

STATE EMPLOYMENT
RELATIONS BOARD

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IN THE MATTER OF IMPASSE X
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BETWEEN X
X
HAMILTON COUNTY DEPARTMENT X
OF JOBS AND FAMILY SERVICES X
X
AND X
X
AMERICAN FEDERATION OF X
STATE, COUNTY, AND MUNICIPAL EMPLOYEES X
(AFSCME) X
OHIO COUNCIL 8 X
LOCAL 1768 X

REPORT OF
THE FACT FINDER

SERB FILE NO.: 2009-MED-02-0117

HEARING: November 18, 2009; Cincinnati, Ohio

FACT FINDER: William C. Heekin

APPEARANCES

For the Employer

David Helm, Labor Relations
Manager, Hamilton County Human Resources

For the Union

Walter Edwards, AFSCME
Staff Representative

ADMINISTRATION

By way of a phone call and email from David Helm on September 22, 2009, the undersigned was informed of his designation to serve as fact finder regarding a successor labor contract, negotiations impasse. On November 18, 2009, and following receipt of pre-hearing submissions, a fact finding hearing went forward. There, testimony as well as document evidence was presented. The record was closed at the conclusion of the hearing and the matter is now ready for the issuance of a fact finding report.

FINDINGS AND RECOMMENDATIONS

This impasse involves a bargaining unit made up of approximately 715 employees of the Hamilton County Department of Jobs and Family Services (“the Employer” or “the JFS”) who are represented by AFSCME Ohio Council 8, Local 1768 (“the Union” or “Local 1768”). Hamilton County, Ohio (“the County”) encompasses an urban/suburban geographic area located in southwestern Ohio that includes Cincinnati, Ohio. Prior to the fact finding hearing, the Employer and the Union (“the Parties”) met a number of times in an effort to finalize a successor collective bargaining agreement (“the Agreement” or “The Labor Contract”). Thus, the remaining unresolved issues are the subject of this fact finding report, where the recommendations contained herein are made in light of the following ORC 4117.14 criteria:

* * *

- Past collectively bargained agreements between the parties;
- Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

- 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.
- The lawful authority of the public employer.
- Any stipulations of the parties.
- 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.

* * *

Accordingly, in addition to the following, it is recommended that all tentatively agreed upon contract provisions be adopted.

1.
APPENDIX B: BARGAINING UNIT PAY SCALE & PAY

Employer position: The Employer proposes two changes. First, that the pay scale be updated to reflect the correct pay range minimum and maximums. Second, in order to avoid further layoffs that the Union forgo the two percent (2%) guarantee if no merit increase is approved for 2010 and 2011, while not eliminating the potential for a merit increase for 2010 or 2011 if approved by the Board of County Commissioners. The Board has approved in its budget a potential merit increase of up to 3%, effective July 1, 2010, if certain “triggers” are met:

1. Reach a minimum of a 6% general fund reserve;
2. Total 2010 general fund revenue through May 30, 2010 projecting over the 2010 approved budget and;
3. Total 2010 general fund revenue expenditures projecting within the 2010 approved funding level through May 30.

Union Position: Five percent (5%) increase as to each year of the Agreement, while maintaining pay for performance.

It is recommended that the Employer's proposal be adopted. Regretfully, this is felt to be justified in light of the severe economic recession that has currently befallen much of the World, the United States, the State of Ohio, and Hamilton County. Accordingly, this recommendation is made against the backdrop of what is now starting to be referred to as "the Great Recession". Indeed it is widely understood to be the worst since the 1930's, where the recovery process seems to have only recently begun. While the length and extent of the recovery is the subject of much debate amongst economists and financial experts, it has severely impacted the JFS budget, where the State of Ohio – the JFS main funding source – has been deeply affected. As a result, in 2008/2009, the bargaining unit was reduced in number from 977 employees to 715 employees by way of attrition, retirement, and layoffs. More particularly, this was due to the most severe funding reduction in JFS history: \$30,000,000 as between fiscal year 2008 and fiscal year 2010. At the same time, this recommendation does not ignore the fact that in many cases the recession has helped to bring about additional work load demands on the individual employee, which extends beyond additional duties being absorbed as a result of this steep reduction in force. Indeed this follows since the mission of JFS is to provide social services to those citizens of Hamilton County in need, which is understood to have been exacerbated as a result of the recession. Finally, as a ray of hope, this recommendation does potentially allow for salary increases in 2010 and 2011 if the aforementioned "triggers" come about.

In the end, this recommendation is felt to be the only option in light of the extreme financial constraints which have been placed on the Employer.

2.
ARTICLE 17: INSURANCE

Employer position: Current language.

Union position: Introduce an employee contribution cap.

It is recommended that the Employer's position be adopted. This follows since employee health insurance is at least in part impacted by the same financial circumstances which surrounds the issue of pay. Accordingly, it is understood that without a "cap" on the employee contribution side, this allows the Employer greater flexibility as it considers what is the best health insurance package to be made available to the largest number of County employees. In acknowledging the Union's valid point regarding the other County's units which also do not have a cap and as to the law enforcement units that do, many of whom are also more highly paid, continuing the "no cap" current language can only be seen as necessary: i.e., in light of these financial circumstances and the current US health insurance, private sector based system.

