

STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

IN THE MATTER OF
FACT-FINDING BETWEEN

2010 DEC 10 P 2:48

CLERMONT COUNTY COMMISSIONERS
(Department of Job and Family Services)

CASE NO: 09-MED-10-1197

AND

OHIO COUNCIL 8, AFSCME LOCAL 3536

FACT-FINDING REPORT

HEARING

Hearing Date: November 12, 2010
Report Issued: December 9, 2010
Hearing Location: 2400 Clermont Center Drive, 706D
Batavia, OH 45130

Employer Representative: Mr. Paul R. Berninger, Esq.
Wood & Lamping, LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202-2491

Other Employer Participants: Mr. Michael R. Pride, Director
Ms. Sandra Tahat, HR Administrator

Union Representative: Mr. Walter J. Edwards, Staff Representative
Ohio Council 8 American Federation of State,
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1213 Tennessee Avenue
Cincinnati, OH 45229-1097

Other Union Participants: Mr. Mark C. Wolf, President
Jamie Schutte, Union Member

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

APPOINTMENT

This Fact-finder was appointed by letter dated September 1, 2010, 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 Thursday, December 9, 2010. Accordingly, the Fact-finder scheduled and conducted the Fact-finding Hearings 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 be recommended by this Fact-finder.
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, the Findings of Fact and Recommendations presented in this Report are based on reliable information relevant to the issues before the Fact-finder. In making recommendations, Fact-finders 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 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 – THE PARTIES AND THE ECONOMY

The bargaining unit consists of approximately 142 employees. The numerous job classifications are identified in Appendix A of the parties' Agreement which expired on December 31, 2009. The classifications are generally divided into the following series: Income Maintenance (6), Social Services (7), Clerical (9), Typing/Data Processing (9), Investigation (3), and Employment Services (2).

The Clermont County Department of Job and Family Services (“Department”) is a triple combined agency that provides a broad range of services to the Clermont community including Child Support Enforcement; Children's Protective Services; Adult, Child and Family Stability Programs (e.g., Medicaid, Food Stamps); and the Workforce Programs (e.g., Ohio Works First, Workforce Investment Act and others). The Department is a county, state, and federally supported agency responsible for basic financial, medical and social services to ensure that the basic needs of Clermont County citizens are met.

The parties negotiated throughout January, February and March 2010. They participated in two mediation sessions using a SERB mediator a couple of months ago. A brief attempt to resume mediation was made prior to the start of the Hearing, but both parties agreed that it would not succeed. The Hearing was convened. The following issues identified by the Parties in their Pre-hearing Position Statements and during the Fact-finding Hearing remained unresolved at the conclusion of the Hearing – excepting, two issues were withdrawn at the Hearing and both Parties stated that the provisions would remain as provided in the prior contract language: Article 18 Sick Leave and Article 25 Health Insurance.

The Parties agreed that they tentatively agreed to maintain current contract language in all Articles 1 through and including 39 – except those in issue during the Hearing, to wit: Articles 2 (Dues Deduction), 4 (No Discrimination), 15.5 (Vacation and Holidays), 29 (Wages), and 40(Terms of Agreement). The Employer withdrew all of the proposals it made prior to the submission of its Pre-Hearing Statement – except concerning wages.

Collective bargaining is an ongoing process that develops and matures through the years, through successive collective bargaining agreements, and perhaps most importantly, through the daily interactions between the members of the bargaining unit and members of management. The Preamble to the parties’ Agreement states in part: “The intent of this Agreement is to engender a spirit of cooperation so that both parties together may work to better service the citizens of Clermont County.” Difficult times, like now, require the best working relationship possible for the benefit of all of their various respective stakeholders.

ISSUES

ISSUE 1: ARTICLE 2: DUES DEDUCTION

UNION'S ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Union proposes that all employees working in bargaining unit positions should pay their fair share fee. The Union proposes the following language:

Section 2.3 Fair Share Fee

Effective January 1, 2010, all employees in the bargaining unit who are not members in good standing of the Union shall pay a fair share fee to the Union. All employees hired after January 1, 2010, who do not become members in good

standing of the Union shall pay a fair share fee to the Union effective the employee's date of hire. The bi-weekly fair share fee amount shall be certified to the Employer by AFSCME Ohio Council 8. The deduction of the fair share fee from the earnings of the employee shall be automatic and does not require a written authorization for payroll deduction. Payment of the fair share fee to the Union shall be made in the amount as dues.

Payment to the Union of the fair share fee shall be made in accordance with the regular dues deduction as provided in Section 2.1 of this Article.

