

STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF :
FACT-FINDING BETWEEN : 2008 DEC -9 P 1: 29
:
SERVICE EMPLOYEES INTERNATIONAL : CASE NO: 08-MED-05-0614
UNION, DISTRICT 1199 :
: AND :
: HAMILTON COUNTY HEAD START : FACT-FINDING REPORT
:

HEARING

Hearing Date: November 21, 2008
Report Issued: December 8, 2008
Hearing Location: Program's Central Office
924 Waycross Road
Cincinnati, Ohio 45240

City Representative: Mr. J. Michael Fischer, Esq.
1714 West Galbraith Road
Cincinnati, Ohio 45239-4812

Other City Participants: Mr. Jack A. Collopy, Executive Director, ESC
Dorothy Echoles, Director of Operations
Debby Mossburger, Fiscal Director

Union Representative: Ms. Dedeon Jackson, Coordinator
SUIU District 1199
1771 30th Street
Cleveland, Ohio 44144

Other Union Participants: Mr. Mark Turpin, Administrative Organizer
Ms. Tomasino Sloan, Negotiating Team
Ms. Rosemary Candy, Negotiating Team
Ms. Barbara Bader, Negotiating Team
Ms. Deborah Anderson, Negotiating Team
Ms. Sandra Young, Negotiating Team
Ms. Tracy Coley-Smith, Negotiating Team

Fact-finder: William M. Slonaker, Sr., JD, MBA, SPHR

APPOINTMENT

This Fact-finder was appointed by letter dated October 9, 2008, from the Ohio State Employment Relations Board. Pursuant to the appointment, this Fact-finder was bound to conduct a Fact-finding Hearing and to serve on the Parties and SERB his written Report and recommendations on the unresolved issues. Subsequent to the appointment, the Parties agreed to extensions such that the Fact-finder was to serve the Parties with a written Fact-finding Report no later than Tuesday, December 9, 2008. Accordingly, the Fact-finder scheduled and conducted the Fact-finding Hearing as above noted.

STIPULATIONS

1. That only the remaining issues before this Fact-finder are in dispute. That issues previously agreed to by the Parties shall stand as agreements, regardless of the outcome of this Fact-finding Report; and, that the Parties did not want such agreements specifically referenced in this Report.
2. That all contractual and SERB procedures/time frames preceding the Fact-finding Hearing have been met. Therefore, this matter is properly in Fact-finding.

CRITERIA

Pursuant to Rule 4117-9-05(J) State Employment Relations Board, findings of fact shall take into consideration all reliable information relevant to the issues before the Fact-finder. Pursuant to Rule 4117-9-05(K) the Fact-finder, in making recommendations, shall take into consideration the following factors:

1. Past collectively bargained agreements, if any between the parties;
2. Comparison of 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; and,
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.

BACKGROUND

Hamilton County, Ohio is located in Southwestern Ohio. It estimated population in 2006 was 822,596, including a 2.7% drop since the 2000 census. (<http://quickfacts.census.gov/qfd/states/39/39061.html>). Approximately 332,000 of the population is within the city of Cincinnati (<http://quickfacts.census.gov/qfd/states/39/3915000.html>)

The Parties' most recent Agreement had a term of three years (as have all of their Agreements) July 1, 2005 through June 30, 2008. The Parties engaged in negotiation sessions and in mediation on several occasions, resolving issues through memoranda of agreement. The Parties indicated their agreement that their prior agreements are to stand regardless of the outcome of the fact-finding process. The parties did not want their memoranda specifically identified in this Report. The Parties attempted a final mediation before the start of the Fact-finding Hearing as to the remaining three issues, without success.

