

07-MED-08-0749

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The State of Ohio
STATE EMPLOYMENT RELATIONS BOARD

Ottawa County Riverview Nursing Home
Employer

and

Service Employees International Union,
District 1199
Labor Organization

SERB Case No: 07-MED-08-0749: 5b

**FACT FINDING REPORT
AND RECOMMENDATIONS**
February 22, 2008

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STATE EMPLOYMENT
RELATIONS BOARD
2008 FEB 25 A 11: 56

INTRODUCTION

The Riverview Nursing Home operated by the Ottawa County Commissioners (herein also "Employer" or "County") and Service Employees International Union, District 1199, (herein "Union") are parties to the Collective Bargaining Agreement effective November 16, 2004, and expiring November 16, 2007. (herein "Agreement")

The undersigned was appointed Fact Finder in this dispute by the State Employment Relations Board (SERB) on December 31, 2007, pursuant to the Ohio Administrative Code, OAC 4117-9-05 (D) for fact finding and recommendations on open issues for a replacement Agreement. The parties agreed to extend the date of the Fact Finder Report and Recommendations to February 25, 2008.

There are approximately one hundred sixteen (116) bargaining unit members in the bargaining unit employed by the Employer and represented by the Union. The bargaining unit consists of all State Tested Nursing Assistants, Feeding Assistants, Rehabilitation, Activities, Dietary, Housekeeping, Laundry and Custodians but excluding all temporary, student and intermittent employees, professional, supervisory, licensed confidential employees, licensed practical nurses, registered nurses, office clerical, maintenance employees, and guards.

HEARING

With unresolved issues still pending, a fact-finding hearing was held on February 11, 2008, at the Ottawa County Court House, Port Clinton, Ohio. Pre hearing briefs of the issues were submitted on February 9 and 10, 2008, with proposals and exhibits in conformity with OAC 4117-9-05(F). Both parties attended the hearing and elaborated upon their positions regarding the issues remaining at impasse through their representatives. In attendance were: SEIU District 1199 Long Term Care Coordinator, Ms. Monica Moran. In attendance for the Union were also Rebecca Erd,

Amy Duty, Lisa Woods, Patty Prolosek, Gail Barker Joyce Barnette, Will Laves and Kyle Huff. The Employer was represented by Dolores F. Torricero, Esq. In attendance for the Employer Robin Pfeiffer, HR Coordinator, Pam Courtney, H.R. Director, Kendra M. German, Home Administrator, Jere Witt, County Administrator, and Brian Coil, CFO. Five joint exhibits (JX)¹ were received in evidence.

MEDIATION

The parties agreed to mediation and proceeded with the assistance of the Fact Finder to address certain of the Open Issues identified on February 11, 2008. The Union and County reached a number of tentative agreements at that session on all the open issues. Without objection, those agreements are incorporated in the report and recommendation.

ISSUES

The articles agreed to remain unchanged as of February 11, 2008, are

- Article 3 - Non Discrimination
- Article 7 - Check Off, Union Dues and Fees
- Article 8 - Agency Shop
- Article 10 - No Strike No Lockout
- Article 13 - Layoff and Recall
- Article 18 - Health and Safety
- Article 22 - Public Employees Retirement System
- Article 23 - Bereavement Leave
- Article 24 - Jury Duty and Court Appearance
- Article 30 - Trading Days Off

¹ JX A Agreement between The Ottawa County Riverview Nursing Home and Service Employees International Union, District 1199, The Health Care And Social Service Union, AFL-CIO, CLC, effective November 16, 2004 until November 16, 2007.
JX B Last Best offer of The Ottawa County Riverview Nursing Home dated 12-5-07
JX C Email from the County Home counsel to SEIU representative dated 12-17-07
JX D Tentative Agreements between County Home and SEIU 1199 various dates thought 2-11-08 (Note front sticker shows "Exhibit 8")
JX E Tentative Agreement between County Home and SEIU 1199 dated 2-11-08

- Article 31 - Employee Information
- Article 32 - Savings Clause
- Article 33 - Insurance Coverage
- Article 36 - Subcontracting
- Article 39 - Operation of County Motor Vehicles, Insurance Eligibility
- Article 40 - Substance Abuse Testing