The Union has to follow mandated collective bargaining laws when negotiating contracts. Negotiating contracts includes negotiation for all bargaining unit positions; and all bargaining unit positions are represented by the Union, regardless of whether or not a bargaining unit member is a dues-paying member of the Union. Some people chose not to belong to a union for religious reasons or personal preference. Council 8 and the Local have been paying the costs related to all members of the bargaining unit. The Union has been seeking fair share for at least the past 15 years. When there is a successful contract negotiation, all the bargaining unit members benefit. The Union noted that they invest considerable time in matters pertaining to non-dues paying employees.

The following jurisdictions in Clermont County have fair share fees: Union Township, Correctional Officers, and the Deputy Sheriffs. Additional nearby examples include: Hamilton County JFS, Dayton Municipal Court, Butler County Metropolitan Housing Authority, and the cities of Wyoming, Cheviot, and Reading. (The Union submitted pertinent copies from the respective contracts.) Paying one's fair share is a generally accepted concept, and the Union's request is not unique.

The Union noted that 2008 was the last year for a pay raise – but not for increases to the bargaining unit members' share of health insurance costs. The Union reported that some have said that they support the Union, but have stopped paying dues to help fund their rising costs for insurance premiums.

EMPLOYER'S POSITION AND ITS ARGUMENTS

The Employer proposes no change to the language in Article 2 of the prior Agreement. The Employer is opposed to requiring non-Union employees to pay money to the Union. Currently, (based on October 2010 payroll records) fewer than 20% (28 of 142) of the unit members have authorized dues deduction. The Employer acknowledges that there could be other members paying dues without a deduction, but any significant number is highly unlikely. The Employer assumes that the 80% who have not authorized dues deduction do not wish to pay money to the Union. Mandating a fair share fee payment to the Union at a time when there will be no wage increase would result in less take-home pay for those employees and alienation toward the Employer.

Union membership has declined approximately 5% during the past year. The financial impact can be summarized as follows:

Average bargaining unit member salary is \$17.00 per hour
Dues are \$17.29 per pay period; or \$34.58 per month; or \$414.96 per year

Fair share would equate to an average salary reduction of 1.26% for a majority of members.

If membership were about 80% then the Employer may support fair share. Such is the case with the County's deputy sheriffs. However, in this "rural, conservative" county there is very little support for the labor movement in general. There is no political interest whatsoever in fair share fee. From a purely political standpoint there would be almost no reason why the Commissioners would approve a contract. (In the Sheriff's Office, the Sheriff is the employer, not the Commission.) Fair share is not fair to the bargaining unit members. Fair share may cause a petition to remove the Union. The consequences of increases to employees' share of health insurance costs have been the same for all County employees – excepting a conciliator imposed a cap on the share paid by the deputy sheriffs. (Note: in 2009 the County waived one month of employee contributions for all employees.)

RECOMMENDATION

Dues, including fair share, is one of the foundation stones for a union to effectively represent both its dues-paying members and all other members of the bargaining unit. Asking a union to perform its duties without a reliable source of funding from its beneficiaries is analogous to asking a county or other governmental entity to meet its service obligations with funding totally reliant on residents/citizens voluntarily choosing to contribute and then following through by voluntarily mailing a check. The current situation is similar to an "unfunded mandate." The need for the Union's funding is most critical during these challenging economic conditions. Without funding, the recognition of this bargaining unit becomes a slight of hand – "yes" you (employees) can collectively bargain with your employer, but "no" you cannot have the resources to effectively bargain through your chosen representative. ORC 4117.09 provides that a collective bargaining contract may provide for fair share.

The cost to bargaining unit members of their fair share may well be worth the investment as the Union continues to represent them during and after what some are calling the "Great Recession." This is analogous to the cumulative increases to the bargaining unit members' "fair share" of health insurance premiums passed along to them by the Employer. Ultimately, there is a fundamental question for both the dues-paying and the non-dues paying members of the bargaining unit. The question goes to the very essence of the nature of collective bargaining. The question is, During these extraordinarily difficult times, do you want to stand by yourself and negotiate individually with your Employer (*i.e.*, no union); or, do you want to stand as part of the 142 employees and collectively negotiate with your Employer (*i.e.*, the Union)? As noted from the Preamble, hopefully all employees and the Employer will resolve issues in the "spirit of cooperation so that both parties together may work to better service the citizens of Clermont County."

For these reasons, the Fact-finder recommends that the Parties agree to fair share as part of Article 2, Section 2.3 as proposed by the Union – excepting that the commencement date be

January 1, 2011.