3.

ARTICLE 3: UNION RIGHTS AND REPRESENTATION

Employer position: Modify Section 3.2 by reducing the number of Union stewards from eight (8) to five (5) and delete the following Section 3.2 language: "The Chief Steward shall be allotted forty (40) hours per work week to represent employees."

Union position: Maintain current language

It is recommended that Article 3 not be modified. While acknowledging the Employer's point as to the cost savings which would be involved, it is basic that the shop steward system plays a key role in the maintenance and furtherance of constructive labor relations between the Parties. At this time of financial crises, which recently has led to a large reduction in force that undoubtedly placed a strain on labor relations, it is not recommended that any part of the current shop steward structure be altered.

4.

ARTICLE 11: LAYOFF & RECALL

Employer position: Modify the current language in a number of areas:

Section 11.1. Whenever the Employer determines that layoff or job abolishment is necessary within either a work Section of classification, the following procedures shall apply:

A. Within the affected work Section or classification, employees will be laid off in inverse order of their seniority.

1. Affected employees shall be allowed to bump into affected or non-affected work Sections or classifications or bump down within their classification series within their division according to seniority, provided the employee has been previously certified by successful completion of probation in the classification series.

2. If an employee is unable to bump as contained above, an affected employee shall have the ability to ~~move~~ transfer into a funded vacancy in another division, provided the Employer intends to fill such vacancy and if the following conditions apply:

- the employee has been previously certified by successful completion of probation in the ~~classification~~ position.
- The employee has held with position within the last three (3) years.
- The funded vacancy is posted during the employee's layoff notification period.

Employees may not bump to a higher rated classification with a higher pay grade.

B. Affected employees and the Union will be given no less than thirty (30) calendar days advance notice of a pending layoff or abolishment.

C. Prior to the layoff effective date, the Union and the Employer agree to meet the negotiate, with the intent of reaching agreement, over the bumping rights, the order of bumping off laid off employees, and the possibility of laid off employees filing vacancies in other divisions. In the event agreement is not reached, the Employer shall implement its last offer. Laid off employees shall not be required to bump, but may at their discretion. ~~Employees may not bump to a higher rate classification with a higher pay grade.~~

D. Employees laid off shall be paid for all earned but unpaid overtime, compensatory time, personal days and vacation (if the employee desires and so requests) in a lump sum, or at the rate of eighty (80) hours per pay period until all earned but unpaid earnings are paid (at the employee's option), or until the employee is recalled to work, whichever occurs first.

E. ~~The Employee will provide upon request two (2) weeks of outplacement services and training to all laid off employees and retirement counseling and assistance to those laid off employees eligible for regular or disability retirement.~~ Employees employed with the agency at least one year prior to the effective date of the layoff, will receive one week of severance pay for each full year of continuous service with the agency. Without a break in service. The minimum is two (2) weeks and the maximum is eight (6) weeks.

Section 11.2. Employees laid off shall be placed on a recall list for a period of eighteen (18) months. If there is a recall, employees shall be recalled in the inverse order of ~~layoff~~ their seniority into the classification the employees were initially laid off from. An employee who ~~accepts a recall~~ exercises his/her displacement right to a lower paid position than the one from which he/she was laid off may claim his/her original position if it becomes available within eighteen (18) months of the original layoff.

Section 11.3. The official notice of recall shall be sent to the employee by certified mail with a copy to the Union. A copy of the official notice of recall shall also be sent to the employee by regular mail. The Employer shall be deemed to have fulfilled its obligations by mailing the recall notice by certified mail, return receipt requested, to the last mailing address provided by the employee. It is the responsibility of the employee to provide the employer with written notification of any change in address, telephone number, or and/or name during his/her lay off period.

Section 11.4. The recalled employee shall have fourteen (14) calendar days following the date of receipt or attempted delivery of the recall notice to notify the Employer of his/her intention to return to work and shall have twenty one (21) calendar days following the receipt or attempted delivery of the recall notice in which to report for duty, unless a different date for returning to work that is later than the above twenty one (21) calendar day period is otherwise specified in the notice. The recall time periods provided or in this Section may be decreased by mutual agreement of the laid off employee and the Employer.

Union position: Delete the word "division" from this article. In addition, extend the Article 11 employee right to recall period from eighteen (18) months to twenty-four (24) months. Also, the Union seeks to extend the recall notification period from twenty-one (21) days to thirty (30) days.

It is recommended that the current language be maintained with one exception: That the Union's position be adopted as to deleting the word "division". This follows since, as the Union

points out, the word “division” does not appear to have a clear meaning in terms of precisely defining employee rights when a layoff and/or recall action becomes necessary as has occurred recently. While it clearly limits an employee’s rights in this vital area of layoff and recall, without a clear purpose for its remaining as well as a precise definition, the undersigned accepts the position of the Union that the word “division” should be deleted

5.

