

**STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO**

2007 OCT 23 A 11: 22

In the Matter of Fact-Finding Between:

Frontier Local School District : Margaret Nancy Johnson
Board of Education Fact-finder

And : Recommendations

Ohio Association of Public School Employees : Case NO. 06-MED-09-1074
AFL-CIO, and its Local 510

Appearances

For OAPSE:
Stephen Kubic, Field Representative
OAPSE/AFSCME Local 4
88 North Plains Road
The Plains, Ohio 45780

For the Board:
Diana S. Brown, Esq.
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100 South Third Street
Columbus, Ohio 43215

Statement of the Case

In accordance with Ohio Revised Code Section 4117.14, the State Employment Relations Board appointed Margaret Nancy Johnson to serve as a fact-finder in the bargaining impasse between Frontier Local School District, hereinafter "Board" or "District," and the Ohio Association of Public School Employees, Local 510, hereinafter "OAPSE" or "Union." Prior to convening on September 18, 2007, in the Library of the District High School, the parties submitted timely pre-hearing statements for review by the fact-finder. At the hearing, the fact-finder received evidence and argument on the matters in contention. By Agreement between the parties the time for the issuance of fact-finding recommendations has been extended and these recommendations are now issued on October 22, 2007 for consideration by the respective negotiating teams and determinations made in compliance with statutory regulations.

Approximately thirty-nine (39) employees in the bargaining unit perform a variety of non-teaching functions supportive of the educational purposes of the School District. Certificated personnel in the District are represented by the Ohio Education Association. For several years, the terms and conditions of employment for the classifications in the bargaining unit have been set forth in labor agreements between OAPSE and the Board.

The most recent contract expired on June 30, 2007 and the parties have been unable to reach agreement on a successor contract.

Issues

Issues remaining in dispute include the following: Vacancies, Promotions and Transfers; Layoff and Recall; Hours of Work and Overtime; Wages and Compensation; Extra Work Assignments; Insurance; Sick Leave; Severance Pay; and Duration of the Agreement.

Criteria

In submitting the recommendations which follow, the fact-finder has taken into consideration those factors traditionally relied upon by neutrals and those specifically enumerated in Ohio Revised Code Section 4117.14(G)(7).

Position of the Parties

A. Section 13.3 Vacancies, Promotions and Transfers.

1. *Union*

The Union proposes modifying Section 13.3 of the current contract so as to require the Board to post for bid eleven (11) and twelve (12) month positions which become vacant within the last two months of the school year. Presently the Board is not required to post any year-end vacancies until the following August and accordingly, may assign openings in the summer months at its discretion. The Union contends that if a vacancy exists, it should be posted for bid.

2. *Board*

Opposing the Union proposal, the Board seeks to retain its latitude to determine the extent of the work force and whether or not it will fill a vacancy. In actuality, when such an occurrence arises, the Board utilizes the services of a nine-month employee.

B. Section 13.9

1. *Union*

Additional language proposed by the Union for this section of the Agreement would enable short hour employees to bid on a second short hour position that has been posted for bid, with a cap on the number of hours that may be worked. Not only does this language benefit bargaining unit employees by enabling them to work more hours, but it also benefits the District by preventing additional insurance benefits required for another employee.

2. *Board*

For liability purposes, the Board does not wish to have its employees working in excess of ten hours per day. Moreover, the Board contends that unless it can eliminate and combine jobs, the proposed language does not have a financial benefit for the Board.

C. Section 14.2 Layoff and Recall

1. *Union*

The Union proposal on Layoff is to enable the most senior employees affected by a job reduction to continue to maximize earnings by bumping into another classification.

2. *Board*

Arguing that the Union proposal would generate confusion and additional displacement, the Board rejects the language offered by the Union.

D. Section 17 – Wages and Compensation

1. *Union*

Proposing a \$.30 increase per hour effective July 1, 2007, with a wage reopener effective July 1, 2008 and July 1, 2009, the Union contends a substantial increase in wages is needed to off-set increases unit members will experience in their health care costs. Without such a wage adjustment, the employees in this unit will experience a wage decrease. While the Board compares its wage offer to that given to teachers and administrators, the earnings of the members of the bargaining unit do not approximate the earnings of such personnel.

The Union also proposes new contract language providing Educational Aides an additional \$5.00 per hour for all time such employees are responsible for a classroom in the absence of a teacher. Since such situations have occurred in the past, the Union argues that the only incentive to prevent the occurrence is to impose a financial penalty on the Board.

