

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of: :
 :
United Auto Workers Local 2192 : **2013-MED-06-0792**
 :
and : **FACT FINDING REPORT**
 : **FINDINGS AND RECOMMENDATIONS**
 :
Lorain County Department of Job : **October 18, 2013**
and Family Services :

APPEARANCES

For the Union:

Jim Waingrow, International Representative, UAW
Andrea Thomas, Bargaining Committee
Nadine Plavsich, Bargaining Committee
Kelly Fields, Bargaining Committee Chair

For the Employer:

Sandra Conley, Clemans Nelson
Howard D. Heffelfinger, Clemans Nelson
Alisa Thacker, Manager, Department of Job and Family Services

**Daniel G. Zeiser
Fact Finder
P.O. Box 43280
Cleveland, Ohio 44143-0280
440.449.9311**

I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on August 7, 2013, pursuant to Ohio Revised Code Section 4117.14(C)(3). The parties mutually agreed to extend the fact-finding period as provided under Ohio Administrative Code Rule 4117-9-05(G) until October 30, 2013. The parties are the United Auto Workers (Union or UAW) and the Lorain County Department of Job and Family Services (Employer or DJFS). The Employer is an agency of Lorain County responsible for providing unemployment, welfare, and other benefits. The Union represents approximately 165 employees in various classifications.

The collective bargaining agreement expired on September 15, 2013. The parties met six (6) times prior to fact finding. During negotiations, the parties reached tentative agreements on the following matters:

1. Article 8 - Grievance Procedure, Section 8.6 (Housekeeping).
2. Article 15 - Demotions, Section 15.1 (Housekeeping).
3. Article 16 - Transfers, Section 16.1 (Housekeeping).
4. Article 19 - Health and Safety.
5. Article 23 - Job Audits (Housekeeping).
6. Article 24 - Inclement Weather (Housekeeping).

These tentative agreements are hereby incorporated into this Fact Finding Report.

II. THE HEARING

The fact-finding hearing was initially held on October 2, 2013 at the offices of the DJFS, 42485 North Ridge Road, Elyria, Ohio. Each party provided a pre-hearing

statement to the Fact Finder. At the October 2 hearing, the Employer raised the issue that it had not received the Union's pre-hearing memorandum. The Union was unable to determine whether it had sent its memorandum to the Employer, as the person who had sent it was unavailable that day. The hearing was reset for October 9 to allow the Union to provide evidence that the pre-hearing memorandum had been sent to the Employer. On October 3, the Union acknowledged that the Employer had not been provided with the memorandum. It took the position that serving the Fact Finder was sufficient under Ohio Administrative Code Section 4117-9-05 and that it could rectify the situation since the hearing had been reset. The Fact Finder gave the parties until the close of business on October 7 to provide him with their positions and any other relevant information. The Employer provided a letter outlining its position and a fact finding report from Susan Grody Ruben in the matter of The City of Conneaut and Fraternal Order of Police, 12-MED-08-0754, dated July 19, 2013. After reviewing the law, regulations, and the other information provided, the Fact Finder concluded that, under Chapter 4117 and OAC 4117-9-05, the Union was prohibited from introducing any evidence in support of its proposals but could introduce evidence in rebuttal to any Employer proposals. The Employer objected to the Fact Finder permitting the Union to introduce evidence not in support of matters raised in the Employer's memorandum, but the Fact Finder overruled that objection. The hearing continued on October 9, 2013. At the request of the Union and agreement of the Employer, the Fact Finder engaged in mediation. Mediation was not successful, though, the hearing was held, and this report issued.

The parties jointly introduced the following exhibit into evidence:

1. Agreement between the Lorain County Department of Job and Family Services and the United Automobile, Aerospace and Agricultural Implement Workers of America Local Union #2192 Effective March 28, 2011 through September 15, 2013.

Additionally, the parties introduced the following exhibits into evidence:

Employer Exhibits

1. Summary of Employer Position and Statement of Rationale, Issue 1.
2. Summary of Employer Position and Statement of Rationale, Issue 2.
3. Summary of Employer Position and Statement of Rationale, Issue 3.
4. Summary of Employer Position and Statement of Rationale, Issue 4.
5. Summary of Employer Position and Statement of Rationale, Issue 5.
6. Summary of Employer Position and Statement of Rationale, Issue 6.
7. Summary of Employer Position and Statement of Rationale, Issue 7.
8. Summary of Employer Position and Statement of Rationale, Issue 8.
9. Summary of Employer Position and Statement of Rationale, Issue 9.
10. Summary of Employer Position and Statement of Rationale, Issue 10.
11. Summary of Employer Position and Statement of Rationale, Issue 11.
12. Summary of Employer Position and Statement of Rationale, Issue 12.
13. Summary of Employer Position and Statement of Rationale, Issue 13.
14. Summary of Employer Position and Statement of Rationale, Issue 14.
15. Summary of Employer Position and Statement of Rationale, Issue 15.
16. Summary of Employer Position and Statement of Rationale, Issue 16.
17. Summary of Employer Position and Statement of Rationale, Issue 17.