It appears that there may be confusion as to the identity of the Employer. Various names are being used. Consider:

Source	Name Identified
Employer (position statement)	Hamilton County Early Learning Program (aka Hamilton County ELP)
Union (position statement)	Hamilton County Early Learning Educational Service Center
CBA (7-1-05 – 6-30-08) (Article 1, A)	Hamilton County Head Start Program
CBA (7-1-05 – 6-30-08) (signature page)	Hamilton County Head Start, by Jack A. Collopy, Executive Director; by Dorothy Echoles, Associate Director
Financial information (Employer's book)	HCESC Early Learning Program Hamilton County Educational Service Center Early Learning Program Hamilton County ESC Early Learning Program Head Start Hamilton Cty Educ. Serv. Ctr. HCESC State Early Learning Initiative Hamilton Co Ed Service Center HCESC Early learning initiative
Financial Information (Union's book)	Hamilton County Educational Service Center (audited basic financial statements, YE 6-30-07)
Cincinnati-Hamilton County Community Action Agency (Employer's book, 11-12-08 letter)	Hamilton County Educational Service Ctr
Tab 25 Employer's book	Hamilton County Head Start

As noted above, one of the factors that “shall” be taken into consideration in making recommendations is “the lawful authority of the public employer.” This implies that the public employer is identifiable, that it is an entity that exists under law. In short, the position of the Employer seems to be that the Employer is not Hamilton County, nor is it the Hamilton County Educational Service Center [which functions as the County’s Board of Education]. Instead, the position of the Employer is that the employer is a “Program.” As a suggestion, the Parties may wish to clarify/confirm the identity of the Employer – for many purposes, including, for contracting purposes and for financial purposes. Note: the identity of the Employer is directly related to another factor that “shall” be taken into consideration in making recommendations, *i.e.*, “. . . the ability of the public employer to finance and administer the issues proposed” This factor implies an employer with identifiable, verifiable financial resources, or lack thereof.

According to the Union, there are approximately 92 employees in the bargaining unit, including approximately 20 different classifications, with most members being Head Teachers, Associate Teachers, or Assistant Teachers. (See Appendix to Agreement.) The Employer puts the number of bargaining unit employees at 95. According to the Employer’s description, it operates two types of classrooms: federal head start classrooms (“federal”) and Ohio Early Learning Initiative classrooms (“Ohio”). The Employer notes that the funding source for each type is different.

It operates the federal head start classrooms as a grantee of the Cincinnati-Hamilton County Community Action Agency. Hamilton County receives from CHCCAA \$4,079,813.00 to operate the federal head start classrooms. This amount is fixed and does not change from year to year unless the federal government authorizes a cost of living adjustment (COLA) to the amount of the grant. (Employer’s Position Statement)

The Employer notes that there was no increase for the current fiscal year starting November 1, 2008.

As for the funding of the Ohio classrooms, the Employer says:

[T]he state funds Hamilton County on a student enrollment and participation basis. The state pays Hamilton County for each student served based on the number of students attending on a daily basis, and the number of hours the student is in attendance on a daily basis. * * * ODE breaks the year into qualifying periods, which generally represent a calendar month, and pays Hamilton County in one qualifying period for student attendance in the previous qualifying period. (Employer’s Position Statement)

Ohio’s fiscal year starts on July 1. Further, the Employer contracts with private daycare providers, and two other Ohio counties to use a portion of the (Ohio) student slots allocated to Hamilton County.

The Employer said that of the 95 employees in the bargaining unit, 63.49 are federally funded, and 31.51 are funded by state funds (with each category including a small number of dual-funded persons). Essentially, the position of the Employer is that the only sources of funds to pay the Employees are the two identified as federal and Ohio. Its position is that neither Hamilton County nor the Hamilton County Educational Service Center can (or will) add even "\$1.00" toward the wages of the Employees. The position of the Employer is that it has no assets whatsoever, not even one table or chair, and not only does it have no cash, but that it never has any cash, and that it does not even have a bank account.

Further, the Employer says that there is no single set of financial statements for it as the employer of these bargaining unit members. In lieu of presenting meaningful financial statements reflecting its financial condition – from which its ability to pay or to not pay can be argued and perhaps even be derived – the Employer offered what is typically known in the accounting trade as a "shopping bag" (Employers Fact-finding book, tabs 2 through 23). This is, when a client's financial transactions are thrown into the proverbial shopping bag and the accountant is charged with trying to make financial sense of the various pieces of paper. Such was the charge to this Fact-finder.

