

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF THE FACT FINDING BETWEEN:	:	: CASE NO. 2013-MED-09-1079
	:	:
COMMUNICATION WORKERS OF AMERICA LOCAL 4329, AFL-CIO	:	: FACT FINDING REPORT
	:	: Submitted by John F. Lenehan,
Union,	:	: Fact Finder, September 4, 2015
	:	: (Via Email)
and	:	:
	:	:
GALLIA COUNTY, OHIO DEPARTMENT OF JOBS AND FAMILY SERVICES	:	:
	:	:
Employer.	:	:

Union Representative:

**Mr. Christopher S. Peifer
Barkan Meizlish, LLP
50 E. Broad Street, 10th Floor
Columbus, Ohio 43215
Phone: (614) 221-4221
Email: cpeifer@barkanmeizlish.com**

Employer Representatives:

**Mr. Donald R. Keller
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
Phone: (614) 719-5955
Email: dkeller@mwncmh.com**

**Dana L. Glassburn, Administrator
Gallia County Dept. of Jobs and
Family Services
848 Third Avenue
Gallipolis, Ohio (740) 446-3222
Dana.Glassburn@jfs.ohio.gov**

SERB:

Mary.Laurent@serb.state.oh.us, med@serb.state.oh.us

FINDING AND RECOMMENDATION

I BACKGROUND

On June 16, 2015, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the case of Communication Workers of America, Local 4320 and the Gallia County Department of Jobs and Family Services (Case No. 2013-MED-09-1079). A Fact Finding Hearing was held on August 5, 2015, 9:00 a.m., at the Gallia County Court House, 2nd Floor, 18 Locust Street, Gallipolis, Ohio. The Communication Workers of America, Local 4320 was representative by Christopher S. Peifer, Esquire. The Gallia County Department of Jobs and Family Services was represented by Donald R. Keller, Esquire and Dana L. Glassburn, Administrator/Director of the Gallia County Department of Jobs and Family Services. Also, in attendance on behalf of the Union were: Ernie Meadows, Chief Steward; Amanda Elkins, Steward; R. Glenn Skeen, Vice President, CWA Local 4320; and, John E. Bibish, CPA. Additional attendees on behalf of the Employer were: Kathy Campbell, Fiscal Supervisor, Gallia County Department of Jobs and Family Services; and, Karen Sprague, Gallia County Administrator for the County Commissioners. Prior to the commencement of the hearing, the Fact Finder discussed the possibility of mediating and settling any outstanding issues. Unfortunately, the parties were unable to reach any further agreement.

The following report is the Finding and Recommendation of the Fact Finder regarding the outstanding issues. At the conclusion of the hearing, the parties agreed that the Fact Finding Report would be issued via email to the parties' representatives and SERB on September 4, 2015.

A. Description of the Parties and Bargaining Units

The parties are Communication Workers of America, Local 4320, AFL-CIO ("Union", "Local 4320" or "CWA"), and the Gallia County Department of Jobs and Family Services ("Employer", "Agency", "Department" or "County"). The Union is recognized as the certified and exclusive representative of the probationary and non-probationary, full-time and part-time employees in the following classifications:

1. Account Clerk 1 (16511)
2. Account Clerk 2 (16512)
3. Clerical Specialist (12113)

4. Custodial Worker (42111)
5. Employment Services Counselor (64222)
6. Employment Service Interviewer (64210)
7. Income Maintenance Aide 1 (17211)
8. Income Maintenance Aide 2 (17212)
9. Income Maintenance Worker 2 (17222)
10. Income Maintenance Worker 3 (17223)
11. Investigator 1 (26211)
12. Investigator 2 (26212)
13. Social Service Aide 1 (17321)
14. Social Service Worker 1 (69311)
15. Social Service Worker 2 (60312)
16. Social Service Worker 3 (60313)
17. Telephone Operator 1 (12131)
18. Vehicle Operator 1 (54441)

The Gallia County Department of Jobs and Family Services is an administrative department of the County of Gallia, Ohio, a political subdivision of the State of Ohio. Gallia County is governed by a three (3) member Board of Commissioners. Mr. Dana Glassburn is the Director/Administrator of the Department pursuant to appointment by the Board of Commissioners. The Department or Agency administers and provides a wide range of services and programs to the citizens of Gallia County. These services and programs include: (1) Adult and Family Services (Prevention, Retention and Contingency Programs); Food Assistance (Food Stamp Benefits); Medicaid Assistance; Ohio Works 1st Assistance; Nursing Homes and Long Term Care Assistance; Healthy Start/Healthy Families Medicaid; (2) Social Services (Child Care; Health check; Non-Emergency Transportation; Adult Protective Services; Pregnancy Related Services); (3) Workforce Investment Act Job Training; (4) Child Support Enforcement; (5) Employer Services for local businesses (including recruitment, pre-employment testing; computer lab training and development, and re-training); and (6) Services to Job Seekers (e.g., job fair, resume and interviewing assistance, and career counseling).

