

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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| In the matter of: |) | |
| |) | |
| WILLIAMS COUNTY BOARD OF |) | |
| MENTAL RETARDATION AND |) | |
| DEVELOPMENTAL DISABILITIES |) | |
| Employer |) | Date of Hearing: |
| |) | June 30, 2009 |
| -and- |) | |
| |) | |
| OHIO ASSOCIATION OF PUBLIC |) | |
| SCHOOL EMPLOYEES (OAPSE) |) | |
| AFSCME LOCAL 4/AFL-CIO |) | |
| |) | |
| |) | |
| |) | |
| Case No. 2008-MED-12-1384 |) | |
| |) | Date of Award: |
| |) | August 3, 2009 |

FACT FINDER'S REPORT AND RECOMMENDATION

APPEARANCES

FOR THE EMPLOYER

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FOR THE UNION

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FACT FINDER

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STATE EMPLOYMENT RELATIONS BOARD [SERB]-(Ohio)

SCOPE OF DUTIES OF THE FACT-FINDING PANEL in accord with
Section 4117 of the Administrative Code

- A. The fact-finding panel shall attempt to mediate the disputes of the parties prior to conducting a fact-finding hearing.
- B. When mediation efforts do not resolve all issues at impasse, the fact-finding panel shall hold an evidential hearing except that the parties may stipulate facts and waive a hearing. For purposes of hearing, the fact-finding panel shall have the power to regulate the time, place, course, and conduct of the hearing, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and request the Board to issue subpoenae to compel attendance of witnesses and the production of books, papers, and records relating to any matter before the fact-finding panel. The fact-finding panel may not choose a hearing location at a cost to the parties unless the parties fail to agree to an alternate cost-free location. Fact-finding hearings are to be held in private.
- C. The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.
- D. The fact-finding panel, in making recommendations, shall take into consideration the following:
 - (1) Past collectively bargained agreements, if any, between the parties.
 - (2) Comparison of unresolved issues relative to the employees in the bargaining unit with the 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, and 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.

A Fact-Finding Hearing was held on Thursday, June 30, 2009 at the Williams County MR/DD facility, known as the Enrichment Center, commencing at approximately 10:30 a.m. The Fact Finder had been selected by the parties and appointed by SERB on May 27th. There was agreement that the fact finding recommendation should be submitted on Thursday, July 30th. The parties agreed to the Fact-Finder's request to extend the deadline to Monday, August 3rd.

Five MR/DD Service and Support Administrators (SSAs) had been certified as a bargaining unit by SERB on October 30, 2008, and selected as their bargaining agent the Ohio Association of Public School Employees (OAPSE/AFSCME Local 4/AFL-CIO). OAPSE had been representing another MR/DD unit, Local 779, for some time. The parties held eight negotiating sessions between January and April 2009, and met for mediation on May 12, 2009. The efforts spent in negotiating and in mediation appear to have borne little fruit, not an unusual result where the parties are negotiating a first contract and the emotions run high.

The unresolved issues were 1) Fair Share Fee; 2) Wages; 3) Vacations; 4) Court Leave; 5) Union Business Leave; 6) Civil Service; 7) Educational Incentives; 8) Duration of Agreement. The parties settled the duration of agreement dispute at the hearing, i.e., Upon Ratification to

June 30, 2012, with wages retroactive to July 1, 2009. The parties also agreed to a zipper clause.

The Fact-Finder trusts that his interpretation and application of OAC 4117 will provide a point of departure for improved relationships and constructive bargaining. Nothing in these recommendations should be considered set in stone.

Fair Share

The most contentious issue in dispute aside from salary was the Union's request for Fair Share, emphasizing that the established 'sister' unit already had such a provision. The Employer argued that it was 1) opposed to granting fair share in a first contract; 2) fair share is a permissive subject of bargaining; 3) it takes away the choice of bargaining unit members not to pay union dues, 4) there are no solid guidelines regarding fair share fee; 5) there are potential legal implications because the courts and SERB have been reluctant to address fair share. The Union asserted that Fair Share costs the Employer nothing. Four of the five employees signed an interest card and voted to unionize, and it is inequitable for one member of the unit for one member of the unit to receive all of the benefits afforded to dues paying members.

Recommendation

The extreme feelings generated by the Fair Share request require

special attention to the bases on which this recommendation was formulated. Fair share should be implemented based on OAC 4117, Sections C, consideration of all reliable information relevant to the issues..., and especially Section D (1) past collectively bargained agreements between the parties; (D) 6, Such other factors...which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures....The sister unit organized by the same union, OAPSE, is as far as the Fact Finder is concerned, a past agreement between the parties. There was an allegation by the Union of the Employer's desire to 'teach a lesson' to those employees who had sought to unionize, which indeed would be shortsighted. This allegation is just that; the Fact Finder credits the Employer advocate with doing his best to represent the agency's interest and perceptions of those interests by those to whom he reports. However, the lack of some semblance of equity between and among the employees of two bargaining units with the same Employer and represented by the same union would be damaging to morale and harmful to the agency's long-range viability and productivity. Engendering negative relationships among co-workers is not in the long range best interest of any organization. Especially in a public agency with such a significant and sensitive service role, hard feelings or informal, internalized grievances on the part of the majority of unit members would

be dispositive of the agency's goals and potentially of its public support.

