

**STATE OF OHIO**

**STATE EMPLOYMENT RELATIONS BOARD**

In the matter of	*	13-MED-05-0638
	*	
Fact-finding between:	*	
	*	Martin R. Fitts
Butler County Job & Family Services	*	Fact-finder
	*	
and	*	
	*	
AFSCME Ohio Council 8, Local 3062	*	May 27, 2014
	*	
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**REPORT AND RECOMMENDATIONS OF THE FACT-FINDER**

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**APPEARANCES**

For the Butler County Job & Family Services (the Employer):

James L. Davis, Assistant Director of Human Resources  
 Matthew Neugebauer, Human Resources Officer  
 Adam Jones, Assistant Director, Butler County JFS

For AFSCME Ohio Council 8, Local 3062 (the Union):

Joe D. Wilson, Staff Representative  
 Kelly Suit, AFSCME Local 3062 President  
 Sandra McGuire, AFSCME Local 3062 Vice President  
 Candace Taylor, AFSCME Local 3062 Treasurer  
 Charity Sizemore, Executive Board

## **PRELIMINARY COMMENTS**

The bargaining unit has approximately seventy-five (75) members and consists of all full-time, regular part time, and intermittent employees of the Butler County Department of Job and Family Services, including the following positions: Account Clerk 1, Clerical Specialist 1, Clerical Specialist 2, Clerical Specialist 3, Mail Clerk/Messenger, Unit Support Worker 2, Social Services Worker 1 (degree and non-degree), Social Services Worker 2, Investigator 1, Investigator 2, Eligibility/Referral Specialist 2, One-Stop Clerical, Bookkeeper I, Bookkeeper II, Training and Employment Coordinator (degree and non-degree), Contract Assistant, and Contract Evaluator.

The last Collective Bargaining Agreement expired on August 31, 2013. Since that time the Employer and Union participated in twelve negotiating sessions that commenced on September 10, 2013. Article 42 (Wages) was the primary issue in dispute and despite one last session on March 13, 2014, the parties reached impasse on wages. Also remaining at impasse are Article 27 (Holidays) and Article 43 (Duration). The parties did successfully reach tentative agreements on numerous other articles.

This Fact-finder was appointed by SERB on April 4, 2014 and a Fact-finding Hearing was held on May 13, 2014. Both parties submitted pre-hearing statements, attended the hearing and elaborated upon their respective positions.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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, and 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.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented to the Fact-finder at the May 13, 2014 hearing.

## **ISSUES AND RECOMMENDATIONS**

### **Issue: Article 27 – Holidays**

#### **Positions of the Parties**

The Union proposed the addition of the following holidays: one-half day on Christmas Eve and one-half day on New Year's Eve.

The Employer proposed the retention of current contract language, which does not provide for holiday time on Christmas Eve or New Year's Eve, but rather provides this bargaining unit with any such holiday time on those two days as granted by the Board of County Commissioners to any other of its employees.

#### **Discussion**

The Employer noted that Butler County had approved these two days as paid half-day or full-day holidays prior to 2010. However, in the parties' negotiations in 2010, the current language was crafted and placed into Article 27, Section 2(a) and reads: *Christmas Eve Day and New Year's Eve Day shall be observed only as approved by the Board of County Commissioners for all other non bargaining unit employees of the County.*

The Employer stated that in 2012, all employees (i.e., bargaining-unit and non-bargaining unit employees) received a paid half-day off on those days due to this “me too” language. The Employer argued that this is a fair and equitable approach. It argued that Butler County’s holiday practices are generous without the addition of two more holidays. It provided evidence that the Bureau of National Affairs (BNA) conducts an annual survey on holiday practices, and that BNA reported that surveyed employers provide an average of 8.9 days paid holiday in 2013. The Board of County Commissioners currently provides 10 days of paid holiday to its non-bargaining unit employees, and none of its other union contracts establishes these days as holidays.

For reasons of economy and out of concern for public perception, the Employer proposed to maintain current contract language in order to be consistent among all Butler County employee groups, both bargaining-unit and non-bargaining unit employees, who fall under its appointing authority.

