

STATE OF OHIO  
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD  
IN THE MATTER OF THE FACT FINDING PROCEEDING IN  
CASE NO. 10-MED-03-0344

PROFESSIONALS GUILD OF OHIO

and

MONTGOMERY COUNTY BOARD OF DEVELOPMENTAL DISABILITIES

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

John F. Lenehan

Issued October 14, 2010

Appearances:

VIA E-MAIL

Mr. John Campbell-Orde, Esquire  
Professionals Guild of Ohio  
PO Box 7139  
Columbus, Ohio 43205-7139  
(614) 258-4401(Phone); (614) 258-4465 (Fax)  
[jcampbellorde@professionalsguild.org](mailto:jcampbellorde@professionalsguild.org)

Montgomery County Board of Developmental Disabilities  
c/o Mr. David Kessler  
Dublin Management Group, Ltd.  
300 Wilson Bridge Rd., Suite 100  
Worthington, Ohio 43085  
(614) 764-0681  
[dsk@dublinmanagement.com](mailto:dsk@dublinmanagement.com)

## **REPORT AND RECOMMENDATIONS**

### **I Background**

The Employer, Montgomery County Board of Developmental Disabilities Services (MCBDDS), is the county agency providing services relating to the care, training and education of individuals with developmental disabilities in Montgomery County, Ohio. The Board's operations include both educational programs for individuals with disabilities from birth to age 21, and adult programs, including sheltered workshop functions, for older individuals with disabilities. The Board's Transportation Department transports school age clients and adults from their homes to the Board's facilities in the in the morning and returns them home again in the afternoon/evening. Buses usually run from 6:00a.m. to 10:p.m., Monday through Friday.

The funding for the MCBDDS is through the Montgomery County Human Services Combined Levy. Additional funding is through Medicaid reimbursements, local, state and federal funds. As of the writing of this report, there is pending a replacement levy for Montgomery Human Services to be voted on November 2, 2010.

The Union, Professionals Guild of Ohio (PGO), represents a bargaining unit of the Board's Transportation Department workers, including "all full-time and part-time employees who are employed by the MCBDDS in the following classifications: Dispatcher, Vehicle Operator Aide, Vehicle Operator II, Auto Mechanic and Courier. There are approximately ninety-six full and part-time employees in the bargaining unit distributed as follows: fifty-four (54) Vehicle Operator IIs, thirty-six (36) Vehicle Operator Aides, two (2) Dispatchers, three (3) Mechanics, and one (1) Courier (Delivery Worker I). MCBDDS has six hundred (600) additional, full and part-time non-organized employees.

This case involves a wage reopener to be effective June 30, 2010. The parties' current Collective Bargaining Agreement is for the period July 1, 2009 through June 30, 2012 and provides for wage reopeners effective June 30, 2010 and June 30, 2011. A Notice to Negotiate was filed by the Employer on March 18, 2010. On March 24, 2010, SERB assigned the current

case number and established the sixty (60) day negotiation period, nothing that there was no agreed upon settlement procedure and thus, the statutory dispute settlement procedure was to apply. The parties met on April 28, 2010 and July 7, 2010 for negotiations, but were unable to reach agreement. As a result SERB was requested to provide a list of proposed Fact Finders, which resulted in the selection of the undersigned.

A Fact Finding Hearing was held on September 20, 2010 at the offices of the MCBDDS. At that hearing the Fact Finder attempted to mediate the dispute without success. The parties agreed that due to scheduling issues the Fact-Finding Report would be due on October 14, 2010.

## **II Criteria**

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

- 1) Past collectively bargained agreements 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 employers in comparable work, given consideration to factors peculiar to the area and the classifications 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 on the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taking into consideration.

### III Findings and Recommendations

Issue

Wages

#### **Union's Position**

The Union in its Pre-Hearing Position Statement maintains that the issue before the Fact Finder is the re-opener on Article 41, Wages. This Article provides for the wage schedules for bargaining unit classifications and the shift differential paid to bargaining unit members working the second shift, as set forth in Appendix A.

The Union acknowledges that the Employer serves a noble mission in the community and that bargaining unit members play an important role in ensuring that individuals with developmental disabilities are promptly and safely transported to programs that suit their needs. The employees in the bargaining unit work demanding jobs in a regulated environment. They are directly involved in transporting individuals who frequently suffer from severe mental and/or physical disabilities, many of whom are fully grown adults. When compared to employees doing similar work under other collective bargaining agreements in the Montgomery County Area, they are the lowest paid. They are paid between one (\$1.00) and three (\$3.00) dollars per hour less than the average wage paid to employees working in the same classifications possessing the same level of experience.

