

**FACT-FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
March 3, 2010**

In the Matter of)
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Columbiana County Board)
Of Developmental Disabilities)
)
And) **08-MED-10-1093**
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Columbiana County Board)
Of Developmental Disabilities)
Employees Association)
(

APPEARANCES

For the Board of Developmental Disabilities
Karrie M. Kalail, Esquire
Britton Smith Peters & Kalail

For the Employees Association
Katherine Boerger, Labor Relations Consultant
Ohio Education Association

Fact-Finder, Marc A. Winters

BACKGROUND

This Fact-Finding involves the Columbiana County Board of Developmental Disabilities, (hereafter referred to as the “Employer”) and the Columbiana County Board of Developmental Disabilities Employees Association, (hereafter referred to as the “Association”).

The Association’s bargaining unit is comprised of approximately 106 full-time, part-time and intermittent employees in the classifications of Clerical Specialist, Secretary I, Custodian, Habilitation Specialist II, Workshop Specialist II, Workshop Specialist I I/Enclave, Food Service Worker, Developmental Specialist, Language Development Specialist (Workshop), Sheltered Workshop Nurse (LPN), Workshop Specialist II/Nurse, Workshop Specialist II/Nurse Substitute, Custodian/Vehicle Operator, Vehicle Operator II, Vehicle Operator I I/Vehicle Operator Aide, Vehicle Operator Aide, Personal Service Assistant, Vehicle Operator II/Workshop Specialist II and Maintenance Repair Worker.

The Columbiana County Board of Developmental Disabilities located in Columbiana County Ohio, services approximately four hundred (400) eligible persons county-wide offering a wide range of education, vocational and habilitation programs and services generated towards increasing the independence and quality of life for these individuals.

There are two (2) other bargaining units employed by the Columbiana County Board of DD; the Robert Bycroft Teachers Education Association (RBEA), teachers and aides in the school age program and the Columbiana County (MR) DD Service and Support Administrators (SSA); both represented by the Ohio Education Association.

In a letter, dated November 30, 2009, the State Employment Relations Board duly appointed Marc A. Winters as Fact-Finder for this matter under the Ohio Administrative Code Rule 4117.

The parties to this fact-finding have had an ongoing bargaining relationship. The most recent collective bargaining agreement between the parties, a three (3) year agreement, expired on December 31, 2008. The parties have met on numerous occasions, beginning in October of 2008, trying to negotiate a successor agreement. Although successful in resolving some issues, the parties, unable to reach an Agreement, declared impasse and proceeded to Fact-Finding.

The parties have a signed extension agreement whereby they have agreed to extend the time period for the issuance of the findings of fact and recommendations of this Fact-Finder.

The Fact-Finding Hearing was conducted on Tuesday February 23, 2010, at the Employer’s Offices, Lisbon, Ohio. The Fact-Finding Hearing began around 10:00 A. M., and was adjourned at approximately 1:15 P. M.

Mediation during the course of Fact-Finding was attempted. Although the mediation, at face value, did not resolve the issues, at that point, it gave this Fact-Finder a thorough understanding of each

parties respective position and helped to explain the differences between the parties so that this Fact-Finder could now write this Report

This Fact-Finder would like to convey his appreciation not only for the courtesy and cooperation given to the Fact-Finder by both parties, but to each other as well.

The Hearing was conducted in accordance with the Ohio Public Employee Bargaining Statue set forth in rule 4117. Rule 4117-9-05 sets forth the criteria this Fact-Finder is to consider in making recommendations. The criteria are:

1. Past collectively bargained agreements, if any.
2. Comparisons 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, given consideration to factors peculiar to the area and classification involved.
3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issue proposed and the effect of the adjustments on the normal standards 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 determining of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

In addition to, the testimony given and the evidence presented, taking into consideration the Ohio Rule 4117 criteria, internal and external parity, this Fact-Finder studies and relies on various Collective Bargaining Agreements, Fact-Finding Reports and Conciliation Awards, as posted online by SERB, in writing this and any Fact-Finding Report.

