

**STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO**

In the matter of Fact Finding between:)	SERB No. 11-MED-10-1568
)	
SUMMIT COUNTY CHILDREN)	Hearing: March 9, 2012 and March
SERVICES,)	10, 2012 at Akron, Ohio
)	
Public Employer,)	Date of Award:
)	March 26, 2012
and)	
)	
THE COMMUNICATIO WORKERS)	
OF AMERICA, LOCAL #4546, AFL0CIO,)	
)	
Employee Organization.)	

FACT FINDING REPORT

Before Mitchell B. Goldberg, SERB appointed Fact Finder:

Appearances:

For the Employer:

Craig Brown,	Attorney
Katerina Papas,	Deputy Executive Director/General Counsel
Montrella Jackson,	Staff Attorney/Manager
Sharon Geffken,	Director of Social Services
John Saros,	Executive Director
James Smith,	Attorney
Gary Binns,	Director of Finance

For the Union:

Larry Vuillemin,	Attorney
Robin Schenault,	President, Local 4546
Sarah-Maria Riffle,	Staff Representative
Lucy Potisuk,	Secretary/Treasurer/Steward
Todd Kutzera,	Vice President, Local 4546
Darren Cooper,	Representative, Local 4546

I. Introduction and Background.

The Ohio State Employment Relations Board (“SERB”) appointed the undersigned as the Fact Finder of this public employment labor dispute on January 18, 2012. The parties agreed that the issuance date for this Report would be March 26, 2012. They also agreed to postpone their filing of pre-hearing statements required by SERB Rules and Guidelines until March 9, 2012, the date of the hearing. The hearing was conducted at the Employer's administrative offices in Akron, Ohio on March 9, 2012 and March 10, 2012. The parties presented opening statements, oral testimony, documentary exhibits, and closing arguments in support of their respective positions on the following unresolved issues.

The parties requested and the Fact Finder agreed to engage in mediation sessions on March 1, 2, 5 and 6 for purposes of resolving as many unresolved issues as possible. Tentative Agreements were reached on some issues, but the parties were unable to resolve the following issues.

The Union has been certified by SERB as the exclusive bargaining representative of the employees in the bargaining unit, which consists of employees performing jobs in many classifications that include clerical and administrative positions, trades, laborers, food service workers, social workers and assistants. The Agency provides children and related family social services for Summit County citizenry.

The following recommendations consider the criteria set forth in Section 4117.14 (C)(4)(e) of the Ohio Revised Code, Section 4117-9-05 (K) of the Ohio Administrative Code and SERB Guidelines. This Report and the following recommendations adopts and incorporates all unchanged terms, provisions and language in the expired CBA, all terms, provisions and language that were tentatively agreed upon during contract negotiations, agreements arrived at through mediation, and agreements that were made during the hearings.

II. Economic and Financial Evidence.

The Agency's economic proposals are based upon its budgetary concerns and revenue projections for the next three CBA contract years and beyond. It has three major revenue sources: (1) federal funds; (2) state funding; and (3) local funding from a specific real estate tax levy. It is concerned about a reduction of federal support due to the present budget-cutting environment in Washington, and its aversion to begin balancing the budget and reduce the growing deficit through tax increases. It is further concerned about the state's continuing efforts to reduce its deficit by reducing the support for local governments and agencies.¹ The Agency's primary concern, however, is its ability to manage its expenses within the revenue received from the county's designated property tax levy for SCCS services.

The present levy that provides for 2.25 millage expires at the end of 2013. It is a temporary levy. This means that the millage is based upon the snapshot real estate valuations that are performed at designated intervals. The most recent valuation reflected the devaluation of county real estate due to the recession, the prime mortgage fiasco that has produced a high number of foreclosures, and low demand for housing due to high unemployment. Because the levy is a temporary levy, property tax revenue from the levy will not increase based upon new construction, or from increased valuations over the levy period, until the next valuation cycle.

The levy is the primary revenue source for the Agency. It is planning for a renewal levy to pass in November. The Agency is concerned about its prospects for the renewal. The poor economy and slow recovery make it difficult to pass property taxes, even renewals of existing taxes. It believes that SCCS does not enjoy the same voter support for its services as MRDD voter support, due to the nature of its mandated services that include removal of children from parental custody when there is proof of child abuse or neglect. The Union disagrees and contends that there is strong support among the voters

¹The levy receipts are budgeted to decline by \$1.4 million from 2010 to 2012 due to a real estate property devaluation of 9.1%. This level will remain the same throughout the CBA term until the next evaluation in 2019.

who recognize the need for SCCS services to protect the county's children from abuse or neglect. Nevertheless, the Agency has assumed that the levy will be renewed in November for the next 6-year period that begins in 2014. The Union's support was instrumental in raising voter support for the passage of the present levy and its support is needed for passing the proposed November renewal.