Gallia County Ohio has a population of approximately 30,934 according to the 2010 census. The County seat is located in the Village of Gallipolis, Ohio.

B. History of Bargaining

The parties have a bargaining history dating back more than thirty (30) years. Currently there are twenty-four (24) employees in the bargaining unit; seventeen (17) of them are members of the Union and pay dues, and seven (7) do not pay any dues or fair- share fees. From November 8, 2013 to May 7, 2015, the parties met seventeen (17) times for the purpose of negotiating a successor agreement to the one that was effective June 4, 2011 through December 31, 2013 (“Current Agreement”). In addition to these meetings, the parties exchanged proposals via email. Tentative Agreements were reached on thirty-three (33) articles of the thirty-seven (37) in the Current Agreement.

On May 7, 2015, the CWA informed the Employer that the Union had no further movement in their proposals. As a result, the Employer submitted to the Union its “Last Best Final Offer” (LBFO).

C. Resolved Articles/Issues

It is the finding and recommendation of the Fact Finder that the aforementioned thirty-three (33) tentative agreements on the articles of the Current Agreement are to be incorporated in this Fact Finding Report and the new successor CBA of the parties.

D. Unresolved Articles/Issues

The following are the unresolved articles and issues remaining for disposition by the Fact Finder.

1. Article 7 “Dues Checkoff” (Union Proposal)
 - a) Fair Share Fee
 - b) Meeting of New Employees with Union Officials
2. Article 8 “Union Representation”
 - a) Section 8.1 – delete requirement that stewards be selected from different classifications (Union Proposal)
 - b) Section 8.7 – reduce paid monthly steward time from 12 to 4 hours per month (Employer Proposal)
 - c) Commissioners’ Meetings
3. Article 34 “Wages”
 - a) Amount and effective date of increases
 - b) Additional hourly increase for employees employed in 2009
 - c) Appendix – Hourly Rate Listing

- d) Hourly rate to be assigned to employees employed as of June 4, 2011 or who were on active recall list and returned to employment prior to expiration of the list
 - e) The hourly rate to be assigned to an employee who is demoted more than one (1) pay range
 - f) The hourly rate to be assigned to an employee who exercises bumping rights into a higher pay range
 - g) One time signing bonus upon ratification of the Agreement
 - h) Materials and supplies for employees use
 - i) Supplemental paid leave for employees employed as of December 31, 2013
 - j) Longevity increases
4. Article 37 “ Duration”

II CRITERIA

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

- 1) Past collectively bargained agreements 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 employers in comparable work, given consideration to factors peculiar to the area and the classifications involved;
- 3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect on the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III ISSUES

ARTICLE 7 **DUES CHECKOFF**

A. Fair Share Fee

Union's Position

The Union has proposed to incorporate a fair share fee provision in Article 7 –Dues Checkoff of the Current Agreement. Its proposal reads as follows:

Section 7.6 The Employer shall deduct a fair share fee from the pay of bargaining unit employees who are not members of the union, as follows:

1. For all new employees hired after the ratification date of this contract, the deduction shall begin sixty (60) days following the beginning of employment. The fair share fee shall be equal to the dues required of a Union member.
2. For all current employees who are not union members, the fee will only go into effect if they change a job classification, from the classification they hold at the time of the contract ratification.
3. Any union member who freely decides to drop out of the union, shall forfeit union membership but will continue to pay his/her dues.

When an employee enters the bargaining unit for any reason, the Employer shall notify the employee of this Article and provide the employees with the appropriate deductions forms.

In support of its fair share fee proposal, the Union argues that it is cost neutral for the Employer and that it will make those for whom the Union administers the CBA pay their fair share of the costs of administration and fairly distribute those costs among all bargaining unit employees. In addition, the incorporation of the fair share fee provision is consistent with the collective bargaining agreements the County has with other bargaining units, e.g., Emergency Services, Sheriff's Office, Engineer and 911 Communication Center, which contain fair share provisions in their CBA's.

The Union further states that its policy in relation to the fair share fee payers is relatively liberal in that they receive the difference between the costs of representational activities and non-representational activities in advance prior to the fair share payer paying the equivalent of dues. Finally, the Union argues that its proposal of a fair share fee provision is reasonable

both in relation to the County and the employees in the bargaining unit, and stresses, again, it is cost neutral for the County.

Employer's Position

The Employer is adamantly opposed to imposing a fair share fee obligation on non-members. First, it argues that whether a CBA contains a fair share fee provision is subject to the sound discretion of the public employer and the employee organization based upon good faith negotiations, and such should not be imposed by a third party, i.e., fact finder or conciliator. Second, the Employer states that the Union did not provide any rationale for its proposal, except for the traditional union rhetoric/pretense that there should be no "free riders".