In view of this, the Union proposed that the Employer rectify in part the wage inequity. The Union notes that the Employer has the financial ability to accommodate the Union's proposal. In fact, states the Union, the Employer has spent many thousands of dollars over the last several months on its physical capital. The Union is not proposing that the Employer correct the external inequity in its entirety at this time, but that it makes modest moves by investing in its human capital to ensure bargaining unit members are paid fairly and adequately, and to account for cost of living increases. In addition, the union proposes a modest pay supplement for part-time employees alone, considering that they receive less in benefits than full time employees, coupled with the same low wages when compared with external comparables. Therefore, the Union makes the following proposals.

1. Appendix A. Salary Schedule, Effective November 30, 2009 (retroactive to July 1, 2009) - implement an external equity adjustment by increasing the base wage for each classification in accordance with the following:
2. Modify Article 41 – Wages to read as follows:

**Section 41.1**

**Employees are paid in accordance with the salary schedule contained in Appendix A. Each step of the salary schedule is a two percent (2%) over the previous step.**

**The salary schedule currently in effect will be modified as follows:**

**Base wages for full- time employees in the following classifications will have the following respective external equity adjustments:**

**Driver: 19 cents added to base wage.**

**Bus Aide: 14 cents added to the base wage.**

**Lead Mechanic: 25 cents added to base wage.**

**Mechanic: 24 cents added to base wage**

**Dispatch: (CDL) 20 cents added to base wage.**

**Dispatch: (Non-CDL): 15 cents added to base wage.**

**Courier: 14 cents added to base wage.**

**Part-time employees will receive an additional 15 cent increase to base wages beyond full time employees.**

**After the above adjustments are applied, there will be a 1 percent general increase to the adjusted base wages.**

**Section 41.2**

**Employees' step increases will be retroactive to July 1, 2010.**

**Section 41.3**

Shift Differential for all second shift employees is **forty-one (\$41)** per hour.

**Section 41.4**

This Article is subject to a wage re-opener as indicated in Article 47 of this Agreement for the contract years beginning July 1, 2010 and July 1, 2011.

The Union submitted the following evidence in support of its position that the Employer has the financial resources to meet its wage demands. The first exhibit was a Financial Summary from the Office of Management and Budget for MCBDDS of total revenues and expenditures both budgeted and actual for the fiscal years 2006 – 2010 (PGO Exhibit #1). An analysis of this exhibit indicates that revenues exceeded expenses for each of these fiscal years. The second exhibit was the Statement of Cash Balances or Reserves for the fiscal years 2009 and 2010 (PGO Exhibit #2). This exhibit reflects the current beginning cash balances for 2009 at \$7,226,873.75 and for 2010 at \$10,678,975.36. According to the Union these two exhibits clearly demonstrate that the Employer has the financial resources to meet the Union's wage demands.

In support of its position that the bargaining unit employees are underpaid when compared to employees in other agencies, the Union submitted a comparison of the hourly wage rates of bus drivers and bus aides in the Montgomery County area (PGO Exhibits #3) and the actual hourly wage rates for each employee in the bargaining unit (PGO #4). These exhibits, according to the Union demonstrate that the bargaining unit employees are underpaid, that some equity adjustments are warranted and that its wage demand is fair and reasonable.

### **Employer's Position**

The Employer MCBDDS in its pre-hearing statement maintains that the PGO is asking for a raise that is beyond the appropriate reach of the Organization. The Montgomery County area has been hit by layoffs, downsizing, closings and job relocation during the current recession. Through sound management MCBDDS has continued to provide services to the Developmentally Disabled at a level that exceeds its counterparts in the other eighty-seven (87) Ohio counties. Like most public sector organizations, the program is facing a truly unknown financial future. The impact of the upcoming shortfalls in both the current and new biennial State of Ohio budgets (rumored to be upwards of nearly eight billion dollars) from which the Employer draws significant financial assistance, as well as the impact of being a recipient subset of county wide "Human Services" Levy. Where monies are provided to the Employer at the discretion of the County Commissioners, through the recommendation of a "levy distribution

committee”, has placed the Employer in a very difficult financial position. Adding to the funding uncertainty, recent rumors indicate that the State Subsidy Program for Boards of Developmental Disabilities are in jeopardy – may not be funded.