The problem for the Agency is the management of its expenditures over the next contract term and beyond when its revenues will decline, or at best remain flat. It began addressing its concerns in 2009 by implementing a reorganization plan with a goal to perform its needed services with less resources, and by providing more efficient services with the same or better productivity from its personnel. It has "walked the walk" by closing its medical clinic, laying off indirect workers, or eliminating non-caseworker positions, and providing for an early retirement incentive that replaces higher compensated employees with lower paid personnel. It believes that it has become more efficient and raised productivity levels by having caseworkers supervise visitations at the visitation center instead of having aides do this work. It reduced caseworker caseloads after eliminating the aides.

The reorganization and budget-cutting has produced an ending cash balance of approximately \$32 million as of 12/31/11. While the Agency's proposal for wage freezes is not premised upon an "inability to pay," it nonetheless contends that it needs this front-end cushion to fund its operations until the next levy and through this CBA term when its revenue sources will remain flat or decline. A dollar saved now results in a savings of \$3 over the contract term, and \$6 over the renewal levy term. It believes that by the end of the CBA term its ending balance will still be high, in the \$30 million range, but it is needed to pay projected expenses through the levy period. By then, the ending balance will be in the 17% range, the Agency's preferred minimum reserve needed to deal with contingencies and unexpected expenses.

The Union membership has its own set of economic concerns. These members are middle class wage earners who have personally experienced the recession, lower real estate property values and

little or no growth in whatever savings they have due to the present low interest rates. At the same time, their cost of living has soared. Gasoline prices are expected to exceed \$4/gallon by the summer. State budget cuts have produced higher tuition costs for public higher education. The money saved for higher education is stagnant. Medical expenses and medical insurance premium costs will continue to rise at near double digit annual levels. The switch from the present high benefit county plans to lower cost plans will produce higher co-pays, deductibles and out-of-pocket expenditures, with less coverage.

The national cost of living figures do not account for the much higher cost of living expenses for middle class earners who must bear these higher medical and educational expenses. Many of the members are highly educated public servants and strive to provide the same educational opportunities for their children. When these expenses are added to higher costs for utilities, food and other normal expenses, a prolonged wage freeze will result in an excessive, unreasonable and unnecessary belt-tightening when the economy is now showing signs of improvement. Social Security cost of living increases have resumed. The Union believes that the Agency, even with its projections, has the ability to pay reasonable cost of living increases for its members, while keeping reasonable ending balances during the contract term and beyond.

Moreover, the Agency's reorganization has, in the Union's opinion, placed additional workloads upon the members notwithstanding caseload reductions. Caseloads, in and of themselves, are meaningless statistics. The demands of each case are different. The Union believes that adding visitation duties upon caseworkers adds to their workloads, without any additional compensation. The matter is made worse when the Agency proposes a 3-year wage freeze and benefit reductions.

III. Unresolved Issues.

A. Economic Issues

1. Wages and Benefits (Articles 602 and 601).

External Comparisons

Comparing the unit's wages with those of public employees performing similar work in the geographic area is one of the designated statutory factors for making fact finding recommendations to parties who cannot resolve their differences as to the economic components of a CBA. One must recognize, however, that public employers in a designated area may have different funding sources that impact their particular contracts.

Some agencies like the SCCS depend upon designated tax levies. Other public employers depend upon state funding and income tax receipts. It is difficult to find any operating pattern for the payment of cost of living increases. Wages paid during the heavy recession years of 2009, 2010 and 2011 reflect the lower tax receipts that impacted revenues and the state's budget cutting with the reduction of the local government fund. The poor economy explains the following wage freezes within the county and surrounding area:

	2009	2010	2011	2012
Akron, City		0%	0%	1.5%
Cuyahoga Cty.			0%	1%
Summit DJFS				0%
Stark Cty.			0%	0%
Summit Exec.	0%	RO		
Summit Fiscal		0%	RO	
Summit MRDD		3.25%	3.25%	3.25%
Summit CSEA			0%	0%
Summit Sheriff			0%	0%
Fairlawn City				3%
Green FF			1%	1.5%
SCCS	3%	2%	2%	

The above evidence does show that during 2009-2011 when other public employees in the area had their wages frozen, the unit members at SCCS received 7% over the period added to their base wages. MRDD's financial history, its present financial condition and its budget projections for the future were not explained in this record. I would need to know more of these facts to understand why their CBA provided for larger percentage wage increases while other agencies remained flat or had

smaller percentage wage increases. It may be that adjustments will be made in their next contract that will be negotiated later this year.

