

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
DONALD G. RUSSELL, FACT-FINDER**

STATE EMPLOYMENT
RELATIONS BOARD

2012 NOV 19 P 2:29

In the Matter of the Fact-finding between

American Federation of State, County,

Municipal, Employees, Ohio Council 8,

Local 3225,

Employee Organization,

-and-

The Darke County Board of Commissioners

and the Darke County Department of

Jobs and Family Services,

Employer.

Case No. 12-MED-03-0358

Fact-finding Report

The State Employment Relations Board notified the fact-finder of his appointment by e-mail letter dated June 26, 2012. The parties were negotiating and submitted several joint agreements to extend the fact-finding period. The final joint agreement extended the statutory fact-finding timelines to allow the issuance of the fact-finder's recommendations until and through November 16, 2012. The fact-finding hearing was held by agreement on November 1, 2012, in the conference room at the Department of Job and Family Services office, 631 Wagner Avenue, Greenville, Ohio, beginning at 10:00 a.m. Marcia Knox, AFSCME Regional Director, represented the employee organization. Brett A. Geary, Regional Manager of Clemens-Nelson and Associates, Inc., represented the employer. Both parties submitted considerable evidence in three-ring binders in support of their positions on the issues, the issues, with arguments for their positions. This evidence is incorporated herein by reference. The parties also testified and argued their positions orally to the fact-finder.

The parties provided the fact-finder with a copy of the current collective bargaining agreement. It is the touchstone of the successor agreement. That is, the

proposals are framed as keeping current language, deleting current language, or adding language in a specific spot.

The parties came to the fact-finding with some successful bargaining behind them and had reached tentative agreements on several issues. These tentative agreements were all included in the employer's binder as tab 5. AFSCME referred to them in its binder, but the full copies of the tentative agreements are in the employer's binder at tab 5. There is not issue about what has been agreed upon.

At the opening of the hearing, there remained six issues unresolved. They were (1) Article I, Management Rights; (2) Article 20, Transfers Within A Classification; (3) Article 21, Wages; Appendix B; (4) Article 27, Vacation; (5) Article 38, Duration; and, (6) Article 41, Alcohol / Drug Standards, Appendix ** Random Testing.

At the opening of the hearing, the parties mutually requested the fact-finder to mediate. The fact-finder suggested that the parties give brief openings on the issues remaining so that the fact-finder could be schooled on them for purposes of mediation and as a framework for fact-finding should one or more issues remain unresolved at the close of the mediation effort.

The parties were successful in resolving five of the six issues through the mediation process. Tentative agreements on these five issues were initialed as tentative agreements and exchanged between the bargaining teams and copies of them were provided to the fact-finder (mediator). They are attached to this report in their rough draft, initialed form, and included as part of the fact-finder's recommendation. The fact-finder did not type them out for two reasons. First, it would involve a great deal of time and expense for the parties if the fact-finder did this. Second, there is always the chance that something could be changed inadvertently in the process of typing them for this report. The tentative agreements reached during the hearing /mediation were on management rights, transfer within a classification, vacation, duration, alcohol / drug standards, random testing.

The only issue remaining for the fact-finder to make a decision on is Article 21, Wages, Appendix B. Following is the fact-finder's decision and recommendation.

Factors

The fact-finder considered the following factors in deciding the issues in this case. The first factor considered the current collective bargaining agreement, which was submitted by both parties, and is Tab 5 of the employer's exhibits. The second factor is to make comparisons of the wages of the employees in the bargaining unit with the wages of other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classifications involved. A third factor is the public interest---"interests 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 standards of public service." A fourth factor is the lawful authority of the public

employer. Finally, other factors are considered which are normally and 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.

The fact-finder does not consider fact-finding to be like grievance, or rights, arbitration where the arbitrator determines if there are rights in the contract that should be enforced on behalf of an employee, or the union, or the bargaining unit. In fact-finding, and interest arbitration, the fact-finder is present because the parties were unable to negotiate a collective bargaining agreement between themselves. The fact-finder should endeavor to give them the agreement they would have reached if they had not reached a bargaining impasse. This often means that issues that might appeal to a fact-finder as just and fair are not recommended because it is not likely they would be agreed to by these two parties at this time and place. This is an important consideration in Ohio fact-finding because, regardless of how a fact-finder views a particular issue, the fact-finding report must be submitted to the principals for a vote of approval. Recommendations that follow in this report should be seen in that light.