The Employer has made a wage proposal that it maintains is fiscally responsible and that reflects parity with other employees within the agency. Although it is not proposing to increase the base salary, it is prepared to move eligible employees one step on the salary schedule. This would reflect a 2% increase for each eligible employee to be effective July 1, 2010. According to the Employer only ten (10) employees would not be eligible for the adjustment because they are at the top of the salary schedule. The Employer has proposed for these employees a lump sum payment of 1% of current salary. In addition, the Employer has proposed that the 2<sup>nd</sup> shift employees’ differential be increased to \$.40 from \$.38.

Contrary to the Union’s position, the employer argues that the bargaining unit employees are very well paid. Unlike the surrounding school districts, the members of the PGO generally enjoy annual salaries consistently higher than similar positioned employees in those districts. In addition the bargaining unit employees are able to participate in health plans with the Employer picking up to 90% of the monthly premiums.

Since the fact finding is taking place subsequent to the proposed implementation dates, the employer is proposing a one- time execution of contract or lump sum payment determined by employment status. The Employer is willing to consider language incorporating this concept and has proposed specific language which is set forth below.

The PGO has filed an unfair labor practice with SERB regarding the fact that its members have not received step increases at this time. The Employer believes that the impact of this report will be significant. The Employer believes that the filing of the unfair labor practice and its resolution is a fair topic for this Fact Finding Proceeding and that the Fact Finder should recommend the withdrawal of the ULP by the PGO, should the Fact Finder’s Report address the issue of retroactivity. Finally, Article 47 of the CBA should be amended to provide for only one reopener, i.e., June 30, 2011.

The employer has proposed the following language to implement its proposals.

## ARTICLE 41

### WAGES

Section 41.1 The salary schedule in effect on June 30, 2010, will remain in effect until June 30, 2011.

Section 41.2 All members of the bargaining unit eligible for a step increase will receive the step increase on July 1, 2010. #

Section 41.3 Any member of the bargaining unit who is at the top step and therefore not eligible for a step increase will receive a one- time 1% lump sum payment payable during July 2010. \*

Section 41.4 Shift differential for all second shift employees will be \$.40 per hour.

Section 41.5 This Article is subject to a re-opener as indicated in Article 45 of this Agreement for the contract year beginning July 1, 2011. **THE PARTIES MUTUALLY AGREE TO BEGIN RE-OPENER NEGOTIATIONS DURING FEBRUARY 2011 AND TO MAKE EVERY EFFORT TO CONCLUDE NEGOTIATIONS PRIOR TO JUNE 30, 2011.**

**THE STEP INCREASE RETROACTIVE AMOUNT WILL BE CALCULATED AT THE AVERAGE HURLY WAGE FOR EACH CLASSIFICATION; DRIVERS WILL RECEIVE \$112.00; MECHANICS AND DISPATCHERS WILL RECEIVE \$144.00; FULL TIME BUS AIDES AND COURIER WILL RECEIVE \$85.00 AND PART TIME BUS AIDES WILL RECEIVE \$43.00.**

- The 1% one- time lump sum payment is to be calculated by utilizing the person's "non Friday" flat rate (e.g. 7.5 hours) multiplied by their hourly rate as of June 1, 2010 (e.g. \$18.50), multiplied by 232 days in the program year multiplied by 1% ( $7.5 \times \$18.50 \times 232 \times .01 = 321.90$ )

## ARTICLE 47

### DURATION OF AGREEMENT

Section 47.1 By signing this Agreement, the parties hereby acknowledge that they have had a full and fair opportunity to bargain over all terms and conditions of employment. This Agreement supersedes and replaces all pertinent statutes, rules and regulations over which it has authority to supersede and replace.

Section 47.2 Duration of Agreement. This Agreement shall be effective on July 1, 2009, and shall remain in full force and effect through midnight June 30, 2012.

Section 47.3 Reopener. Effective June 30, 2011, Article 41 (Wages) shall be reopened pursuant to Chapter 4117-90AC **BEGINNING IN FEBRUARY 2011.**

In support of its proposals the employer introduced evidence that the employees in the bargaining unit were well paid and in fact earned on an annual basis more than many similar employees in school districts throughout Montgomery County (ER #1) and had comparable or

better benefits. It also introduced a comparison of wage settlements for non bargaining staff of MCBDDS and PGO since 2006 to the present (ER #2). Finally, it produced a summary of recent Fact Finder Reports involving the county agencies (ER #3).