The articles on which the parties had reached Tentative Agreement before February 11, 2008. are:

- Article 1 - Agreement
- Article 2 - Recognition
- Article 4 - Probationary Period
- Article 5 - Management Rights
- Article 6 - Union rights
- Article 9 - Grievance and Arbitration Procedure
- Article 11 - Discharge and Discipline
- Article 12 - Seniority
- Article 14 - Vacancies and Bidding
- Article 17 - Unpaid Leave of Absence
- Article 19 - Vacations
- Article 20 - Holidays
- Article 25 - Schedule Posting
- Article 26 - Meal Periods Rest Periods
- Article 27 - Bulletin Board
- Article 28 - Labor management Committee
- Article 29 - Personnel Files
- Article 35 - Dress Code
- Article 38 - Perfect Attendance
- Article New - Absenteeism and Tardiness

The issues remaining for consideration by the Fact Finder on February 11, 2008. are:

(according to the Union)

- Article 15 * - Employee Status
- Article 37 * - Wages

(according to the Employer)

- Article 15(1) W - Employee Status
- Article 15(2) * - Employee Status
- Article 16 (2) W - Hours of Work
- Article 16 (3) W - Hours of Work
- Article 16 (4) W - Hours of Work
- Article 16 (8) * - Hours of Work
- Article 21(1) W - Sick Leave

Article 21 (2) *	-	Sick Leave
Article 21 (3) *	-	Sick Leave
Article 21 (9) *	-	Sick Leave
Article 34 W	-	Personal Days
Article 37 *	-	Wages
Article New *	-	Twelve Hour Shifts

The (W) reference above are to issues withdrawn at or immediately before the hearing. Mediated agreements are noted as such above by (*). Agreement to retain current contract language is referred to as (CCL) herein.

Articles not withdrawn at or by the hearing on February 11, 2008, were wages, minor language changes and those related to the institution of twelve hour shifts. The parties differed on which article would most appropriately address the 12 hour shift issue with the consequence that several were left at impasse only for the purpose of inserting provisions for that issue.

CRITERIA

In compliance with Ohio Revised Code § 4117.14C(4)(e) and Ohio Administrative Code Rule 4117-9-05(J) and 4117-9-05(K), the Fact Finder considered the following in making the findings and recommendations contained in this report.

1. Past collective bargaining agreements between the parties;
2. Comparison 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, giving consideration to factors peculiar to the area and classification involved;
3. 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;
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 determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

In as much as this proceeding is an advisory interest arbitration, the general standards of interest arbitration are part of what the sixth criteria refers to. Those are located in ELKOURI & ELKOURI HOW ARBITRATION WORKS (Sixth Edition, Ruben, Editor. BNA, 2003) at pp1358-1364.

As quoted therein, note:

". . . [interest arbitration] calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations – they have left it to this board to determine what they should, by negotiation, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to?" *Twin City Rapid Transit Co.* 7 LA 845 at 848 (McCoy *et al.* 1947)

As a public sector statutory proceeding in the nature of advisory fact finding under the Ohio's law, the interest of the public is a third element in the balance of equities. ELKOURI at p. 1361.

The criteria operative in this fact finding are chiefly the fifth and sixth. Those are the stipulations of the parties reached though mediation, and the general standard of what the parties as reasonable people should voluntarily agree to.

ISSUE: Article 37 Wages

CONTRACT SECTION: Article 37 wage scale

UNION PROPOSAL: The Union proposes to increases as follows:

Scale Design: Add column for 25 years and older at same proportional increase

First Year 3.5% across the board increase (retroactive to November 16, 2007)

Second Year 3.5% across the board increase

Third Year 3.5% across the board increase

EMPLOYER PROPOSAL: The Employer proposes to increase wages as follows:

First Year 3.0% across the board increase (retroactive to November 16, 2007)

Second Year 3.0% across the board increase

Third Year 3.0% across the board increase

Seniority will transfer within each department

Marsha Hill (Rehab Department) will be "grandfathered" into the old rehab pay rate + the yearly percentage.

Shift differential for second shift is \$0.40 and for third shift is \$03.0 for all employees.

Weekend shift differential will be \$0.35 from 11 p,m Friday through 11 p.m.

Sunday for STNA only.