Third, the Employer submits that pursuant to Ohio Revised Code 4117.03, public employees have a free choice and the right to refrain from joining, assisting, or participating in an employee organization. Thus, to impose an involuntary obligation to contribute financially to the Union, but with no voice in union business or decisions whatsoever, is fundamentally unfair, akin to "taxation without representation" and the Employer refuses to be a party to such pecksniffery.

Finally, the Employer states that the Union realized a financial windfall in dues collections as a result of changes in the 2011 Agreement, viz., elimination of the PERS pick-up of the employees' contribution and having the employees pay a share of the health insurance premiums.

Finding and Opinion

The positions set forth by the parties are not new. Certainly, employers have over the years expressed a concern for employees being forced to pay union dues, agency shop or fair share fees. Without engaging in pecksniffery, some may even have had an actual concern. However, a more compelling and logical reason for opposing this form of union security would be providing a union with the economic resources to represent its employees effectively at the bargaining table, which could be viewed by some employers as being contrary to their interests. Employers have not been inclined to state this as their reason for opposing a union or agency (fair share) shop provision.

Of course, unions have expressed concern for the unfairness of employees not paying any dues or fees, but benefiting from the representation provided by a union. It may not be a great concern where most or all the employees in the bargaining unit are members of the union. However, it is a concern of a union that there is a guaranteed revenue source to carry out its duty of fair representation. According to the Employer, revenue for the Union, in this case, should not be a problem.

While the argument set forth by the Employer would be more compelling if the Union's fair share provisions were to be imposed immediately and automatically on all non-member employees upon or shortly after ratification, that is not what the Union proposed. The Union's proposal does not require current employees to pay a fair share fee unless they change a job classification. If a current employee non-member remains in his/her current job classification, no fee would be imposed. New employees hired after the date of ratification would freely and voluntarily accept the payment of the fair share fee as a condition of employment. In the same manner, a current employee would freely and/or voluntarily seek or accept a change in his or her classification and the payment of the fair share fee.

The most compelling factor to be considered regarding this issue are the internal comparables. The Employer ignored this in stating its reasons for opposing the incorporation of a fair share fee into the CBA. The exhibits submitted by the parties, specifically the Union, establish that the CBAs with the other bargaining units in the County have fair share fee provisions. Apparently, the concern with forced payment of a fair share fee was not a great concern at the time these agreements were negotiated.

In summary, it is the Fact Finder's Finding and Opinion that the Union Security provisions of the proposed Article 7 provide for fair share as proposed by the Union.

Recommendation

Therefore, it is recommended that the following Section 7.6 be added to Article 7 -Dues Checkoff of the Current Collective Bargaining Agreement.

Section 7.6 The Employer shall deduct a fair share fee from the pay of bargaining unit employees who are not members of the union, as follows:

1. For all new employees hired after the ratification date of this contract, the deduction shall begin sixty (60) days following the beginning of employment. The fair share fee shall be equal to the dues required of a Union member.
2. For all current employees who are not union members, the fee will only go into effect if they change a job classification, from the classification they hold at the time of the contract ratification.

3. Any union member who freely decides to drop out of the union, shall forfeit union membership but will continue to pay his/her dues.

When an employee enters the bargaining unit for any reason, the Employer shall notify the employee of this Article and provide the employees with the appropriate deductions forms.

B. Mandatory New Employee Meeting

Union's Position

Apparently, the Union had proposed a provision in a new Section 7.6 requiring the Employer to arrange a meeting between an employee who enters the bargaining unit and Union officials on or before the employee's first day of employment. This proposal was not presented in the Union's Pre-Hearing Position Statement and no specific evidence was submitted at the hearing.

Employer's Position

The Employer was opposed to the Union proposal on this matter.

Finding and Opinion

. Since this proposal was not presented in the Union's Pre-Hearing Position Statement and no specific evidence was submitted at the hearing, it is to be considered withdrawn.

Recommendation

Therefore, it is recommended that there be no provision for a mandatory new employee meeting between an employee who enters the bargaining unit and Union officials on or before the employee's first day of employment.

ARTICLE 8 **UNION REPRESENTATION**

A. Section 8.1

Union's Position

The Union proposes to delete the requirement that the Chief Steward and Stewards be selected from "different classification series. The rationale for this is that the limiting the

selection of either a Chief Steward or a Steward from a single classification will place an undue burden on the Union to recruit and maintain a sufficient number of Stewards from the other classifications, which only include a single or a couple of employees. The Union states that the deletion of the requirement will not place an undue burden on the County in light of other provisions of Article 8. Also, the deletion of the requirement would be consistent with the majority of other County collective bargaining agreements.

Finally, the Union indicated if there should be an issue as to work coverage, which has not existed to this date, the Union is prepared to agree to the County's proposal in Section 8.1 that Union business may be interrupted.

Employer's Position

The Employer has consistently rejected the Union's proposal to delete the selection requirement because of interruptions of the Union Steward time are sometimes necessary and precipitated precisely as a direct result of Stewards and the Chief Steward working in the same classification and/or work unit. The current practice according to the Employer is that if a Chief Steward or Steward is on paid Union time and an Agency coverage issue arises, the steward is interrupted and returns to work. Thus, the Employer proposes to incorporate this current practice into Section 8.1 of the CBA.