Internal Comparisons

Wages, benefits and other compensation paid to employees employed by the same employer is another accepted criterion for judging the reasonableness of proposals across the public sector bargaining table. This factor is particularly relevant in this case because the Agency has proposed to freeze across-the-board cost of living increases over a three-year period for all of its employees, those represented by the Union and the non-represented management and non-bargaining unit workers. Moreover, the Agency promised during these negotiations that any wage type increase such as cost of living payments, bonuses and the like paid to its non-represented employees over the next three years would be paid to unit members in the form of a “me-too” clause. This proposal demonstrates the Agency's serious attempt to apply discipline for the purpose of maintaining its expenses in line with its projected revenue during the contract term. Personnel costs are by far its largest expense item.

The Union is proposing 4% across-the-board increases for all three years. This must be weighed against the Agency's proposal of a three year wage freeze. After reviewing and considering all of the evidence on this subject, together with the parties' arguments and contentions, I believe that a freeze on base wages for 2012 is appropriate. This will permit the Agency to make its case to the voters that it is conserving taxpayer money and properly managing its available resources. Thereafter, with a renewal of its funding hopefully in hand, it can look to these resources and address the cost of living needs of its personnel. A freeze for 2012 will not cause the unit employees to substantially lessen its pay status or its rank compared with other public employees in the area, or in the market for social service employment. The Agency must recognize that it cannot provide excellent service to the citizens without excellent employees. Continuous wage freezes, or below cost of living payments will in turn lead to more employee turnover as good employees will look elsewhere to provide enough

income to meet their needs. The Union Attorney's statement rings true: No member is in this field “for the money.” The work is long and hard. It requires unique skills and training, with little reward other than the satisfaction of helping children and families solve their problems and improve their lives.

RECOMMENDATION: I recommend that base wages be frozen at 0% for 2012. For 2013, I recommend that each unit member receive, effective January 1, 2013, a lump sum payment of 2% of their base wages that will not be added to their base. I recommend an across-the-board wage increase in 2014 of 2% for each bargaining unit member. Beginning January 1, 2012 and for the term of the CCA, all unit members shall receive all earned step increases, academic incentives and/or automatic promotion increases. All monies being held in escrow related to these items shall immediately be dispersed to the bargaining unit members.

2. Promotional Increments (602.02).

The Agency proposes to suspend promotional increments for the CBA term. The Union rejects the proposal.

RECOMMENDATION: No change.

3. Shift Differential (602.03)

The Union proposes changing the present two-tiered system that pays social workers and nurses a \$.75 per hour differential and the remaining unit employees a \$.40 per hour differential for working Saturdays and Sundays. This differential has not increased since the 2000 CBA. It proposes only one rate of \$1.00 per hour. The Agency prefers to keep current contract language for economic reasons.

RECOMMENDATION: No change.

4. Social Worker Promotions (602.04).

The Union proposes a pay adjustment to cure an inequity between employees who have the same or similar educational qualifications. Currently, social workers are promoted under a formula that accounts for a bachelor's or a master's degree and accumulated service with the Agency. The Agency

has hired non-licensed social workers. They may not have MSW degrees, but some have related beneficial degree such as a master's in counseling. The Union proposes to change the existing structure so that all social workers with master's degrees are paid one rate and all social workers with bachelor's degrees are paid one rate, recognizing that there are different pay scales for licensed and non-licensed social workers. Each of the groups (licensed, non-licensed) would receive 3-year promotions for bachelor's degrees, and 7-year promotions for master's degrees on their respective scales instead of the current system that separates social workers between MSWs, related master's degrees, licensed social workers and non-licensed social workers. Now, employees who perform the same work and maintain the same type of degree equivalence are paid differently. All of these social workers are governed by the same licensing board and must complete the required training and education to maintain their credentials.

The Agency proposes to freeze these additional promotions and payments for the CBA term for economic reasons. The Union states that its proposal involves 12 employees with related master's degrees and 6 non-licensed degreed social workers who would receive these educational promotions. The Agency's cost would be approximately \$30,000. The Union believes that the cost is reasonable and within the Agency's budgetary constraints. It rewards employees for their efforts to better educate themselves in their professions and improve in their work performance. It would reward all of the social workers, licensed and non-licensed. Management already has a plan that includes automatic promotions for managers at 3 years and 7 years. This evidences management's recognition of this benefit's value in terms of providing a quality work force for its clients.

The Agency did not contest the merits of the Union proposal. Its rejection is based solely on the economic implications. Accordingly, I find that promotions should apply for licensed and non-licensed social workers alike with similar degrees on their respective pay scales.

RECOMMENDATION: I recommend that the Union proposal for the revised 602.04

10

language be accepted, but that it not be implemented until the third contract year (2014).

