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IN THE MATTER OF FACT FINDING

BETWEEN

MONTGOMERY COUNTY BOARD OF DEVELOPMENTAL DISABILITIES SERVICES

AND

PROFESSIONALS GUILD OF OHIO

Before: Robert G. Stein, Fact finder

SERB CASE # 11-MED-04-0665

Advocate for the EMPLOYER:

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INTRODUCTION

The parties in this matter are Montgomery County Board of Developmental Disabilities Services (hereinafter referred to as "Board", or "Employer") and the Professionals Guild of Ohio (hereinafter referred to as "PGO" or "Union"). The bargaining unit of approximately ninety-eight (98) employees is represented by the PGO and it consists of full and part-time employees who hold the classifications of: Dispatcher, Vehicle Operator Aide, Vehicle Operator II, Auto Mechanic, and Courier. These employees provide a vital service to the developmentally disabled population of Montgomery County. Montgomery County is located in southwest Ohio. The Board is a Montgomery County agency that provides care, education, and training services to a population of developmentally disabled individuals across the age spectrum from birth through adulthood. The bargaining unit's primary mission is to transport school age students and adult consumers from their homes to Board facilities and back home again. The Board and Union, which this fact finder has had the pleasure to work with in the past, cooperate in providing a very vital service for a population in need of transportation services.

National/State/Local Economic Outlook: In response to determining the value of real estate, an often repeated colloquial phrase is "location, location, location." To paraphrase that often used idiom when it comes to the economy, whether it be international, national, state or local, the expression that may be suitable is “uncertainty, uncertainty, uncertainty.” Cuts in spending and in existing programs are being vigorously pursued as a central interest in Washington D.C. and of course that vigor has been replicated for reasons of budget deficit in Columbus and in Montgomery County. The economy in Ohio continues to experience the effects of a national recession that was said to have ended two years ago, but whose affects still profoundly linger. The impact of the recession upon Ohio’s revenue stream is plain and it is now translating into substantial cuts in services and personnel. In Ohio, unlike many other states, there has historically been a substantial lag time between a declared end to a recession and recovery from it. Yet, the current decline in revenue, caused by what many call the “Great Recession” is far deeper and broader than those of the past, and it is severely testing even the most resilient of Ohio’s public employers and employees alike. Many states in the United States are attempting to cope with declining revenues and increasing costs. Local governments in Ohio that were already weakened by the loss of industry, commerce, and changes in revenue sources from the state in preceding years were particularly vulnerable as the events of the recession took hold. At this point in time it is difficult to know how and when Ohio’s economic recovery will take place. Every month, every week, and sometimes daily the signals regarding the national economy are mixed signals, causing considerable speculation and caution. One of the more certain and troubling aspects of the current economic times is losses of high paying skilled jobs in Ohio. Many jobs that once sustained a viable middle class lifestyle are now being performed outside of the United States. They number in the hundreds of thousands and clearly underscore the existing structural problems of unemployment in areas such as manufacturing and construction. Most troubling is the prospect that the loss of these high paying manufacturing jobs is permanent. This altered employment pattern will require a recovery in Ohio to take a very different course than it has in the past when industrial facilities creating these jobs were still in the state. All the news is not negative; there are indicators of economic revival and some employers are doing well in this recession and its aftermath. The most recent reports indicate General Motors, Ford, and Chrysler are selling more cars, albeit not at the pace as in previous years. Yet, this modest trend is an important indicator for ancillary businesses that the American auto industry, particularly in Ohio, supports. To their credit, public employee unions and employees in Ohio have, in the main, recognized and responded to their employers who continue to experience a shortfall in revenue while anticipating cuts in state aid. State employees and many county, city, and township public employees in and outside of Ohio, and including those of the bargaining unit in this matter, continue to make unprecedented financial sacrifices in the form of layoffs, wage freezes, benefit givebacks, furlough days and in paying more for their medical coverage. In addition to these factors, collective bargaining in Ohio is currently on the precipice of dramatic change that if implemented, promises to be sea change in the way collective bargaining is conducted. The sea change is also coming in the form of significant cuts in funding as evidenced by the recent passage of the Governor's budget in the Ohio House of Representatives. Notable in its passage are the preservation of significant cuts to local governments and a phase out of the estate tax. These changes represent a major financial challenge for all local governments throughout the state of Ohio.