\$0.50 per hour supplement for cook acting as supervisor.

POSITIONS: The Employer: This was agreed as mediated.

POSITIONS: The Union: This was agreed as mediated.

FINDINGS AND RECOMMENDATION: This was agreed as mediated.

Recommendation: Section 37 Wages.

Each column on the wage table as of expiration shall be increased as follows:

First Year 3.0% across the board increase (retroactive to November 16, 2007)

Second Year 3.0% across the board increase

Third Year 3.0% across the board increase

Marsha Hill (Rehab Department) will be "grandfathered" into the old rehab pay rate + the yearly percentage.

Shift differential for second shift s \$0.40 and for third shift is \$0.30 for all employees.

Weekend shift differential will be unchanged

\$0.50 per hour supplement for cook acting as supervisor.

In addition a signing bonus contingent on ratification of this report shall be paid in the first year of the agreement only, in the amount of \$150.00 (gross) within 30 days of ratification to all employees of the unit having five years of service or more as of the date of the ratification by the Union.

ISSUE: Article Various :Twelve Hour Shifts

CONTRACT SECTION: New language

EMPLOYER PROPOSAL: County proposes a new Article or a Memorandum

UNION PROPOSAL: The Union proposes additions to Articles 15 and 16

POSITIONS: The Employer: This was agreed as mediated.

POSITIONS: The Union: This was agreed as mediated.

FINDINGS AND RECOMMENDATION: This was agreed as mediated. One of the issues prolonging agreement was the Employer's maintenance of oversight and review of the 12 hour shift program. It was understood the parties consider this to be pilot project with some potential for discontinuation due to failure of its objectives. It strikes the Fact Finder that it would be best to document the program as a memorandum that, if successful, can become part of a future agreement.

Recommendation: The Employer's proposed changes (JX B) as modified in mediation are recommended to become a memorandum of understanding to be attached to the Agreement and which reads as follows:

Memorandum of Understanding
12 Hour Shift Pilot Program

Whereas, the bargaining parties are desirous of reducing absences and the costs associated with absence in the form of overtime premium or of external services to cover the same, without impairment of care for residents, and

Whereas the bargaining parties agree that such savings are properly used to increase the earnings opportunities of employees through having more hours worked, and

Whereas the bargaining parties understand that the changes of schedule contemplated in this memorandum have a risk of not achieving these goals if immediately implemented for the entire workforce so a phase in of a pilot program is being agreed,

Now therefore the bargaining parties agree as follows:

- (1) There shall be an addition of up to 26 more 12 hour shifts for a total of 40 including the weekend 12 hour shifts already in existence. Only whole stations shall be designated for the 12 hour shift.
- (2) Employees shall bid on the 12 hour shifts by seniority. Employees successfully bidding shall work three (3) twelve (12) hour shifts per week. Employees scheduled for these shifts shall work 12 hours inclusive of one half ($\frac{1}{2}$) hour paid lunch.
- (3) The conversion of whole stations to 12 hour shifts shall begin with a labor management meeting within sixty (60) days of the ratification of the Agreement to consider the Employer's plan to add stations.
- (4) Within 90 days of the implementation of the 12 hour shift program (ie after employees have been working the shifts), and regularly thereafter as the parties may agree, the Employer shall review the data it uses to evaluate the program in labor management meeting(s) devoted to that subject by demonstrating for the period, among other data it may use, the changes in absenteeism, changes in cost for overtime or external services, and the changes in aggregate (not individual) employee gross compensation. The data for the affected stations shall compared to the non-affected stations during the current contract and to employer experience in the preceding contract.
- (5) The Employer maintains the right to eliminate the pilot program within its sound discretion after six months of its implementation.

ISSUE: Miscellaneous Changes

CONTRACT SECTIONS: Article 21 Sick Leave (2)(3)(9,A &C)

POSITIONS: The Employer: This was agreed as mediated.

POSITIONS: The Union: This was agreed as mediated.

FINDINGS AND RECOMMENDATION:

The Employer's Last Best Offer (JX B) dated December 5, 2007, consists of a list of provisions with attached excerpts from the Agreement modified by the offer. It had been voted on and rejected by the Union before December 17, 2007. By agreement on February 11, 2008, the parties ask that the Last Best Offer be the starting point of the mediation and that its provisions be included in this report and recommendation as further modified by the mediated recommendations contained in this report.