Any and all items or proposals not previously agreed upon or specifically addressed within this Report are considered to be withdrawn. Any and all items or proposals agreed to and any tentative agreements made prior to the date of this Report, that are not specifically addressed in this Report, are recommended to be incorporated into the new Agreement.

Except as recommended and/or modified below or mentioned above, the provisions of the predecessor agreement are to be incorporated into the new Agreement without modification.

Where this Fact-Finder recommends changes, it may be sufficient to indicate the change only without quoting the exact language of the parties proposals.

The following eleven (11) issues are the issues that were considered during the Fact-Finding Hearing on February 23, 2010.

- Issue No. 1, Article 2, Recognition, Section 2.3 B & C, Definitions.
- Issue No. 2, Article 12, New Section 12.6, E, Background Checks.
- Issue No. 3, Article 17, Christmas Leave.
- Issue No. 4, Article 34, Hours of Work, Section 34.3, Personal Service Assistants.
- Issue No. 5, Article 36, Holidays.
- Issue No. 6, Article 38, Calamity Days.
- Issue No. 7, Article 42, New Article, Supersession.
- Issue No. 8, Article 44, Insurance.
- Issue No. 9, Article 47, Salary.
- Issue No. 10, Article 48, Working Conditions, Section 48.3, B.
- Issue No. 11, Article 48, Working Conditions, Section 48, New Section K.

RECOMMENDATIONS

As a Fact-Finder, I would be remiss in my duties if I did not point out, in this Report, the amount of mistrust that has evolved between this bargaining unit and the Employer over a period of time.

The mistrust, between the parties, is so contentious that, in my opinion, it has poisoned the collective bargaining relationship.

With that said, this Fact-Finder, had conveyed to the parties that they are in serious need of some type of a third party intervention to teach the parties how to work with each other for their own mutual benefit. As a suggestion, only, this Fact-Finder recommended that the parties contact FMCS for their RBO, (Relationship By Objective) training. However, I should point out that there are many relationship building programs out there for them to explore as long as they try to get help somewhere. With a new Superintendent, in place, the timing is ripe for a third party intervention.

The mistrust issue between the parties is also reflected in this Report. The Employer has several issues that would be considered a major revamp from how things are currently conducted under the present Collective Bargaining Agreement. Where, under a different labor/management relationship, this Fact-Finder may have made recommendations on some of the Employer's proposals, to do so now would further injure the parties relationship and the morale of the employees/members.

The following recommendations are a good faith attempt to have both sides accept this Report and end the bargaining for now with hopes they will try to rebuild their relationships before the next round of bargaining begins.

Issue No. 1, Article 2, Recognition, Section 2.3 B & C, Definitions.
Issue No. 4, Article 34, Hours of Work, Section 34.3, Personal Service Assistants.
Issue No. 5, Article 36, Holidays.

Issues 1, 4 & 5 can be discussed together.

Here the Employer has proposed to change the definitions for a full-time employee and a part-time employee. In particular, this change would have more directive effect on the Personal Service Assistants. The Employer has also agreed to grandfather current employees whose wish not to increase their hours.

The Association, although objecting to the Employer's proposals and requesting to maintain current language, has countered with two proposals that would affect the Personal Service Assistants. One by leaving the current definitions alone and increasing the PSA's hours and the second, by having the PSA's receive the same holidays as full-time employees.

The reasoning for the Employer's proposal is twofold. First, they want to have such definitions be more in line with industry standards. Second, the definitions as they are defined now make scheduling the Personal Service Assistants to restrictive.

The Association's opposition is that they are fearful that employees would be working full-time hours without receiving full-time benefits. In addition, the Association believes that the Board will use this type of a sweeping change to ultimately reduce full-time employees to part-time status.

RECOMMENDATION:

This type of change is one that this Fact-Finder has indicated above would, at this time do more harm than good towards the relationship of the parties.

