

State of Ohio

State Employment Relations Board

In the Matter of Fact Finding	:	SERB Case Number: 2013-MED-04-0607
	:	
Between:	:	
	:	
Butler County Board of	:	
Commissioners,	:	Date of Hearing: May 20, 2014
Hamilton, Ohio	:	Date of Report: June 5, 2014
Employer	:	
	:	
And:	:	
	:	Felicia Bernardini, Fact Finder
Butler County Children Services	:	
Independent Union	:	
Union	:	

Fact Finder Report and Recommendation

Appearances:

For Butler County Board of Commissioners

Jim Davis, Assistant Director of Human Resources, Fact Finding Spokesperson

William Morrison, Assistant Director, Butler County Children Services

Barb Fabelo, Chief Financial Officer, Butler County Job and Family Services

Matthew S. Neugebauer, HR Officer, Butler County Commissioners

For Butler County Children Services Independent Union

R. Jessup Gage, Attorney, Hardin, Lazarus & Lewis, LLC, Fact Finding Spokesperson

Keila Rickus, Administrative Assistant, Bargaining Unit Member

Christi Scheid, Home Study Specialist, Bargaining Unit Member

Rachel Melampy, Ongoing Case Worker, Bargaining Unit Member

Rebecca Palmer, Facilitator Social Worker, Bargaining Unit Member, Union President

Introduction

Case Background

Felicia Bernardini was selected by the parties to serve as fact finder in the above referenced case and duly appointed by the State Employment Relations Board (SERB) on April 8, 2014 in compliance with Ohio Revised Code (ORC) Section 4117.14C(3). The case concerns a fact finding proceeding between the Butler County Board of Commissioners (hereafter referred to as the “Employer” or the “BOC”) and the Butler County Children Services Independent Union (hereafter referred to as the “Union” or “BCCSIU”).

Prior to the hearing, the parties engaged in contract negotiations on multiple dates beginning on June 10, 2013 and ending with three mediation sessions, the last on January 6, 2014. Despite the many meetings, the negotiations resulted in limited tentative agreements (TA’s). Both parties dropped many of their initial proposals and agreed to retain current contract language. At fact finding, five (5) issues remained unresolved. The fact finding hearing was scheduled for May 20, 2014. Both parties timely filed the required pre-hearing statements.

The day of the hearing, the parties and the fact finder discussed whether an effort at mediation prior to moving to the evidentiary hearing might be worthwhile. The parties’ advocates agreed to a brief mediation of the Duration Article given that their respective proposals on that Article had not been previously discussed. No agreement was reached on the Duration Article and the parties proceeded to hearing.

Jim Davis represented the Employer.

Jessup Gage represented the Union.

Issues

The remaining open issues addressed by both parties at the hearing are as follows:

Article 37: Longevity Supplement

Article 39: Step Increases

Article 41: Wages

Article 46: Duration

New Article: Retention Schedule

General Background Information

Butler County is situated in the southwest corner of the State. It is just north of Hamilton County and the City of Cincinnati and is bordered by Montgomery, Warren and Preble Counties. Butler County's population in 2012 was 370,589.¹ The population of Butler County has grown by double digits in each of the past two decades and is expected to grow by 7-8% by 2020.² At 4.7%, Butler County has one of the lowest unemployment rates in Ohio.³

The Butler County Department of Job and Family Services is a combined agency that provides a broad range of services including Medicaid, Food Stamps, WIC, Adult Protective Services, Ohio Works First, and Workforce Development. Butler County Children Services is a Division of Butler County JFS governed by the Butler County Commissioners. Children Services is responsible for investigating allegations of abuse or neglect and acting to protect children from harm.

The bargaining unit is represented by the Butler County Children Services Independent Union. Included in the Unit is all non-management, full-time and regular part-time employees of the Division. There are currently 124 employees in the Unit, most of who are classified as Social Service Workers. Their primary responsibilities are to respond to reports of child neglect/abuse, assess risk, make and record observations from investigations and conduct home visits. Other bargaining unit employees provide administrative, custodial, financial, and clerical support services for these case management functions.