2. *Board*

Arguing that in 2006 teachers and administrators received a 1.5% increase in wages along with an increased cost in insurance benefits, the Board proposes a \$.10 cent per hour increase in wages for this unit. In contrast with the increase experienced by other employees, the OAPSE unit received a 2% - 3.6% increase on July 1, 2006 without absorbing any of the insurance increases. Financial data submitted by the Board establishes the severe financial condition of the District. Though the school district is one of the smallest in Washington County, it has one of the largest number of students living in poverty and has one of the lowest assessed property valuations.

Because it is not its intent to permit a recurrence of Aides being placed in charge of a classroom, the Board rejects the Union proposal providing additional pay for Educational Aides.

E. Section 18.1 - Extra Work Assignments

1. *Union*

To insure that employees are compensated for extra work incurred when a non-school organization utilizes school buildings, the Union has proposed modifications to Section 18.1. The proposal eliminates language that limits the extra work assignment to when “such permit requires the use of bargaining unit personnel.”

2. *Board*

Since there already is a policy on the matter, the Board rejects the proposal of the Union. Modification to the contract language would impose additional costs on the District that are not warranted.

F. Section 18.3 – Extra Work Assignments

1. *Union*

OAPSE proposes increasing compensation for extra bus runs from \$7.50 per hour to \$8.50 per hour. The current rate is close to minimum wage and does not appropriately pay drivers for time expended on behalf of the District.

2. *Board*

The additional costs which this proposal would require can not be sustained by the Board. Because extra bus runs are most frequently associated with sports events, the proposal would have a severe impact upon an already strained athletic budget.

G. Sections 19.1; Section 19.2 and 19.7- Insurance

1. *Board*

Seeking relief from the extraordinary insurance costs incurred by the District, the Board has proposed modifications that are consistent with those applicable to all other employees in the District. Such changes include increased monthly premium contributions, an increase in the annual deductible and increase in the contribution for prescription medications. Presently, by not having a uniform insurance program, the Board incurs an additional cost of \$5,400 each month.

Additional changes proposed by the Board include modifying Section 19.2 to provide a one-time rather than an annual payment of \$1,000 for waiving single coverage and \$2,000 for waiving family coverage.

Board proposal for Section 19.7 includes increasing employee co-payment for prescription drugs for mail orders and for member pharmacies.

2. *Union*

Opposing the additional costs for insurance benefits proposed by the Board, the Union argues that members of this bargaining unit have restricted earnings by reason of the hours worked. Increases proposed by the Board would have the effect of eliminating its proposed wage increase. Compared to their income, the increased insurance costs affect these employees more adversely than other employees.

Accordingly, the Union is not in agreement with any change to the employee's monthly premium share. Additionally, the Union suggests an annual deductible of \$250.00, physician office co-pay of \$25 per visit, and pharmaceutical payments comparable to those paid by teachers under their plan.

The Union had understood the parties were in agreement on retaining the current language set forth in Section 19.2 providing for an annual lump sum payment for waiving insurance. The issue is not a new one and the Union has consistently prevailed upon this matter. There is no justification for changing the current provision.

H. Section 22.1 – Sick Leave

1. *Union*

Current contract language provides for a maximum accumulation of sick leave at 256 days that the Union proposes increasing to 270 days.

2. *Board*

Due to the additional costs that such an increase would impose, the Board is opposed to increasing sick leave accrual and proposes maintaining current contract language.

I. Section 24.2 - Severance Pay

1. *Union*

Seeking to simplify while providing a more generous severance pay, the Union proposes that an employee who retires with five to ten years of service be entitled to 30%

of his or her accumulated sick leave and that an employee with ten or more years be entitled to 55% of accumulated sick leave. Rather than a recurring cost, this is a one-time payment.

2. *Board*

As the Union already has a generous severance package that exceeds that granted teachers, the Board is opposed to the Union proposal.

J. Section 31.1- Duration

Because the five-year Forecast projects deficit spending, the Board proposes a one-year contract effective upon signing. In contrast, the Union seeks a three-year contract with wage re-openers for each year of the contract.

Discussion

Responsible for administering a small, rural school district without a significant tax base, the Board of Education for the Frontier Local School District is confronted with indisputable fiscal constraints. A Five Year Forecast for Fiscal Year 2007 indicates deficit spending of \$295,429 in 2006 with projections for deficiencies through 2011. Additional financial data indicates that of six school districts in Washington County, Frontier is second only to Marietta in terms of the percentage of students living in poverty. Moreover, the District has the lowest median income, lowest property tax per pupil, and the lowest property valuation per pupil.