The Union noted that while employees directly under the Board of County Commissioners do not receive more than ten holidays, all of the bargaining units under the Butler County Sheriff’s Office do receive more than ten holidays; in fact they have 12 paid holidays. The Union argued that this bargaining unit endures high stress levels just as the Sheriff’s bargaining units do, and that justifies the added holidays.

The Union also argued that a cursory look at other county JFS agencies (at least the 31 counties surveyed by the Union, which it acknowledges represents the first 31 counties alphabetically) shows that most (28 of the 31) provide more than ten holidays to their employees. However, as there are 88 counties in Ohio, this represents less than half of the possible JFS comparables, leaving undocumented for this Fact-finder how the other 57 county JFS agencies provide holidays for their employees.

### **Findings and Recommendation**

The Fact-finder finds the Employer’s argument to be compelling for the following reasons. First, the internal comparables show that the other Board of County Commissioner employees, bargaining and non-bargaining, follow the same ten-day holiday schedule, with the Commissioners retaining the right to grant additional full or half holidays on Christmas Eve and New Years Eve. Thus this bargaining unit is treated similarly with other employees working

under the Board of Commissioners. This is a far more compelling comparable than the other 31 county JFS agencies presented by the Union, which includes a number of counties geographically far from Butler County, and vary widely in their demographic and political landscape.

Secondly, and most compelling, the parties saw fit to change the language of Article 27.2(a) in their last contract negotiations. As all negotiations are full of give and take, it is reasonable for this Fact-finder to assume that this same give and take was part of the process that led to the crafting of the current language. There was no reasonable argument or evidence that what was acceptable to this bargaining unit in 2010 has proved unreasonable or unfair to them now.

With such a recent change in this provision, and with the strong internal comparables favoring the Employer's position, there is simply no compelling argument to recommend changes to Article 27, Section 2(a) at this time.

Therefore the Fact-finder recommends that the current language for holidays in Article 27 be retained.

#### **Issue: Article 42 – Wages**

#### **Positions of the Parties**

The Union proposed a 2.5% increase in the first year of the contract retroactive to September 1, 2013, with wage re-openers in years two and three of the contract.

The Employer proposed a \$500.00 lump-sum payment in Year 1, a \$550.00 lump-sum payment in Year 2, and a \$550.00 lump-sum payment in Year 3 of the new agreement.

#### **Discussion**

The Employer did not argue an inability to pay for a wage increase larger than the one it has proposed, but rather that the need to achieve parity with other Board of Commissioners

bargaining units (internal equity) and with other County JFS organizations in the Southwest Ohio region (external equity) is motivating its proposal.

The Board of Commissioners has seven bargaining units under its appointing authority. Negotiated agreements are in place in five of those units (Building and Zoning, Care Facility, the Child Support Enforcement Agency, Maintenance, and Water and Sewer). Two units are in fact finding (Children Services and this bargaining unit). A Summary of Bargaining-Unit Wage Agreements with wage language for the five negotiated agreements was provided to the Fact-finder. The Employer argued that Butler County's wage proposal for lump sum payments with a reopener in the last year of the contract is similar to and consistent with the wage events that other bargaining-unit employees of the BOC are experiencing.

The Employer noted that the 1.0% across-the-board or step increase that these bargaining-unit employees received in 2012, before the current round of negotiations and the Employer's negotiations with other BOC bargaining units, was one of the few wage adjustments that any bargaining unit had received since 2009. Non-bargaining unit employees of the Board of Commissioners had not received any kind of pay adjustment since 2008. That changed in July 2013 when the Board of Commissioners approved a one-time payment not added to base pay that was equivalent to 1.5% of annual salary for non-bargaining unit employees who had received no other pay adjustment in the previous year, such as a promotional increase. 73.7% non-bargaining unit employees received the lump-sum payment. In January 2014, non-bargaining unit employees who were not at the top of the pay grade received a percentage adjustment in base pay to the top of the pay grade or of 2.5%, whichever was smaller. The Employer stated that an identical increase to the 2014 non-bargaining wage adjustment was proposed to the Union during the current negotiations. That proposal was rejected, the Employer presumed, because 45.3% of the employees in this bargaining-unit are topped-out in their pay grades.