Article 21: Wages; Appendix B

The union proposed a three (3%) percent increase for all bargaining unit employees beginning July 1, 2012; another on July 1, 2012; and a third on July 1, 2014. This includes increases on the steps for eligible employees.

The steps should be explained. The wage table, Appendix B of the contract, now has hourly, biweekly, and annual dollar amounts for employees in Pay Ranges 02, 04, 05, 06, 06 (BA), and 06 (MA). The employees in Pay Range 06, advance to 06 (BA) upon presenting documentation that the employee has received a Bachelor's Degree in Social Work, Psychology, Sociology, or related field. Pay Range 06 (MA) is the same except the employee must present a Master's Degree. There is now a minimum and maximum pay range for all classifications. After entering the classification at Step 1, each year the employee receives a step increase to another step until the employee reaches the maximum pay for that classification. There are eight to eleven steps depending upon the classification.

There are now sixteen bargaining unit members in the steps. The remaining bargaining unit members, about 18, are at the top of the salary range for their classifications and no longer receive step increases. So, if the contract provides for a percentage increase, say two (2%) percent, then those on the steps receive 2% plus the step, which may be another percent to perhaps 3%. The step increases widely vary. It is hard to know why, but it is probably a result of unintended results of past contract settlements.

The bargaining unit had 43 employees several years ago, but in the past three years has dropped to 34 employees. Fortunately this has occurred as a result of retirement and other kinds of attrition and no layoffs have been necessary. Even so, the work load and duties of the bargaining unit employees remains the same with the result

that the remaining employees have taken on more responsibility due to the downsizing of the bargaining unit.

The union asked for increases on July 1 while the employer proposed increases for the first year upon ratification--November or December.

The most troublesome issue on wages is the step increases. The union argued strongly for keeping them so that the new employees can move more quickly to the top of the classification salary range. The employer argued just as rigorously against keeping the steps.

The employer proposed to eliminate the step system and replace it with pay ranges including a minimum rate and a maximum rate. The employer pointed out that the trend in public sector bargaining units is to eliminate the "double pay increases (a % on the rate and another % on the step) by eliminating the step systems." The employer says "the fairness of the step system was seriously challenged during the SB5 debates, and public opinion was clear that the double pay increases were outdated and excessive in this economic climate." The fact-finder does not doubt it was challenged in the SB5 debate, but doubts that the public formed any opinion about it.

There are two troubling aspects to the steps. First is that they are automatic increases expected even before bargaining begins. The recipients do not deem them to be increases because they existed before the bargaining. Second, they do cost more money, and they limit the pot of money available to the negotiators for other salary and benefit items that might be needed more. Third, to the extent they represent increases in a percentage higher than other negotiated settlements where they do not exist, they fail to pass the test of being comparable to other settlements.

Comparable bargaining units include Shelby DJFS, Seneca DJFS, Pickaway DJFS, and Ashland DJFS. None of these have steps within their salary classification ranges.

With respect to the total wage issue, the employer pointed out that for the past several years, the County Board has faced financial difficulties that are common to all local government. The Board and the general fund have been hit with cuts in the Local Government Funds, future elimination of the Estate Tax, and reductions or elimination of other funding mechanisms. The Board contributes the state minimum to the JFS funding, but its problems are felt countywide.

The DJFS unit is the only unit under the County Board that has the step increases mentioned above.

The employer also proposed that each employee employed on November 1, 2012, would receive a lump sum payment of two (2%) percent of the employee's base salary, which shall not be included in calculating base pay. For 2013, the employer proposed an

increase of two (2%) percent to the base rates of pay. For 2014, the employer proposed a “me too” for increases, tied to what the Board gives to non-union employees.