Positions, Discussion and Recommendations

At the hearing the parties agreed to present their respective arguments on issues grouped in the following way: step increases and wages, followed by longevity supplement and retention schedule, followed by duration. Therefore, the format of this report will follow the same order and grouping of issues. Below the position of each party is briefly summarized, position summaries are followed by a brief analysis and discussion, which is followed by the fact finder's recommendation.

¹ Ohio County Profiles, Ohio Development Services Agency, Office of Policy, Research and Strategic Planning

² Ibid

³ Ohio Not Seasonally Adjusted Unemployment Rates April 2014, Ohio Department of Job and Family Services, Bureau of Labor Market Information

In analyzing the positions of the parties and making recommendations the fact finder is guided by available, relevant evidence and the criteria set forth in ORC 4117.14(G)(7)(a) to (f):

- (a). Past collective bargaining agreements, if any between the parties;
- (b). 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;
- (c). The 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 standard of public service;
- (d). The lawful authority of the public employer;
- (e). Any stipulations of the parties;
- (f). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

1. Article 39: Step Increases and Article 41: Wages

Employer Position

The Employer proposes to freeze steps and is offering the following schedule of lump sum payments for fulltime employees and a pro-rated amount for part-time employees.

- \$500.00, December 2014
- \$550.00, December 2015
- Wage reopener to negotiate a performance-based pay plan or \$550.00, December 2016

The Employer maintains that a system with across-the-board increases, step increases and promotional increases, as is currently the system for bargaining unit employees, can in various combinations, lead to individual bargaining unit employees receiving increases that reach as high as 10% or more (5% for classification promotion, 3% for step increases, 1-3% across-the-board increases). Such a pay practice is not consistent with wage increases in the private sector and is not consistent with the labor market in the area. The BOC has eliminated step increases from all of its non-bargaining unit pay plans and has newly implemented a pay for performance system. As for

bargaining units, the Commissioners have removed, or frozen, step increase pay provisions in all but two of its labor agreements. Both this Unit and the Butler County JFS bargaining unit are currently in fact finding. In both cases, the Employer's step/wage proposal is the same as that achieved in other bargaining units. In place of step increases, the Commissioners seek to negotiate a pay for performance plan that would provide for perhaps as much as 4% increases if warranted by performance. This aspect of the Employer's proposal is tied to the wage reopener for the third year of the contract.

As for wages, the Employer seeks a provision that is aligned with the provision offered to the JFS Unit and aligned with the pay provision achieved in other Butler County bargaining unit contracts. The Employer maintains that these internal comparables should be the basis for this Unit's wage settlement. The Employer further maintains that the public sentiment among voters in the County is fiscally conservative. Despite the fact that Children Services levies have consistently been passed by voters in years past, there is no guarantee of levy passage in the future. Without levy support the funding situation for Children Services would be completely different. Given this, the Employer maintains that it must be in step with the conservative taxpayer sentiment and has structured its pay proposals for step increases and wages in just such a conservative manner.

In preparation for fact finding the Employer surveyed Social Service Worker wages in adjoining counties. The adjoining counties are a reasonable set of comparables because they are a mix of large and small counties, and they are the resident counties for the Children Services workforce – thus, a true representation of the local labor market. The wage survey is limited to the Social Service Worker classifications because these classifications make-up 80% of the bargaining unit. The results of the wage survey show that Social Service Worker 2s are somewhat below market, but most of the current employees are Social Service Worker 3s and 4s. In these two classifications, the average hourly wage in the adjoining counties is just at the wages of Butler County. This shows that the wages are properly aligned with the surrounding labor market and any shift upward, as would happen with an across-the-board percentage-based wage increase, would shift the pay scale above the 100th percentile.