5. Social Worker Academic Incentive (602.05).

The Union proposes to change the language in this provision to include the proposed changes to 602.04. The Agency proposes to suspend this academic incentive for the same reasons as its proposal for 602.04.

RECOMMENDATION: I recommend that the current provision remain in effect until 2014, at which time it should be amended to include the recommended changes for 602.04.

6. Programmer & PC/Network Technician Promotions (602.06).

The Union is proposing language that provides for a promotion from a PC/Network Technician I to a II upon meeting certain requirements, similar to that provided for promotions from a Computer Programmer Assistant to a Computer Programmer, and from a Computer Programmer to a Computer Programmer Analyst. The Agency proposes to suspend the entire promotional benefit during the CBA.

RECOMMENDATION: No change.

7. Groundskeeper Promotion (602.06).

The Agency proposes to suspend this promotional benefit for the life of the CBA for economic reasons. The Union wants to maintain current language.

RECOMMENDATION: No change.

8. Medical Clinic Beeper (602.09).

I am unsure whether this section is still relevant due to the elimination of the medical clinic. It may also have been addressed in the TA that related to beepers.

RECOMMENDATION: The section should be eliminated, subject to the TA, or remain unchanged.

9. Bilingual Compensation.

Presently, there is one employee who has been designated as the go-to person to communicate

11

with clients and families who speak Spanish. Since she is the only person who is fluent in Spanish, and because there is an increasing Spanish speaking clientele, her workload has increased dramatically. She must perform these functions that interrupt and interfere with her regular duties and responsibilities.

The Union, however, is proposing a new compensation item that provides for premium pay for *all* employees who are fluent in any foreign language, including sign language. The Agency objects to any additional premium pay. I believe the Union's proposal is overly broad. At present, there is only a Spanish issue. Other agencies provide some type of premium compensation for this needed service.

RECOMMENDATION: I recommend that the present Spanish translator or interpreter should be paid a \$1 premium per hour for her added work. The premium would be paid to her or her replacement during the CBA term.

10. Public Employees Retirement System (602.12).

The Union proposes that the Agency pay for the entire amount of the employee's contribution to PERS, in addition to the Employer's share. The Agency opposes this for economic reasons. The proposal would cost the Agency 10% of each employee's wage that would amount to a considerable added expense. The evidence shows that no other Summit County employer pays the entire employee contribution.

RECOMMENDATION: The Union's proposal is rejected because of the significant costs to the Agency.

11. Added Restriction for Taking Time Off (601).

The Agency proposes adding language to 601 that requires an accrued balance for all paid time off benefits sufficient to cover the time off at the time such requests are made. Presently, employees need only have accrued their time by the time they take their time off. Under the Agency's proposal employees who request time off in advance of the time when it will be taken could be denied

notwithstanding that they would have the time accrued by the time they are off. The Agency's proposal

12

might also interfere with the present vacation selection procedures .

RECOMMENDATION: The Agency's proposed language change is rejected. The present benefit shall remain unaltered.

12. Personal Leave Days (601.01).

Both parties have proposals. The Agency wants a language change that requires one day's advanced notice for taking a personal leave day. The Union proposes to increase the benefit from 16 to 32 hours per year, and from 8 to 16 hours per year for new employees completing their probation after June 30. The notice requirement would unduly restrict usage when it is necessary to take a personal day for unforeseen reasons. Adding more personal leave time is an expensive proposition for the Agency that is attempting to control its costs within its projected revenue streams.

RECOMMENDATION: No change.

13. Continued Service Benefit (601.02).

The Union wants to increase this longevity benefit and the Agency wants to suspend it for the life of the CBA. The Union's proposal involves substantial costs. The Agency has not made its case that suspending this benefit for 3 years is necessary to accomplish its budgetary management over the CBA term.

RECOMMENDATION: No Change.

14. Life Insurance (601.03).

The Union proposes an increase to \$100,000 from \$50,000. The Agency opposes the increased premium cost.

RECOMMENDATION: No change.

15. Health Insurance and Prescription Card (601.06).

The current contract states that the Agency shall provide benefits for group health insurance,

prescription drug coverage, dental insurance and optical insurance at levels the same as those offered

13

other Summit County employees. Four plans were offered under the prior CBA. Employees were required to contribute 10% of the Agency's premium under the PPO Advantage or PPO Plus plans. Those who chose coverage under the EPO or PPO were required to pay 14% of the Agency's premium. Employees who opted out of coverage received \$50 per month as compensation for this choice. The Agency prefers to keep the current language in place.

The County is planning to drop the PPO and EPO, the most expensive plans. Under the present language, the Agency employees will only have the PPO Advantage and PPO plans to choose from. Their premium contributions for these plans will remain at 10%. The Agency proposes to still offer dental and vision coverage, but employees must pay 100% of these premiums. AFSCME county employees receive dental and vision coverage under the AFSCME Care Plan with no premium contribution.