ISSUE 2: ARTICLE 4: NO DISCRIMINATION

UNION'S NON-ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Union proposes that Section 4.1 be replaced with the following language:

The Employer and the Union agree that there shall be no discrimination against any employee on account of race, color, religion, sex, national origin, age, disability, gender identity, genetic information, military status, sexual orientation, union membership or activity, or ancestry.

Section 4.1 currently protects the following bases: “sex, race, handicap, age, religion, national origin or union membership.” Thus, the Union’s proposal would add the following bases for protection from employment discrimination: color, gender identity, genetic information, military status, sexual orientation, [union membership] or activity, and ancestry. All bargaining unit members should be protected.

EMPLOYER’S POSITION AND ITS ARGUMENTS

The Union’s proposal adds to the classes of protected persons, groups who are not protected under current state and federal law. Persons with specific gender identity, genetic codes, and sexual orientation are not protected classes under most state laws or general federal laws prohibiting discrimination. If the law raises a group of people into a protected class, the County would likely amend the non discrimination clause. But until the state or federal legislatures do that, the County does not want to amend the Article because there is no body of law setting the standards. A contract provision for non discrimination requires standards to determine what is or is not employment discrimination. While there are some provisions in some contracts and different protections in some states, in general the County will abide by the law. Further, if the Union can cite a circumstance where the Department discriminated against someone because of the additional bases proposed by the Union, then the Employer will discuss a change. There is no need to change Article 4 unless there is evidence of adverse actions in a pattern of discrimination against a class – not just because something happened to an individual employee. Just because something might happen is no reason to put it into a labor contract. There are no problems here about which the Employer is aware.

Regardless, neither the County nor the Department discriminates on the basis of anything. There is no one who thinks that there should be any employment discrimination on any basis. Intelligent management should only deal with employees on the basis of their performance. The Union’s proposal would not make any difference on how the Department operates. Adding additional bases for protection will only expose the Employer to one more challenge or charge that the Employer does not need.

RECOMMENDATION

Essentially, the Employer's position is that if the law does not require including a basis for protection against employment discrimination, then it is not necessary. Since when do we gauge all that *should* or *should not* be done by what is required by the law? Thomas Paine, a Founding Father of the United States, noted that, "*Law is insufficient because it does not inspire human excellence.*" Law is the bottom floor for ethical conduct, that is, typically it is unethical to violate the law. Sexual orientation in the U.S. has long been and continues as a basis for discrimination in the workplace. That's why: "[T]wenty state laws and the District of Columbia . . . hundreds of local ordinances, and thousands of workplaces, including nearly 90 percent of Fortune 500 companies, include it as part of their employment discrimination laws and policies . . ." (*Employment Law for Business*, 6th ed., Bennett-Alexander & Hartman, 2009, McGraw-Hill Irwin, p. 463)

An organization's social responsibility includes not only doing no harm, but to go further and help prevent harm if it reasonably can. Estimates of the population of gay and lesbian adults in the U.S. typically range up to as many as 10%. "In Ohio's capital city, gay men, lesbians and bisexuals make up about 6.7 percent of the population of about 750,000, according to a 2006 study by the UCLA School of Law's Williams Institute. That's a far cry from more than 10 percent in San Francisco, Atlanta, Boston, Minneapolis and Seattle, but it's higher than most Midwestern Cities." (*The New York Times*, "Hello, Columbus," November 21, 2010, p. 70) According to *Diversity Inc.* magazine, between 15 to 16 million adult Americans, which translates to at least 6 percent of the U.S. population, identify themselves as lesbian, gay, bisexual or transgender, but many estimate the actual percentage to be about 10 percent." (*American Agent & Broker*, "Market to LGBT community," July 1, 2010, p. 50) It seems highly likely that the Department's workforce, and the bargaining unit, include persons with a sexual orientation other than that of heterosexual. It seems only prudent to formally acknowledge and reassure these employees by providing that employment decisions and workplace activities will not discriminate on the basis of sexual orientation. Such a provision will also discourage those in the workplace who may be inclined to discriminate against subordinates or co-workers on the basis of sexual orientation.

There is a serious flaw in the Employer's suggestion to wait until a complaint or until pattern of discrimination complaints occur in the Department. Most perceptions of employment discrimination (on any basis) are never reported to anyone – internally or externally. For example, estimates of perceptions of sexual harassment that go unreported are as high as 95%. There are many plausible explanations; however the primary one seems to be fear of retaliation. For example, 47% of women who report workplace sexual harassment to anyone in authority can expect to suffer an adverse action in retaliation.