Union Position

The Union is seeking to eliminate the contract language that froze step increases during the term of the prior contract and to reinstate the normal functioning of the step increase provision. As for wages, the Union seeks across-the-board wage increases as follows:

- 3.5%, retro-active to July 1, 2013
- 3.5%, July 1, 2014
- 3.5%, July 1, 2015

The Union maintains that there has been substantial economic growth in these post-recession years. Butler County's financial position is strong. Sales tax revenues in 2013 were 15% greater than projections. Property tax collections are similarly high. The ending cash balance for the Butler County Children Services fund is \$5.08M, which is 20% of the Division's operating expenses. This is a very healthy fund carryover for the County. In fact, the Employer has not made an "inability to pay" argument regarding the economic proposals for this bargaining unit. Money has been offered to this bargaining unit in the form of annual lump sum increases and a pay for performance, merit-based pay program that could theoretically provide for individual raises averaging 2.5% in a range of 1-4%.

The Union points out that the Employer has not been as consistently conservative in its handling of County pay practices as it claims. There are two clear and dramatic ways in which the BOC has acted in a manner that is contrary to the position it has taken with its bargaining units. First, they have approved pay structures that include across-the-board increases of 3% and more, along with step-based pay plans for other county employers (*e.g.*, Sheriff, Courts). The budgets for these other county employers are all approved by the Butler County Board of Commissioners and therefore cannot be said to be outside of their authority. Second, they have recently granted multiple pay increases for bargaining exempt employees directly under their governance. In the case of these non-bargaining unit employees, pay ranges have been increased not only to levels recommend by the Commissioners' external wage consultant, but in some cases even higher than what was recommended. In addition to pay range adjustments, individual non-bargaining unit employees were reclassified resulting in pay range changes and consequently pay increases. Furthermore, these same non-bargaining unit employees in Children Services also received a 2.5% wage increase in 2014, and they had received a 1.5% lump sum payment in 2013. The upshot of these pay increases is that non-bargaining unit employee pay, over a ten-year period from 2004-2014, increased on average 33%, with a range of 17.25% to 49.17%. Whereas bargaining unit employee pay, over this same ten years, increased on average 14.25%, with a range of 12.53% to 19.3%.

For comparable wages, the Union turns to the counties that the Employer's own external consultant used in Butler County's non-bargaining unit employee wage study. These counties are Warren, Clermont, Lake, Lorain, Montgomery, Stark and Summit. Bargaining unit wages in these

counties, with the exception of Warren which is not unionized, show that wages for Butler County Social Service Workers are consistently 6.5% to 12.5% below average. In addition to the Union's wage survey, which is a snapshot of wages as of 2014, the Union's survey also shows that these counties all have pay plans that include step increases and longevity supplements. Finally, with respect to comparable data, the Union's survey shows that wage increases of 2.5% for the coming year have been negotiated in some counties while other counties are still actively negotiating.

The Union further maintains that contrary to the Employer's argument that Children Services has not been devastated by layoffs as other County agencies have been, Children Services has experienced a hiring freeze and is consistently 10 bargaining unit positions under its budgeted staffing level. In addition there have been 14 bargaining unit resignations in 2011, 17 bargaining unit resignations in 2012, 16 bargaining unit resignations in 2013, and 6 bargaining unit resignations so far in 2014. Most of these resignations are Social Service Workers. These figures demonstrate that turnover is unsatisfactorily high among social workers. Clearly this bargaining unit has not been unscathed by staff reductions as the Employer argues.

Discussion and Recommendation

After carefully reviewing the evidence presented in this case, I recommend restarting the normal functioning of step increases and providing modest across-the-board cost of living increases for the first and second years of the contract (1.5% and 1.75% respectively) and a wage reopener in the third year for the purpose of revisiting the pay for performance plan sought by the Employer. In lieu of the third-year reopener, the parties may default to a 2% cost of living adjustment.