The Union and its members are dissatisfied with the previous plans and the plans now offered by the County. The total premium costs for the county plans have increased dramatically from 2009 to 2012, 40% for single/41% for family under the EPO, and 50% single/61% family for the PPO. Deductibles have also increased during this period. The two lower cost plans had premium increases of 18% and 24% over the period, but these plans have more out-of-pocket costs and benefit levels have decreased. The Union objects to being forced into these plans because it believes that the County has done a poor job of selecting insurance and holding down costs.

Other counties and public entities have fixed dollar amounts for premium contributions or lower percentage contributions with equal or better benefits and coverage. The Union proposes to cap employee monthly premium contributions at \$50 single/\$100 family. It also proposes to increase the opt out payment that has been in place since 2000. The Agency saves substantial costs that are derived from employees who opt out of county plan coverage.

The Agency is planning on saving substantial money by reducing the plan selections to the two

14

lower cost plans in 2013. It has projected only a 5% increase in its annual insurance costs over the contract term, an amount far less than its experience with all 4 plans. This cost savings, however, is coming with a price for all the Agency employees who are covered under the county plans. Benefits have been reduced, out-of-pocket costs have risen, and premium costs may continue to rise over the projected 5% per year.

I recommend that the members continue coverage under the two county plans, with contribution levels at 10% because all employees are in the same plans, and the County is a large group that should obtain better benefits at lower costs due to its size. The Agency must recognize, however, that some county employees receive dental and vision insurance with no premium contribution. Because Union members now will have limited choices for coverage with increased premium exposure over the CBA term because of percentage contributions instead of fixed amounts or caps, and more out-of-pocket exposure, I recommend that the Agency provide vision and dental coverage with no premium cost to the employees.

RECOMMENDATION: I recommend current language except that the Agency should provide vision and dental insurance coverage at the same levels provided to County employees, but without any premium cost for the members.

16. Vacation Schedule (601.08).

The Union is proposing a language change that provides for approval of requests if supervisors do not respond to requests in a timely manner. The Agency wants to keep current language. I believe this is the type of problem that should be addressed in labor-management meetings, or through the grievance procedure. Automatic approval language might cause a new set of problems and issues.

RECOMMENDATION: No change.

17. Holidays (601.09).

The Union proposes to add two holidays with pay. It also proposes to provide part-time

15

employees with another work day if their scheduled day falls on a holiday. It is also proposing that its members have a day off for election day. The Agency proposes current language to avoid these additional costs.

RECOMMENDATION: No change because of the added costs over the 3-year term.

18. Holiday Time (601.10).

Both parties propose changes. The Union wants to eliminate the day before/day after work rule, and the Agency wants the ability to reschedule 4-10 employees to 8-5 schedules during holiday weeks. The evidence does not warrant any change in this provision.

RECOMMENDATION: No change.

19. Bereavement Leave (601.11).

The Union proposes adding additional persons who may qualify for this benefit, grandparents-in-law and domestic partners. The Agency opposes this request for cost reasons, and proposes current language. The Union's proposals have merit, but further negotiations must occur to determine the actual costs involved in this proposal. It is an economic issue in the final analysis.

RECOMMENDATION: No change.

20. Tuition Reimbursement Program (601.14).²

The Union proposes to increase this benefit to \$2,000 for full-time employees and to \$1,000 for part time employees. The Agency opposes this proposal because of the costs.

RECOMMENDATION: No change.

21. Family and Medical Leave (601.15).

The Union proposes an expansion of this benefit in order to return to the same language that

² The Agency's outline of unresolved issues contains a Union proposal for increasing flex time under 601.12. The Union's pre-hearing statement, however, omits this proposal. I am unsure whether the Union withdrew this proposal or whether it was addressed in their scheduling TA. In any event, I am omitting this proposal from this Report..

was contained in the CBA from 1994 to 2006. The present language was in the 2007-2009 CBA and

16

2009-2011 CBA. The Union wants to eliminate the 12-months employment for eligibility and replace it with 1,250 hours. It wants to expand the definition of immediate family to coincide with its earlier bereavement proposal. Other changes would increase entitlement, permit employees to retain 80 hours of sick leave, and increase unpaid leave once sick leave is exhausted.

These changes were not negotiated before me in mediation, and were not explained or argued before me at the hearing. I am puzzled by the fact that they were negotiated out of the last two CBAs, but are now proposed to be added back. To the extent that the changes require more payment for time off or extended leave time, the changes would result in added costs to the Agency.

RECOMMENDATION: No change.

22. Licensure for Professional Staff (601.16).

The Union proposes that the Agency pay for the entire cost of licensing renewal for social workers and assistants instead of the present one-half amount. The Agency opposes this additional cost.