### **Finding and Recommendation**

During the fact finding hearing and in the Employer's pre-hearing statement there was discussion of a pending unfair labor practice charge filed by PGO claiming that the Employer MCBDDS did not grant the scheduled step increase set forth in Appendix A of the CBA. The Employer indicated that the steps set forth in Appendix A were not based upon years of service, and thus, were not automatic. As stated above in the discussion of the Employer's position, it was suggested that a recommendation be made to withdraw the unfair labor practice. Although it might be logical to do so should this report resolve the issue of retroactivity and advancement on the pay steps of Appendix A, the Fact Finder will leave such to the sound discretion of the PGO and SERB.

The Union's position as presented in its pre-hearing statement requests a step advancement (2%), an equity adjustment (1-1.5%) plus 1% across the board increase on the base salary scheduled. This would be an approximate total 4% increase on base salary for most employees. In addition, the Union seeks a shift differential increase from \$.38 to \$.41 per hour. The step increase would be retroactive to July 1, 2010. Although it is not clear when the other increases would be effective, it is assumed upon acceptance of this report.

The Employer has proposed a step increase effective July 1, 2010 for those eligible, and a 1% lump sum payment for those not eligible (approximately ten employees). The shift differential would be increased from \$.38 per hour to \$.40 per hour. The retroactive increase for advancement on the salary schedule would be made in one payment, calculated at the average hourly wage for each classification. Specific payments, as of September 20, 2010, were set forth in the Employer's Attachment 1C to its pre-hearing statements.

The financial data submitted by the Union establishes that the Employer probably could afford the Union's wage demands for the current year. The employer submitted no specific

evidence contradicting this financial data. The beginning cash balance for 2010 was well over \$10,000,000.00. However, the Employer established that the future was at best, uncertain. It is anticipated in future years that there will be major cuts in state and federal funding. Also, there is currently pending before the voters a replacement levy for Health and Human or Social Services which is a funding source for MCBDDS. Thus, while the Employer currently has a cash reserve, it will need that in the future to maintain the level of services to its clients.

The important question is what is a fair and appropriate pay increase, if any, in the current economic climate? The Union maintains that compared to the transportation employees in school districts in the Montgomery County area, the employees in the bargaining unit at MCBDDS earn \$1.00 to \$3.00 less per hour. The Employer claims that they are well compensated when compared to those same employees on an annual salary basis. Based upon the evidence both contentions are correct. On an hourly rate comparison the bargaining unit employees earn less per hour. However, they earn more on an annual salary comparison. The reason for this disparity is that most of the bargaining unit employees at MCBDDS are employed full time through the year. Whereas, most of the transportation employees in the school districts are part-time and do not work beyond the school year. While the jobs of the transportation employees in school districts and at MCBDDS are comparable, their work year is not. This makes a big difference in annual salary and benefits. There was no evidence submitted that the Employer had difficulty hiring bus drivers and aides. As to the mechanics and dispatchers, their wages appear to be competitive with the school districts. Thus, this evidence is not sufficiently convincing at this time, to justify the equity adjustments being sought for the bargaining unit employees by the Union.

As to the 1 % proposed increase on the base salary schedule, this cannot be justified in context of what the Employer's non represented employees received and the fact finding reports for other Montgomery County bargaining units. Nor would a 1% lump sum payment be in line with comparable settlements of the Employer and the other County agencies. Both the compensation for non represented employees and the fact finding reports for the other Montgomery County bargaining units provide no increases on the base salary. The non-represented employees of MCBDDS received for the current fiscal year no increase on the base

salary schedule, a pay step if eligible and 1% lump sum if not eligible. In the other Montgomery County bargaining units the Fact Finding Reports, which have been accepted by the parties reflect recommended settlements providing no increase on base salary, no step increase and no increase on base or a lump sum settlement of \$375. Specifically, Fact Finder Frank Keenan stated in SERB Case # 09 MED-09-134, at pages 28 and 29:

\* \* \*

It is clear that the union is focused in large measure on obtaining In Article 31 a fair settlement, as compared to other County bargaining unit employees, to the extent possible, taking into consideration the differing conditions of employment and different funding sources of other county bargaining units.

\* \* \*

I will recommend a lump sum payment larger than that proposed by the Employer for the first year of the contract. Concerning Article 32, I will recommend a merit/step increase freeze in the first year of the contract and a reopener for year two of the contract, again for year three of the contract.