In this case we are not dealing with a traditional fact finding scenario of "inability to pay." Both parties asserted as much in the fact finding hearing, and this may, in fact, be the only point on which the parties agree. It is amply clear that the root of this dispute is a philosophical difference between the parties as to the preferred structure of the pay plan. The Employer seeks to dispense with automatic step increases and replace that system with performance-based raises; the Union seeks to maintain its current step progression provision. This fact finding report is not a commentary on the rightness or wrongness of either approach. There are advantages and disadvantages to both; there is research that both supports and opposes adoption of one or the other, and both have their enthusiasts and detractors. This report is based on an analysis of the evidence presented at hearing and application of the relevant statutory criteria for making recommendations.

Upon review of the external comparable data present by the parties I find that both sets are instructive. The Union's data is broader ranging. It covers all bargaining unit positions rather than just social workers. It includes more data points upon which averages are based; and the selected counties more closely match the demographic characteristics of Butler County, which is presumably why these same counties were used when Butler County studied the wages of its non-bargaining unit employees. The data clearly show that, with the exception of Administrative Assistants, the pay ranges of this bargaining unit are substantially below average and the differential is greater at the entry level of each pay range than at the career top of each pay range. The Employer's comparable data, though different, also show that entry level pay is somewhat below average, but that career top level pay is essentially at the 100th percentile. Upon close examination of the Employer's wage survey of adjoining counties, it is evident that the Preble County salary data is more appropriately aligned with the Social Service Worker 2 job description based on the handwritten notes on the survey instrument. In Preble County, all social service worker duties are performed by SSW2s, there are no SSW3s nor are there lead worker SSW4s. This minor adjustment in the Employer's summary data table changes the averages slightly for SSW2 and SSW3, but does not change the pattern. Regardless, Preble County is an outlier both organizationally and demographically and its inclusion only serves to skew the data. Without Preble county the remaining counties together (both Employer and Union) show that the Butler County Social Service Worker pay ranges are below average, out of step with what other counties pay for same/similar duties, and they are farther below average at the entry level than at the career top level. Unrebutted testimony at the hearing established that 53% of bargaining unit employees are at the top step of their pay range. 20% of bargaining unit employees are at step one, and 10% are at step two. Until such time as the Employer undertakes a fairly constructed wage study, as it did with its non-bargaining unit employees and makes an appropriate equity adjustment to the structure of the pay range, this comparable data clearly argues for the reinstatement of step increases for this bargaining unit.

Given that the data show that this bargaining unit's pay ranges have fallen behind the market, across-the-board cost of living increases are appropriate. Even if one adopts the position, as the Employer has, that the current social service worker pay is between the 93rd to 100th percentile (as adjusted by the fact finder) of the average social service worker pay in surrounding counties, projecting three years of lump sum bonuses rather than cost of living adjustments to base pay would result in pay ranges that fall behind the market, especially at the entry levels. Evidence presented at hearing shows that similarly situated counties have negotiated modest (2%-2.5%) pay raises for 2014

and 2015. SERB's summary wage settlement data presented at hearing clearly show that wage settlements are trending up each year rather than dropping or remaining flat. Whereas the Employer looks retrospectively at the SERB data and calculates three-year historic averages in the range of .92% - 1.3%, and thus asserts that a 1% lump sum equivalent is in keeping with SERB data; the fact finder looks to the year-to-year change in wage settlements from 2011, when settlements bottomed out, and sees that wage settlements are rising annually (in relevant comparison areas) at modest increments of between 25% and 45%. This Unit received a 1.5% wage increase in 2009 (below SERB-reported averages), a 1.5% wage increase in 2010 (a rate on par with SERB-reported averages), 0% increase in 2011, 2012 and 2013 (along with no step increases). This being the case, a reasonable wage settlement for this bargaining unit is an across-the-board 1.5% increase retroactive to July 1, 2013; and a 1.75% across-the-board increase effective July 1, 2014.