RECOMMENDATION: No Change.

23. Court Leave (601.18).

The Agency proposes to restrict payment for employees who are subpoenaed to testify in court in matters unrelated to abuse and neglect. The Union opposes this restriction. The language has been in the CBA since 2000. There was no evidence presented that warrants any change in the current language.

RECOMMENDATION: No change.

24. Leave Donation Program (601.18).

The Union proposes to expand the program to permit more employees to participate. The Agency wants to keep the present program in effect. There was no evidence presented as to the effect

of the proposed changes on scheduling, administration and/or costs.

RECOMMENDATION: No change.

25. Proposed New Benefits.

The Union is proposing that the Agency pay for auto insurance coverage that would insure employees when they use their personal vehicles while on agency business. It proposes an annual sick leave cash conversion program, and a sick leave conversion to cash upon separation. The Agency opposes these new benefits because they would add costs when it is attempting to control its expenses during the contract term and beyond through the levy renewal period.

RECOMMENDATION: The rationale for these proposed additional expenses, and the cost impact upon the Agency were not fully developed in this record. Accordingly, I decline to recommend adding these proposed benefits to the CBA.

B. Non-Economic and Other Language Issues

The Agency, in its efforts to reorganize its operations so that it is able to provide the same or better services to its clients, and so that it may continue to fulfill its mission of protecting children from abuse and neglect, has proposed comprehensive contract language changes. The stated objective for the changes is to provide management flexibility in its operations. This will provide more efficiency by streamlining the operations. The changes will permit management to do more with less resources, and produce cost savings that will last throughout the CBA term and levy funding cycle. The proposed changes include the expansion of unilateral management rights, more liberal subcontracting rights, reorganization of job classifications, and reassignment of work duties within and among classifications. Ms. Papas testified that the proposed changes are intended to highlight the mandates and mission of the agency as expressed in O.R.C. 5153, to reserve to management all management rights not specifically restricted by the CBA, to eliminate contradictory and confusing CBA language, and to otherwise change, adopt and administer work rules and policies that management believes are essential for the

Agency to achieve its mission within the bounds of its financial and budgetary constraints.

18

The Union, it is safe to say, based upon 4 days of mediation and 2 hearing days, has not bought in to these proposed CBA changes. It believes that the proposals tear at the very heart of Union rights, protections and security that have developed over years of negotiations. They have obtained these rights and protections that have improved working conditions for its members by making concessions. It has no interest in relinquishing any of these hard fought gains without serious and substantial concessions and benefits that are offered in return. It believes that nothing is offered in exchange for the changes; instead, the Agency proposes a three-year wage freeze and a reduction in health insurance benefits with higher employee costs.

The expressed reasons for the proposed changes are sound from a management or organizational perspective. However, the motives for the proposed changes that would expand subcontracting rights and permit management to realign job duties and revise job classifications are, in the Union's mind, suspect and even harmful to its status and existence. If enacted, the changes would dramatically increase member workloads, that are already stressed to the limits, without any additional compensation. More jobs would be outsourced to the extent that the Union would be weakened as a bargaining unit representative. Its ability to represent the bargaining unit by improving compensation and working conditions would be irreparably damaged.

Unfortunately, the unsatisfactory bargaining relationship and past conflict between the parties provides an evidentiary basis for the Union's concerns about the Agency's motives for these CBA changes. The history includes past strikes, discipline, discharges, grievances, arbitration, SERB proceedings, and even court litigation. These particular negotiations involved protracted negotiation sessions, outside mediation, Fact Finder mediation and a hearing that addressed but failed to resolve many issues.

I cannot ascertain the parties' motives for their positions. However, I must exercise caution in

recommending major changes in the present language that was arrived at through past negotiation

19

efforts. Although some proposals from both parties appear sound on their face, a recommendation over an ostensible objection may cause additional harm to an already fragile relationship. On balance, maintaining the status quo will leave the parties to their own negotiation efforts, and any change would come about through the normal give and take process of collective bargaining. This process, as difficult and time consuming as it was, managed to produce an agreement over difficult work schedule issues that were important for both sides.

26. Article 101.

The Union proposes to expand the language of this article to return to the provisions that were in effect from 1978-2003. The present language appeared for the first time in the 2003-2006 CBA. The Union believes that the current language when compared with the previous language, is more negative and restrictive. It discourages collaboration and undermines the CBA. The Union wants to return to language that is more positive in terms of encouraging cooperation. It also believes that it better protects it from unreasonable Agency unilateral actions. The Agency prefers the current language. Like the following Union objections to management's proposed changes, it does not want to resurrect past language that was changed after rigorous negotiations.

RECOMMENDATION: No change.