While the fact-finder is not going to say “never” about any particular proposal, the fact-finder is not inclined to recommend lump sum payments unless special circumstances exist, such as if the funds are from a one-time windfall. With a lump sum, the pay is gone when the next increase period begins, and employees feel they are getting a pay cut. The fact-finder is likewise not inclined to recommend “me too” provisions for increases even though they are often used. They are often used between units that seek pay parity, such as police and fire units.

So, taking all this into consideration, recognizing the employees are not overpaid for their work, especially taking into account those with higher education and degrees; and, recognizing that the employer is not awash with money, what shall the recommendation be?

Following is the fact-finder’s recommendation for Article 21, Wages, Appendix B.

ARTICLE 21 WAGES

Section 21.1 Effective with the beginning of the first full pay period following ratification of this Agreement, each employee assigned to the pay scale contained in Appendix B herein shall receive a two-and-one-half percent (2.5%) increase to his or her base hourly rate; such payment shall on be provided to employees who are employed in the bargaining unit on November 1, 2012.

Section 21.2 Each employee assigned to the pay scale contained in Appendix B herein shall receive a two percent (2%) increase to their base hourly rate at the beginning of the first full pay period following July 1, 2013.

Section 21.3 Effective with the beginning of the first full pay period following July 1, 2014, bargaining unit employees shall receive a two percent (2%) increase to their base hourly rate.

Section 21.4 Maintain current contract language.

Section 21.5 New employees hired after the effective date of this Agreement shall normally be employed at the minimum rate of the applicable pay range. The employer reserves the right to assign new employees above the minimum rate of the applicable pay range when, in the Employer’s judgment, the new employee possesses exceptional knowledge, skills, education, and/or experience which justifies a higher entrance rate into the classification.

Section 21.6 Maintain current contract language.

On the page showing Pay Ranges, Rate Type, Minimum Rate, the numbers will be changed to only reflect the Minimum Rates as proposed in the Employer's submission. The column for Maximum Rate will be deleted. The new contract will have only a minimum rate for each Pay Range and no maximum rate.

Summary

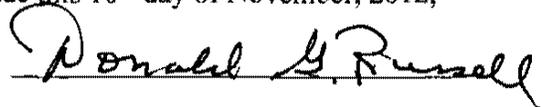
The statute requires a summary of the recommendations. The summary follows here:

- RECOMMENDATION The parties shall use the existing agreement as a touchstone for their agreements to retain current language, delete language, or add language.
- RECOMMENDATION The parties shall include in their contract the tentative agreements reached prior to the fact-finding on November 1, 2012. These agreements are in Tab 5 of the employer.
- RECOMMENDATION The parties shall include in their contract the tentative agreements reached in mediation at the fact-finding hearing on November 1, 2012. These are attached as agreed to by the parties and include all issues except wages.
- RECOMMENDATION The parties shall include the language and numbers on Article 21, Wages, as set out above by the fact-finder. A new Appendix B shall be prepared and included in the contract consistent with the recommendation.

The fact-finder wishes to thank the parties for excellent presentations and the opportunity to serve as fact-finder in this case.

These recommendations are respectfully made this 16th day of November, 2012,

By:



Donald G. Russell, Fact-finder

ARTICLE 1
MANAGEMENT RIGHTS

Section 1.1. The Employer reserves all the customary rights, privileges, or authority of management, except as modified by the express terms of this Agreement, including but not limited to the following:

- A. The right to manage its affairs efficiently and economically, including the determination of quantity, quality, frequency, and type of services to be rendered; the determination, purpose, and control of the types and numbers of materials, machines, tools, and equipment to be used; the selection of the location, number, and type facilities and installations; and the addition or discontinuance of any services, facilities, equipment, materials, or methods of operation;
- B. The right to determine starting and quitting times, work schedules, and the number of hours to be worked, including overtime, lunch, breaks, and rest periods; and to establish the procedures and means for properly documenting hours worked and not worked for all bargaining unit employees.
- C. The right to determine the methods, means, or process by which work is performed; to adopt, revise, or enforce work rules, policies, or regulations; to carry out cost control and general improvement programs; and to determine the methods and amount of supervision necessary;
- D. The right to establish, change, combine, or discontinue job classifications and prescribe and assign job locations and relocations and job duties, content, and classification titles for any new or changed classifications;
- E. The right to establish, continue, or discontinue policies, practices, or procedures for the conduct of the Employer's business and its services to the citizens of Darke County and, from time to time, to change or abolish such practices or procedures provided such does not violate Ohio Revised Code Section 4117;
- F. The right to establish training programs and upgrade requirements for employees within the department;
- G. The right to transfer, promote, demote, or layoff employees due to financial or work load requirements, reorganization of the department, or other legitimate reasons;
- H. The right to continue, alter, make, and enforce rules or regulations for the maintenance of discipline; to suspend, demote, discharge, or otherwise discipline employees for just cause and to take such measures that the Employer may determine are necessary for the orderly and efficient operation of the Employer's business; ;
- I. The right to subcontract, reorganize, or discontinue the agency or its functions, or to combine with any other public or private agency as a new Employer, ~~further the Employer shall not be obligated to bargain over the decision to subcontract, reorganize, discontinue, and/or combine.~~ Upon request of the Union, the Employer agrees to meet and discuss the effects of the decision to subcontract, reorganize, discontinue, and/or combine.

(prior to implementation)

BB 11/1/12

Section 1.2. Maintain current contract language.

Effective Date: Upon Execution of the Agreement

11/1/12

M
Paul Heery
Kelly E Babcock
Graig J. ~~Stallard~~
Mary Getaway

U

ARTICLE 20
TRANSFERS WITHIN A CLASSIFICATION

Section 20.1. A transfer within a classification shall be defined as the movement of an employee from one position to another position within the same classification, but which may be assigned to another division or unit of the Agency or another agency affiliated with Darke County JFS (e.g., pursuant to a contract, agreement, resolution, consolidation, etc.). A transfer within a classification shall not involve any change in the employee's rate of pay.

Section 20.2. Maintain current contract language.

Section 20.3. Maintain current contract language.

Section 20.4. Maintain current contract language.

Effective Date: Upon Execution of the Agreement

If the transfer would result in the employee being permanently assigned to a location outside of Darke County for thirty (30) calendar days or more, the Employer will notify the Union and the affected employee in advance of the transfer.

ASG 11/1/12

11/1/12

[Signature]
Brian Heary
Kelly E Babcock
Janice J. [Signature]
Sherry Hathaway

[Signature]

ratification of this Agreement

11/1/12
**ARTICLE 21
WAGES**

to
Section 21.1. Effective with the beginning of the first full pay period following execution of the Agreement November 1, 2012, each employee assigned to the pay scale contained in Appendix B herein shall advance to the next succeeding pay step in the applicable pay range until the maximum step within the pay range is obtained. Employees who have reached the maximum step prior to execution of this agreement shall receive a two percent (2%) ~~lump sum payment, which does not increase to their his or her base salary, which shall be payable within thirty (30) calendar days of ratification of the agreement;~~ such payment shall only be provided to employees who are employed in the bargaining unit on November 1, 2012.
hourly rate *11/1/12*

11/1/12
Section 21.2. Each employee assigned to the pay scale contained in Appendix B herein shall advance to the next succeeding pay step in the applicable pay range at the beginning of the first full pay period following July 1, 2010 until the maximum step within the pay range is obtained. Employees who have reached the maximum step prior to July 1, 2010 shall receive a two percent (2%) increase to their base salary at the beginning of the first full pay period following July 1, 2010 2013.
hourly rate

Section 21.3. Effective with the beginning of the first full pay period following July 1, 2014 2011, bargaining unit employees shall receive the same general increase to the wage scale as is granted to all other classified non bargaining unit employees of the Darke County Board of County Commissioners, with eligible employees receiving their step increases.
a two percent (2%) increase to their base hourly rate. *11/1/12*

Section 21.4. Maintain current contract language.