As is the situation with most employers, escalating health insurance costs are a major expenditure for which some relief is sought. Board proposals, therefore, include a small wage adjustment and modification of insurance so that employee contributions are increased. For its part, during these contract negotiations the Union has endeavored to improve the ability of unit members to increase earnings by enhancing work opportunities. The recommendations that follow are an effort to balance these two objectives so as to enable unit members to earn more while at the same time containing employer costs.

A. Section 13.3 Vacancies, Promotions and Transfers

Current contract language relieves the Board of the obligation to post for bid vacancies that occur during the final sixty days of the school year and provides for the posting of such vacancies by August of that year. The intent is that during the summer months the Board need not fill existing vacancies but may exercise its discretion to wait until August to post.

By its proposal the Union seeks to exclude eleven and twelve month employees from the provision, so that should a vacancy to be filled occur in such a classification the Board would be required to post the same. Pursuant to the Union proposal, the Board would be required to fill vacancies in the maintenance, custodial and mechanics classifications.

The Board contends that the modification would result in additional costs to the employer. Currently, if the Board needs to fill a vacancy in the eleven and twelve month classifications, it will use a nine-month employee to fill the post. Thus, the additional cost to the Board is minimal.

The reason nine month vacancies do not need to be filled is that there is no work to be performed in such classifications during the summer months. Concurring with the Union, the fact-finder is of the opinion that if work in the eleven and twelve month classifications needs to be done, then, a vacancy exists which should be posted for bid. By doing so, the parties will provide a work opportunity for the bargaining unit without incurring substantial additional cost.

Accordingly, the fact-finder recommends the Union proposal for Section 13.3.

B. Section 13.9

Also involving vacancies, promotions and transfers, the Union proposal for Section 13.9 is intended to again increase work opportunities for unit members by enabling them to bid upon a second position. In opposition the Board contends that unless it can eliminate and combine jobs, the proposal is not financially beneficial for the District. Although the purpose of these proceedings is to assist in the containment of costs for this beleaguered school district, it should be noted that financial “benefit” is not a statutory criterion in determining contract issues under the Ohio Collective Bargaining Act. In the absence of evidence that the proposal is cost prohibitive or indicative of the statutory “inability” to pay, the fact-finder weighs the financial costs with the purpose and intent of the proposal.

In school districts in which some employees work one classification for only a few hours per day, it is not uncommon to permit employees to hold a second classification. The fact-finder is of the opinion that this proposal provides a reasonable means for enhancing the work hours of employees. However, the fact-finder concurs with the Board that due to liability issues, the total number of hours worked each day by one employee should not exceed ten (10) hours.

C, Section 14.2 Layoff and Recall.

Intended to provide greater job security for the most senior employees, the Union proposal enables *qualified* unit members to bump less senior employees in bargaining unit classifications. Opposing the suggested modification, the Board contends that the change “would complicate the procedure and create confusion.”

Layoffs and reductions always create consternation—and for employees layoffs are costly, both financially and emotionally. In such situations, layoff by seniority is intended to provide those employees with the greatest time investment in the organization some measure of stability. Indeed, job security is central to the collective bargaining process.

Again, the intent to increase work opportunities for more senior employees in a constrained economic environment outweighs the administrative concerns on this issue. In the absence of a cost impediment to the Union proposal, the fact-finder recommends the Union modification as another means to enhance employment opportunities by seniority.

D. Section 17- Wages and Compensation

Pay Rate Increase

On the wage issue, the Union proposes a \$.30 per hour increase across all classifications. Referencing insurance expenses, the Union contends such a wage

increase is needed to cover the additional costs incurred by unit members. Indeed, without the wage increase sought by the Union, it argues its membership will experience a pay decrease.

In support of its proposal for a \$.10 per hour increase in wages, the Board cites internal comparability as well as bargaining history, referencing the 2% to 3.6% increases negotiated for this unit in July 2006 and the 1.5% increase received by teachers and administrators. Indeed, much of the Board presentation concerns bargaining history with OAPSE, indicating a 5.2% increase in 2004, a 4.5% increase in 2005, as well as the 2.6% increase in 2006. The Board compares these increases with the 4.5% received by teachers in 2004 and 2005 and the 1.5% in 2006, the year in which teachers also agreed to assume increased insurance costs.

It is important to note that the parties *bargained* these increases in the give and take of contract negotiations which, as in the case now pending, may have included multiple other issues on the table, economic and as well as non-economic. Moreover, while internal comparability is certainly a factor, as will be discussed below, it does not require wage uniformity. Indeed, services rendered and hours worked by the certificated classifications are substantially different from those of non-certificated personnel in the bargaining unit—and the wage paid these differing units is reflected by these differences.

