

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

2008 MAY 21 A 11: 15

In the Matter of the Fact-Finding Between:

AFSCME, Local 316,)
Employee Organization)
)
and)
)
Board of Erie County Commissioners,)
Dept of Job and Family Services)
Employer)

12-1272
Case No. 2007-MED-11-1198

APPEARANCES:

For the Union:

Cheryl Tyler-Folsom, Union Representative
Pam Hall, Union President
Linda Pugh, Union Vice-President
Kim Faggionato, Union Executive Board
Victoria Strawn, Union Steward
Janie Jurn
Jennifer Rogers
Steve Alt

For the Erie County Department of Job and Family Services

Margaret Rudolph, Employer Representative and Director of Human Resources
Vicki Lyons, Assistant Director, JFS
Deb Haer, Business Administrator, JFS
Pat Browning, Administrator of Family Work Force/IM
Nancy Shea, IM Supervisor

Before Sarah Rudolph Cole, Fact-Finder

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Introduction

AFSCME, Local 3616 (hereinafter "AFSCME" or "Union") represents the bargaining unit at issue in this case. Eighty employees comprise the bargaining unit and are located within the Erie County Department of Job and Family Services ("Employer"). The parties' previous collective bargaining agreement (hereinafter "Agreement") expired on February 28, 2008, but was extended by agreement on a day to day basis. The parties participated in a number of negotiations as well as a mediation with a mediator from the FMCS and, as a result, reached tentative agreements on many issues. The parties submitted the remaining unresolved issues, identified below, for fact-finding. The fact-finding hearing took place on May 7, 2008 at the Erie County Department of Job and Family Services in Sandusky, Ohio.

Criteria

Fact-Finders must consider the criteria articulated in Ohio Revised Code

§ 4117.14(C)(4)(e) and Ohio Administrative Code § 4117-9-05(K) when making a decision.

Criteria to be considered are:

- (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;
- (c) 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

The parties were at impasse on nine issues: Article 3, Union Time; Article 19, Holidays; Article 29, Major Medical; Article 31.01, Rate of Pay (including retroactivity of pay); Article 31.03, Longevity; Article 31.09, Educational Stipend; Sick Leave Conversion, Bonuses/Me Too; IM Case Count. The Employer withdrew its one-time lump sum payment offer. The parties did not discuss the issue at the hearing. Therefore, the Fact-Finder did not address this issue. Each of the remaining issues will be discussed separately.

Article 3: Union Time

Union Position

The Union proposes that the Union President or stewards should be allowed up to four hours per month to conduct Union business during agency hours, provided a log of such activities is provided to the County. The Union asks for a private area within the agency to conduct such business.

Employer Position

The Employer expressed concern that permitting the president or her designee four additional hours of time per month to handle union business would be expensive, costing the County \$2,268.00 over the life of the agreement. Moreover, the Employer emphasized that the Union President, as well as other members of the union, already participate in a number of

activities on behalf of the union during work hours including grievance meetings, pre-disciplinary conference, Labor-Management meetings and division meetings. The Employer offer 15 minutes a month to the Union President or her designee in which to orient new employees to the union.

Recommendation

The Employer shall allow the Union President or her designee four (4) hours per month to conduct Union business, including orienting new employees to the union, during work hours, provided a log of such activities is provided to the Employer. The Union President or her designee shall provide the Employer with reasonable notice of the anticipated date and time, during work hours, that these hours will be utilized.

Over the last several years, the Employer increasingly has expected employees to raise workplace concerns with members of management. During the hearing, the Employer stated that it wanted employees to make greater effort to raise issues of excessive workload with management employees. According to the Union, however, some employees are reluctant to discuss issues with their supervisor. Providing the Union President, or her designee, additional time during the month to conduct Union business could be used for, among other things, working with employees so that they are more comfortable with "desk reviews" or other potential interactions with management.

The extra time ought to relieve some of the administrative burden on the Union President while, at the same time, facilitating the kind of work relationship the Employer seeks. The Employer's fifteen minute orientation offer seems inadequate for orientation purposes, much less discussing important issues with one's union representative. Although there is a financial cost

associated with the additional time, it is minimal, and should provide benefits to both the Union and the Employer in enhanced communication.