Section 21.5. New employees hired after the effective date of this Agreement shall normally be employed at the minimum rate step 1 of the applicable pay range and shall advance to the succeeding pay steps in such pay range on each anniversary date of the Agreement. The Employer reserves the right to assign new employees above the minimum rate step 1 of the applicable pay range when, in the Employer's judgment, the new employee possesses exceptional knowledge, skills, education, and/or experience which justifies a higher entrance rate into the classification.

Section 21.6. Maintain current contract language.

11/1/12

M
Bruce Heary
Kelly E Babcock
Grand
Sherry Hathaway

O

Darke County DJFS
 Fact Finding Proposal, 11/1/12
 AFSCME/OC8, Local 3225

APPENDIX B

EFFECTIVE THE FIRST FULL PAY PERIOD FOLLOWING EXECUTION OF THE AGREEMENT

Pay Range	Rate Type	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10	Step 11
02	Hourly	\$10.35	\$10.66	\$10.99	\$11.31	\$11.65	\$12.00	\$12.35	\$12.74			
	Biweekly	\$828.00	\$852.80	\$879.20	\$904.80	\$932.00	\$960.00	\$988.00	\$1,019.20			
	Annual	\$21,528.00	\$22,172.80	\$22,859.20	\$23,524.80	\$24,232.00	\$24,960.00	\$25,688.00	\$26,499.20			
04	Hourly	\$10.53	\$10.80	\$11.15	\$11.48	\$11.83	\$12.18	\$12.55	\$12.92	\$13.31	\$13.71	\$14.12
	Biweekly	\$842.40	\$864.00	\$892.00	\$918.40	\$946.40	\$974.40	\$1,004.00	\$1,033.60	\$1,064.80	\$1,096.80	\$1,129.60
	Annual	\$21,902.40	\$22,464.00	\$23,192.00	\$23,878.40	\$24,606.40	\$25,334.40	\$26,104.00	\$26,873.60	\$27,684.80	\$28,516.80	\$29,369.60
05	Hourly	\$11.63	\$11.96	\$12.32	\$12.71	\$13.07	\$13.46	\$13.90	\$14.32	\$14.75	\$15.19	\$15.66
	Biweekly	\$930.40	\$956.80	\$985.60	\$1,016.80	\$1,045.60	\$1,076.80	\$1,112.00	\$1,145.60	\$1,180.00	\$1,215.20	\$1,252.80
	Annual	\$24,190.40	\$24,876.80	\$25,625.60	\$26,436.80	\$27,185.60	\$27,996.80	\$28,912.00	\$29,785.60	\$30,680.00	\$31,595.20	\$32,572.80
06	Hourly	\$12.84	\$13.34	\$13.88	\$14.44	\$15.01	\$15.62	\$16.24	\$16.89	\$17.57	\$18.28	
	Biweekly	\$1,027.20	\$1,067.20	\$1,110.40	\$1,155.20	\$1,200.80	\$1,249.60	\$1,299.20	\$1,351.20	\$1,405.60	\$1,462.40	
	Annual	\$26,707.20	\$27,747.20	\$28,870.40	\$30,035.20	\$31,220.80	\$32,489.60	\$33,779.20	\$35,131.20	\$36,545.60	\$38,022.40	
6A (BA)*	Hourly	\$13.12	\$13.65	\$14.19	\$14.75	\$15.35	\$15.96	\$16.60	\$17.26	\$17.95	\$18.67	
	Biweekly	\$1,049.60	\$1,092.00	\$1,135.20	\$1,180.00	\$1,228.00	\$1,276.80	\$1,328.00	\$1,380.80	\$1,436.00	\$1,493.60	
	Annual	\$27,289.60	\$28,392.00	\$29,515.20	\$30,680.00	\$31,928.00	\$33,196.80	\$34,528.00	\$35,900.80	\$37,336.00	\$38,833.60	
6B (MA)**	Hourly	\$13.42	\$13.94	\$14.48	\$15.06	\$15.61	\$16.22	\$16.86	\$17.50	\$18.20	\$18.94	
	Biweekly	\$1,073.60	\$1,115.20	\$1,158.40	\$1,204.80	\$1,248.80	\$1,297.60	\$1,348.80	\$1,400.00	\$1,456.00	\$1,515.20	
	Annual	\$27,913.60	\$28,995.20	\$30,118.40	\$31,324.80	\$32,468.80	\$33,737.60	\$35,068.80	\$36,400.00	\$37,856.00	\$39,395.20	