Regarding "military status," who can legitimately object to formally acknowledging and reassuring employees who are or were in the military that the Employer will not condone discrimination in its workplace on the basis of military status? It should be added.

Regarding adding "color," both federal law and Ohio's anti-discrimination law protect on this basis, and it should be added. (Personally, this Fact-finder believes that "color" is already protected under the bases of "race" and "national origin.")

Regarding “ancestry,” the basis “national origin” and in some situations the basis “race” should cover discrimination based on “ancestry.” Thus, this basis need not be added.

Regarding, “gender identity” and “genetic information,” both are important bases and undoubtedly can be the motivation for employment discrimination. However, they are best left to future negotiations when the Union might consider providing a stronger foundation for addition of one or both of these bases to Article 4. Further, based on the Employer’s argument, should an instance arise in the workplace then presumably the Employer will reconsider the merits of adding these bases.

In summary, the recommendation is that the following bases be added to Article 4 – No Discrimination; Section 4.1: sexual orientation, military status, and color; but, that the following *not* be added: gender identity and genetic information.

ISSUE 3: ARTICLE 15: VACATION AND HOLIDAYS

UNION'S ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Union believes that employees should be given two additional paid days off (Christmas Eve day and each employee’s birthday) because of the increase in the workload. There are fewer employees to do the work and the case load has increased. Allowing two additional days off will help employees reduce stress or prevent stress while on the job. However, upon clarification, the Union acknowledged the Employer’s practice that even though an employee previously requested vacation time for Christmas Eve, if the Commissioners call and authorize all employees to leave at noon, then that half-day is not charged against vacation time.

EMPLOYER’S POSITION AND ITS ARGUMENTS

The Employer currently recognizes ten holidays. There is no reason to grant more paid time off when the Department is operating with fewer employees handling more work. While ten, and sometimes more, holidays are common in the public sector, few private sector employees enjoy such a benefit. There is virtually no support among taxpayers to grant more benefits to public employees.

The Employer acknowledged the increased workload, which on the positive side means the County cannot layoff Department employees due to the increased demand for social services prompted by the current economic distress being experienced by many residents of the County. On the negative side, the County cannot layoff Department employees to pay for a wage increase.

Already the Employer observes ten holidays and there is no reason for more paid time off. These employees receive more holidays than do private sector employees. The Employer submitted numerous articles regarding public employees locally and across the U.S. Admittedly, public employees engaged in public service work (as are these employees) are at or near the bottom of public employees in general. Perceptions by the general public are primarily concerned with the wages of safety services and other high level positions. There is a national reaction against the

cost of public employment. Thus, this is not the time to be adding to the cost structure of public employment. The Employer will not give its employees more time off. This agency has to consider how to continue on with the work it is doing. Thus far, the Employer has not cut benefits – but that time may come.

RECOMMENDATION

In light of the Employer’s disclosure that it treats all county employees the same when it comes to Christmas Eve (i.e., not charging vacation time if the Commissioners permit an early dismissal) the recommendation is that this economic proposal not be adopted. For many of the same reasons discussed below in relation to wages, this is not the time to be expanding benefits. The Employer correctly points out that the bargaining unit members have a good number of holidays (10). The recommendation is also that the Union’s proposal that each bargaining unit member’s birthday be added to the list not be adopted.

ISSUE 4: ARTICLE 29: WAGES

UNION'S ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Union proposes a 4.5% wage increase per each year of the Agreement to help offset increases in the employees’ health insurance rates. By letter of October 7, 2010, Mr. Pride notified the Union that the bargaining unit members’ share of health insurance premiums will increase on January 1, 2011 as follows:

Increase to Employee				
	Single		Family	
	per pay period (24)	per year	per pay period (24)	per year
NPOS 1	11.35	272.40	9.86	236.64
NPOS 2	10.19	244.56	6.61	158.64

The Union referred to what they perceived to be new hires by the Employer – “Contract Manager” fulltime, \$20.94/hr. The Union cited a May 17, 2010 press release by the Commission as follows:

Due to stronger than anticipated revenues during the first half of the year, Clermont County government employees will not face furloughs in 2010. * * * but our revenues continue to decrease. * * * We need to bring our expenses in line with our revenues. The county has cut \$8 million from the budget between 2008 and the planned 2011 budget, based on revenue reductions. * * * Clermont County Administrator Dave Spinney said that in spite of the reprieve from furloughs this year, departments have been instructed to make additional budget cuts of 2.6 percent for 2011.