This Fact-finder believes that when it comes to the "ability to pay" factor, the Union should do its best to show that the Employer can pay the costs for what the Union is seeking; and concomitantly, if the Employer believes it cannot pay, then it should do its best to show its inability. Efforts in these regards fell far short on both sides in this Fact-finding – due primarily to the absence of meaningful financial statements for the Employer.

The most likely identity of the Employer is the Hamilton County Educational Service Center, with its financial condition reflected in large part by the "Hamilton County Educational Service Center, Basic Financial Statements, Year Ended June 30, 2007, With Independent Auditors' Report" (Union's Fact-finding book, tab "Financial Statements 2007). Note: the "Head Start Fund" is identified as one of the Center's three major governmental funds (page 7). However, the Parties' Agreement identified the Employer as the "Hamilton County Head Start Program," and the Employer denied that these statements are those of the Employer, which is possible.

Unfortunately for all concerned, a recommendation on the economic issue of wages is still possible notwithstanding a question as to the specific identity of the Employer, and the lack of meaningful financial statements for whoever the Employer may turn out to be. While the economy (national, state, and local) was not an issue between these Parties, the elephant in the Fact-finding room must be identified and addressed upfront. Unfortunately for the Parties, they are negotiating during what many have described are the worst economic conditions since the Great Depression. Consider just a few of the reports during the past couple of weeks:

Officials in Ohio's Hamilton County, which includes Cincinnati, have proposed cutting 551 jobs, or about 9% of the county's work force. They're recommending

a \$241 million general-fund budget next year, which would be a decrease of \$31 million, or 11%. * * * Cuts at the state level in Ohio are affecting Hamilton and other county governments. In September, Ohio Gov. Ted Strickland told state agencies to trim budgets by 4.74%, the second round of cuts this year * * * Ohio's unemployment rate is currently 7.3%, above the national average of 6.5%. (*The Wall Street Journal*, "Midwest States Cut Spending in a Hurry as Region's Economy Deteriorates," 11-22-2008, page A3, by Amy Merrick)

The appointment of Christina Romer to head the Council of Economic Advisers places a scholar of the Great Depression close to President-elect Barack Obama. Ms. Romer's macroeconomic expertise may come in handy as the Obama administration tries to counter a financial crisis that some economists say is the worst since the 1930s. (*The Wall Street Journal*, "Obama Gets Depression Scholar in Romer," 11-26-2008, page A6, by Kelly Evans)

The deteriorating jobs situation is likely to further constrain wages and incomes. New claims for unemployment benefits last week were a seasonally adjusted 529,000, down from the previous week but still high. The four-week average rose by 11,000 to 518,000, a 26-year high. The unemployment rate, currently 6.5%, is expected to hit 8% to 9% toward the end of next year. (*The Wall Street Journal*, "Deteriorating Economy Adds to Urgency for Obama," 11-28-2008, page A11, by Kelly Evans)

"Over the next two years, Ohio will confront the most serious erosion of revenues it has experienced in the last 40 or 50 years," Sabety [Ohio Budget Director] said, adding that officials are forecasting the first-ever annual decrease in wage and salary income. * * * [T]he state is forecasting a deficit of \$7.3 billion for the two years beginning July 1 and ending June 30, 2011. If all state agencies cut budgets by 10 percent over the two-year budget period, the deficit still stands at about \$4.7 billion, Sabety said. (Dayton Business Journal, "Strickland: Ohio facing \$7 billion deficit," 12-01-08)

The National Bureau of Economic Research said Monday that America entered recession in December 2007. * * * The unemployment rate, at 6.5%, is rising but still well shy of its 7.8% level after the 1990-91 recession or the double-digit levels of the early 1980s. * * * If the current cycle persists past April [2009] it would be the longest recession since the Great Depression. (*The Wall Street Journal*, "Fed Signals More Action as Slump Drags On," 12-02-2008, page A1, by Jon Hilsenrath and Sudeep Reddy)

Skittish U.S. employers slashed 533,000 jobs in November, the most in 34 years, catapulting the unemployment rate to 6.7 percent, dramatic proof the country is careening deeper into recession. (Associated Press, "US employers cut 533,000 jobs in November," 12-05-2008, by Jeannine Aversa)

In summary, there is a very big and disagreeable economic elephant in the room, one that will be impossible to slip past for the foreseeable future.