The Board is funded by the Montgomery County Human Services Combined Levy ("Levy"), Medicaid and other local, state, and federal funds. The Employer provided financial data reflecting its serious concern regarding revenue cuts from the state of Ohio. Additionally, employees are experiencing their own financial difficulties in terms of surviving an uncertain economy marked by high unemployment, record housing foreclosures, declining property values, and rising gasoline prices.

The issue in this case is a wage re-opener for the third and final year of the current Collective Bargaining Agreement (hereinafter referred to as "Agreement"). A fact finding hearing was held on July 28, 2011, under the statutory requirements contained in the Ohio Revised Code. The fact-finder first attempted to resolve the parties' differences through mediation, which was unsuccessful. The fact finder subsequently convened the parties and held a fact finding hearing which dealt with the single issue under the reopener language.

The re-opener language that is the subject of this impasse is contained in Section 4 of Article 41 Wages. It reads as follows:

"Effective June 30, 2010 and June 30, 2011, Article 41 (Wages) shall be reopened pursuant to Chapter 4117-9 OAC.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made.

Issues: (Summary of positions are identified below, see position statements of the parties for details and rationale)

Issue 1 Wages

Employer's Position:

The Employer is proposing a one-time lump sum payment of one hundred dollars ($100) for each full-time driver, mechanic, and dispatchers upon execution of the Agreement's re-opener. Secondly, the Employer is proposing a seventy-five dollar ($75) lump sum payment for all full-time couriers and bus aides. Finally, the Board is proposing a fifty dollar ($50) lump sum payment for all part-time employees. (See Employer's Position Statement)

The Employer argues that it is facing a revenue shortfall for fiscal year 2012, which begins in January of 2012. Although the County passed a Human Services Levy and made projections of income in November of 2010, those predictions have been revised downward by somewhere between ten percent (10%) and twenty percent (20%) over four (4) years. During the hearing the Employer emphasized that it is expecting at least a ten percent (10%) cut in anticipated revenue from the Human Services Levy and is hopeful, yet not certain that that is a more realistic figure for purposes of planning. (Employer Ex. 3) According to the Board these anticipated losses in revenue, when combined with reduced revenue from other sources and other factors, will result in agency wide layoffs of approximately one hundred (100) employees, some of which will be accomplished through attrition and reductions of full-time positions to part-time positions in the bargaining unit and possibly elsewhere. In proposed raw numbers, regarding two main bargaining unit classifications, the Employer, based upon a loss of ten percent (10%) of its revenue from the Levy, proffered testimony at the hearing that in FY 2012 its composition of bargaining unit members will change from the current fifty-five (55) full-time drivers to thirty-four (34) full-time and twenty-one (21) part-time drivers. The reduction of full-time bus aides will be even more dramatic. Part-time drivers are not eligible for health care benefits. In summary, the Employer is willing to provide a modest lump sum adjustment but cannot commit to a wage increase that represents an on-going financial commitment.

Union's Position:

The Union is proposing that members eligible for a salary step advancement on the salary schedule shall receive the increase effective July 1, 2011.