To have employees working together with different definitions of full and part time is hard to overcome in the best of labor/management relationships. To have part-time employees working more hours than similarly situated employees working full-time and the part-time employee not receiving the same benefits as the full-time employee is disastrous.

While, the concept, here, of changing the definitions is probably a correct course for management to follow, the timing is wrong. Communications and trust must, first, be improved between the parties.

Therefore, this Fact-Finder's recommendation on the above three (3) issues is the status quo.

Issue No. 2, Article 12, New Section 12.6, E, Background Checks.

The Association has proposed that the Board reimburse employees for required criminal records checks.

Currently, all new employees are required by the Ohio Revised Code 5126.28G to have fingerprinting and background checks before beginning employment with all costs paid by the Board. The Board, by contract language, covers all costs associated with staff certification and licenses including costs for CDL licenses for bus drivers.

Now experienced employees are being required to have these fingerprinting and background checks in order to drive buses or renew their license to work for the Board. The background checks costs approximately sixty-five dollars (\$65.00) and must be redone with each CDL or license/certification renewal.

Since the Board pays this cost for all new employees, the Association's position is that the same cost be paid for all employees.

RECOMMENDATION:

Since the above costs are normally incurred by most Employers, this Fact-Finder sees no reason for the same not to be true here.

The recommendation is to grant the Association's request.

The recommended language is as follows:

12.6, E, The Board shall reimburse any employee for all costs associated with a required BCI and FBI background check.

Issue No. 3, Article 17, Christmas Leave.

Issue No. 5, Article 36, Holidays.

Once again these two issues can be discussed together.

The Employer has proposed to redesign how the current Christmas Leave days are taken. Currently employees take five (5) paid leave days staggered during the two weeks surrounding Christmas. The Employer would have the employees take three (3) paid leave days during the Christmas period and then add two new holidays during the year, the day after Thanksgiving and an additional day at July 4th.

The Employer's reasoning is to provide essential services to clients so to remain competitive with private providers in the County and to be able to staff a new business venture whereby clients will

manufacture and sell candles. The Board views the Christmas time period as a prime time for the candle sales and that a plant shutdown will compromise the business opportunity.

The Association objects to the altering of the Christmas Leave week and proposes that the current language remain.

The Association's position is that because of the staggering of the two weeks the program is open during Christmas week, except for client attendance. The Association further argues that this time is an optimal time to do maintenance that is more detailed and custodial work that can not be completed at other times, as well as a time for workshop staff to update and complete files. Additionally, the Association contends that employees have to apply for leave and some classifications must schedule their leave away from Christmas recess because there is no staggering of their leave times at the program. The Association suggests there are multiple solutions to reconfiguring Christmas leave so that there would be more staff on site without reducing the leave at Christmas week.

RECOMMENDATION:

This issue is another issue that has divided the bargaining unit and management. The issues by the Employer for being competitive with the private sector and their anticipation of the candle business warrants further consideration from the bargaining unit. However, and once again, with the mistrust that has poisoned the bargaining relationship, now is not the right time make such a change with the employees leave provisions. Further communications between the parties need to take place and should the candle business become a reality it would be a mistake by the bargaining unit not to discuss alternative coverages by their members to help make this venture work for the Board and their clients.

For now this Fact-Finder's recommendation on the above two issues is the status quo.

Issue No. 6, Article 38, Calamity Days.

The Employer has proposed changing the Calamity Days language to provide that employees attend work on calamity days without additional compensation.

The Employer cites that the compensation structure for working on Calamity Days is excessive and restrictive for trying to keep the facility open for clients.

The Association opposes the change in how Calamity Days are compensated and questions the safety of their members coming to work on such days.

RECOMMENDATION:

Based on the evidence presented and the lack of actual situations to show where this language has harmed the employer in the past, the recommendation is for the status quo.

Issue No. 7, Article 42, New Article, Supersession

The Employer proposes eliminating potential confusion between contractual and statutory conflicts in the Collective Bargaining Agreement.

The Employer has proposed new language to clarify the relationship between the parties' collective bargaining agreement and the Ohio Revised Code.