The following issues, identified by the Parties in their Pre-hearing Position Statements, remained unresolved at the conclusion of the Fact-finding Hearing:

ISSUES

ISSUE 1: WAGES – ARTICLE 25

UNION'S ECONOMIC PROPOSAL

The Union's proposal is found in its Fact-finding materials, Tab "Union Wage Proposal." It proposes an across the board increase of \$2,000 for each of three years:

\$2,000 effective July 1, 2008

\$2,000 effective July 1, 2009

\$2,000 effective July 1, 2010

It projects the cost for the wage increases to be \$184,000 for the first year; \$368,000 for the second year; and, \$552,000 for the third year [\$1,104,000 total]. Note: the Union's figures do not include the additional roll up costs, which would be in addition to its proposed increases.

The Union argues that their members are already substantially underpaid for the valuable services they provide. It argues that the changes to their health insurance benefits during the past three years (employees' share and higher deductibles) justify the wage increases. The Union argues that the Employer can find enough places to cut wasteful costs to pay for the increases. It suggests that the Employer wastes resources by promoting non bargaining unit employees creating a top-heavy organization; replacing computer equipment that does not need replacing; covering vehicle costs for the director; buying new classroom tables and chairs that are not needed; performing unnecessary floor maintenance; and generally suggests that expenses can be cut in other areas to help fund the wage increases. On a more personal, equitable level, the Union believes that its members are not respected and that any monies for increases should go to them for a change, being the teachers and others who work directly with the children. They believe that some bargaining unit members have left, have not been replaced, and thus the Employer puts more work burdens on those who stay.

CITY'S ECONOMIC PROPOSAL

The City's proposal is found in its Position Statement, page 2. It proposes that:

Effective November 1, 2008, all bargaining unit employees will receive a wage increase of \$500.00, and the wage scale of Appendix 1 will increase by 2.5% for all classifications. The Program will notify the Union within five (5) working days of receipt of any written notification from the grantee regarding qualify funds and/or COLA allocation applicable to fiscal years 2009-2010 and 2010-2011. The parties will then immediately commence negotiations for wage increases for bargaining unit employees for these fiscal years. All negotiated wage increases shall be effective August 1, 2008 or August 1, 2010, unless the parties agree to a different implementation date during the applicable year.

The Employer's figures do not include roll up costs, which would be in addition to its proposed across the board increase.

The Employer argues that it gave the Union an opportunity to have a \$650.00 increase (approximate 3.3% increase) for the current year only, but that the Union did not accept its offer by the October 31, 2008, deadline on which the offer was made. While the Employer confirmed that its administrative personnel received a 3.3% increase, it is now only offering the Union the 2.5% represented by the \$500.00. It further argues that there is no money, except for the two sources of funding (federal and State). In summary, the Employer argues that the federal source did not include a COLA for the most recent year, and that some State slots have gone unfilled so the Employer has the bargaining unit members out soliciting for additional students. Further, the Employer expects a 5% cut in State funding for next biennium. Finally, the Employer said that the Union's members do not understand expenditures for such items as computers, floors, tables, vehicles, *etc.* – that their perceptions are misplaced. The Employer confirmed that funds are not being wasted nor are they being spent inappropriately.

Neither Party furnished any comparables whatsoever. However, specifically as to the teachers, attached is a copy of a SERB Benchmark Report obtained by the Fact-finder following the hearing. It is attached to provide a minimal point of reference. Some basic comparisons that may or may not be accurate (no input from the Parties) are:

Head Teachers	Head Start/Preschool Teachers
CDA \$13.55 – \$16.45	Entry Level \$14.49 – \$24.03
BA \$18.38 – \$20.73	Top Level \$19.64 – \$28.63*

*Interestingly, the top level reported by SERB is for Preschool Teachers at Princeton City Schools, located within Hamilton County.

