect the percentage cap. The Union did propose to delete the language calling for the Employer to pay the full cost for single coverage for the bargaining unit employees.

The Employer’s position is that that the bargaining unit employees receive the same benefits at the same cost as all non-bargaining employees. In 2006, the County Board of Commissioners agreed to “equalize” the health benefits for all employees of the Board. This agreement reduced the employee’s share of the cost for all county employees who chose family benefit coverage and only minimally affected those employees who chose single coverage.

The example given was a bargaining unit employee choosing family coverage under their proposal would save at least \$625.00 per month, while a bargaining unit employee choosing single coverage would have to pay less than \$30.00 additional.

In the Employer's view, their proposal represented an *increase in the employee's benefits* for family coverage that outweighs any minimal cost incurred by those employees who choose to remain on the single plan.

Fact-Finder's Conclusion and Recommendation:

My review of the Union's and Employer's proposals indicates that both present elements that are fair and reasonable under the circumstances, elements that are in the best interest of both parties as well as promoting stability for the County Board of Commissioners and economic security for the members of the bargaining unit. To implement the proposal, I recommend the terms and conditions of Article 33 Group Insurance be rewritten as follows, and also include, as was discussed by the parties, a modest premium increase during its term:

“Section 33.1. The Employer shall, for the term of this Agreement, make available to each full-time employee in active pay status a group medical insurance plan. The group medical insurance plan provided to the bargaining unit employees would be the same countywide plan offered to the Board of Commissioners and its *non-bargaining unit employees*.

Section 33.2 *Effective upon ratification of this Agreement, bargaining unit employees shall pay five and one-half (5.5%) of the premium for single coverage or fifteen and one-half percent (15.5%) of the premium for any other coverage option. Effective upon the first full pay period which includes January 1, 2008, bargaining unit employees shall pay six percent (6.0%) of the premium for single coverage or sixteen percent (16.0%) of the premium for any other coverage option. Effective upon the first full pay period which includes January 1, 2009, bargaining unit employees shall pay six and one-half percent (6.5%) of the premium for single coverage or sixteen and one-half percent (16.5%) of the premium for any other coverage option.*

If such non-bargaining unit Darke County employees are required to pay a lesser portion of insurance premiums, the same premium contribution levels shall also apply to bargaining unit employees. All insurance requirements (e.g. , fees, contributions, co-payments, etc.) specified for such non-bargaining unit Darke County employees shall also be applicable to bargaining unit employees.”

4. Article 38 Duration

The parties were unable to tentatively agree on this issue even though they both have proposed a three (3) year Agreement and an identical expiration date of June 30, 2009.

I therefore will adopt the Employer's position on this issue and recommend that **Article 38 Duration** be amended as follows:

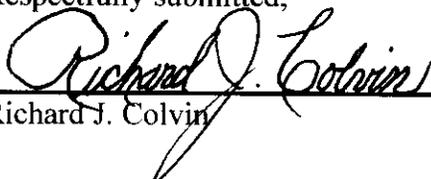
“Section 38.1. This Agreement shall be effective upon ratification and shall remain in full force and effect through 12:00 midnight on June 30, 2009 except for those Articles or Sections, which specify an earlier date.

Section 38.2. Maintain current contract language.

Section 38.3. Maintain current contract language.”

This Fact-Finding Report was signed, dated and issued in the City of Mason, Ohio, County of Warren this 15th day of June 2007

Respectfully submitted,


Richard J. Colvin

This Fact-Finding Report has been sent by overnight mail this 15th day of June 2007 to:

Marcia Knox, Regional Director, AFSCME,
Ohio Council 8
15 Gates Street
Dayton, OH 45402-2917

Brett A. Geary, Regional Manager
Clemans-Nelson & Associates, Inc.
411 W. Loveland Avenue, Suite 101
Loveland, OH 45140-2358

This Fact-Finding Report has been sent by regular mail this 15th day of June 2007 to:

Edward E. Turner
Administrator, Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, OH 43215-421

Exhibit A.

1.	Preamble/Purpose	Same as current Agreement
2.	Article 1 Management Rights	Same as current Agreement
3.	Article 2 Union Recognition	Same as current Agreement
4.	Article 3 Dues Deduction	Same as current Agreement
5.	Article 4 Union Business	Modified
6.	Article 5 Labor/Management Meetings	Same as current Agreement
7.	Article 6 Non-Discrimination	Same as current Agreement
8.	Article 7 Work Rules	Modified
9.	Article 8 Bulletin Boards	Modified
10.	Article 9 Health and Safety	Same as current Agreement
11.	Article 10 Personnel Files	Modified
12.	Article 11 Probationary Periods	Same as current Agreement
13.	Article 12 Seniority	Same as current Agreement
14.	Article 13 Layoff and Recall	Modified
15.	Article 15 Grievance Procedure	Modified
16.	Article 16 Waiver of Ohio Civil Service Laws	Same as current Agreement
17.	Article 17 Job Descriptions/Specifications	Modified
18.	Article 18 Training	Same as current Agreement
19.	Article 19 Vacancies, Promotions and Transfers	Same as current Agreement
20.	Article 20 Transfers Within a Classification	Same as current Agreement
21.	Article 22 On-Call Pay	Modified
22.	Article 24 Temporary Working Level Pay	Modified
23.	Article 25 Benefit Eligibility	Same as current Agreement
24.	Article 27 Vacation	Same as current Agreement
25.	Article 28 Sick Leave	Modified
26.	Article 29 Court Duty	Same as current Agreement
27.	Article 30 Military Leave	Same as current Agreement
28.	Article 31 Leave of Absence Without Pay	Same as current Agreement
29.	Article 32 Family and Medical Leave	Modified
30.	Article 35 No Strike/No Lockout	Same as current Agreement
31.	Article 36 Waiver in Case of Emergency	Modified
32.	Article 37 Severability/Savings Clause	Same as current Agreement
33.	Article 39 Emergency Closings	Modified
34.	Appendix A Bargaining Unit Classifications and Pay Ranges	Modified
35.	Ground Rules for Negotiation	Modified

Exhibit B.

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| 1. | Article 14 Discipline | Modified |
| 2. | Article 26 Holidays | Modified |
| 3. | Article 34 Travel Expense Reimbursement | Modified |