

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT FINDERS REPORT

STATE EMPLOYMENT
RELATIONS BOARD

2009 OCT -1 P 12: 06

In the Matter of Fact Finding)	09MED-04-0487
-between-)	
Woodhaven Nursing Home)	
The Employer)	Opinion and Award
-and-)	of
Service Employees International Union District 11199)	Daniel L. Merritt Esq.
The Union)	
_____)	29 September 2009

BACKGROUND

The Woodlawn Nursing Home, herein called the "County" or "Employer" or the Service Employees International Union District 11199 herein called the "Union" or "Employees" are the parties involved in the current labor dispute. The bargaining unit consists of approximately seventy two full and part time employees. The positions include state tested Nursing Assistants, Non State Tested Nursing Assistants, General Aides, Restorative Aides, Dietary, Housekeeping and Laundry, Seamstress employees. The employees provide health care and custodial services for the residents of Woodhaven Nursing Home.

The current Collective Bargaining Agreement expired on 30 June 2009. The parties met at least four times to resolve their bargaining issue differences but were unable to reach agreement on key issues. On 31 July 2009 the State Employment Relations Board appointed Daniel L. Merritt Esq. as the impartial Fact Finder in compliance with Ohio Revised Code 4417.14 (c)(3).

A mediation and fact finding hearing was scheduled for 2 September 2009. A Fact Finding was conducted. The parties reached Tentative Agreement (TA) on a number of issues before the Fact Finding Session. These TA's are to be incorporated into the final agreement.

The following issues remaining to be resolved included; Article 3 PROBATIONARY PERIOD; ARTICLE 6 CHECK OFF DUES; ARTICLE 18 LAYOFFS; ARTICLE 25 HOLIDAYS; ARTICLE 26 VACATION; ARTICLE 30 WAGES, APPENDIX (A) FAMILY AND MEDICAL LEAVE ACT OF 1993.

The parties presented documentary evidence to support their respective position on each issue. The Fact Finder considered all statements and documentary evidence submitted by the parties in reaching the conclusions and recommendations stated below. The Fact Finder also considered the criteria listed in rule 4117-9-05 (K) of the State Employment Relations Board. The following statutory criteria serve as guidelines:

The Fact Finder in making recommendations shall take into consideration all reliable information relevant to the issues, including, but not limited to:

1. Past collective bargaining agreements, if any, between the parties;

Deb Walker	STNA Service Employees International Union
Katrina Morris	Housekeeping Service Employees International Union
Amber Bankey	Housekeeping Service Employees International Union

ISSUES AND CONSIDERATIONS

ARTICLE 3 PROBATIONARY PERIOD

Union Position

The Union proposed that current contract language be retained.

Employer's Position

The Employer proposed to change all 120 day periods to 180 day periods.

Discussion

The parties reached tentative agreement at the hearing whereby the Employer can extend the initial probationary period for up to thirty 30 days with notification to the Union. The specific language is contained in the Tentative Agreement signed by the parties and is incorporated into this report by reference.

Recommendation

The parties' tentative agreement should become part of the final Collective Bargaining Agreement.

ARTICLE 6 CHECK-OFF DUES

Union Position

The Union proposed that a voluntary Political Action Committee check off deduction for all bargaining unit employees be added to the check off list. The Union asserted that almost one half of the bargaining unit employees have signed cards authorizing the deduction. The Union further asserted that the deduction is in line with the approximately sixteen deductions already approved for employees. (See U.E. #1 and U.E. #2)

Employer Position

The Employer proposed that the current contract language be retained. The Employer rejected the assertion that deductions for a Political Action Committee were comparable to the deductions already approved.

Discussion

The current deductions focus mainly upon the individuals financial or health payments. Monies are collected for taxes, pensions, savings and health insurance of various sorts. A charitable contribution deduction is included for United Way. The Political Action Committee deduction proposed is definitely not comparable to the current approved deductions.

Recommendation

The Fact Finder recommends that the current contract language be retained

ARTICLE 18 LAYOFFS

Union Position

The Union proposed that current Collective Bargaining Agreement language be retained. Further the Union stated that if a recalled employee “must demonstrate to management’s satisfaction that the employee has the ability to perform all aspects of the current job description then adequate retraining must be provided to meet the specifics of the job changes.

