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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of:	:	
	:	
Professionals Guild of Ohio	:	Case No. 12-MED-01-0048 and
	:	Case No. 12-MED-01-0049
and	:	
	:	
Montgomery County Board of County Commissioners	:	

FACT-FINDING REPORT AND RECOMMENDATION

The undersigned, Steven L. Ball, appointed as State Employee Relations Board Fact-Finder, makes the following report:

I. HEARING

The Fact-finding was heard at The Haines Center on May 9, 2012, at 9:30 a.m. The following were present:

Professionals Guild of Ohio:	Chauncey Mason, Executive Director Eric Kanthak, Council President Jane Hay, Council Secretary Dan Rice, Council Vice President
Montgomery County Board of County Commissioners:	Buzz Portune, Attorney at Law Stephanie Echols, County HR Director Patty Baird, MCDJFS HR Coordinator David Hess, MCDJFS Finance & Administration Deb Feldman, Administrator Amy Wiedeman, Asst. Administrator

II. CRITERIA

Consideration was given to the criteria listed in §4117.14 O.R.C. and Rule 4117.9-05(K) of the State Employee Relations Board, as follows:

1. Past collectively bargained agreements, if any, between the parties;

2. Comparison of the 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.

III. ISSUES AND RECOMMENDATIONS

The issues in these matters relate to wages, longevity bonuses, and anniversary merit increases upon a reopener negotiated in the current agreement for the period April 1, 2011 to March 31, 2014. The employer, Montgomery County Department of Job and Family Services, Division of Children's Services ("Division"), is controlled by the County Commissioners ("County"). The employees are represented by the Professionals Guild of Ohio, and are comprised of two units, the Professional Employees and Non-Professional Employees (hereinafter collectively, the "Union"). The Union reopened the contract, seeking a 2% increase for all employees, plus a "me too" clause, and to reinstitute biennial longevity bonuses to top step employees. The County offers a $400 bonus payment for 2012, and no percentage increase in wages. It opposes reinstituting biennial longevity bonuses.

The Union proposes that anniversary merit increases in Article 30, subject to a reopener in the current agreement in 2012, continue to be suspended through March, 2013, effectively postponing the reopener to April 1, 2013.

The County's position as to wages is twofold. First, the county argues its inability to pay based upon the finances available for Children's Services expenditures. Second, the County argues that the current wages are now comparable to similarly situated employees in other jurisdictions and the proposed wage increases would exceed increases provided by the County to other County employees. The Union's position is that the County not only has the ability to pay, but in fact misrepresented its fiscal position in previous negotiations. Also, the Union argues that its members have had no increases since 2009, and given the increase in the cost of living, it is equitable to grant a wage increase.

Finding of Fact No. 1: Wages

A. **Ability to Pay**

The major argument by the County against the permanent wage increases proposed by the Union is the fragile state of the revenues available for the Children's Services budget. The County funds the Division in part with allocations it makes from a Human Services Levy on real estate. Allocations of levy funds are the subject of recommendations by a Human Services Levy Council appointed by the Commissioners. The levy combines funding for a number of activities, including the Division, one of only two counties in Ohio that does so. Per David Hess, the Assistant Director for Finance and Administration, the levy presently comprises 55% of the Division's budget and 40% is provided by federal funding. Miscellaneous sources makes up the remaining income. County property valuations decreased by 7.05% in 2011, eliminating 9.5 million dollars in revenues for 2012. The County fears further losses in the tax base valuation.

The County projects levy revenues to decline from $137.5 million in 2011 to $120.1 million in 2015, due to revaluation of property values, the loss of the tangible personal property tax, and a loss of the utility deregulation tax. The Human Services Levy Council has recommended allocating $25.4 million to Children's Services for 2012 and three years thereafter, down from $26.6 million in 2011. Cuts to the Division were by a lower percentage than other participants in the levy. One million two hundred thousand dollars ($1,200,000) of the allocation in 2012 and 2013 is "earmarked" for one-time expenditures for capital projects to pay off the loan for the Haines Center, replace the telephone system, demolish Shawn Acres cottages and to replace the carpet in the Haines Center. The County expects 2012 budgeted expenses (including its proposed bonuses) to exceed revenues by 1.4 million dollars, which will decrease the Children's Services Reserve Fund to 10.4% of the budget. The County states that the Division is "required" to maintain a 9% cash reserve by the Levy Council. The earliest possible increase to the levy would be on the ballot in November, 2014. The County contends that the uncertain future financial state of revenues precludes permanent wage increases. The $400 lump sum payment proposed by the County will cost $102,800 for bargaining unit employees, and $140,000 including union and non union employees. The Union provided evidence that it will cost the County $117,283.75 for each percentage wage increase for all bargaining unit employees. The 2% increase proposed by the Union would cost a total of $234,567.50 for 2012, not including associated increases for payroll taxes, etc.

The Union contends that the County benefited in the negotiations of the 2011 wages with an erroneous projection of a five million dollar operating deficit for the year ending 2011, which in actuality resulted in a $1,391,147 ending cash balance. The Union questions the credibility of the County's current projections, because of this apparent discrepancy. The County says that it received a 2.1 million dollar windfall from the federal government (Title XX), designated solely for placements, which was not expected. In addition, the County says that it saved money by lowering total wages through employee attrition and cutting contract costs for placements and administrative and maintenance costs. Management salaries have been frozen for four years. The Union also complains that the County's projections increased the 2012 appropriation for salaries and benefits by over a half million dollars (or 2.2% from 2011), and repeats the 2.2% increases in its projections for 2013-2015. Upon examination by the Union, the County Administrator stated that the revenue estimates were conservative.