\* \* \*

In consideration of the foregoing, it must be concluded that the Employer's position is more persuasive. Thus, there should be a step increase for those eligible and a 1% lump sum payment for those employees not eligible, but no equity adjustment as proposed by the Union. Nor should there be any increase on the base salary schedule. However, as to the shift differential, there is only a \$.01 per hour difference between the parties' proposals; the Employer should have no problem covering the additional cost of the Union's proposal on this issue. Here the difference is insignificant.

As to the issue of retroactive pay, the Employer has made recommendations as to lump sum payments to eliminate the difficulty of calculating on each individual pay check and any problems which could occur with the County Auditor. While the step increase will be effective July 1, 2010, the retroactive payments should be in accordance with the Employer's recommendations, except that due to passage of additional time and in consideration of settlement, these lump sum payments should be increase by \$100.00 for the Drivers,

Mechanics and Dispatchers, by \$75.00 for full time Aides and the Courier, and, \$50.00 for part-time Aides.

The Employer's proposal to commence negotiations on the next reopener in February 2011 and to conclude negotiations prior to June 30, 2011 should not be incorporated into the current CBA. The parties, should they desire, can begin negotiations earlier than the time set forth in the CBA. Also, the provision for concluding by June 30, 2011 is not practical.

In addition, the Employer's proposal regarding the reference to the current wage reopener being deleted from the CBA is not necessary. No change in the language of Article 47 is recommended.

Therefore, based upon the foregoing findings and rationale, it is recommended that the following contract language on wages be adopted and that Article 41 be amended to reflect same.

#### **ARTICLE 41**

##### **WAGES**

Section 41.1 The salary schedule in effect on June 30, 2010, will remain in effect until June 30, 2011.

Section 41.2 All members of the bargaining unit eligible for a step increase will advance one step on the salary schedule and receive the step increase effective July 1, 2010. #

Section 41.3 Any member of the bargaining unit who is at the top step and therefore not eligible for a step increase will receive a one- time 1% lump sum payment payable during November, 2010. \*

Section 41.4 Shift differential for all second shift employees will be \$.41 per hour.

Section 41.5 This Article is subject to a re-opener as indicated in Article 45 of this Agreement for the contract year beginning July 1, 2011.

#

**DRIVERS WILL RECEIVE FOR RETROACTIVE PAY AND SETTLEMENT THE AMOUNT OF \$212.00; MECHANICS AND DISPATCHERS WILL RECEIVE FOR RETROACTIVE PAY AND SETTLEMENT THE \$244.00; FULL TIME BUS AIDES AND COURIER WILL RECEIVE FOR RETROACTIVE PAY AND SETTLEMENT \$160.00 AND PART TIME BUS AIDES WILL RECEIVE FOR RETROACTIVE PAY AND SETTLEMENT \$93.00. THESE PAYMENTS SHALL BE MADE ON THE PAY CHECK FOR THE NEXT**

**FULL PAY PERIOD SUBSEQUENT TO RATIFICATION OR ACCEPTANCE OF THE FACT FINDER'S REPORT DATED OCTOBER 14, 2010.**

- The 1% one- time lump sum payment is to be calculated by utilizing the person's "non Friday" flat rate (e.g. 7.5 hours) multiplied by their hourly rate as of June 1, 2010 (e.g. \$18.50), multiplied by 232 days in the program year multiplied by 1% ( $7.5 \times \$18.50 \times 232 \times .01 = 321.90$ )

**IV Certification**

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted September 20, 2010. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan  
John F. Lenehan  
Fact Finder

## V Proof of Service

This fact-finding report was electronically transmitted this 14th day of October 2010, to the persons named below.

**Mr. John Campbell-Orde, Esquire**  
**Professionals Guild of Ohio**  
**PO Box 7139**  
**Columbus, Ohio 43205-7139**  
**(614) 258-4401(Phone); (614) 258-4465 (Fax)**  
[jcampbellorde@professionalsguild.org](mailto:jcampbellorde@professionalsguild.org)

**Montgomery County Board of Developmental Disabilities**  
**c/o Mr. David Kessler**  
**Dublin Management Group, Ltd.**  
**300 Wilson Bridge Rd., Suite 100**  
**Worthington, Ohio 43085**  
**(614) 764-0681**  
[dsk@dublinmanagement.com](mailto:dsk@dublinmanagement.com)

**Mary Laurent**  
**SERB**  
[Mary.Laurent@serb.state.oh.us](mailto:Mary.Laurent@serb.state.oh.us)

/S/ John F. Lenehan  
John F. Lenehan