The parties did not offer evidence regarding the need for a private area where the union could meet with the employees. Therefore, the Fact-Finder does not recommend designating a private area for the Union President or her designee to meet with union members.

Article 19: Holidays

Union Position

The Union requests an additional ½ day Christmas Eve. The Union proposes closing the office at noon on that day.

Employer Position

The Employer proposes to maintain the current number of paid holidays at 11. Using the Employer's proposed wage increase of 2%/2%/2%, the Employer concludes that the additional ½ day would cost the Employer \$20,421.94 over the life of the Agreement.

Recommendation

Current contract language, identifying 11 paid holidays, should be maintained.

While the Union provided information explaining that little business is conducted on Christmas Eve day, and noted that the County Courts usually shut down early on that day, the Fact-Finder is not convinced that the additional paid holiday time is warranted. No other collective bargaining agreement in Erie County provides for additional time off on Christmas

Eve. In addition, Union members have personal days that they can use to take time off on Christmas Eve, if they so desire. The number of holidays the employees currently have is quite reasonable and clearly in keeping with other employees within Erie County. In addition, the Union did not provide external comparable evidence demonstrating that they receive less holiday time than their colleagues working similar positions in other counties. While less business is transacted on Christmas Eve, it may well be that a family emergency from a client or prospective client justifies keeping the office open during a time of the year when help may be needed. Thus, the Union's request for additional time is rejected.

Article 29 Hospitalization/Major Medical

Union Position

The Union understands that, due to difficult financial circumstances, it must accept the move from the major medical 3 plan (hereinafter "medplus 3") to the major medical 4 plan (hereinafter "medplus 4"). The Union is concerned, however, about the financial impact the move to medplus 4 will have on its membership. According to the Union, under medplus 4, the monthly family premium increases \$120.00. In addition, the deductible for a single person moves from \$200 to \$500 and the deductible for a family from \$400 to \$1,000. In addition, co-pays increase by \$10.00 for each visit to the doctor. According to the Union, an employee with a family could pay up to \$792 per year more for medical coverage (if they have to pay the whole deductible) plus co-pays than they did when medplus 3 was in effect. The Union requests that the Employer put \$300 for a single employee and \$600 for an employee with a family in the employee's flexible spending plan to offset the increased deductible.

Employer Position

The Employer contends that the move from medplus 3 to medplus 4 is critical. Rising health care costs and increased risk associated with health care usage are major concerns for the Employer. The Employer notes that non-bargaining employees moved to medplus 4 without an increase in salary and that every bargaining unit that has bargained a new agreement went from medplus 3 to medplus 4.

Recommendation

The Fact-Finder recommends that the following language be added to the Agreement. This language is taken from the Employer's proposal but changes the effective date of the clause to the date that the Agreement is ratified.

29.01 The Employer shall select the carrier for the insurance programs herein. However, any change in carriers or programs will not reduce any of the current levels of benefits in force and effect as of the date this agreement is effective, as described in Appendix ____, unless otherwise mutually agreed between the parties as referenced below.

29.02 Employees of the Bargaining unit in full-time active pay status, or approved Family and Medical Leave, are eligible to participate in the health insurance plan provided to the Employer's non-bargaining employees for the duration of this Agreement, as provided below:

29.02.1 Any change in carriers or program, as recommended by the Cost Containment Committee and approved by both the Board

of Erie County Commissioners and Local 3616, will amend this agreement to reflect said change.

29.02.2 Effective on the date this agreement goes into effect, employees will be required to contribute \$35/month single coverage and \$60/month family coverage towards hospitalization premiums.

29.02.3 Effective 01/01/09, Employees will be required to contribute at the same rate as non-bargaining unit employees as recommended by the Cost Containment Committee and approved by both the Board of Erie County Commissioners and Local 3616.

29.02.4 The mandatory spousal enrollment provision of the Health Insurance Plan will not be implemented during the life of this contract.

29.02.5 The union president or her designee will continue to be a member of the County's Cost Containment and Wellness Committee and can attend these meetings on County time.

29.03 Insurance Booklets shall be provided to all eligible employees. Eligibility for medical, vision, dental and life insurance begins after ninety (90) days of employment. The current Master Plan Document will be available on-line at www.erie-county-ohio.net.