The Union referred to the record of a Commissioners’ regular session of 06/02/10 noting that Ms. Hopper received the position of “Fiscal Support Coordinator and Mr. Van Winkle received the

position of Systems Analyst 2 as evidence that the County has funds for payroll.

EMPLOYER’S POSITION AND ITS ARGUMENTS

The Employer’s proposal is no wage increases for two years (2010 and 2011). The Union’s proposed 13.5% wage increase over three years is ludicrous. The unemployment rate in Clermont County stands at 9.2%. There is virtually no inflation and even a concern at the federal level of deflation. Bargaining unit members are paid at a comparable or better rate than their counterparts in neighboring counties.

There is no money for a wage or benefit increase. The Employer’s administrative budget is funded with approximately 90% federal and state dollars. The State of Ohio, which has been contending for several years with its own economic crisis, now faces a \$6 to \$8 billion deficit. Because of the State’s crisis, the Employer’s administrative budget (that which supports almost all employee costs) was cut from almost \$16 million in FY 2006 to slightly more than \$10 million in FY 2011 – a cumulative cut of about 35%. During that same period, the bargaining unit members in the Department received raises of 2% (2007) and 3% (2008). The non-represented employees received almost the same. It is virtually certain that the Employer will not receive any additional administrative funds in FY 2012 (commencing July 1, 2011) and it is highly likely that those funds will be reduced.

The Employer submitted information regarding the wage provisions contained in the contract between The State of Ohio and the Ohio Civil Service Employees Association, AFSCME Local 11 (4/15/09 – 2/29/2012). It provides:

Section 36.02 – General Wage Increase

There shall be no general wage increase for the duration of this Agreement.

The Employer submitted copies from contracts of Job and Family Services departments in the region (Montgomery, Hamilton, Butler, Greene). The wage rates are very comparable. The Employer is not suggesting comparison to two counties (Brown, Adams) to the east of Clermont because the wage rates are significantly lower and would substantially reduce averages. Clermont is larger, closer, and more comparable to the four counties. Further, Montgomery and Butler counties have wage and step freezes through at least 2011.

The Employer submitted the following wage and staffing histories for the bargaining unit:

WAGE ADJUSTMENT HISTORY

YEAR	AFSCME BARGAINING (COLA, Step Increase ¹ , Longevity ²)	NON-BARGAINING (Merit Pay)
2011		0% budgeted
2010		0%
2009	0% COLA No Steps/Longevity 28 hours furlough ³	0% 28 hours furlough ³
2008	3% COLA	2.96% average

	3% average Step Increase Longevity Increase	
2007	2% COLA 3% average Step Increase Longevity Increase	2.85% average
2006	3% COLA 3% average Step Increase Longevity Increase	2.90% average
2005	2.5% COLA +.5% lump sum payment 3% average Step Increase Longevity Increase	2.62% average

¹Step increase – for eligible employees not at the maximum rate of pay on the pay scale

²Longevity Pay – for eligible employees hired prior to June 19, 2003. Rates vary by pay range and years of service.

³80 hours mandatory furlough to be served from September 2009-June 2010 [*served only 28 hrs in 2009 due to other cost saving initiatives; management rescinded mandate*]

DJFS STAFFING LEVEL HISTORY

2007 239 full-time equivalent positions:
76.5 (32%) Non-Bargaining
162.5 (68%) Bargaining

2010 221.5 full-time equivalent positions:
72 (33%) Non-Bargaining
149.5 (67%) Bargaining

Total Positions Abolished/Vacant¹:
30.5 full-time equivalent positions:
8.5 (11.5%) Non-Bargaining²
22 (14.5%) Bargaining

¹No employees laid off

²Includes Assistant Director position

Non-represented county employees, including those of the JFS Department, did not receive a pay increase in 2009 or 2010. None is budgeted for 2011. Extending the current wage schedule for at least one more year keeps the bargaining unit members in the same position as are those persons who supervise them. Through the use of furloughs and staff reductions through attrition, the Employer has not had to impose any layoffs.

As to the increases in employees' share of health insurance premiums, the Employer characterized them as not being significant. Generally, employees are paying more for health care and will likely continue to pay more in the future. Public employees in general remain the prime beneficiaries of health care insurance with better benefits and at lower costs than for private sector employees. Nationwide there is a reaction against the wages and benefits of public employees. That is the current political picture. There are no people running for elected office, or who just got elected, or who are holding elected office who are going to waive the flag to give increases in pay or benefits to public employees. We have to recognize the political realm.