As for internal comparables, the Employer seeks to engage in pattern bargaining with its unionized units and maintains that a package of no step increases and lump sum bonuses is the established and excepted pattern in five out of seven bargaining units. In this case, the economic package on which the pattern is based has been premised on the notion that the existing pay ranges are equitable and already market-based. In the case of this bargaining unit, the best evidence in the record suggests otherwise. The fact finder takes note of the way non-bargaining unit employee pay has been handled leading up to implementation of the Commissioners' pay for performance plan. The process included a fair wage study followed by an adjustment of pay scales to the market. These steps are a reasonable foundation upon which to implement a future pay for performance plan. They are also steps that could be replicated for bargaining units. Based on this, the fact finder recommends a wage reopener in the third year of the contract. In so doing, both parties have the opportunity to revisit in negotiations how such a plan might be fairly implemented. Failing that, the parties may default to a 2% across-the-board cost of living adjustment effective July 1, 2015.

Recommendation

The statutory criteria require that the fact finder consider comparable public jurisdictions, and the Employer's ability to pay and administer the recommended provisions. In light of these criteria the fact finder recommends the reinstatement of step increases and the following wage settlement:

- Effective July 1, 2013 all rates of pay shall increase 1.5%.

- Effective July 1, 2014 all rates of pay shall increase 1.75%.
- In the third year of the contract (2015) a wage reopener limited to Article 41 and the implementation of a performance-based pay plan, or the parties may default to a 2.0% rate increase effective July 1, 2015.

Relevant contract language shall read in part as follows:

Article 39: Step Increases

Section 39.1. Employees shall be eligible for step increases in accordance with current pay ranges and pay steps as provided in Schedule 3 and 3A (effective January 2, 2010). ~~This provision is frozen beginning January 1, 2012 through June 30, 2013.~~

All other sections: current contract language.

Article 41: Wages

Section 41.1. Pay ranges shall remain unchanged during the term of this Agreement as set forth in Schedule 3A (Social Worker 1, 2, 3, and 4) and Schedule 3 (all other Employees), **which pay schedules shall be increased by 1.5% effective July 1, 2013 and 1.75% effective July 1, 2014.**

Section 41.2. ~~In the event that the Board of County Commissioners approves an across-the-board increase for non-bargaining unit employees of Butler County Children Services in an amount greater than three (3%), cumulatively during the term of this Agreement, the Employees covered by this Agreement shall receive an across-the-board increase in the amount that exceeds three percent (3%), subject to the same terms and conditions.~~

The Employer and the Union may agree to meet and re-open negotiations limited specifically to Article 41 (Wages) and the implementation of a performance pay plan. Notice to re-open negotiations shall be done through written notice and served to the other party no later than January 30, 2015. If either party declines to reopen negotiations or the Parties meet and cannot reach a new agreement in regards to Article 41 (Wages) by May 31, 2015, pay ranges in Schedule 3A and Schedule 3 shall increase by 2% effective July 1, 2015. The timeframe for the re-opener negotiations may be adjusted by mutual agreement of the Parties.

2. Article 37 Longevity Pay Supplement and New Article: Retention Schedule

Union Position

The Union seeks to reestablish a longevity benefit for all bargaining unit employees. In doing so, the Union proposes an edit to existing language in Article 37 to clarify the ongoing nature of the current longevity supplement for bargaining unit employees hired prior to April 15, 1994. The Union also proposes a new article that establishes a retention benefit for bargaining unit employees hired on or after April 15, 1994. The proposed retention schedule supplement is a lesser benefit than the existing longevity supplement. It is intended to help address the high turnover that this bargaining unit is experiencing. The financial impact of the proposed retention benefit is minimal for the Employer, but would be a financial incentive for those in the bargaining unit who are stepped-out and looking for a reason to stay. Furthermore, the Union maintains that other jurisdictions have longevity benefits making this proposal a simple matter of comparability.

Employer Position

The Employer opposes the proposed change in the longevity article and is opposed to the proposed retention benefit. The Employer maintains that the level of turnover in this bargaining unit is not abnormal and certainly is not at a level that adversely impacts the Employer's ability to carry out its mission. The longevity benefit was negotiated out of the contract in 1994; the language is designed to allow the benefit to sunset. Today there are only a handful of employees still receiving this benefit. The Employer maintains that even though other jurisdictions have existing longevity benefits, no new longevity benefits are being negotiated where the benefit does not exist. Furthermore, the structure of the new retention benefit as proposed by the Union has no phase-in language and would therefore result in individual bargaining unit employees receiving as much as 5% increases upon implementation. This would indeed be a costly benefit with long term ramifications for the Employer.