The Union asserts it had no general wage increase in 2011 and is simply proposing that bargaining unit members who are eligible for a step increase be advanced on the salary schedule. [1] The PGO argues that in December of 2011 the Employer agreed to implement a salary step increase (with no general increase) for approximately 434 out of 655 employees, except Children's Services direct care staff, in spite of uncertainty in state funding, and in the amount of revenue to be

[1] A small number of employees in the bargaining unit have reached Step T, the top step of the bargaining and are no longer eligible for a step increase.

generated by the Levy. The Union also argues that in May of 2011, the Employer granted a one percent (1%) lump sum payment, with no step increase or general increase for approximately 118 Children's Services direct care staff. The Union argues its proposed step increase proposal would only cost the Employer approximately forty-one thousand dollars. ($41,000)[2] The Union argues that inflation from June of 2010 to June of 2011 has risen 3.6% and that its proposal would help offset this cost to bargaining unit members and that its proposal is a matter of fundamental fairness in terms of internal equity. (PGO Ex. A, B, & K) The Union argues that there are more than sufficient funds for its proposed step increase in 2011, even though there is a projected downturn in revenue projected in the next fiscal year. It contends the current revised budget of the Employer projects well over a $200,000 balance at year's end. (PGO Ex. K)

Discussion: Nothing is clear or certain regarding the economy as of this writing. The stock market, if it can be regarded as something of an indicator, is indicative of this assertion. Until there is more of a predictable direction in terms of budgets at the national and state level (including revenue enhancements and predictable cost cutting measures), financial commitments beyond the immediate means of an Employer are risky, just as they are for individual employees and their families. In December of 2010 the Employer committed to a step increase for a large number of its

[2] Does not include payroll roll-up costs.

employees and understandably the Union is viewing this in terms of internal equity. Yet consider what has happened in seven (7) months, and more dramatically during the last several weeks. The increase granted to Children's Services direct care staff is a more contemporary view of an economy that is more realistic, yet painful, particularly to those most vulnerable in the economy. Moreover, it is not uncommon, particularly given the volatility of the economy over the past few years for things to change (or put another way for denial to give way to more sobering economic realities). Given the volatility in the economy since late 2008, one bargaining unit and an employer, operating under one set of economic assumptions, may be able to settle for a monetary increase that is substantially different than a monetary increase taking place just months later with the same employer and a different bargaining unit. In the current economy timing is critical, and when the economy stabilizes and becomes more predictable and promising, bargaining units whose contracts are up for negotiations at that time will benefit over those who have locked in settlements reflective of a more uncertain time.

While the fact finder concurs with the fact that the Employer is likely to have a carryover at the end of 2011, in 2012 the reductions in revenue start to be realized and are reflected in both PGO Ex. J and Employer Ex. 3 indicating projected negative balances, with the assumption of no change in the Levy allocations, which from the evidence appears not to be the case. And, the current state of the economy lends no support to the notion that the Employer is being overly pessimistic in its forecast that appears to have been grounded with its granting of a one percent (1%) lump sum payment in May of 2011 to 118 Children's Service direct care staff. It must be noted that these are the times we live in and these are hard decisions that are being made. Yet it must be said that continued years of subpar or no wage increases will place vast numbers of employees in a perpetual economic downhill slide, exasperated by the return of sustained inflation.

RECOMMENDATION

Section 41.1 Base wages contained in the salary schedule currently in effect (Appendix A) will remain unchanged from July 1, 2011 through June 30, 2012, reflecting a zero percent increase in base wages.

Section 41.2 Step schedule increases shall be frozen through June 30, 2012.

Section 41.2 A. All full-time employees shall receive, within two (2) pay periods following ratification, a one-time lump sum payment of 1% of their 2010 earnings or $325.00, whichever is greater.

Section 41.2 B. All part-time employees shall receive, within two (2) pay periods following ratification, a one-time lump sum payment of 1% of their 2010 earnings or $162.50, whichever is greater.

Section 41.3 Shift differential for all second shift employees is forty-one (.41) cents per hour.

Section 41.4 Maintain Current Language/No Longer Applicable

TENTATIVE AGREEMENT

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the recommendations contained in this report.

The fact-finder respectfully submits the above recommendations to the parties this _____ day of August 2011 in Portage County, Ohio.

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Robert G. Stein, Fact-finder