The Employer submitted the following financial information:

**CLERMONT COUNTY DJFS Total Administrative Budgets
w/o WIA and IV-E Reimbursements**

SFY	Total Allocations	Annual Reductions	Cumulative Reductions	Cumulative Percentage Reductions
2006 7-1-05 / 6-30-06	15,878,364			
2007 7-1-06 / 6-30-07	15,066,304	-812,060	-812,060	-5.11
2008 7-1-07 / 6-30-08	13,850,608	-1,215,696	-2,027,756	-12.77
2009 7-1-08 / 6-30-09	12,703,274	-1,147,334	-3,175,090	-20.00
2010 7-1-09 / 6-30-10	10,821,431	-1,881,843	-5,056,933	-31.85
2011 7-1-10 / 6-30-11	10,107,719	-713,712	-5,770,645	-36.34

The Department typically has about 47 funding streams, being allocations or grants from the State of Ohio. About 92% of the Department's funding comes from the State (which includes state and federal money). The money from local sources includes the Children Services levy, a mandated share of public assistance monies, and the County Commissioners add \$350,000 into child support toward support and administrative costs. (Commissioners in only three other Ohio counties put in more to assist child support operations.)

The total Department budget is more than \$30 million, but only part can be used for administration. The rest is for services, child placement, and job training. The above chart reflects only monies that can be used for administration. Since 2006, the Department has suffered a cumulative reduction of 36.34%. The cuts have been met by eliminating services, the number of employees, and merging positions. For example, the Contract Manager position mentioned by the Union was an existing employee who took over new duties, while keeping some of their existing duties. The Union referred to Ms. Hopper and Mr. Van Winkle. Neither was a new hire. Both were reclassifications due to assuming extra duties and assignments so that the Employer would not have to fill some vacant positions.

An immediate concern is whether the Federal Child Support Incentive program will be extended. Currently, the County receives an estimated \$457,000 of such incentive funds. Two years ago, the federal government said that federal incentives could be used to bring in federal match monies. In child support, every \$1.00 equates to \$.64 in match money – but the Department needs its \$.34 to get the dollar. The Department has been using the federal incentive money to comprise the \$.34. The Department receives about \$457,000. Effective 10-1-10, the Ohio DJFS kept 10% of that money (\$45,700). If the right to use the federal incentive monies to help earn the matching monies is lost, the Department could lose some or all of the federal matching funds, currently at \$914,000.

The Employer cited from the weekly newsletter of the Directors of County JFS Agencies in Ohio. The September 3, 2010 issue reported that:

An increase demand for assistance has not resulted in increased service dollars. In fact, during this record caseload growth period and the worst economic climate since the Great Depression, county JFS agencies have experienced unprecedented cuts.

- Income maintenance – 45 percent since 2007
- \$128 million [statewide] annual loss in TANF
- Total loss in funding of 40 percent since the start of the recession.

[County] DJFS's have 3,250 fewer employees since the beginning of the recession – which results in 6,760,000 fewer service hours available to operate the local system and help meet the needs of the communities.

The June 18, 2010 issue reported that Ohio's unemployment rate was 10.7% in May, compared to the national rate of 9.7%. It also reported that Ohio is facing a projected shortfall in the next biennium (7-1-11 to 6-30-13) of \$8 billion.

The bottom line is, in the next biennium there will need to be substantially less spending, massive increases in revenues or a combination of both. [There will be] a profound impact on the delivery and magnitude of services in Ohio affecting every state funded program including education, prisons, social services and economic development.

The November 8, 2010 issue reported that, "Without exception, this will be the most difficult and contentious budget period in state history." It also reported the Governor-Elect's threat to "run you over [with a bus]. If you oppose us, we will beat you." The Department has struggled to rationally meet prior budget cuts as explained above – without layoffs – and is running on a shoestring because the citizens of the County very much need the Department's services. Most other departments in the region have had layoffs. Recently, (prior to the November election) a representative of the Ohio DJFS estimated that the Ohio (State) department will face a minimum reduction in the next budget of 10%, and more likely 30% to 40%. Thus, this Clermont County Department will minimally have to submit a budget with a cut of at least \$1 million.