The language in the current CBA with Local 779, Article 4, Fair Share Fee should be adopted.

Wages/Salary

The Employer sought a two (2) percent increase upon signing, a two (2) percent increase effective the first full pay period closest to the anniversary date of the signing of the agreement, with a similar two (2) percent increase in the third year. The Union sought a four-and-a-half (4 ½) percent increase each of four years, beginning in 2008, a year before this proposed agreement could potentially be signed, arguing that the Employer purposely attempted to deny the five employees in the recently formed unit a raise, or punishing them, while every other MRDD employee received a three (3) percent increase for each of four years, starting in 2008. The Employer advocate pointed out that that Agency would have faced the likelihood of an unfair labor practice charge if it had provided increases to the employees who were at the time seeking to unionize.

The parties' extreme positions, again, reflect the uncertainty and the emotions which complicate relationships during the bargaining of a first agreement. Analysis of the agency's financial status indicates a potential for future dire circumstances. However, it does not indicate, nor did the Employer assert, an inability to pay. Even so, there is increasing

unemployment in Williams County and indeed throughout the region and nationally, plus a strong possibility of funding cuts by the State of Ohio. The State provides an average of nineteen (19) percent of the county MRDD agencies' total budgets. These factors, weighed in the light of unchallenged data provided by the Union that Williams County had a twenty eight-and-a half (28.5) percent unreserved general fund balance in December of 2008, indicate that the present situation is serious but not dire. Not to denigrate the value of prudence and/or preparing for the future, the County at present appears to be in a sound financial condition. In this context it is significant that the Government Finance Officers Association's generalized yardstick for an unreserved general fund balance is in the range of five (5) to ten (10) percent.

Recommendation

Section 1. Employees will receive the following salary increases.

- A. The annual salary of all bargaining unit employees shall be increased by four (4) percent on July 1, 2009.
- B. The annual salary of all bargaining unit employees shall be increased by four (4) percent effective the July 1, 2010.
- C. The annual salary of all bargaining unit employees shall be increased by four (4) percent effective July 1, 2011.

Section 2. Newly hired employees shall receive three percent (3%)

less annual salary than the lowest paid bargaining unit employee for the duration of their probationary period.

Three (3) percent step increases should be granted in/on the same format used in the Local 779 agreement.

Vacation

The Employer language on Vacation is reasonable and should be adopted. It appears to meet the Employer's needs and his right to maintain *regular and predictable scheduling among five employees..*

Court Leave

The Employer language on Court Leave is reasonable and should be adopted.

OAPSE Business Leave

A modified version of the Employer language is recommended.

The modification involves some payment for those on union business leave, thereby recognizing the value to the Employer of union bargaining team members with training in the negotiating process and dispute resolution.

NEW ARTICLE-OAPSE BUSINESS LEAVE

Section 1 – Duly elected or appointed delegates to conventions, conferences, or seminars of the Union who are in the bargaining unit shall be granted time off for the purpose of participating in such conventions and activities. The employee must submit a written request for such time off to the Employer or his designee ten (10) working days prior to the requested date for the leave to begin. Such leave shall be **paid** and shall not exceed a total of five (5) days per calendar year for the bargaining unit

Civil Service

The language in Article 36 of the current agreement with the new unit's sister local 779 is recommended. The comparables do not support the Employer position that specific articles should be excluded. The potential for litigation on these and related issues is recognized, and is ever-present. The possibility of legal action is a 'normal' situation.

Educational Incentives

The Union makes a logical case that the Employer should provide educational incentives. As a career educator in higher education, and from a philosophical viewpoint, the Fact-Finder is in agreement that in a service-oriented agency providing mental health developmental disabilities services to the general public, and paying step increases according to the Local 779 contract in a format recognizing levels of formal education, agency support would be ideal. Nevertheless, in consideration of all potential costs to the Employer stemming from these recommendations, the Employer position is recommended.

The thoroughness, courtesy and professionalism of the advocates as well as the witnesses is appreciated. Hopefully these recommendations will facilitate improved relationships and a productive atmosphere for negotiation and potential agreement.



Donald R. Burkholder
Fact – Finder, August 3, 2009

This report was forwarded to SERB and to the parties by USPS Express Mail at approximately 3:00 p.m. on Monday, August 3, 2009.