Finding and Opinion

The Union's position on this issue is more persuasive. Most of the employees in the bargaining unit are in the four (4) maintenance classifications (14 employees); seven (7) of the employees are non-union members and not eligible to be a steward and they are in four (4) different classifications than the union members; and, and the remaining classifications only have a total of three (3) employees (one or two in each classification). Thus, the Union would have difficulty in choosing from different classifications the number of stewards permitted by the CBA (1 Chief Steward and 2 stewards). The Union's agreement with the Employer's proposal on incorporating the current practice into Section 8.1 of the CBA should curtail future coverage issues.

It is the opinion of the Fact Finder that the Union's proposal to delete the provisions on the selection of stewards should be implemented and the Employer's proposed language incorporating the current practice into Section 8.1 should be adopted.

Recommendation

Therefore it is recommended that Section 8.1 of Article 8 read as follows:

Section 8.1 The Union reserves the right to select Union employee representatives. The Union will select not more than two (2) Stewards and one (1) Chief Steward. While on Union time as provided in Section 8.7, a Steward or chief Steward's time may be interrupted in the event of an Agency coverage issue.

B. Section 8.7 Reduction of Paid Steward Hours

Employer's Position

The Employer proposes to reduce the paid steward hours from 12 hours to 4 hours per calendar month. Under the current CBA the union stewards and Chief Steward are entitled to a total of 12 hours per calendar month of paid time "during normal business hours" for the performance of Union business, and in consultation with employees concerning potential grievances and preparation for grievance or disciplinary hearings. The use of paid steward time is limited to on site activity.

According to the evidence submitted by the Employer at the hearing, the Union stewards and the Chief Steward have not reported use of anywhere close to 12 hours per month. The Employer has tracked the total number of steward hours from January 2012 to date (Employer Exhibit B). In calendar year 2012, the average monthly usage was 1 hour 52 minutes; in calendar year 2013, the average monthly usage was 3 hours 2minutes; in calendar year 2014, the average monthly usage was 3 hours 56 minutes; and, in 2015 to date, the average monthly usage has been 2 hours 8 minutes of steward time. Since 2012, the average monthly usage of paid steward time has been 2.75 hours per month. There have been only ten (10) occasions where the usage of steward time has exceeded four (4) hours.

Thus, the Employer argues that as a result of this level of usage a reduction in paid steward time is warranted.

Union Position

The Union opposes a reduction in the number of hours permitted per calendar month for union business during duty hours. In the current CBA the Union agreed to reduce the number of

hours from twenty-four (24) to twelve (12). According to the Union there have been no complaints from the County about the number of Union business hours. Other County CBAs include the same number of Union business hours, if not more. Furthermore, the Union argues, the additional reduction of Union business hours, will potentially interfere with the duty of the union to represent bargaining unit employees.

Finding and Opinion

The Fact Finder concurs with the Union's position. There should be no reduction in the number of hours permitted per month for Union business. The evidence indicates that there are occasions when more than four (4) hours per month may be required for Union Business involving the administration of the CBA. The evidence also indicates that the Union has been responsible and not abused its right to use paid time off for Union business. The Union business conducted by the stewards is also the Employer's business. The Employer and Union are parties to the CBA and responsible for administering it.

Recommendation

Therefore, it is the recommendation of the Fact Finder that there be no change in the provisions of Section 8.7 of Article 8.

C. Commissioners' Meetings

Union's Position

Apparently, the Union had proposed a provision in Section 8.7 expanding the use of paid steward time to include one (1) hour per week for meetings with the County Commissioners. This proposal was not presented in the Union's Pre-Hearing Position Statement and no specific evidence was submitted at the hearing.

Employer's Position

The Employer was opposed to the Union proposal on this matter.

Finding and Opinion

Since this proposal was not presented in the Union's Pre-Hearing Position Statement and no specific evidence was submitted at the hearing, it is to be considered withdrawn.

Recommendation

Therefore, it is recommended that there be no provision in Section 8.7 expanding the use of paid steward time to include one (1) hour per week for meetings with the County Commissioners.

ARTICLE 34

WAGES

A. Amounts and Effective Dates

Union's Position

The Union proposes in 34.2 a fifty cent (\$.50) increase to base wages effective January 1, 2015, a fifty cent (\$.50) base wage increase on January 1, 2016 and a fifty cent (\$.50) base wage increase on January 1, 2017. It argues that the proposal is consistent with the majority of the history between the parties during which bargaining unit employees in the beginning received the greater of five percent (5%) or fifty cents (\$.50) and then simply received fifty cents (\$.50) in annual, base wage increases. Such practice continued until January 2008, when bargaining unit employees last received a base wage increase. However, the Union states that the base wage increases now proposed by the Union are not an attempt to simply turn back the clock to the days of past governmental budgets.