The Employer tied the wage issue to its position that the term of the new Agreement should only be two years, and not three. The Employer is proposing to get through 2011 – another 12 ½ months with no economic changes. The Employer reasoned that with a two-year Agreement expiring December 31, 2011, both parties can, during the next bargaining cycle, look ahead to 2012 and beyond to 2013 and 2014 with perhaps some comfort level that the current state and local government fiscal crisis will be abating. The Union can, if it chooses, be back at the bargaining table in less than one year. The Employer sees little chance that funds will be available for a wage increase in 2012 (anticipating budget cuts) but the Employer hopes that 2013 and 2014 will be brighter years and hopes to absorb modest increases if there is general economic improvement in the U.S. The County projects no wage increases for its other employees through 2011. If any additional funds were to become available for this Department,

those funds will be used for the citizens it serves, providing for those in need. The Department is not about employing people and paying them more dollars. The Employer acknowledges that unfortunately, public employees in the social services are at the bottom of the ladder regarding pay to public employees.

Committing to an increase now, for 2012, would be foolish and could be disastrous if the current administrative budget is cut again next FY. If it is cut substantially (which is a real possibility) the Employer will be seeking wage and benefit reductions.

Layoffs are not a reasonable answer to budget cuts because in a crumbling economy, the demand for welfare related services increases. In the future, it may be a significant burden on the Employer just to allow bargaining unit members to hold onto what they have.

RECOMMENDATION

The Parties were unable to mutually identify *the* compromise answer for this economic issue. This Fact-finder does not have *the* answer. The financial and economic experts do not have *the* answer for what some have been calling the “Great Recession” (thankfully not the “Second Great Depression”). It is hard to imagine a more difficult time for a Fact-finder to conjure recommendations regarding economic issues. The primary goal for these Parties should be an agreement on wages that serves their basic *needs* during this time of economic stress. This is not a time for either Party to be seeking to improve their economic *wants* at the expense of the other. Consider accepting a resolution with which both can live for the immediate future – that is, January 1, 2010 through December 31, 2011.

Consider the December 2009 prediction cited below which appears to have come to pass:

- Recessions often take longer to trickle down to local government, in part because it takes time for the sales and property-tax revenues on which municipalities depend to catch up with a depressed economy. * * * But the sting this time around is expected to be far more acute and long-lasting than in previous recessions. (*The Wall Street Journal*, “A Slump Hits Home, Cities Downsize Their Ambitions,” December 26-27, 2009, p. A1)

Some current encouraging wage news is that perhaps the private sector is emerging and hopefully the public sector will ultimately follow the upturn:

- HR consultancy Towers Watson found that U.S. Companies expect their budgets for salaries to rise about 2.9% next year. * * * For 2011, only 5 percent of companies say they expect they will keep pay frozen at current levels. (Associated Press, “Surveys, corporate moves suggest higher salaries coming; Job woes of beautiful women,” December 1, 2010)

Further economic information on the Great Recession during the past few weeks includes:

- Ohio’s unemployment rate was 9.9 percent in October, down slightly from 10.0 percent in September, according to data released this morning by the Ohio Department of Job and Family Services. * * * The number of unemployed has decreased by 50,000 in the past 12 months from 638,000. The October unemployment rate for Ohio was down from 10.8 percent in October 2009. The U.S. unemployment rate

for October was 9.6 percent, unchanged from September. (Targeted News Service, "Ohio and U.S. Employment Situation (Seasonally Adjusted)," November 19, 2010)

- President Barack Obama on Monday proposed a two-year salary freeze for all federal civilian employees The freeze would affect about two million workers in 2011 and 2012. * * * Workers were scheduled to receive a 1.4% pay raise in 2011. With an average increase of 7.2% on health insurance premiums, many civilian workers would actually see their take-home pay fall. The freeze would not apply to Congress (*The Wall Street Journal*, "Federal Pay Freeze Planned," November 30, 2010, p. A1)
- Budget cuts in the Department of Job and Family Services are likely to impact the state's neediest residents because 87 percent of the agency's budget goes to services. A 90 percent budget would result in fewer families receiving subsidized child care, reduced payments to child-care providers and higher co-pays for low-income families to access such services. * * * The report said Ohio and most states are expecting a slight increase in revenue and spending during the current fiscal year that ends June 30. But after two of the worst budget years since the Great Depression, spending and revenue nationwide are not likely to return to pre-recession levels until 2013 or 2014. (*The Columbus Dispatch*, "Ohio's Financial Crisis Agencies' Budget Outlook: Painful; Prisons would close, services would dry up under some scenarios," December 2, 2010, p. A1)
- Some US states are forecasting budget gaps at least until 2013 as the economic recovery may not be strong enough to replace expiring stimulus measures or cover expected spending increases for services, according to a bipartisan research group. In the face of yawning deficits, states have slashed services and raised taxes and fees. * * * Some 30 states and Puerto Rico expected revenue would be "stable" for the rest of the year, up from four states in last year's survey at this time. Fiscal directors in Maine, Massachusetts and Ohio described their revenue outlook as "optimistic." (*Financial Times*, "US states face long haul on budget deficits," December 8, 2010, p. 3)