RECOMMENDATION

Personally, the Fact-finder cannot imagine a more important public function than the early education of Ohio's underprivileged children. This Fact-finder has the highest regard and respect for the bargaining unit members and the critical work they do. For future reference, the Union may wish to consider confirming the identity of the Employer, its financial condition (via

meaningful financial statements), and even related transactions if the Union still perceives that there are unnecessary expenses. (See the discussions above.) However, for purposes of this Report, it is not necessary. The local, state, national, and world economies are collapsing. Obviously, substantial wage increases are not possible – even though they are most likely well deserved. The Employer’s non bargaining staff received an increase of 3.3%. This Fact-finder does not buy the argument that there is not even “\$1.00” available from the County. Finally, the Parties acknowledged that for all prior contracts a wage increase was provided for the first year of the three-year contracts, with reopeners for the second two years.

For these reasons, the Fact-finder recommends that the Parties agree to an across the board increase of \$650.00, being the amount originally offered by the Employer (which the Employer can afford to pay) with the increase effective as of August 1, 2008 (keeping with past practice); and, that the issue of wage increases be reopened for the second and third years of a new contract (keeping with past practice) with any resulting increases being effective as of August 1, 2009, and August 1, 2010 respectively (again, keeping with past practice). Note: the recommended increase of \$650.00 is minimal, and at best will help the bargaining unit members pay their increased medical insurance costs and the costs for their background checks (which is the next issue). Further note: the recommended increase (as originally offered by the Employer) does not include roll ups, as such costs are in addition to the recommended increase -- just as they were implied as additional costs to the Employer’s across the board increase offer. The Fact-finder considered and finds that the City has the ability to pay these increased costs as well.

ISSUE 2: STATE & FEDERAL CRIMINAL BACKGROUND CHECKS – NOT IN CONTRACT

UNION'S ECONOMIC PROPOSAL

The Union’s proposal is found in its Fact-finding materials, Union’s Position Statement. The Union’s proposal is to add paragraph “C” to Article 20 – Health and Safety, as follows:

- C. The employer shall pay the cost of any criminal background check needed to maintain employment at Hamilton County Early Learning Center for all employees.

The Union argues that the criminal background checks are mandated by the state per house Bill 190 (effective November 14, 2007). It proposes that the Employer pay for the checks since they are a condition of employment and necessary to meet program compliance. The Union said that it believed that the Employer has paid for background checks for new hires.

EMPLOYER’S ECONOMIC PROPOSAL

The Employer’s position is that it should not pay the costs for the background checks. It

analogized the checks to licenses that one may need to practice certain trades and professions, *i.e.*, that compliance and costs are the individuals'. The Employer denied having paid for any employee's (new or otherwise) background checks.

RECOMMENDATION

From materials supplied by the Union (Union Fact-finding book, tab "Background Checks") it appears the costs for the background checks are \$22.00 for the Ohio BCI check, and \$24.00 for the FBI report. The materials note that the agency completing the background check can set different prices. Further, the background checks are valid for 365 days, and may be used for seeking other school employment. In better economic times, the obvious recommendation would seem to be that the Employer should pay all of its employees for these relatively minor costs. As discussed above, these are abnormal economic times. The Fact-finder recommends that the Parties agree to the Union's proposal, except that the Employer shall only pay such costs for employees who have been employed by the Employer for at least five (5) years as of the dates the costs are incurred (starting as of July 1, 2008).

ISSUE 3: DURATION – ARTICLE 27 DURATION

UNION'S NON ECONOMIC PROPOSAL

The Union proposes that the contract shall become effective July 1, 2008, and will remain in effect through June 30, 2011. This will be consistent with past practice.

EMPLOYER'S NON ECONOMIC PROPOSAL

While the Employer did not address this issue in its Position Statement, during the hearing it suggested a different effective date for a three year contract.

RECOMMENDATION

The Fact-finder recommends that the Parties agree to the Union's proposal, which will be entirely consistent with past practice, that is, that the agreement be for three years effective July 1, 2008 and to remain in effect through June 30, 2011.