In the past, bargaining unit employees in addition to the annual base wage increases, did not pay the premiums for their medical insurance and the contributions to the Public Employees Retirement System (PERS). Currently, the employees in this bargaining unit are paying up to fifteen percent (15%) of the medical insurance premiums and the PERS contributions, and they will continue to do so. Finally, argues the Union the wage increases proposed by the Union would be similar to the other county bargaining units' compensation if you considered that they have their medical insurance premiums and PERS contributions paid.

In support of the foregoing proposal for base wage increases and the proposals for other wage increases, the Union submitted the testimony of John E. Bibish III, CPA, as an expert witness, who gave and introduced into evidence a power point presentation of forty-seven (47)

pages containing numerous exhibits on the financial condition of the Employer. Specifically, Mr. Bibish testified that the Employer had the flexibility and ability to pay the wage increases proposed by the Union.

Employer's Position

The Employer proposes a twenty-five cents (\$.25) across-the board annual increase in each year of the successor agreement- 2015, 2016 and 2017, a total of seventy-five cents (\$.75) per hour. In 2015, the increase will become effective the second full pay period following ratification of the agreement by both parties, and in subsequent years, the twenty-five cents (\$.25) per hour increases would become effective the first full pay period in July 2016 and the first full pay period in July 2017. These are the same annual increases proposed in the Agency's last, best offer.

According to the Employer, the twenty-five cents (\$.25) per year increases are the same hourly amounts already approved by the Gallia County Commissioners for the highest paid employees in the Gallia County 911 Communication Center in the most recent negotiated collective bargaining agreement approved by the County Commissioners in December 2013 for the Gallia County 911 Communication Center for FOP/OLC, Inc. (January 1, 2014 to December 31, 2016). Also, the twenty-five cents per year (\$.25) increases are same hourly amounts authorized by the Commissioners on December 11, 2014 for calendar year 2015 for non-represented employees in Gallia County general fund agencies.

The Employer believes that its proposed twenty-five cents (\$.25) per hour across-the board increase is a very reasonable increase for the Gallia DJFS bargaining unit. This is especially true considering that a majority of the Gallia County DJFS bargaining unit employees (14 employees) are currently paid the highest hourly rates for their classifications compared to their counterparts employed in the other county DJFS agencies in Southeast Ohio. Since the maximum hourly rates for the other DJFS agencies are locked in through December 31, 2016 or December 31, 2017, the Gallia County DJFS bargaining unit would remain the highest paid even if it received no pay increase.

In addition, the Employer maintains that the CWA bargaining unit employees are the highest compensated union-represented employees in Gallia County. Also, a review of the agreements of the other bargaining units will clearly establish this (Employer's Exhibits E,F,G,H and J).

It is the Employer's belief that considerable weight should be given to pay increases approved for other Gallia County employees. The pattern of twenty-five cents (\$.25) is especially significant in light of the higher hourly rates already paid to members of the CWA bargaining unit in comparison with other Gallia employees, both represented and non-represented, and employees in other county DJFS agencies in Southeast Ohio region. Thus, according to the Employer there is no compelling reason to deviate from the pattern of twenty-five cents (\$.25) per hour increases authorized by the County Commissioners.

In support of its proposal, the employer submitted the testimony of Karen Sprague, Gallia County Administrator for the County Commissioners, and Kathy Campbell, Fiscal Supervisor, Gallia County Department of Jobs and Family Services; both testified as to budgeting process, the financial statements introduced into evidence and the funding for the Department of Jobs and Family Services. In addition, a notebook containing numerous exhibits was put into evidence.

Unlike other Gallia County departments, the Employer's funding comes from a combination of state and federal sources. State and federal funding constitutes more than 95% of the Agency's revenue sources. The state and federal funding allocation process is a "use it or lose it" reimbursement based funding process. If funds are not used by the close of the relevant fiscal year, the allocation is no longer available to the Agency, i.e., it does not carry over to subsequent fiscal year. The Agency receives minimal funding from the Gallia County General Fund (less than \$100,000.00). The level of General Revenue funding received by the Agency from the County is determined and mandated annually by the State of Ohio Department of Jobs and Family Services.

The money for the salaries and benefits of bargaining unit employees and administrative expenses is provided by three (3) funds: Fund #006-JFS Fund (also referred to as Public Assistance); Fund #007 -CSEA fund; and Fund #008-WIA Fund. In addition, the Agency is required to follow a unique process, the "Random Moment Sampling" (RMS) process, in order to obtain authorization to use or draw down money from the fund allocations. The RMS process determines the funding source from which employees can be paid.

Finding and Opinion

Based upon the testimony of the witnesses at the hearing and the exhibits submitted into evidence, the following facts have been established.

1. The Employer has the resources and ability to grant a pay increase; however, its resources are limited and unpredictable.