APPENDIX B

EFFECTIVE THE FIRST FULL PAY PERIOD FOLLOWING EXECUTION OF THE AGREEMENT

Pay Range	Rate Type	Minimum Rate	Maximum Rate
02	Hourly	\$10.99	\$12.74
	Biweekly	\$879.20	\$1,019.20
	Annual	\$22,859.20	\$26,499.20
04	Hourly	\$11.15	\$14.12 <i>\$14.99</i>
	Biweekly	\$892.00	\$1,129.60 <i>\$1,190.20</i>
	Annual	\$23,192.00	\$29,369.60 <i>\$31,179.20</i>
05	Hourly	\$12.32	\$15.66 <i>\$16.62</i>
	Biweekly	\$985.60	\$1,252.80 <i>\$1,329.60</i>
	Annual	\$25,625.60	\$32,572.80 <i>\$34,569.60</i>
06	Hourly	\$13.88	\$18.28 <i>\$19.40</i>
	Biweekly	\$1,110.40	\$1,462.40 <i>\$1,552.00</i>
	Annual	\$28,870.40	\$38,022.40 <i>\$40,352.00</i>
6A (BA)*	Hourly	\$14.19	\$18.62 <i>\$19.81</i>
	Biweekly	\$1,135.20	\$1,493.60 <i>\$1,584.80</i>
	Annual	\$29,515.20	\$38,833.60 <i>\$41,204.80</i>
6B (MA)**	Hourly	\$14.48	\$18.94 <i>\$20.11</i>
	Biweekly	\$1,158.40	\$1,515.20 <i>\$1,608.80</i>
	Annual	\$30,118.40	\$39,395.20 <i>\$41,828.80</i>

CAF
11/1/12

An employee who demotes, whether voluntarily or not, goes to the same step a rate of 4% lower in the applicable pay range for the new position as the employee was in previously for the position from which demoted.

Darke County DJFS
Fact Finding Proposal, 11/1/12
AFSCME/OC8, Local 3225

*An employee whose job classification places them in pay grade 06 will advance to pay grade 6A upon presentation of documentation demonstrating the employee has a Bachelor's Degree in Social Work, Psychology, Sociology, or related field.

**An employee whose job classification places them in pay grade 06 will advance to pay grade 6B upon presentation of documentation demonstrating the employee has a Master's Degree in Social Work, Psychology, Sociology, or related field.

Effective Date: Upon Execution of the Agreement

11/1/12

M

Brett Alway
Kelly E Babcock
Gavin Patrick
Sherry Matthews

U

ARTICLE 27
VACATION

Section 27.1. Maintain current contract language.

Section 27.2. Maintain current contract language.

Section 27.3. In order for an employee's vacation request to be considered, that employee must put the request in writing. Vacation shall not be granted in increments of time that are less than one-half (1/2) hour in duration. Further, if an employee intends to take three (3) or more consecutive weeks of vacation, he or she must provide the Employer with at least a four (4) calendar month notice for the Employer to arrange operations. *This notice requirement does not apply to unplanned FMLA events.*

Section 27.4. Maintain current contract language.

Section 27.5. Employees may at the sole discretion of the Director with proper authorization carry over earned vacation time for a period not to exceed forty (40) hours ~~three (3) years accumulation.~~ Vacation accrual in excess of forty (40) hours ~~three (3) years worth of accumulation~~ will be forfeited unless the employee has made a reasonable effort to utilize her vacation and has had such vacation requests denied. *into a successive year*

Section 27.6. Maintain current contract language.

11/1/12
Effective Date: Upon Execution of the Agreement

(in addition to the prior year's accumulation, which must be used in the successive year).

11/1/12
M
Britt Henry
Kelly Babcock
Angela [unclear]
Mary Hathaway

V

ARTICLE 38
DURATION

Section 38.1. This Agreement shall be effective upon ratification and shall remain in full force and effect through 12:00 midnight on June 30, 2015 ~~2012~~ except for those articles or sections which specify an earlier effective date.