The Employer argued that Butler County JFS is currently situated near the top of the local labor market. In July 2013, the 19-county Southwest ODJFS Directors Association issued income maintenance case load statistics that included salary information for the highest-level caseworkers in an organization. The information was collected and distributed by the Director of the Greene County Department of Job and Family Services. Those results showed that Butler County JFS starting pay was \$15.66 per hour (third-highest out of the 19 counties in the region). In addition, the results showed that the Butler County JFS starting pay is currently 9.8% over the local labor

market average. The Employer argued that allowing an across-the-board increase would exacerbate this pay situation and the Employer's standing in the local wage market.

The Employer called its proposal of a \$500.00 lump-sum payment in Year 1, a \$550.00 lump-sum payment in Year 2, and a \$550.00 lump-sum payment in Year 3, reasonable for the reasons stated above, and also because it more than fits in with recent wage settlements among public employers in the region and Ohio county jurisdictions. The Employer provided SERB's most-recent Annual Wage Settlement Report which shows that wage settlements in the Cincinnati region from 2011 to 2013 averaged 0.92% per year during that three-year period. The average for county jurisdictions over that same time frame was 1.3%. The average annual pay of a BCJFS bargaining-unit employee is \$35,692.80. The Employer argued that a \$500.00 lump-sum payment represents 1.4% of pay and \$550.00 represents 1.54% of pay. Therefore, the Employer argued, the proposed lump-sum amounts are consistent with or greater than the wage settlement amounts being reported by SERB.

The Union noted that its proposal would provide a 2.5% wage increase for all bargaining unit employees rather than just those who have not yet topped out at their pay grade. It believes this is fair, as all the employees have had to perform more duties as the number of citizens on public assistance has more than doubled since 2009, while the number of FTE's has dropped nearly in half in that same time period.

In support of its argument, the Union provided evidence that the Employer laid off approximately 50 employees at Butler County JFS in 2011. This occurred during the 2009-2014 time frame that saw: total food stamp cases rise from 14,713 in 2009 to 35,243 in 2014; the number of food stamp recipients rise from 34,243 in 2009 to 48,740 in 2014; and the number of Medicaid recipients rise from 47,006 in 2009 to 70,224 in 2014.

Additionally, the Union argued that its proposed 2.5% across the board raise would cost only approximately \$39,000 in 2014. It argued that the cost of living has increased 10% since 2010, while the employees of this bargaining unit have seen their wages rise by only 1%.

Lastly, the Union argued that its proposal for wage re-openers in Year 2 and Year 3 of the agreement would give the Employer an opportunity to make its case at that time that additional increases would not be feasible then.

## **Findings and Recommendation**

The Fact-finder finds several facts to be compelling. First, the fact is that the caseload of this bargaining unit has dramatically increased over the last five years while the manpower in the agency has substantially decreased. It is clear that the members of this bargaining unit have had to take on significantly more work without additional compensation. The Employer offered no evidence that any other county employee group (bargaining or non-bargaining) has had such a large uptick in work. The employees of this bargaining unit have earned an increase, and earned it retroactive to the expiration of the previous agreement.

Secondly, while the Employer argued that its proposal translates to 1.4% and 1.54% wage increases, this is somewhat misleading, as an increase to the base wage compounds in value over the years, while a lump-sum payment does not. Three successive lump-sum payments would keep the employees at the same base rate at the end of the agreement, meaning that the employees would lose three years of compounding that likely never will be recaptured in future wage increases. Thus equating the lump-sum amounts to a percentage wage increases is not comparing apples to apples.

However, an across the board 2.5% wage increase is a significant jump, and clearly not called for when considering the Board of Commissioners internal comparables, nor the other county JFS external comparables presented by the Employer. The approximate value of the Employer's first year proposal would be somewhat greater than 1.4% if it were an across the board increase rolled into the base wages. This Fact-finder considers a 1.5% across the board increase to the base wage rates retroactive to September 1, 2014 to be reasonable and fair to the employees, and has been earned through their increased workload. The additional base wage rate will not significantly change the position of this bargaining unit's wages relative to the comparable JFS units presented by the Employer.