Union Exhibits

The Union offered no exhibits.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (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 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) 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.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions.

III. ISSUES AND RECOMMENDATIONS

Introduction

The issues remaining at impasse prior to the hearing included:

1. Article 2 - Recognition.
2. Article 8 - Grievance Procedure.
3. Article 10 - Personnel Files.
4. Article 21 - Dress Code.
5. Article 22 - Standards of Conduct.
6. Article 26 - Sick Leave.
7. Article 28 - Union Leave.
8. Article 30 - Family and Medical Leave.

9. Article 32 - Work Day/Work Week.
10. Article 33 - Wages.
11. Article 34 - Health Care and Insurance.
12. Article 37 - Holidays.
13. Article 38 - Vacation.
14. Article 39 - Personal Days.
15. Article 40 - Public Retirement System.
16. Article 49 - Duration of Agreement.
17. New Issue - Union Office.

As noted above, since the Union did not provide the Employer with its pre-hearing memorandum, the Fact Finder was prohibited from taking evidence in support of its proposals. Issues 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, and 17 were Union proposals. The Employer rejected these Union's proposals and sought to retain the current contract language. Additionally, the Employer withdrew its responses as to Issues 1, 4, and 9. Thus, the Fact Finder was precluded from addressing these issues. The issues that remained and are addressed in this report include:

1. Article 33 - Wages.
2. Article 39 - Personal Days.
3. Article 40 - Public Retirement System.
4. Article 49 - Duration of Agreement.

Issue: Article 33, Wages

Position of the Employer: A 3% general wage increase in 2013 upon execution of the Agreement, a 2.5% general wage increase commencing with the first full pay period

following September 15, 2014, and a 2.25% general wage increase commencing with the first full pay period following September 15, 2015. The maximum rate is to be increased by 1.5% in 2013, by 1.25% in 2014, and by 1.125% in 2015.

Position of the Union: During negotiations, the Union proposed wage increases of 3% in each year of the contract. At the hearing, the Union requested any increase for 2013 to be effective September 15, 2013.

Findings: The DJFS argued that its wage proposal is consistent with increases provided to other bargaining units during the 2013 contract cycle. The County has collective bargaining agreements with nineteen (19) bargaining units. All units that have contracts beginning in 2013 have settled for the 3%-2.5%-2.25% package. Internal consistency in bargaining is an important factor in fact finding and conciliation. Numerous neutrals have found that pattern bargaining within an employer is important. Further, treating this bargaining unit differently could cause low morale in other units. It could also lead to other units seeking to be treated differently, defeating the purpose of consistent wages within the County. The DJFS also introduced evidence that the wages of this unit are comparable to similar counties. It proposed Butler, Clermont, Lake, Lucas, Mahoning, Stark, and Trumbull counties as comparable. The Fact Finder is not convinced that Lucas county is comparable, given that Toledo is located there. The remaining counties, though, are comparable. Some, such as Butler, are adjacent to a county with a large metropolitan area (Hamilton County and Cincinnati) and have a city with similar population to the City of Lorain (approximately 64,000, 2010 Census). Hamilton has a population of approximately 62,000 (2010 Census). Others have a city with populations similar to Lorain. For example, Stark County has Canton, with a

population of approximately 73,000, while Mahoning County has Youngstown with a population of approximately 67,000 (2010 Census). Lorain County is adjacent to Cuyahoga County and Cleveland, while Lorain is similar in population to Canton, Youngstown, and Hamilton. The evidence showed that the majority of DJFS employees are in classifications such as Account Clerk 2, ESC, Investigator, IM Aide 2, and IM Worker 3. These classifications are paid comparably to similar classifications in the above counties. Finally, the DJFS claimed that any wage increase for 2013 must be prospective. It provided an internal memorandum that retroactive pay increases require a great deal of work and, as a result, the County would not sign any Union agreements with retroactive pay.