The Employer contends that they only want to ensure all portions of the labor agreement can be given effect and ensure that a negotiated provision not be nullified by external law.

The Union is opposed to the inclusion of the Employers proposal stating that it is a sweeping change and one that they are not sure what the impact may be.

RECOMMENDATION:

The intent of the Employer's proposal is to seek a commitment from the Association that the Association is willing to live by what they have negotiated into their Collective Bargaining Agreement. The intent is fine, however, this Fact-Finder agrees with the Association that the Employer's proposal is such a sweeping change that no-one can predict, at least without more discussion and evidence, what the future ramification may be to either party.

The Employer's proposal preempts numerous sections of the ORC which would also include corresponding Municipal Ordinances and Municipal Civil Service Rules. A lot more discussion needs to take place between the Employer and the Association on this issue before this type of language can be implemented.

It is therefore this Fact-Finder's recommendation that the Employer's proposal be denied for this Report.

Issue No. 8, Article 44, Insurance.

Issue No. 9, Article 47, Salary.

The nature, the dynamics and the costs of these two proposals are so intertwined as such they can be discussed together.

At the Fact-Finding Hearing, the Employer had offered to match the insurance package that was agreed to by the Teacher's Association (a different bargaining unit of this Employer) for this bargaining unit. The insurance package, among other things caps the monthly premium contributions at \$90.00 (family) and \$45.00 (single). However, the insurance package is contingent upon this Association accepting a wage freeze for three years.

The Association wishes to maintain their current language with premium contributions at \$90 and \$45 for family and single coverages.

However, they argue that the members of the Teacher's Association have a much higher salary and work less days for that salary than compared to the members of this bargaining unit and therefore the members of the Teacher's bargaining unit can withstand a wage freeze more easily than this unit.

To that end the Association is proposing a three percent (3%) increase in each year of the new three (3) year agreement. In addition, the Association is proposing that the indexes for Custodians, Vehicle Operators and Intermittents be increased.

The Employer also has a proposal to eliminate step increases.

RECOMMENDATION:

Rising health care costs can adversely and directly contribute to financial problems for any Employer. Employers should attempt to reduce their exposure to the annual rising costs. Although this Employer has not argued an inability to pay more of the premium costs, they do argue that all employees should bear some of the responsibility while the Employer tries to minimize their exposure. On the other hand, these employees have an interest in maintaining their current plan by trying to minimize their burden with respect to increased monthly premiums all the while making a modest wage increase.

This Fact-Finder recognizes the benefits to the Employer by having all employees on the same health care plan and for them to share or pay the same premium amounts. It's much easier to administer, budget and it helps employee morale when each employee for the Employer is subject to the same premium share amounts. Not to mention the cost of the plan should be lower with the increase of employee participants.

While this Fact-Finder believes that the Employer's proposal to be prudent, providing an adequate wage increase to employees who do not make the salary as the Employer's teachers do should also be part of this package. To ask for a freeze is out of the question while asking for a 3% is also too high.

In comparison purposes with the like jurisdictions in and out of Columbiana County and surrounding communities, this bargaining unit is fairly paid and somewhat above the average.

However, with that said, based on the Employer's finances, as provided to this Fact-Finder at the Hearing, there is no dispute that the Employer can afford to give these employees a fair wage increase for the work that they do perform.

This Fact-Finder must balance a fair wage increase for this bargaining unit, taking in account the amount of the premium contribution, along with their needs to remain somewhat competitive within their external comparable market, and with the Employer's need for fiscal responsibility and concerns for internal consistencies and parity.

It is this Fact-Finder's recommendation that the Employer's Health Insurance package as given to the Teacher's Association be adopted with the following modifications to the wage proposal.

Additionally, while speaking to both parties, they each indicated that because of the length of bargaining for this contract both sides would like some time in between this contract and when they begin bargaining for a new Collective Bargaining Agreement. The following wage proposal takes into account the parties wishes for a longer break between bargaining. Hopefully, the parties will attempt to try and work on some relationship building during this time.