2. There has been no increase on base wages for employees in the bargaining unit since 2008.
3. The Current Collective Bargaining Agreement expired December 31, 2013.
4. The Wage rates of the current employees in the bargaining unit are competitive with employees in other DJFS agencies and other employees of Gallia County.
5. Gallia county employees, both bargaining unit and non-bargaining unit, have received a \$.25 per hour per year pay increases for 2014 and 2015.
6. A \$.25 per hour increase is approximately 1 to 1 ½ % increase for a bargaining unit employee.
7. There is no evidence that the Employer's other bargaining unit employees or non-bargaining employees have received a \$.50 per hour per year increase.

Considering the foregoing, it is the opinion of the Fact Finder that while the Union's demands are not excessive, the Employer's position on this issue is more persuasive in that considerable weight should be given to both internal and external comparables. First, to the pay increases approved for other Gallia County employees during the conduct of the current negotiations. These increases set the pattern of twenty-five cents (\$.25) per hour and that is significant when the higher hourly rates which members of the CWA bargaining unit already receive are considered. Second, when external comparables are examined involving other agencies in Southeast Ohio, the hourly rates of the bargaining unit are higher than most of the employees in other agencies.

If the internal comparables were applied to this bargaining unit, there should have been a twenty-five cents (\$.25) per hour increase on base wages for 2014. This did not occur because the parties reached no agreement within the legal time limit for retroactivity. To correct this unintended disparity, it is the opinion of the Fact Finder that the per hour increase for 2015 should be fifty cents (\$.50) effective the first full pay period in January, 2015. This would comply with the set pattern. The increases in subsequent years would be effective the first full pay in January 2016 and the first full pay in January 2017.

Recommendation

Therefore it is recommend that effective the first full pay in January, 2015 that the base hourly rate for each employee shall be increased fifty cents (\$.50) per hour and effective the first full pay in January 2016 and 2017 the base hourly rate for each employee shall be increase twenty-five cents (\$.25) per hour. Sections 34.1, 34.22 shall reads as follows:

Section 34.1 Each employee will pay the full amount of the required employee contribution to PERS and the Employer will pay the full amount of the required employer contribution to PERS, as provided in the Ohio Revised Code.

Section 34.2 Effective the first full pay period in January, 2015, each employee will receive a fifty cents (\$.50) per hour increase. Effective the first full pay period in January, 2016, each employee will a receive twenty-five cents (\$.25) per hour increase. Effective the first full pay period in January 2017, each employee will receive a twenty-five cents (\$.25) per hour increase.

B. Additional Hourly Increase for Employees Employed in 2009

Union Position

The Union proposes that effective July 1, 2015, any current bargaining unit employee who, as a result of layoffs in 2009, had their position abolished, were bumped, or who were placed off payroll due to the layoffs and later returned to payroll, have his or her base wage increased an additional forty cents (\$.40) and also effective July 1, 2015 each employee who was employed by the County Department of Job and Family Services in 2009 receive an additional twenty cent (\$.20) increase to his or her base wage.

According to the Union, the forty cent (\$.40) increased is proposed to address the lack of wage increases during the past CBAs whereby senior employees have wages equivalent to new hires. The employees who were laid-off had their positions abolished and therefore were hired into new positions and treated as new hires and had their pay cut. According to the Union, other County bargaining units did not have this in their collective bargaining agreements. Those units, however, were not as severely reorganized as this bargaining unit.

The twenty cents (\$.20) increase is proposed to address the lack of step increases during the years.

Employer's Position

The Employer opposes these increases for several reasons. First, the employees who would qualify for these supplemental increases are already the highest paid employees in their classifications in Southeast Ohio and are likely the highest paid employees in their classifications in the State of Ohio. Second, there exists a significant internal gap in the hourly rate of pay between the bargaining unit employees who were employed in 2009 (hired before June 4, 2011) and the bargaining unit employees hired after June 4, 2011. The payment of supplemental hourly rate increases to the highest paid employees in the bargaining unit would further aggravate the internal pay gap, and likely cause resentment within the bargaining unit.

Finding and Opinion

In the absence of sufficient evidence regarding this matter, the Fact Finder concurs with the Employer. These supplemental increases should not be granted. Layoffs result in job abolishment, demotions, bumping and reductions in pay. Previous wages rates should not be reinstated or made up by means of supplemental pay increases.

Recommendation

Therefore it is recommended that Union's proposals for supplemental pay of forty cents (\$.40) and twenty cents (\$.20) be denied and not incorporated into the CBA.

C. Appendix – Hourly Rate Listing

Employer's Position

The Employer proposes to delete the appendix page listing the current hourly rate of bargaining unit employees.

Union's Position

The Union has not stated any opposition to this proposal.

Finding and Opinion

Since Appendix "A" is or will be out of date, it should be deleted from the successor CBA.

Recommendation

Therefore, it is recommended that Appendix "A" in the Current CBA be deleted.