Reviewing the external comparables cited by the Board in contract year 2006-2007, the fact-finder notes that wages paid unit members are in the middle range of the six Washington County school districts. Averages highlighted by the Board are somewhat misleading due to the significantly higher wages which the Warren and Wolf Creek School Districts are able to afford.

In support of its comparability argument, the Board also introduced into evidence the Annual Wage Settlement Report issued by the State Employment Relations Board. Interestingly, however, the SERB data indicates that school districts in the State of Ohio negotiated wage increases averaging 2.61% in 2006.

Upon a review of the arguments made by the parties and the financial data submitted in support of their relative positions, the fact-finder recommends a wage increase of \$.20 for bargaining unit employees. A wage enhancement greater than that offered by the Board is warranted in order to offset the increased costs that members of the bargaining unit will experience. Moreover, a \$.20 increase is consistent with comparables, both internal and external. While fiscal restraint is appropriate, the Board has not argued an inability to pay any wage increase.

Thus, the fact-finder recommends that a \$.20 per hour adjustment be implemented for all classifications.

Signing Bonus

In addition, rather than retroactivity, the fact-finder recommends that the increase take effect upon the signing of the Agreement and that a \$300.00 signing bonus be afforded the members of the bargaining unit.

Teachers Aide Charge

A supplemental wage proposal made by the Union is a \$5.00 per hour payment to Aides who may be placed in charge of a classroom in the absence of the teacher. Apparently in the past such a situation happened. The proposal of the Union is intended to be more of a deterrent to the administration than a benefit for employees. Responding to the proposal, the Board has indicated its intent not to let such a situation re-occur. It is

recognized that Aides ought not to be left in charge of a classroom without a teacher present.

In the opinion of the fact-finder, collective bargaining ought not to become the forum for imposing penalties upon an administration for infractions of state requirements. Such matters are best left to other jurisdictions. As the proponent of new contract language, the Union has the responsibility of demonstrating the inadequacy of current contract language. Given the declarations by the Board that it is not its intent to place Aides in charge of classrooms as well as the ability to grieve any contractual infringement, the language proposed by the Union would become an unnecessary clause.

The fact-finder does not recommend the \$5.00 per hour pay proposed by the Union.

E. Section 18.1 Extra Work Assignments

Again, in Section 18.1 the Union is proposing modification to existing language imposing a financial burden on the Board. Accordingly, the Union has the burden of justifying its proposal. Current language requires the presence of a unit member only when the permit requires the use of such personnel. As proposed by the Union, the Board would be required to assign unit personnel whenever a school building is in use by an outside organization. Concurring with the Board, the fact-finder is of the opinion that the additional expense of a unit member should only be incurred if needed. Evidence does not establish that in the absence of a unit member, use of district property by an outside organization has subsequently occasioned additional work by unit members. The only evidence of involvement by the unit personnel in such an activity, while appreciated by the Board, was above and beyond the call of duty.

The fact-finder is of the opinion that the proposed modification is unnecessary and she does not recommend the same.

F. Section 18.3 Extra Work Assignments

Existing contract language provides that after the first two hours of an extra trip paid at a regular hourly rate, bus drivers be compensated at \$7.50 per hour. The Union proposes an additional \$1.00 per hour for the hours in excess of the first two. Because of the increased cost, especially to an already financially strained athletic budget, the Board is opposed to the proposal.

The safe transportation of children to and from extracurricular athletic events is a substantial responsibility for the bus driver so assigned. He or she should be compensated in a manner that recognizes the service rendered. While the fact-finder notes the burden placed on the athletic program, she believes the importance of sports to the school community should generate the financial support of the community. Without the bus drivers who transport the athletes to their competitions, there would be no such program.

The amount of the increase proposed by the Union, however, is unduly high lacking comparables or financial figures and data in support thereof. A more incremental increase is appropriate.

The fact-finder recommends that after the first two hours, extra runs for bus drivers shall be paid at the rate of \$8.00 per hour.

G. Section 19.1; Section 19.2 and 19.7- Insurance

The insurance proposal put forth by the Board imposes significant increased costs upon unit members. On the other hand, indisputable evidence establishes that rising health care costs are a major factor in the deficits incurred by this school district. Some relief not only is warranted—it is essential. The administration simply cannot continue to afford present insurance costs for this unit.

Having successfully secured modifications from the teachers union, the Board now seeks to secure the same from OAPSE. Perhaps more than with any other issue, internal comparability is a persuasive criterion in considering insurance issues. There is value in having employees on the same insurance plan and receiving the same benefits at the same cost. Insurance for one unit should not cost the Board more than that for another. Nor should one unit be receiving better benefits than another.