27. Management Rights (109).

The Agency proposes major changes in this Article. It proposes to add additional management rights as provided by law, including those set forth in O.R.C. 5153 and general reservation of rights language. It wants to provide the unilateral right to create, eliminate or consolidate job classifications and to create new or modified job descriptions with changed duties and responsibilities. Moreover, it wants to eliminate the obligation to bargain over any of its stated and reserved management rights during the term of the CBA, either with respect to its decision in any particular case, or the effects of its

decision. It proposes eliminating the existing language in 109.03 that permits the Union the right to

20

question the legality of the Agency's action in exercising its management rights in the courts or before an administrative agency, and protects the Union's right to file grievances under 504. I find that management's proposal is much too broad. It eliminates Union rights that were obtained through bargaining. The Union's objections are reasonable.

RECOMMENDATION: No change.

28. Seniority and Layoff (110).

The Union proposes changing the present 21 day advanced layoff notice to 30 days. My notes are unclear as to whether the Agency agreed to 30 days.

RECOMMENDATION: There will be no change unless the Agency agreed to 30 days, in which case the agreement shall prevail.

29. Miscellaneous (206.03), Subcontracting.

The Union proposes to further limit the Agency's subcontracting rights by adding language that limits subcontracting to only those services not normally and customarily performed by unit employees. The Agency proposes to eliminate the entire section, thereby providing for unlimited subcontracting rights.

RECOMMENDATION: No change. The present section provides for subcontracting rights, but with some limitations. It is similar to other clauses I have seen in both public and private sector CBAs. It was arrived at through negotiations, and any changes should be made under the same process. A recommendation could disturb the balance set forth in the present language that permits the Agency's managerial flexibility, but protects the security of the members and the bargaining unit.

30. Smoking Privileges (206.10).

Presently, the Agency provides for a smoking hut under the provisions of this article. The Agency, like many other public and private employers wants to discourage employees from smoking at

work on the employer's premises. This policy cannot seriously be criticized given the state of medical

21

evidence that clearly shows the serious adverse health effects from smoking. The tobacco companies do not even attempt to dispute these medical findings. Their warnings now make it clear that disease and death are the natural by-products of this addictive habit. In this particular case, children and families should not be exposed to smoking or secondhand smoke. The hut prevents this from happening, but it is reasonable for the Agency to promote good health to the children and families that its employees interact with each day.

The problem is that smoking is an addiction that is difficult to overcome. The present designated smoking area and rules should not be altered unless a comprehensive smoke free workplace program is put in place. This would involve a policy for new hires, that prefers or requires non-smokers, or smokers who agree to participate in a non-smoking program to cure their addiction. Existing employees who smoke should be encouraged to participate in such programs with employer-paid costs, and rewards for completion. An immediate conversion to a smoke free workplace without management's assistance and encouragement is a policy designed for failure.

RECOMMENDATION: No change.

31. Caseloads caps (new).

The Union contends that the Agency must be committed to the needs of the public and the community by setting caseload sizes equal to or slightly better than the “best practice” standards of the CWLA and PCSAO. The Agency had a problem in the past when caseloads were set too high. Procedures and policies were put in place to address the caseload problem, but the Union believes that the reorganization plan developed by the Executive Director will cause a backslide, and the previous problems and issues will reappear. The Union has presented its case with a 4 page detailed analysis of the day to day problems and issues in support of its position that caseloads need to be better managed with fixed limits.

The Agency believes that its reorganization plan addresses caseload management. The plan

22

reduced caseloads so caseworkers can supervise visits. Ms. Geffen testified that caseloads are now low and meet applicable standards. She provided extensive testimony in support of her opinion that the Union's concerns are without merit. After hearing considerable testimony and across-the-table discussions at the hearing, I am convinced that caseloads and workloads are not necessarily connected. A caseworker might have a smaller number of cases, but each case might be more involved and complicated, requiring more attention and time.

I believe that caseload management is primarily management's responsibility. The supervisors and managers must continuously monitor each caseworker's workload to insure that professional services are allocated in the best manner among the Agency's available resources. I can understand that at certain times and under certain circumstances caseloads may exceed the average standards, but this might be a temporary or reasonable shortage of needed services. The authority and responsibility for allocating resources must reside with management..

RECOMMENDATION: The workload situation is dynamic. I do not recommend the Union's proposal of caseload caps as a reasonable preventative cure for periodic work overloads. Work assignments must be adjusted and revised when needed on a client by client basis.

32. Work Schedules (302).

Both parties propose changing 302.05 that provides for a one half hour paid lunch and two ten minute breaks for clerical staff. The Union wants to increase the paid lunch to one hour and two ten minute breaks for all employees. The Agency wants to delete the entire paid lunch and provide clerical staff with only one break. It wants to delete the 30-minute paid lunch if an employee works more than four hours beyond their regular shift (302.06). The Union want to retain this benefit.