This factfinder concludes upon the evidence that the County is able to pay the wage increases demanded by the Union, conceding, however that the financial uncertainties created by state decreases in funding and the decrease in property values has narrowed the County's budget choices. Because the County has chosen to lump a number of government functions in the levy, it has the <u>ability</u> to allocate additional resources to the Children's Services Divisions for wage increases, albeit to the detriment of other deserving programs served by the levy. But even without further allocations to the detriment of other levy participants, the County has the resources for the Union's proposed wage increase. Both the earmarks and the cash reserve requirement are merely recommendations by the Levy Council to the County Commissioners. The earmarks, and cash reserve balance all are policy decisions by the Board of Commissioners. Certainly the Division's employees deserve as much consideration as the Division's phones, carpet, demolition costs, etc. Moreover, the County admits that the Division received over two million dollars ($2,000,000) in 2011 not contemplated in its budget. If in fact the units' wages are sub-par to the extent of the 2% increase asked by the Union, resources do exist to remedy any shortfall.

B. The Equity of the Proposed Bonus/Wage Increases

County Exhibit 5 was offered as evidence of comparable wages for similar positions throughout the state, obtained from SERB Clearinghouse Reports. It demonstrates that as to professional employees, Montgomery County has the third highest top level wage rate in caseworker 1 and 2 positions, and is well above the average rate for both positions. As to Caseworker 3 positions, Montgomery County's top level rate is above the statewide average and fourth highest of 10 organized units in Ohio.

In non professional positions, Montgomery County's top salary is highest in the state among organized Children's Services units. As to secretaries, the top level salary for a Secretary 1 is slightly above average, while the Secretary 2 position has a top level salary of $39,000, above average and third highest in the state.

The data as to comparables is a bit fragmentary; but obviously comparable counties such as Lucas, Summit and Mahoning Counties are included. If any disparity exists, it would be in the top level of many of the positions. The Union did not rebut the County's position as to comparables. Finally, the County presented evidence that a 2% increase would exceed increases negotiated by other county units, again not rebutted by the union. Management and non-bargaining unit employees have had their wages frozen, but share the same "bonuses" as bargaining unit employees. AFSCME and non-bargaining unit employees of the Department of Job and Family Services received a $400 bonus in February, 2012, despite an overall 3% increase in the cost of living for 2011 as reported by the U.S. Bureau of Labor Statistics.

Given the evidence showing no significant disparity between the wages of the two units and comparable wages elsewhere, the evidence of similar "bonuses" to other county employees, and the uncertainties of the current funding of the Division (notwithstanding its ability to pay), as well as a possible reopener on wages for 2013, the factfinder believes that the County's position should be adopted. The Union also appended a "me too" clause to its proposed 2% increase. The ability to the Union to reopen wages again in 2013 appears to this factfinder to negate the need for any such clause.

Recommendation

Article 29, Section 2 of the Agreement should be amended to delete the current language and to add the following: "No later than thirty days from the ratification of modification of this section pursuant to reopener, all bargaining unit employees on the payroll as of April 8, 2012 will receive a lump sum payment of Four Hundred Dollars ($400.00)."

Finding of Fact No. 2: Longevity Bonuses

The Union also proposes language which it contends is necessary to continue the longevity bonuses (Section 4) which were suspended in 2011. The County opposes the Union's position and seeks a continued suspension of payment without proposing any specific modification to the agreement. Neither party addressed the status of the payments should no change be made to the current agreement. Nor did any party discuss the financial ramifications of the longevity bonuses. However, as the bonuses are to be paid only to those employees who have "topped out," (approximately one-half) the financial ramifications do not appear to be unsupported by available revenues.

The current language appears to this factfinder to mandate such bonuses for 2012, as the current language merely states that "Longevity bonuses will not be paid in 2011." The necessary conclusion made by this factfinder from the current language of Section 4, is that a $950 special lump sum payment is to be made in alternating years of the agreement, which would mean that the bonus would be paid in 2012, as it was not paid in 2011. Insofar as the agreement was for a three year term, the result of not paying the bonus in 2011 is that the bonus would be paid in only one year of the agreement, i.e. 2012. The language proposed by the Union appears to accomplish this same result which ameliorates to some degree the discrepancy in top pay rates in comparable counties such as Lucas and Summit. In the absence of any specific proposal by the county to alter the current language which would appear to provide for the bonuses in 2012, the factfinder believes the language proposed by the Union should be adopted, even if superfluous.

Recommendation

The Union's proposed change to Section 4, Article 29 should be adopted. The following language should be added to the second paragraph following "2011." "All employees that reached the top longevity step of their pay range as of 2010 will receive the Longevity Bonuses paid in 2012. After 2012, the alternating payment schedule will resume."

Finding of Fact No. 3 – Article 30, Section No. 1 Anniversary Merit Increase

The current agreement provided for suspension of anniversary merit increases for the period April 1, 2011 to March 31, 2012, subject to a limited reopener to determine any increases for 2012. The Union proposed no increases upon the reopener, but conditioned that upon postponement of the reopener to April 1, 2013. The County has not opposed that modification. The postponement is reasonable given the uncertainties of the county's finances.

Recommendation

The Union's proposal should be adopted. The following sentence should be added to the final paragraph of Article 30, Section No. 1:

"Anniversary Merit Increases will be suspended from April 1, 2012 to March 31, 2013. Article 30 shall be subject to a limited reopener to determine Anniversity Merit Increases effective April 1, 2013. These negotiations shall commence not later than February 1, 2013."

Steven L. Ball, Fact-Finder
May 30, 2012

CERTIFICATE OF MAILING

I hereby certify that a copy of the Fact-Finding Report was sent via email to: Chauncey M. Mason, Robert E. Portune and to the Bureau of Mediation, SERB, on this 31st day of May, 2012.

Steven L. Ball, Fact-Finder