The Union argues that since its members do not have the same earnings as teachers, they should not be required to pay the same for insurance. This point is understood by the fact-finder, but she agrees with the Board that insurance is a commodity that must be purchased at a price. Although one may shop for a better deal, the cost is constant for each purchaser. Because she has recognized the substantial cost increase the members of the bargaining unit will incur, she has also recommended some income adjustments and enhanced work opportunities to off-set insurance costs for the members of the unit.

The fact-finder, therefore, recommends the Board proposal on Insurance as set forth in Section 19.1 and 19.7. As to Section 19.2, however, the fact-finder recommends current contract language. The Board proposal presents a significant modification to previously negotiated contract language. While the Board contends that the language was “mistake” in the first instance, there is no documentary evidence concerning the history of this language and its inclusion in the Agreement. Nor is there any evidence on the financial implications of the provision. On the other hand, the language is clear and unambiguous in its provision and there can be no assertion that its meaning was not understood. In the absence of evidence justifying change, the fact-finder cannot recommend modification to a contract term upon which the parties have previously bargained and reached agreement.

Section 22.1 – Sick Leave

Arguing that the cost is a one-time payment occurring upon an employee leaving the employment of the District, the Union proposes increasing sick leave accumulation to 270 days. Although the fact-finder understands the one-time only nature of this payment, nonetheless, it is a contractual change that imposes an additional financial cost upon the District. Since the Union is the proponent of the modification, it has the burden of demonstrating that a contractual change is warranted. In the absence of persuasive evidence that the District’s Sick Leave commitment is inconsistent with comparables, the fact-finder cannot recommend the Union proposal.

Current contract language is therefore recommended.

H. Section 24.2 – Severance Pay

For reasons stated in the above paragraph on Sick Leave, the fact-finder does not recommend the Union proposal to change the severance pay now provided bargaining unit employees. Without an over-riding justification for such a modification, present provisions should be retained.

Current contract language is recommended.

I. Section 31.1 – Duration

While the fact-finder generally recognizes that collective bargaining interferes with the day-to-day operations of the school District and that there is value in minimizing the frequency of such interruptions, given the financial limitations of this Board, she believes that a one-year contract may be beneficial to both sides. Rather than locking the parties into a long term commitment, a one year agreement provides immediate resolution while at the same time it preserves an opportunity for the parties to reassess financial obligations and the impact of the monetary adjustments herein recommended.

Considering the fiscal constraints of the district, a one-year contract is appropriate.

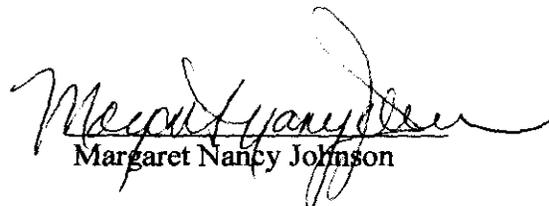
The fact-finder recommends a one-year Agreement.

Recommendations

The foregoing recommendations are summarized as follows:

1. Section 13.3: The fact-finder recommends the Union proposal on Section 13.3.
2. Section 13.9: The fact-finder recommends the Union proposal on 13.9 with the provision that the total number of hours worked by an employee not exceed ten (10) hours per day.
3. Section 14.2: The fact-finder recommends the Union proposal.
4. Section 17.1: The fact-finder recommends an increase of \$.20 per hour effective upon the signing of the Agreement and a \$300.00 per employee signing bonus.
5. Section 17.9: The fact finder does not recommend the Union proposal.
6. Section 18.1: The fact-finder recommends current contract language.
7. Section 18.3: The fact-finder recommends increasing compensation for extra bus runs to \$8.00 per hour after the first two hours of the trip.
8. Section 19.1 and 19.7: The fact-finder recommends Board language.
9. Section 19.2: The fact finder recommends current contract language.
10. Section 22.1: The fact-finder recommends current contract language.
11. Section 24.2: The fact-finder recommends current contract language.
12. Section 31.1: The fact finder recommends a one-year contract.

Respectfully submitted,


Margaret Nancy Johnson

Notice of Service

A copy of the foregoing recommendations has been served by over-night mail, this 22nd day of October, 2007 upon: Diana S. Brown, Esq. Bricker and Eckler, 100 South Third Street, Columbus, Ohio 43215; Stephen Kubic, Staff Representative; OAPSE/AFSCME Local 4/ AFL-CIO, 73340 Crescent Road, St. Clairsville, Ohio 43950-9397; and by regular mail upon Edward E. Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215. A copy has also been served upon the parties this date by internet at dbrown@bricker.com and Skubic@oapse.org.


Margaret Nancy Johnson
Fact-finder