ARTICLE 15: HOURS OF WORK AND OVERTIME

Employer position: Maintain current language with a number of modifications:

Section 15.1. The work schedule of each bargaining unit employee shall be determined by the Employer. The standard workweek for all full time employees covered by the terms and conditions of this Agreement shall be forty (40) hours, exclusive of a fifty-five (45) minutes lunch period per work day. The standard workweek is to be used to calculate overtime and does not constitute a guaranteed workweek. The workweek shall be computed between 12:01 AM on Thursday of each calendar week and 11:59 PM the following Wednesday. Employees working in twenty-four (24) hour facilities will be scheduled in accordance with the provisions of the Fair Labor Standards Act. This Article is intended to be used as the basis for computing overtime and shall not be construed as a guarantee of work per day or week. Overtime shall be defined as being in active pay status for more than forty (40) hours in the workweek. Overtime shall be defined as being in active pay status for more than forty (40) hours in a work week. The term active pay status as used in this Article shall include all hours worked and all hours on vacation leave, holiday leave paid leave of absence, furlough and/or compensatory time off, but shall not include hours on sick leave, disciplinary suspension or any unpaid leave of absence.

Section 15.2. Employees may accumulate up to ~~two hundred (200) hours~~ 100 hours of compensatory time. Compensatory time must be used within 180 days of the pay period in which it was earned or it shall be paid in cash at the current hourly rate. Compensatory time may be used for any reason, so long as the employee requests such time through written request to his immediate supervisor. Request compensatory time may be granted by the immediate supervisor based on the workload of the department or work area. Requests for use of compensatory time shall not be unreasonably denied. During special projects or any situation where an excessive amount of overtime is scheduled, the Employer may require that the employee accept overtime payment instead of compensatory time.

Upon termination, the employee shall be paid for all compensatory time at his/her current hourly rate of pay ~~or his/her average hourly rate for the past three (3)~~

~~years, whichever is higher.~~ Upon death of the employee, accumulated compensatory time shall be paid to the employee's estate.

Section 15.5. An employee called in to work at a time outside his/her regularly scheduled shift, which call-in does not abut his/her regularly scheduled shift, shall be paid a minimum of two (2) hours at time and one half (1 ½) the regular rate of pay. When an employee ~~within the Employer's Foster Care Unit~~ is scheduled to carry a ~~pager~~ phone or other telecommunications device outside of his/her regularly scheduled working hours, the employee shall be paid a one-time nine-dollar (\$9.00) flat fee per day as compensation. Employees shall not be required to carry a ~~pager~~ phone or other telecommunications device on Christmas Day.

Section 15.7 Bargaining Unit employees shall participate in the same Cost Savings (Furlough) Program (authorized by ORC Section 124.393 under the same terms and conditions as the non-represented staff of the JFS.

Union position: While accepting the position of the Employer regarding updating an employee's telecommunications capability as set forth in the latter's proposal to change Section 15.5, it takes the position that, otherwise, the current language of Article 15 should be maintained.

It is recommended that Article 15 remain unchanged with the exception of the two Employer proposed changes to Article 15.5 that is acceptable to the Union. Regarding the Employer's Section 15.7 proposal as to a "Furlough" program, such a program being mutually beneficial was not firmly established in the record.

6.

ARTICLE 22: LEAVE OF ABSENCE

Employer's position: Delete the current Section 22.3, "Military Leave", language and substitute the following:

Bargaining unit employees who are members of the Ohio organized militia or members of other reserve components of the armed forces of the United States, including the Ohio National Guard, shall be entitled to the greater of those military leave benefits as provided in the Hamilton County Board of Commissioners Policy Manual or O.R.C. 5923, 5903 and Section 124.29.

In addition, modify Section 22.4(c.), "Disability Leave", by reducing the amount of unpaid disability leave from eighteen (18) months to twelve (12) months.

Union position: Maintain current language.

It is recommended that the current language of Article 22 remain unchanged.

7.
NEW ARTICLE: DONATED TIME

Employer's position: Not include this new article that is proposed by the Union.

Union's position: Include a new article whereby employees are permitted to donate sick time to other employees who are in need of additional sick time as the result of an extended illness.

It is not recommended that the proposed new "Donated Time" article be adopted at this time. While acknowledging the potential benefit here to all involved, the undersigned acknowledges the concern of the Employer as to its potentially leaving vulnerable those who have donated regarding their own potential need for sick time in the event of an extended illness.



William C. Heekin
January 21, 2010
Cincinnati, Ohio

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January 21, 2010

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Cincinnati, Ohio 45202

RE: SERB Case No.: 09-MED-02-0117: Hamilton County JFS – AFSCME Ohio
Council 8, Local 1768; impasse/factfinding

Gentlemen:

Enclose, please find two (2) copies of the **REPORT OF THE FACT FINDER**. Also,
enclosed is a copy of the INVOICE.

It has been a privilege to have served as fact finder.

Cordially yours,

William C. Heekin

WCH:bwh

enclosure

cc: Mary Laurent (w/enclosure) ✓
(SERB)