Prospectively, the Employer's concerns for Year 2 and Year 3 have some validity. In fact, Year 2 of this agreement will be upon the parties soon, given the Fact-finder's Recommendation for Duration found below. A \$550 lump sum payment at the beginning of Year 2 of the agreement, not rolled into the base wages, again fairly compensates the employees without giving the

Employer an undue burden. Likewise, a \$550 lump sum payment at the beginning of Year 3 of the new agreement, not rolled into the base wages, again provides some deserved additional compensation to the bargaining unit employees without compounding costs to the Employer.

Therefore the Fact-finder recommends that Article 42 be amended to provide a 1.5% across the board increase to the base wages of the bargaining unit members, retroactive to September 1, 2013.

Further, the Fact-finder recommends that Article 42 be additionally amended to provide for a \$550 lump sum payment (not rolled into the base wage rates) to the employees at the beginning of Year 2 of the agreement, and an additional \$550 lump sum payment (again not rolled into the base wage rates) to the employees at the beginning of Year 3 of the agreement.

#### **Issue: Article 43 – Duration**

#### **Positions of the Parties**

The Union proposed a three year agreement beginning September 1, 2013 expiring on August 30, 2016.

The Employer proposed that the contract commence as soon as practicable and expire on December 31, 2016.

#### **Discussion**

The Employer is proposing that this contract commence as soon as practicable and expire on December 31, 2016. That would place the contract close to the three-year statutory maximum duration and, with an end-of-year expiration, it would be synchronized with Butler County's calendar-year budget cycle. The December 31, 2016 expiration date would align this contract with the recently-completed CSEA agreement.

The Employer argued that another reason for this proposed duration is simply a practical one. The Employer would like to have all of its collective bargaining agreements on a negotiating

cycle that ends on December 31, with a number expiring at the end of 2015 and this one expiring at the end of 2016. Butler County relies on its own staff to conduct collective bargaining negotiations and staff resources are finite, and this would space things out better from an administrative standpoint.

The Union tied its proposal here to its proposal for wages, which calls for a wage increase retroactive to September 1, 2013. That date was the expiration of the prior agreement, and the Union would like to pick up where the last contract left off. It argued that this would be fairer to these employees, as stretching out the effective length of this agreement would result in minimizing any wage gains from it.

### **Findings and Recommendation**

The Fact-finder finds several facts to be compelling. First, the wage increase provided for in the recommendation above is retroactive to the expiration of the prior agreement, which this Fact-finder is convinced is fair. Fixing the duration of the new agreement to expire at August 31, 2016 will provide a small, but extra, benefit to the employees with respect to the retroactivity of the base wage increase and the two lump sum payments in Years 2 & 3. As noted above, the increased work load over the last five years has justified such an increase. (Note that the August 31, 2016 date recommended is one day later than the Union's proposal for an expiration date of August 30th, and will provide the parties with a full three years duration.)

Secondly, there was no evidence provided that the parties changed or considered changing the duration of the agreement in their last negotiations. While the Employer argued that it would be helpful administratively for a change in the duration of this agreement to be changed to expire on December 31, 2016, it did not provide evidence that it had attempted to change previous agreements with this bargaining unit to an end-of-the-year date. Further, it did not present a compelling argument that any administrative process has significantly changed during the last three years that a change in the expiration date to an end-of-the year date is warranted.

Therefore the Fact-finder recommends that duration of the agreement be from September 1, 2013 through August 31, 2016.

**The above represents all of the Findings and Recommendations made by the undersigned Fact-finder in this matter.**



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Martin R. Fitts  
Fact-finder  
May 27, 2014

**Certificate of Service**

I hereby certify that an exact copy of this Fact-finding Report was transmitted this day by email to: AFSCME representative Joe D. Wilson (jwilson@afscme8.org); Butler County Job & Family Services representative Jim Davis (davisj@butlercountyohio.org); and the Bureau of Mediation, State Employment Relations Board (med@serb.state.oh.us).



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Martin R. Fitts  
Fact-finder  
May 27, 2014