The Union wants to change 302.10 that subjects employees to disciplinary action if they fail to report to work on time. It wants to revert to language that was in prior agreements that permitted

employees to take vacation time, compensatory time, holiday time or loss of pay for the tardiness. The

Agency wants to retain current language.

The evidence does not warrant the reopening of these issues for the purpose of issuing recommendations on each position or recommending some compromise that appears reasonable to the Fact Finder. If these issues need to be revisited, they must be negotiated between the parties; otherwise they should remain as previously negotiated benefits.

RECOMMENDATION: No change.

33. Job Postings, Transfer and Promotions (403).

Both parties have proposed changes to this article. The Union is willing to live with current language, but it is willing to agree to the expansion of the number of most senior applicants for lateral transfers if management would agree to the selection of the most senior applicant for promotional vacancies. The Agency wants to increase the number from 3 to 5 of the most senior applicants for a regular job opening, and for lateral transfers, but is not willing to agree to the Union's proposal for promotional vacancies. The Union proposes other changes including the deletion of the Agency's ability to reassign employees within their job classifications. The Agency wants to expand this right to permit reassignments to positions outside of classification if it is in the same pay grade.

These positions appear to be subject to horsetrading so that each party might obtain some of what they propose, but further negotiations would be necessary. This is more preferable to a fact finding recommendation.

RECOMMENDATION: No change.

34. Corrective Action (404).

The Union proposes to return to previous CBA language that had a more expansive role for the neutral administrator that included consideration of the imposed penalty as well as a factual determination of the alleged infraction. It proposes language that provides the employee with the right

to question witnesses, and to shorten the time for the Agency's investigation and the time for issuing

the decision after the neutral issues a recommendation. The Agency opposes these changes.

I disagree that the time periods are too long; they appear reasonable and, similar to other contracts that I have reviewed. The Union has cited legal authorities and administrative comments that endorse the right to examine witnesses at pre-disciplinary hearings. However, this possible legal requirement has not been settled as binding law. If it becomes law, the Agency will need to comply regardless of the CBA language.

RECOMMENDATION: No change.

35. Substance Abuse Policy (505).

The present SAB adopts the County's policy. It has been in place for several contracts. The Union is proposing a policy with comprehensive changes similar to the one agreed upon in the 2000 negotiations. One objection to the present language is that the County's policy is periodically amended without any notice to the Agency, and that the parties who negotiate changes do not consult with the SCCS and the Union. The Union believes its proposed policy is fairer, more comprehensive and less ambiguous. The Agency disagrees with these changes, particularly the additional administrative burdens that are placed upon management for determining "reasonable suspicion."

I believe that any changes to the existing policy should be negotiated, as it was in the past. In order to avoid confusion, the county policy as it presently exists, should be attached to the CBA or made readily available for reference. Arrangements should be made with the County officials and Unions to provide copies of any amendments that are made during this contract term. I further agree that the laboratories used should not be the same labs as those where employees might encounter their clients.

RECOMMENDATION: No change.

36. Obligation to Negotiate (603).

The Union wants to eliminate 603.01 and 603.02. The Agency wants to retain 603.02 except

25

for the last sentence. This is the language that states the Union will not relinquish its 4117 rights.

Based upon the parties' bargaining relationship and past history, both parties should retain their legal rights.

RECOMMENDATION: No change.

37. Total Agreement (604).

The Union proposes to delete this section. The Agency wants to keep the language in tact. I can find no reason to eliminate this language that is contained in many CBAs. Moreover, it protects the Union because it incorporates all arbitration decisions that have interpreted the language, all rules, regulations, benefits and past practices. Many agreements attempt to eliminate past practices to prevent them from continuing.

RECOMMENDATION: The language shall remain, but the policy should be attached to the CBA, and amendments should be made during the term that reflect any amendments to the County policy. The parties should also agree upon the laboratories that are used for testing to avoid contacts between employees and Agency clients.

38. Severability (605).

The Union proposes to delete this section. The Agency wants it to remain. This is a standard variation of a CBA provision that ensures that a change in the law that alters a CBA provision will not invalidate the entire contract. Either or both parties may require negotiation over a legal change in order to provide alternative language that reconciles the change with the parties' intentions..

RECOMMENDATION: No change.

Date of Award: March 26, 2012

/s/ _____
Mitchell B. Goldberg, Fact Finder

26
CERTIFICATE OF SERVICE

This Report was served upon the following persons or entities by electronic mail on the 26th day of March, 2012:

SERB Email: **med@serb.state.oh.us**

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/s/ _____
Mitchell B. Goldberg