D. Hourly rate to be Assigned to Employees Employed as of June 4, 2011 or were on active Recall List and Returned to Employment Prior to Expiration of the List

Union's Position

In Section 34.4, the Union proposes that if there is a layoff during the duration of the successor collective bargaining agreement, employees hired as June 4, 2011 or who were on an active recall list and returned to employment with the agency prior to the expiration of said recall list on August 14, 2012, shall receive a minimum hourly rate of fourteen dollars and fourteen cents (\$14.14) or the minimum hourly rate of the classification in which the employee is returned recalled, whichever is greater.

Employer's Position

The Employer has proposed to delete the current Section 34.4 which establishes a minimum hourly rate (\$14.14) for pre-June 4, 2011 hires who are returned to employment from layoff. The Employer states that the parties reached a tentative agreement on revisions to the layoff procedure in Article 18. In particular, the parties agreed to the revision to Section 18.4 that establish the hourly rates of employees who are recalled to employment in their same job within six (6) months (employees return at same level of pay) and employees who are returned to employment after six (6) months (paid the minimum hourly rate for the employee's new job). Based upon the tentative agreement, the Employer considered the issue resolved and that Section 34.4 was rendered obsolete. The Employer is opposed to the Union's proposal.

Finding and Opinion

The Employer's position to delete Section 34.4 should be adopted. Obviously, the provisions of Section 34.4 were included in the agreement to deal with a temporary situation for the term of the last contract. The tentatively agreed to provisions of Article 18, specifically and clearly deal with layoff and recall rights. Under that Article, a person returning to his classification within a six (6) month period retains his pay, seniority and benefits.

Recommendation

Therefore, it is recommended that Section 34.4 of Article 34 of the Current CBA be deleted.

**E. The Hourly Rate to be Assigned to an Employee who is Demoted More than one (1)
Pay Range**

Union Position

In Section 34.6, the Union proposes that if an employee receives a demotion or takes a voluntary demotion after being in his position for two (2) years, the employee's hourly rate shall be decreased by four percent (4%) of his/her current hourly rate of pay, but such hourly rate may not be less than the minimum hourly rate or more than the maximum hourly rate of pay for the new pay range. Following the demotion, the demoted employee may not bid on any position above the employee's pay range within two (2) year period after the effective date of the demotion. The employee may bid on any position at or below the employee's pay range during the two (2) year period.

Employer's Position

According to the Employer, the parties could not agree on an hourly rate to be paid an employee who takes a voluntary demotion or is involuntarily demoted to a position more than one (1) pay range lower. The Employer proposes that the hourly rate of an employee who is demoted whether voluntary or involuntary, more than one (1) pay range should be decreased by 4% for the first pay range and additional 2% for each additional pay range, subject to the minimum and maximum hourly rates of the new pay range.

Finding and Opinion

It is the opinion of the Fact Finder that the Employer's proposal and language should be adopted and incorporated into the successor bargaining agreement since it makes the most sense. It is a logical and orderly way of dealing with personnel.

Recommendation

Therefore, it is recommended that Section 34.6-5 of Article 34 read as follows:

Section 34.6-5 If an employee receives a demotion or takes a voluntary demotion of one (1) pay range, the employee's hourly rate shall be decreased by four percent (4%) of his/her current hourly rate of pay, and the employee's new hourly rate shall be decreased by an additional two percent (2%) for each lower pay range, but such hourly rate may not be less than the minimum hourly rate or more than the maximum hourly rate of the pay of the new pay range. However, if an employee takes a voluntary demotion within two (2) years of assuming a new position, the employee's new hourly rate in the demoted position will be decreased to the hourly rate the employee was paid in the employee's prior position or the minimum hourly rate of the pay range of the demoted position, whichever is greater, however, the hourly rate may not exceed the maximum hourly rate of the pay range.

F. The Hourly Rate to be Assigned to an Employee who Exercises Bumping Rights into a Higher Pay Range

Union's Position

The Union has proposed a new Section 34.7. Under this proposal, the new hourly rate of an employee who is laid off and exercises his/her bumping rights pursuant to Article 18 shall be determined as follows; If the employee bumps into his/her same pay range, the hourly rate shall remain the same. If the employee bumps into another pay range, the decrease/increase shall be 4% change, but such new hourly rate may not be less than the minimum hourly rate nor more than the maximum hourly rate of that position. The Union states that the parties agree on these terms, but for an employee being entitled to the pay associated with a higher pay range. The Union argues that if an employee may have his pay decreased for going down in a pay range,

then it is fair and rational that an employee have his or her pay increased for going up in a pay range.

Employer's Proposal

The Employer proposes that an employee who bumps into a position in a higher pay range should not receive an increase in pay unless an increase is necessary to meet the minimum hourly rate of the higher pay range.