Discussion and Recommendation

On the matter of longevity and retention supplements I am persuaded that the Employer's position is correct. In this matter it is the bargaining history of the parties that carries the most weight. Unlike the step increase article where the parties negotiated a limited suspension of the benefit, the longevity benefit was permanently suspended for all future employees as of April 1994. Over twenty years and multiple rounds of contract negotiations the parties have maintained the

existing longevity language knowing that its impact would be the complete elimination of the benefit upon the retirement or separation of all pre-1994 hirees. Certainly, a party can change its mind as to the wisdom of a negotiated provision from some twenty years prior, but the best path to undo the bargained history of the parties is further bargaining and the mutuality that arises from that bargaining.

Recommendation

The statutory criteria require the fact finder to consider the bargaining history of the parties. In deference to that bargaining history, the fact finder recommends that the parties maintain current language in Article 37: Longevity Pay Supplement and that the proposed new article Retention Schedule, not be adopted.

3. Article 46: Duration

Union Position

The Union seeks a three year contract, the term of which would abut the expiration of the former contract. The dates of the new contract would be July 1, 2013 through June 30, 2016. Further, the Union seeks to eliminate language in Section 46.2 that requires a sixty (60) day notice to negotiate prior to the expiration of the contract. The Union maintains that historically the parties have always abutted the effective date of a new contract with the expiration of the prior contract. There has never been a gap between contracts except for when the Union's bargaining agent changed. The Union also maintains that the current three-year term of the contract that runs on the July-June schedule was introduced in the last contract to accommodate the needs of the Employer. Changing the term back to a January-December schedule again at the behest of the Employer does not serve the mutual interest of the parties.

Employer Position

The Employer seeks a three year contract, the term of which would commence upon approval by the Board of County Commissioners and ending December 31, 2016. The Employer maintains that the parties will be better served if the term of the new contract is set to correspond with the calendar year and with the term of other bargaining unit contracts in the same agency. By

arranging the contract termination dates as proposed by the Employer, the Employer's negotiating team can even out its workload and thus better meet the needs of the parties during negotiations.

Discussion and Recommendation

Both parties have recommended a three year contract, although their proposed starting and ending dates differ. In deference to the bargaining history of the parties the fact finder recommends that the three-year term of the new contract abut the expiration of the prior contract. In addition, the contract language referencing a sixty-day notice to negotiate is consistent with statute and therefore should be retained.

Recommendation

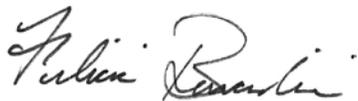
The fact finder recommends current contract language with a start date of July 1, 2013 and an expiration date of June 30, 2016.

Conclusion

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G)(7)(a) to (f) the fact finder recommends the provisions as enumerated herein. In addition, all tentative agreements (TAs) previously reached by the parties along with all sections of the current Agreement not negotiated and/or changed, are incorporated by reference into this Fact Finding Report and should be included in the resulting collective bargaining agreement.

Respectfully submitted and issued at Columbus, Ohio this 5th day of June 2014.



Felicia Bernardini,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Fact Finder Report was sent by e-mail on June 5, 2014 to:

State Employment Relations Board
Mary E. Laurent
65 E. State Street
Columbus, Ohio 43215
med@serb.state.oh.us

Butler County Children Services Independent Union
C/O R. Jessup Gage
Hardin, Lazarus & Lewis, LLC
30 Garfield Place, Suite 915
Cincinnati, Ohio 45202
jessupgage@hllmlaw.com

Butler County Board of Commissioners
C/O Jim Davis
315 High Street
Hamilton, Ohio 45011
davisj@butlercountyohio.org



Felicia Bernardini