The Union contended that the Employer's position is not reasonable. Not all other units agreed to 3% increases. For example, Children's Services agreed to \$.74 increases for 2013, which is not equivalent to 3%. It seeks the same increase, primarily arguing that Children's Services is the most comparable unit to this one, while DJFS employees cannot truly be compared to units such as deputy sheriffs or road workers. Further, the Employer's position on retroactive pay is not accurate. The memorandum indicates that it can be done, it simply takes more work to get it done.

The DJFS responded that the \$.74 increase received by Children's Services equalled 3% of the average of the hourly rate of each employee in that unit. It offered to do the same with this unit. It calculated that an average of 3% of the hourly rates for each employee in the bargaining unit to be \$.46 per hour.

The DJFS's position is reasonable. Each of the bargaining units that have reached an agreement with the County has received 3%-2.5%-2.25%. The \$.74 per

hour increase received by Children's Services is equivalent to 3% of the average hourly rates of the unit. Additionally, the DJFS evidence established that the largest classifications in the bargaining units are paid comparably with other counties. However, its position on retroactive pay is not reasonable. Retroactivity is not precluded. Rather, the County has taken the position that it will not voluntarily agree to retroactivity due to the work required to make pay retroactive. Any increase for 2013 should be retroactive to the first pay period after September 15, 2013.

Recommendation: A general wage increase of 3% effective with the first full pay period following September 15, 2013, a 2.5% general wage increase commencing with the first full pay period following September 15, 2014, and a 2.25% general wage increase commencing with the first full pay period following September 15, 2015. The maximum rate is to be increased by 1.5% in 2013, by 1.25% in 2014, and by 1.125% in 2015.

Issue: Article 39, Personal Days

Position of the Employer: During negotiations, the Union proposed that all personal days be credited on September 16 of each year and to allow personal days to be taken in one (1) hour increments. The Employer was agreeable to front loading personal time and allowing new hires the ability to break one (1) personal day into increments.

Position of the Union: Personal days should be credited on September 16 and all employees should be permitted to break a personal day into increments.

Findings: The Union raised a concern that newly hired employees were not able to utilize time off in small increments to attend a child's school or similar events. The Employer proposed to allow new employees to break one (1) personal day into increments. It proposed this only for new hires since current employees can use

vacation time in increments. Thus, only new hires have a need for incremental time. The Union was hesitant to agree to apply this only to new hires. Both sides agree that personal days should be credited on September 16, with the provision for a reconciliation process should an employee use more time than he or she has accrued at the time an employee leaves employment. Given the Union was hesitant to agree to allow new hires to take a personal day in increments and it could cause more problems than it solves, it is not recommended.

Recommendation: Personal days should be credited on September 16 of each year, with a reconciliation process should an employee take more personal time than he or she has accrued.

Issue: Article 40, Public Retirement System

Position of the Employer: Article 40 should read "Information regarding the Ohio Public Employees Retirement System (OPERS) is available on line by accessing <http://www.opers.org>.

Position of the Union: The Union presented no evidence in rebuttal to the Employer's position. It did suggest that employees be allowed to access the site while at work.

Findings: The expired language provided that the DJFS would provide OPERS information pamphlets to employees needing pension information. However, OPERS no longer provides these pamphlets and the information is available on the OPERS website. It makes no sense to require the Employer to provide pamphlets that no longer are produced and may be inaccurate. The information is available on the internet and employees should be made aware of the site. Employees should be permitted to access the information during non-working time. It would be too difficult to police a

provision that permitted access during working time, since what is reasonable access to one (1) person may not be reasonable to another.

Recommendation: Adopt the Employer's proposed language. Add a provision that employees can access the information during non-working time only.

Article 49 - Duration of Agreement

Position of the Employer: The Agreement should run for a three (3) year period beginning upon execution and terminating September 15, 2016.

Position of the Union: The Agreement should begin September 16, 2016 and run for three (3) years.

Findings: There is no dispute that the Agreement should be for a term of three (3) years. The only issue is whether it should begin on September 16 or upon execution. In the Fact Finder's experience, agreements typically are for three (3) years and begin when the last contract expired. The Employer presented no evidence why the Agreement should not begin upon expiration.

Recommendation: The Agreement should be for a three (3) year period beginning September 16, 2013.

As noted above, all tentative agreements reached during negotiations are incorporated into this report.

Dated: October 18, 2013



Daniel G. Zeiser
Fact Finder