29.04 LIFE INSURANCE. The Employer will provide a Fifty-thousand (\$50,000) Term Life Plan with A.D. & D. for the life of this

Agreement.

- 29.05 Health care/dental premium contributions will go through IRS Section 125 Plan (pre-tax). All medical premium deductions will be evenly split between the first two pays of each month as is the current practice for employees in the Medplus 3 Plan.**
- 29.06 VOLUNTARY PLANS. Any plan in which the employee pays a portion of or the entire monthly premium is understood to be a voluntary participation plan. The County reserves the right to increase the premiums for such voluntary plans, including, but not limited to, COBRA and the family dental plan. Effective on the date of the ratification of this agreement, the employee contribution for the family dental plan shall be \$18.00 per month. Effective 01/01/09, Employees will be required to contribute at the same rate as non-bargaining unit employees.**
- 29.07 The Employer shall continue to pay a portion of the premiums for the single and family coverage of the hospitalization/major medical coverage for the life of this Agreement, except as defined in Appendix —.**
- 29.08 Employees will be required to continue to use the mail order system when purchasing maintenance drugs after the second retail fill.**
- 29.09 Effective on the date of ratification of this agreement, Employees will be required to pay a \$20.00 co-pay on all physician office visits.**

Uniformity with respect to benefit plans is important to both the Employer and the Union. The Union recognized that the financial situation for the County makes the move from medplus 3 to medplus 4 inevitable. It was evident that the Union understood that there were potential cost advantages to both the Employer and the Union if the Union were to move to medplus 4. If the Union were able to stay with medplus 3, its health care plan would be significantly better for its bargaining unit employees than other bargaining and non-bargaining employees within the County. To prevail, the Union would have to show that a unique situation exists with this unit that justifies the different and better treatment. The Union did not provide any internal or external comparables that justified leaving the Union with medplus 3. As a result, the Fact-Finder recommends that the proposed language be incorporated in the new agreement. Importantly, though, the proposed wage increase recommended below is intended, at least in part, to offset the financial consequences of the new health plan.

Article 31.01 Rates of Pay

Union Position

The Union proposes wage increases of 4.5%/4.5%/5% in addition to its proposal for increases to longevity and educational stipend. The Union bases its position on the County's financial position and the salary increases enjoyed by the non-bargaining unit employees over the last two years.

Employer Position

The Employer has offered 2%/2%/2% and contends that its proposal is consistent with wage increases granted to other bargaining units as well as non-bargaining unit staff. The

Employer also requests that any wage increase granted should be effective on the date of the ratification of the agreement rather than be made retroactive to 3/1/08 because the Union delayed negotiations and did not propose retroactivity during the first three negotiation sessions.

Recommendation

The Fact-Finder recommends a wage increase of 3%/3%/3%. The wage increase should be retroactive to March 1, 2008.

The Employer presented a convincing case that the county budget faces major funding concerns for the foreseeable future. During 2008, changes to Ohio's child support funding resulted in a shortfall of \$96,000. As a result, five child support department employees were laid off (although all five were able to find positions with other departments within the agency). The Employer paints an unpleasant financial picture for itself. Chief among its remaining concerns are the Erie County General Fund's general decline and its apparent inability to be a source for funding to the agency should additional shortfalls occur.

The Employer provided SERB data (Employer Ex. IX) that demonstrates that in 2005 and 2006, county bargaining units enjoyed, on average, a 3% raise. The Employer's other comparables (Employer Ex. VIII) show that its bargaining unit employees do very well in comparison to those in Sandusky, Huron, Seneca, and Ottawa counties.

Over the last two years, the non-bargaining unit employees have enjoyed relatively higher wage increases. While their base increase was only 2% each year, every member of the non-bargaining unit staff received a \$1500 bonus in 2006 and 2007. Although described as incentive bonuses, every employee received them. While the Employer insists that there will be no incentive bonuses this year, the inequity of the bonuses has had a negative impact on bargaining

unit employee morale.

Although the County is in a difficult financial position, the average wage increase for counties in Ohio is 3% (Employer Ex. IX). And, during the life of this agreement, the bargaining unit employees are going to experience increased health care costs. To offset the health care costs, keep pace with other counties, and improve employee morale, the Fact-Finder recommends the 3%/3%/3% increase.