Employer Position

The Employer proposed to add the following language “If the workforce needs to be reduced it may be accomplished by layoffs and/or individual hourly reductions of full time employees. This however shall not limit the right of the Home to maintain or create part-time positions.” In addition the Employer would add “Any individual recalled must demonstrate to management satisfaction the ability to perform all aspects of the current job description.” (See Emp. Ex. 1-9)

Discussion

The proposed changes suggested by the Employer are drastic for it would change the Layoff Article to a reduction of hours for full time employees. Further it would add a testing and monitoring activity to all recalled employees. This was described as “draconian” changes and the instant Fact Finder agrees. The current economic news has been better and does not support such a drastic severe change.

Recommendation

The Fact Finder recommends that the current Collective Bargaining Agreement language be retained.

ARTICLE 25 HOLIDAYS

Union Position

The Union has proposed that part-time employees be paid four (4) hours per holiday for five (5) holidays in exchange for other concessions regarding retaining holiday pay for part time employees.

Employer Position

The Employer would change Section 3B to delete "An employee and add "A full time employee..."

The Employer would also delete Section 4 which would eliminate all holiday pay for part-time employees (see Emp. Ex. 10-13)

Discussion

The Employer proposal is another draconian step that would eliminate another major benefit. The Union recognized that the County is going through an economic strain and offered a reasonable alternative. The Union proposed to cut in half the number of holidays for part time workers. Hopefully such an action will help reduce cost and aid the County as we all move out of the depths of the severe economic recession.

Recommendation

The Fact Finder recommends that Section 4 be changed to “Part time employees shall be paid four (4) hours holiday pay at regular rate for five (5) holidays regardless of their normally scheduled hours of work.” The rest of the ARTICLE 25 language is retained.

ARTICLE 26 VACATION

Union Position

The Union proposed that current contract language be retained. The part time employees currently receive vacation benefits that are prorated.

Employer Position

The Employer proposed that Section 6 of ARTICLE 26 VACATION be deleted. The Employer desired to reduce operating costs.

Discussion

The elimination of another part-time employee benefit would not generate the high economic windfall sought by the Employer. Many benefits were put in place to attract and retain the best trained and supportive staff members and others at Woodhaven. The benefits may have to go if we reach the depression stage but we are not there at this time. Indeed the forecast for the economy is more positive.

Recommendation

The Fact Finder recommends that the current contract language of ARTICLE 26 VACATION be retained.

ARTICLE 30 WAGES

Union Position

The Union proposed that the employees receive no increase in wages in 2009 and that wage reopeners be provided for 2010 and 2011. The wage freeze was offered to maintain current Collective Bargaining Agreement benefits for vacations and holidays. The Union also proposed that the "Me Too" wage provision be retained.

Employer Position

The Employer proposed that the employees receive a two percent (2%) wage increase in 2009 and wage reopeners in 2010 and 2011. The two percent wage increase was related to Union concessions in layoff, holiday pay and vacation pay.

The Employer also proposed that the "Me Too" wage provision be deleted.

Discussion

The wage increase of two percent is a significant wage amount to forgo at this time but it is also a critical and significant economic cushion for the Employer at this crucial time. The Union offer of a wage freeze should be accepted and taken together with the other part both parties agreed to namely reopeners. The reopeners provide time for both sides to experience and assess economic recovery act accordingly in a responsible manner. The Me Too provision should be reconsidered in the reopener.

Recommendation

The Fact Finder recommends that employees be given no increase in salary for 2009. The wage freeze in 2009 shall be followed by wage reopeners for 2010 and another wage reopener for 2011.

The "Me Too" provision shall be retained for 2009 but subject to reopener negotiation in 2010 and reopener negotiations in 2011.

APPENDIX A

Your Rights Under the Family & Medical Leave Act of 1993

Union Position

The Union proposed maintaining and updating all appendices. The Union would retain Appendix (A) FMLA.

Employer Position

The Employer would delete Appendix (A) FMLA.

Discussion

The parties reached a Tentative Agreement concerning Appendix A Family and Medical Leave Act of 1993. The TA reached at the hearing and the specific language of the signed agreement is hereby noted and incorporated into this report by reference.

Recommendation

The Tentative Agreement signed by the parties shall be incorporated into the final Collective Bargaining Agreement.

The Fact Finder in reaching the above conclusions and recommendations carefully considered the statements of the parties, exhibits and other documents submitted in support of their respective positions of the parties.

Entered this day
29 September 2009
Sylvania, Ohio



Daniel L. Merritt Esquire
Neutral Fact Finder