SUMMARY OF FACT-FINDER'S RECOMMENDATIONS

ISSUE 1: WAGES – ARTICLE 25

Recommendation: That the Parties agree to an across the board increase of \$650.00, being the

amount originally offered by the Employer, with the increase effective as of August 1, 2008 (consistent with past practice); and, that the issue of wage increases be reopened for the second and third years of a new contract (keeping with past practice) with any resulting increases being effective as of August 1, 2009, and August 1, 2010 respectively (again, keeping with past practice).

ISSUE 2: STATE & FEDERAL CRIMINAL BACKGROUND CHECKS – NOT IN CONTRACT

Recommendation: That the Parties agree to the Union’s proposal, except that the Employer shall only pay such costs for employees who have been employed by the Employer for at least five (5) years as of the dates the costs are incurred.

ISSUE 3: DURATION – ARTICLE 27 DURATION

Recommendation: That the Parties agree to the Union’s proposal, which is entirely consistent with past practice, that is, that the agreement be for three years effective July 1, 2008 and to remain in effect through June 30, 2011.

Note: the Fact-finder, in preparing this Report and making his Recommendations, considered the Criteria/Factors, the oral presentations made at the Fact-finding Hearing and the supporting documentation submitted by the Parties, even though such may not all be referenced in this Report.

THE FOREGOING RECOMMENDATIONS ARE RESPECTFULLY SUBMITTED to the Parties as a proposed settlement for their interest dispute concerning the terms and conditions of their collective bargaining agreement.

Fact-finder


William M. Slonaker, Sr., JD, MBA, SPHR

State Employment Relations Board Clearinghouse

Benchmark Report

December 02, 2008

Employer	County	Union	Local	Job Title	BU	Pupils	Unit Size	Effective Date	Entry Level	Mid Level	Top Level	Hrs/Day	Days/Year	STP	Step Years
BEACHWOOD CI SCHOOLS	CUYA	AFT	1468	PRESCHOOL TEACHER	T	1,485		09/01/2008	18.50	24.27	26.14		196	15	1
CELINA CI SCHOOLS	MERC	AFSCME 4	457	HEAD START TEACHER	NT	2,800	144	07/01/2008	21.05	23.70	25.89	6.00	145	8	1
DAYTON CI SCHOOLS	MONT	AFSCME 4	155	HEAD START TEACHER	NT	17,054	21	01/01/2006	16.11	18.03	20.42	8.00		10	1
EAST CLEVELAND CI	CUYA	AFSCME 4	181	PRESCHOOL TEACHER	NT	4,700	194	07/01/2008	14.49	17.74	20.18	7.50	192	8	1
PRINCETON CI SCHOOLS	HAMI	OEA	PACE	PRESCHOOL TEACHER	T	5,470	486	07/01/2007	24.03	27.00	28.63			4	
SOUTH-WESTERN CI	FRAN	AFSCME 4	211	PRESCHOOL TEACHER	NT	20,776	922	07/01/2008	15.95	18.88	19.64			10	1
WILLOUGHBY EASTLAKE CI	LAKE	OEA	WECP	PRESCHOOL TEACHER	NT	8,877	152	09/01/2007	16.59	19.24	21.91	7.50	161	11	1

William M. Slonaker, JD, MBA, SPHR

Arbitrator • Mediator

STATE EMPLOYMENT
RELATIONS BOARD

2008 DEC -9 P 1: 29

December 8, 2008

Ms. Dedeon Jackson, Coordinator
SEIU District 1199
1771 E. 30th Street
Cleveland, OH 44144

Mr. J. Michael Fischer, Esq.
1714 West Galbraith Road
Cincinnati, OH 45239-4812

Re: SERB Case No. 08-MED-05-0614
Service Employees International Union/District 1199 & Hamilton County Head Start
Program

Dear Mr. Fischer and Ms. Jackson:

Enclosed please find two copies of the Fact-finding Report for the referenced interest dispute.
Also enclosed is my invoice.

Thank you for selecting me to hear this dispute. Should you have future need for the services of
a Neutral, I would welcome the opportunity to work with you.

Sincerely,

Wm. M. Slonaker, Sr.

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