The Fact-Finder also recommends that the wage increase be made retroactive to March 1, 2008. The Employer contends that wages, which are traditionally retroactive to the day after the last agreement expires, should be effective on the date of signing because of delays in the negotiation process. Moreover, the County states that the Union waived its right to raise retroactivity because it did not bring up the issue during the first three negotiation sessions.

The Employer's claim that the Union has delayed the bargaining process is not credible. The parties negotiated several times with each other and also participated in a mediation session with a FMCS mediator. To refuse to permit the Union to raise retroactivity when it actively and in good faith participated in negotiation sessions would elevate form over substance. Finding that both sides have participated in the bargaining process in good faith, the Fact-Finder recommends that wages be made retroactive to March 1, 2008.

Article 31.03 Longevity Pay and 31.06 Educational Stipend

Union Position

The Union would like to increase the longevity pay as follows: 5 years, \$500; 10 years, \$700; 15 years, \$900; 20 years, \$1100. The Union contends that the increase to longevity would

provide a fairer wage for them. The Union also wants to expand the class of employees who may take classes and receive reimbursement for tuition spent.

Employer Position

The Employer counters that the base hourly wages of the bargaining unit are comparable to other units within the County. If more longevity is granted, the Employer emphasizes, wages in this unit will be higher than in other units. Also, the Employer notes that other AFSCME units within Erie County have a comparable, if not identical longevity schedule. Finally, the Employer states that the Union's proposal on longevity would cost an additional \$39,239.25 over the life of the agreement. The Employer objects to the expansion of the educational stipend program and increase in reimbursement amount because of the additional potential cost to the County.

Recommendation

The longevity pay and educational stipend contract language shall remain the same.

The evidence presented at the fact-finding hearing demonstrates that the current longevity pay schedule is consistent with internal and external comparables. The Union offered no reason why its unit should receive higher longevity pay than other units within the County. Moreover, the Union did not contest the applicability of the external comparables, which demonstrated that Erie County pays longevity similar to other counties nearby. The Fact-Finder acknowledges that Erie County pays less than Sandusky and Huron, but takes note of the fact that wages in Erie County are significantly higher and that Erie County longevity is higher than either Seneca or Ottawa Counties.

The Fact-Finder is also not convinced of a need to change the educational stipend reimbursement. It appears that one of the programs described in the Agreement, known by the

acronym "TOPS", no longer exists. While employees should be encouraged to advance their education, the Union did not establish that the current incentives are insufficient to provide this encouragement to employees. Moreover, the current difficult financial picture for the County makes it impossible to expand the existing stipend to more employees, or to increase the amount of the stipend.

Sick Leave Conversion

Union Position

On August 31, 2005, the Union and Employer signed a Memorandum of Understanding that rewarded those employees who had accumulated a large number of sick leave hours during their service to the County. This one-time conversion allowed an employee with greater than 800 hours of sick leave to convert up to 15% of the hours above 800 hours to pay. The Union would like to incorporate this memorandum as a permanent practice in the Agreement.

Employer Position

The Employer objects because of the financial implications of the proposal but does counter with an "earned bonus time" clause that would allow full-time employees, who work 182 days without using sick leave, to receive a ½ day of personal leave. An employee could do this twice a year, but would have to use the time within the calendar year in which it is awarded.

Recommendation

Earned Bonus Time: Full time employees will earn one (1) hour of personal leave each time they work forty-five and one-half (45 ½) days without using any sick leave. An employee may receive up to two (2) earned half (1/2) bonus days per year (January-December) for eight (8) hours maximum. Earned bonus time will be awarded as follows:

**Awarded in January, calculated on the employee's attendance from July 1-
December 31 of the prior year.**

**Awarded in July, calculated on the employee's attendance from January 1 –
June 30 of the same year.**

Only when an employee earns four (4) hours or ½ day of personal leave through this process will the employee be permitted to schedule the leave time. Earned bonus time must be used within the calendar year it is awarded.

The memorandum of understanding the parties signed made clear that the sick leave conversion was a one-time occurrence. The Union would like to memorialize this one-time practice into the Agreement. Unfortunately, the Union provided no internal or external data during the hearing in support of its position. The Employer provided no new evidence about this issue, either, but continued to emphasize its difficult financial position as the reason for rejecting the Union's proposal.