Section 38.2. If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than ninety (90) calendar days prior to the expiration date, nor later than eighty (80) calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt requested. The parties shall commence negotiations within two (2) calendar weeks following receipt of the notice of intent, unless the time period is mutually extended by the parties. ~~If neither party gives notice as provided herein, this Agreement shall be renewed in its present form for one (1) additional year.~~

Section 38.3. Maintain current contract language.

Effective Date: Upon Execution of the Agreement

11/1/12

Brett Healey
Kelly E Babcock
Angie J. Dattoli
Sherry Hatheway

ARTICLE 41
ALCOHOL/DRUG STANDARDS

Section 41.1. Drug/alcohol testing may be conducted on employees at time of pre-employment, post accident, follow-up (pursuant to this Article), return-to-duty (pursuant to this Article), or upon reasonable suspicion, and/or in conjunction with a random testing program. Reasonable suspicion that an employee used or is using a controlled substance or alcohol may be based upon, but not limited to:

- A. Observable phenomena, such as direct observation of drug or alcohol use or possession and/or the physical symptoms of being under the influence of a drug or alcohol;
- B. A pattern of abnormal conduct or erratic behavior, including abnormal leave patterns;
- C. Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug or alcohol possession, use, or trafficking;
- D. Evidence that an employee has tampered with a previous drug test;
- E. Facts or circumstances developed in the course of an authorized investigation of an accident or unsafe working practice.

Section 41.2. Random testing procedures will be in conjunction with Appendix **.

Section 41.3. Drug and Alcohol testing shall be conducted solely for administrative purposes and the results shall not be used in criminal proceedings. Under no circumstances may the results of drug screening or testing be released to a third party for the use in a criminal prosecution against the affected employee. The following procedure shall not preclude the Employer from other administrative action but such actions shall not be based solely upon the test results. Refusal to submit to the testing provided for under this Agreement may be grounds for discipline, up to and including termination.

Section 41.4. Alcohol Testing Procedures: Alcohol testing shall be done in accordance with the Department of Transportation (DOT) regulations for employee testing or, in accordance with the law of the State of Ohio to detect drivers operating a motor vehicle under the influence. A positive result shall entitle the Employer to proceed with sanctions as set forth in this Article. A positive result for the purpose of this article, shall be defined as .04 or above.

Section 41.5. Drug Testing Procedure: All drug tests shall be conducted by laboratories certified by the Department of Health and Human Services (DHHS). The drug screen will be used to detect the illegal use of a controlled substance, which includes the illegal use of or abuse of legal and illegal substances. The results of a screening test shall not be considered positive until it has been confirmed by a gas chromatography/mass spectrometry (GC/MS) full scan test. The procedures utilized by the Employer and testing laboratory shall include an evidentiary chain of custody control. The split sample method of collection shall be used following prescribed testing procedures. All procedures shall be outlined in writing and this outline shall be followed in all situations arising under this Article.

Section 41.6. The results of the drug test shall be delivered to the Director and the employee tested. Prior to reporting a positive result on a confirmatory drug test, the Medical Review Officer (MRO) shall review the documentation to ensure that the test results were obtained using the approved protocol methods.

Section 41.7. Split Sample Testing:

- A. If a drug confirmation test is positive, the employee may, upon written request and at the employee's expense, have the split sample tested by a DHHS-certified laboratory. This request shall be presented to the MRO within seventy-two (72) hours of being notified of a positive result.
- B. In the event the split sample test confirms the results of the primary test, the Employer may proceed with the sanctions as set forth in this Article.
- C. In the event that the split sample test contradicts the result of the primary test, the split sample result is determined to be the final result. The results of this test, if positive, shall allow the Employer to proceed with sanctions as set forth in this Article. If the results are negative, the employee shall be given the benefit of the doubt and no sanctions shall be imposed.

Section 41.8. Test results shall not be released unless the employee has provided a signed release for disclosure of the results. A representative for the Union shall have a right of access to the results upon request to the Employer, with the employee's written consent.