Finally, directly on point is the report from Montgomery County, which includes that county's JFS department:

- More than 800 members of Montgomery County's largest employee union, AFSCME Ohio Council 8, Local 101, won't get a raise this year, but each will receive a \$375 one-time lump sum payment. * * * The union includes employees from . . . Job & Family Services Maria Knox, regional director for . . . Council 8 . . . said, "It's tough out there. We tell our members it's not always about the money. It's about keeping jobs." [N]egotiations on wages and insurance will be reopened in 2011 and 2012. The county and the union have been in negotiations since fall 2009. The former contract expired on Dec. 31, 2009. (*Dayton Daily News*, "Union, county reach pay agreement," September 22, 2010)

Unfortunately, there does not appear to be monies to fund wage increases, and the other indications point to a recommendation that the substance of the Employer's position regarding wages be accepted by the parties, that is, that there be a wage freeze for the calendar years 2010 and 2011. However, the Fact-finder recommends that the parties accept a wage reopener for the third year, 2012. At that time, the parties can anticipate (as suggested by the Employer) the economic conditions that may be developing (positively or negatively) for 2012, 2013, 2014, and beyond.

Further, while it is hard to imagine the Employer granting wage increases for the non-bargaining unit members in the Department, it would be good practice for the parties to accept a "me-too" clause for 2011, just in case there are any across-the-board increases or lump-sum payments to non-bargaining unit employees in the Department.

ISSUE 5: ARTICLE 40: TERMS OF AGREEMENT

UNION'S NON-ECONOMIC PROPOSAL AND ITS ARGUMENTS

The Union proposes a three-year term for the Agreement (January 1, 2010 – December 31, 2012). The Parties have been in negotiations for almost one year (all of 2010) and the Union wants to maintain a three-year contract.

EMPLOYER'S POSITION AND ITS ARGUMENTS

Essentially, the Employer's position is stated above in relation to the wages issue. That is, a two-year term (January 1, 2010 – December 31, 2011) will position the Parties to better evaluate (starting in 2011) the budget and economic conditions for the years beyond (*i.e.*, 2012, 2013, 2014).

RECOMMENDATION

That the Union's proposal that the term of the agreement be for three years (January 1, 2010 through December 31, 2012) be adopted. There was no evidence that the parties have had contracts for any other time periods in the past. The Employer's desire to sit out 2011 and to then focus on 2012 and beyond can be satisfied by the wage reopener for 2012 recommended above.

ADDITIONAL RECOMMENDATION

The Fact-finder recommends that the parties agree that all tentative agreements reached by the parties be part of their collective bargaining agreement. The Parties acknowledged that they tentatively agreed to maintain current contract language in all Articles 1 through and including 39 – except those in issue during the Hearing, to wit: Articles 2 (Dues Deduction), 4 (No Discrimination), 15.5 (Vacation and Holidays), 29 (Wages), and 40 (Terms of Agreement).

SUMMARY OF FACT-FINDER'S RECOMMENDATIONS

ISSUE 1: ARTICLE 2: DUES DEDUCTION

Recommendation: that the parties agree to fair share as part of Article 2, Section 2.3 as proposed by the Union excepting that the commencement date be January 1, 2011.

ISSUE 2: ARTICLE 4: NO DISCRIMINATION

Recommendation: that the parties agree to add the following bases to Article 4 – No Discrimination; Section 4.1: sexual orientation, military status, and color. The recommendation

is further that the parties do *not* agree to add gender identity or genetic information.

ISSUE 3: ARTICLE 15: VACATION AND HOLIDAYS

Recommendation: that the parties *not* agree to add Christmas Eve or employees' birthdays to the list of holidays.

ISSUE 4: ARTICLE 29: WAGES

Recommendation: that the parties agree to a wage freeze for the calendar years 2010 and 2011, with a wage reopener for the third year, 2012; and, to accept a "me-too" clause for 2011.

ISSUE 5: ARTICLE 40: TERMS OF AGREEMENT

Recommendation: that the parties agree to a term for three years (January 1, 2010 through December 31, 2012).

ADDITIONAL RECOMMENDATION

That the Parties agree to accept all tentative agreements reached by the Parties.

Note: the Fact-finder, in preparing this Report and making his Recommendations, considered the oral presentations made at the Fact-finding Hearing and supporting documentation submitted by the Parties, even though not 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 Slonaker, Fact-Finder

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