Sick leave is not typically a benefit that is funded, but is available to provide income continuation for employees who become sick or are injured. Thus, it should not be presumed available as another fund from which to provide increased pay. Moreover, the Union provided no evidence, other than the one-time sick leave conversion, which suggests that the unit is in a unique situation that entitles it to sick leave conversion.

During the fact-finding hearing, however, the Employer indicated, through its proposal, that it remains open to the notion of some sick leave conversion as a reward for employees who do not use their sick time and as a means to avoid abuse of sick leave. The Employer's current proposal seems unduly harsh, however. An employee who works 181 days without using sick

leave must choose to work on the 182nd day, even if sick, in order to avoid losing the ½ day personal leave accrued during the six-month period.

As a result, the Fact-Finder recommends adoption of the Employer's proposal, but would change it so that one hour is earned every 45 1/2 days. Under this proposal, an employee could not take any of the hours as personal leave until she earned at least 4 hours (1/2 day). But, an employee would not be placed in the difficult position of having to come to work when she was ill because the consequences of missing work would not be as significant.

Bonuses/Me-Too Clause

Union Position

The Union would like to add a clause to the agreement that, if during the life of the agreement, the non-bargaining unit employees receive any financial awards, bonus, cash incentives etc., that the Union members will each receive an equal amount.

Employer Position

The Employer does not wish to have a clause and states that there will be no financial awards, bonuses or cash incentives in the future due to the financial situation within the County.

Recommendation

No Bonus/Me-Too Clause should be added to the agreement.

The wage increase recommended to the parties takes into account the two incentive payments non-bargaining unit employees received during 2006 and 2007. Clearly, those incentives created hard feelings within the Union. Nevertheless, the Union does not offer evidence that they are any worse off than other bargaining units within the County. Moreover,

the Employer stated quite strongly and credibly that there would be no such incentives in the future for the non-bargaining unit employees due to the County's difficult financial situation. Thus, a bonus/me-too clause would be financially unmanageable for the Employer and should be rejected.

Income Maintenance (IM) Case Count

Union Position

In 1996, the Employer instituted a policy that provided overtime hours to Income Maintenance employees when the employee took on additional cases. The idea behind the memo was to ensure overtime to employees who took on the work of those employees who left the IM department or who went on extended leaves. The overtime increased depending on the number of additional cases the employee took on. The memo stayed in effect until five or six years ago. The Union would like to reinstitute this policy.

Employer Position

The Employer, again due to the financial situation for the County, does not wish to institute this type of automatic overtime policy. Instead, the Employer wants employees who believe they are entitled to overtime to consult with their supervisor to determine whether overtime is appropriate. To determine whether overtime is appropriate, the supervisor reviews the employee's workload.

Recommendation

The IM memorandum should not be added to the Agreement.

According to both parties, when supervisors and employees work together, the overtime

question typically does not become an issue. If the employee has an excessive workload, overtime is granted. The Union is concerned for the members of the bargaining unit who are reluctant to permit their supervisors to conduct a "desk review" of their workload (literally, a review of what is on the employee's desk) out of fear that other issues might emanate from such a review. The additional time given the Union President or her designee to conduct Union business during working hours was recommended in part to help ameliorate this problem. If an employee is nervous about requesting a desk review in order to earn overtime, he or she would be able to go to the Union President or her designee and ask for help in planning the desk review request. Hopefully, the increased interaction between the Union and its members as well as between union members and the Employer will benefit all working relationships within the IM department.

This concludes the Fact-Finder's Report and Recommendations.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Sarah Cole", written over a horizontal line.

Sarah Rudolph Cole, Fact-Finder

Columbus, Ohio
May 19, 2008

Certificate of Service

This is to certify that a copy of the foregoing was mailed this 19th day of May, 2008, by e-mail and DHL Overnight Express Mail to Margaret Rudolph, Director of Human Resources, 2900 Columbus Avenue, Sandusky, Ohio 44870 and Cheryl Tyler-Folsom, 420 South Reynolds Road, Toledo, Ohio 43615. A copy was also sent by regular U.S. Mail to Administrator, Bureau of Mediation, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213.



Sarah Rudolph Cole