Section 41.9. If the alcohol or drug test is positive, and if this is a first violation of this Article or a self-referral involving alcohol and/or misdemeanor drug related activity, the Employer may offer the employee the opportunity to participate in a rehabilitation or detoxification program, as determined by appropriate medical personnel, which is covered by the employee's health insurance program. An employee who participates in a rehabilitation or detoxification program shall be allowed to use sick leave, vacation leave, compensatory time, and/or personal days for the period of the rehabilitation or detoxification program. If no such leave credits are available, such employee shall be placed on a leave of absence without pay for the period of the rehabilitation or detoxification program. Upon successful completion of such program and a negative result on a return-to-duty test, the employee shall be returned to the same position, provided he or she is qualified, subject to any follow-up testing and any terms of a Last Chance Agreement. Such employee may be subject to two (2) randomly scheduled follow-up tests within the one (1) year period following rehabilitation, unless additional tests are prescribed by her substance abuse professional. If the employee refuses to undergo rehabilitation, or if she fails to complete a program of rehabilitation, or if she tests positive on the return-to-duty or any of the follow-up tests, such employee shall be subject to disciplinary action including termination. Employees who violate the terms of this Article a second time, or whose violations involve evidence of a felony drug related activity, shall not be offered a change to participate in a rehabilitation or detoxification program and will be subject to discipline immediately, up to and including termination.

Section 41.10. Cost of all alcohol/drug screening tests and confirmatory tests shall be borne by the Employer, except that positive return-to-duty tests, follow-up tests, and any test initiated at the request of the employee shall be at the employee's expense.

Section 41.11. For the purpose of implementing the provisions of this Article, each bargaining unit member shall execute medical releases in order for the Employer to obtain the results of the physical examinations and alcohol/drug tests provided for in this Article. Except as otherwise provided by state and/or federal law with regard to communicable diseases, or with permission of the employee, the releases referred to in this Section shall authorize only the release of examination results and progress

Darke County DJFS
Fact Finding Proposal, 11/1/12
AFSCME/OC8, Local 3225

reports pertaining to the drug screening test results. No other medical findings may be released without the express written authorization of the employee.

**APPENDIX **
RANDOM TESTING**

A. Maximum Requirement

- Annually, the Employer may conduct up to three (3) random drug tests. Testing will be unannounced.

B. Test Rate for Controlled Substances

- The testing percentage for controlled substances may be up to 50 percent of the total number of bargaining unit and non-bargaining unit employees of the Darke County DJFS.

C. Method of Selection

- The selection of bargaining unit members shall be based on a scientifically valid method, such as a random number table of a computer based random number generator that is matched with social security numbers. All bargaining unit members shall have an equal chance of being tested each time selections are made.

D. Notification of Selection

- The Employer shall contract with an outside facility capable of providing random selection services. The facility making the random selection should notify the Employer representative three (3) to five (5) days in advance of the scheduled test date of the employees selected. The Employer representative should prepare the notices, notify the department representative or the division head of the selections and request that the department representative or division head pick-up the notices. The department representatives or division head should notify the supervisors and/or the employees at the time they are required to report for testing. All representatives and the department head shall keep the identity of the employees selected confidential.

E. Report Immediately

- The Employer shall ensure that when an employee is selected for random drug testing, the employee reports to the test site immediately.

F. Absent Employee

- In the event an employee who is selected for a random controlled substance test is on vacation, or an extended medical absence, the Employer may either select another employee for testing or keep the original selection confidential until the employee returns.

G. Notification of Positive Results

The Employer is required to notify the employee if the controlled substance test results were positive and which substances actually tested positive. Employees shall be notified of negative results upon request if such results can be made available to the Employer.

H. Consortia

If the Employer conducts random controlled substance testing through a consortium, the number of employees to be tested may be calculated for each individual Employer or may be based on the total number of subject employees covered by the consortium.

Effective Date: Upon Execution of the Agreement

11/1/12

M

D

Paul Stearns
Kelly E Babcock
Gregory J. [unclear]
Shirley Entwistle