The provisions listed on JX B, other than Nos. 1 through 3 that pertain to the 12 hour shift, read as follows:

1. {12 hr shift}
2. {12 hr shift}
3. {12 hr shift}
4. Wages Article 37 attached
5. Personal Days Article 34 CCL
6. Sick Leave Article 21 attached {ie Art. 21 (2)(3)(9,A &C)}
7. Employee Status CCL attached {ie Art.15(2)}
8. Hours of Work Article 16 attached

Article 37 Wages and the 12 hour shift are subject to other recommendations. Art. 15(2) and Art. 16(8) were changed by the TA (JX D) and Article 16(2) and (4) and Article 34 were withdrawn by the Union per the TA (JX E). The Union withdrew it's proposal to increase the amount of sick leave on its pre hearing position statement and confirmed at the hearing. (Art. 21 (1)).

The only part of the JX B that is not affected by the TA's or other recommendations herein is Article 21 Sick Leave Art. 21 (2)(3)(9,A &C). These are sections that had some minor changes that were not in dispute. Art. 21(2) changes call in from two to one hour; Art 21(3) is a typo; (9A) is sick leave on retirement, and (9C) is a typo. These had not been listed in either TA since there were other sections in that article in dispute at the time.

Since the parties agreed to include the remainder of the Offer not otherwise modified in their mediated settlement those sections of Article 21 are set out in the recommendation.

Recommendation: The Fact Finder recommends the adoption Article 21 Sick Leave (2)(3)(9,A &C) as follows:

- 21.2 When an employee is unable to work due to illness or injury, he/she shall see that the Home Administrator or his/her designee is notified as soon as possible on the first day of absence, but no later than ~~two~~ one (1) hours prior to his/her regular shift time, and daily thereafter until a medical certificate is supplied.
- 21.3 Application for sick leave with intent to defraud can result in dismissal and refund ~~to~~ of salaries or wages paid.
- 21.9A [add to end] All employees hired after January 1, 1999 will be paid in accordance with Section 21.9 C.
- 21.9C.1 Employees with five (5) or more years of actual service with the County, the State ~~on~~ or an Ohio political subdivision may elect to be paid in cash for twenty five percent (25%) of the value of their accrued but unused sick leave credit.

ISSUE: Tentative Agreements

CONTRACT SECTIONS: Various

FINDINGS AND RECOMMENDATION:

There were a large number of Tentative Agreements (TA) were reached in negotiations before the hearing. (Cf. p 3 *supra*) Additional TA's were presented at the hearing. Those were documents consisting of agreements reached earlier and shown in initialed excerpts from the Agreement (JX D) and a separate hand written list of agreed sections (JX E) reached that day. Most are either withdrawal of proposals leaving current contract language as the agreement. The agreed sections are as follows:

Article 15 (1) W	-	Employee Status	JX E	CCL
Article 15 (2)	-	Employee Status	JX D	
Article 16 (2) W	-	Hours of Work	JX E	CCL
Article 16 (3) W	-	Hours of Work	JX E	CCL
Article 16 (4) W	-	Hours of Work	JX E	CCL
Article 16 (8)	-	Hours of Work	JX D	
Article 21 (1) W	-	Sick Leave	JX E	CCL
Article 34 W	-	Personal Days	JX E	CCL

By agreement the parties ask that the report and recommendation include these and all former TA's.

Recommendation: The Fact Finder recommends the adoption of all the Tentative Agreements reached before and as presented at the February 11 2008, hearing the latter being represented herein at page 3 *supra* and in JX D and JX E. Those Tentative Agreements are incorporated in total by this reference herein and become a recommendation.


Gregory P. Szuter, Fact Finder
Made and entered at Cleveland, Ohio
February 22, 2008

PROOF OF SERVICE:

The foregoing has been send by U.S. Mail (ordinary) on February 22, 2008, to SEIU District 1199 c/o Monica Moran and Ottawa County Riverview Nursing Home c/o Dolores F. Torriero, Esq. of Downes Hurst & Fishel per addresses shown on the cover with advance copy via email on the same date to both.