Based on the evidence provided, the testimony given and the previous health care discussion with the Employer's need to respond with an adequate wage increase for these employees, this Fact-Finder makes the following recommendation for a wage increase.

Effective for the January 1, 2009 through December 31, 2009 year - \$400.00 sign on bonus.

Effective January 1, 2010:	2% wage increase.
Effective January 1, 2011:	2% wage increase.
Effective January 1, 2012:	2% wage increase.

Step increases will not be eliminated nor will the indexes be increased at this time.

Taking in account the above-discussion on the length of this Agreement.

The recommendation for the duration of this Agreement is:

Effective January 1, 2009 through December 31, 2012.

Issue No. 10, Article 48, Working Conditions, Section 48.3, B.

The Employer has proposed language to allow the Habilitation Manager, under certain conditions to drive a vehicle on a community outing.

The Employer contends that they need this flexibility in the event of an absence or unavailability of the regular driver, or when there is an opportunity to involve more clients and an additional vehicle is needed.

The Employer further contends that they are not interested in eroding bargaining unit work. The Employer's sole intent and focus is to ensure that learning opportunities are not missed and clients are being served. Field trips and social outings are an integral part of the program. These trips increase the independence and quality of life for adult clients.

The Association rejects the Employer's proposal viewing it as another way to reduce the bargaining unit. The Association contends that the Employer caused this problem by not replacing Habilitation Specialist as they retire or resign. As such, the Association is not willing to give up bargaining unit work to the management.

RECOMMENDATION:

Based on the evidence presented and the discussions with this Fact-Finder, the benefits of the Employer's proposal, here, to their adult clients, definitely outweighs the Association's concern with eroding their bargaining unit.

The Employer's intent was to use supervisors to perform this work but have conceded to have only the Habilitation Manager perform this function in sort of emergency or last minute effort so not to cancel the outing.

By recommending this proposal, the Employer, is instructed to use all means possible to schedule an appropriate driver first, to fill the unexpected absence or when an additional vehicle is needed, prior to having the Habilitation Manager do this work. In addition, the Employer will not use this proposal as means to reduce bargaining unit members.

How the Employer utilizes this recommendation will go a long way in having this bargaining unit learn to trust management and the new Superintendent.

Therefore, the Employer's proposal is recommended with the following recommended language:

48.3 Staff Providing community Based Programming

- B Habilitation Specialist II's will be covered under the Board's fleet insurance while transporting clients. In the event that a building does not have a Habilitation Specialist II, a Habilitation Specialist II is absent, unavailable, or more than one vehicle is needed, the Habilitation Manager, with appropriate training, may drive a vehicle on that community outing provided there is no other driver available.

Issue No. 11, Article 48, Working Conditions, Section 48, New Section K.

The Association proposes language which would require a bus aide on all buses.

The Association is concerned that vehicle operators cannot maintain control over a bus or van while attending to the needs of clients. More specifically, when clients need medications or when behavior problems arise.

The Employer rejects this proposal as being unreasonable and unnecessary. The Employer also rejects the idea of imposing staffing standards. The Employer further argues that there are routes where a Aide is not necessary.

RECOMMENDATION:

The Association and the Employer's concerns here are both well taken. While this Fact-Finder cannot impose staffing standards on the Employer or require the Employer to hire additional staff, this Fact-Finder does find that the Association's proposal to have merit. Out of the 18 bus routes only about 3 routes do not have Aides. Currently, there are 15 regular Aides and 5 substitutes.

This Fact-Finder's recommendation is for the Employer to assess the 3 routes without Aides and to look at scheduling in an attempt to cover those 3 routes utilizing the Aides and subs they now have if feasible.

First of importance would be if any of the vehicle operators, driving one of those 3 routes feels they need an Aide to attend the needs of the clients. The Employer may be right. There may very well be a driver whose clients don't need medications or have behavior problems during their transport.

Again, how the Employer assesses this matter could help in the relationship building that is needed between the parties.

Marc A. Winters
Fact-Finder