Finding and Opinion

The Employer's position makes no sense. If an employee is qualified to do the work in a higher pay range, then he should be paid the proper rate for that pay range. If he not qualified, how was he eligible to bump into that pay range or classification? There would be a serious question as to management's competency. Also, the Employer's position appears to be in conflict with the provisions of Article 10, Sections 10.4 A and 10.6. The assumption under Section 10.4 is that an employee who is bumping into a vacant position is qualified. Section 10.6 provides that an employee temporarily performing work in a higher classification should receive the higher rate of pay.

Recommendation

Therefore it is recommended that the language proposed by the Union for a new Section 34.7 under Article 34 should be adopted and incorporated into the successor CBA. Section 34.7 should read as follows:

Section 34.7 The new hourly rate of an employee who is laid off and exercised his/her bumping rights pursuant to Article 18 shall be determined as follows:

If the employee bumps into his/her same pay range, the hourly rate shall remain the same.

If the employee bumps into any other pay range, the decrease/increase shall be a 4% change, but such new hourly rate may not be less than the minimum hourly rate nor more than the maximum hourly rate of that position.

G. One time signing bonus upon ratification of the agreement

Union's Position

The Union has proposed that effective upon the ratification of this contract, all employees employed at the time of the ratification of the contract, shall receive a one-time signing bonus/safety incentive of \$2080.00. The Union maintains that the bonus is to account for the base wage increase taking effect January 1, 2015 and not January 1, 2014. Furthermore, the proposal is consistent with the prior collective bargaining agreement in which the employees received a lump sum supplement of \$2080.

Employer's Position

In the Employer's Last, Best, Final Offer (LBFO), it proposed a lump sum signing bonus of \$1,000.00, payable in two installments, that would have been paid out of Agency funds that were then available for expenditure prior to June 30, 2015, the close of the Agency's 2015 State Fiscal Year. At that time the Employer made clear that the lump sum bonus would be withdrawn if the offer was rejected for the reason that the SFY 2015 funds would no longer be available after June 30, 2015 to fund a lump sum payment.

Now, according to the Employer, a lump sum payment would have to be paid out of SFY 2016 funds. Ohio SFY funds are no longer available to fund a lump sum payment in SFY 2016. Funds for lump sum payments were not budgeted and are not available in Agency's SFY 2016 allocation.

Finding and Opinion

The Union's request for a \$2080, lump sum payment is excessive and cannot be justified. In the previous negotiations, the lump sum settlement made sense in consideration for no base wage increase, reduction or elimination of the PERS pickup, and copays on health care premiums, and the availability of funds. Circumstances were different at that time.

The Employer's LBFO offer didn't contain any increase on base wages for at least one and half years. Considering the recommend wage increases and their effective dates as set forth in this report, makes the justification for a lump sum bonus difficult to support. An additional twenty-five cent (\$.25) per hour increase for a total increase of fifty cents (\$.50) per hour effective January 1, 2015 is more than \$500.00 per year for each full time employee. Paid over three years it is in excess of \$1500.00. Also, the effective dates of the pay increases in January of each year of the contract rather than July provides each employee with additional gross wages.

It is the opinion of the Fact Finder, assuming available funding, that a lump sum signing bonus is not warranted.

Recommendation

Therefore, it is recommended that there be no lump sum wage supplement during the term of the successor CBA and that Section 34.7 of Article 34 of the Current CBA be deleted.

H. Materials and supplies for employees' use

Union's Position

The Union stipulated in its Position Statement that it was prepared to agree to the County's proposal as to Section 34.8 set forth in its last best final offer of May 7, 2015.

Employer's Position

The offer made on May 7, 2015, identified as Section 34.8, is the same offer made in the Employer's Fact Finding Offer identified as Section 34.7.

Finding and Opinion

The Employer's Fact Finding Offer identified as Section 34.7 should be adopted and incorporated into the successor CBA.

Recommendation

Therefore, it is recommended that Section 34.7 as proposed by the Employer in its Fact Finding Offer is to be incorporated into the successor CBA. Section 34.7 shall read as follows:

Section 34.7 The Agency will provide a coffee maker, microwaves, refrigerators, a stove, coffee, coffee accessories (such as: creamer, sugar, sugar substitute, stir sticks), cups, plates, bowls, silverware, (such as: spoons, forks, knives) and condiments (such as: salt, pepper) for the use of employees while at work. The Agency may discontinue or suspend such purchases at the Agency's sole discretion if the Agency determines sufficient funding is not available or such purchases are no longer an allowable expenditure. This provision is not subject to Article 9 of this agreement.

I. Supplemental paid leave for employees employed as of December 31, 2013

Union's Position

The Union in Section 34.9 proposes that upon ratification of the agreement bargaining unit employees who are employed as of December 31, 2013, shall receive a supplemental leave of forty (40) hours, which may be used during the duration of the contract and shall not be cashed out or carried beyond the term. According to the Union this proposal is an attempt at a non-economic solution to make-up for the lack of base wage increases through the years.

Employer's Position

The employer is opposed to adding more paid leave for these or any other employees for the following reasons. First, coverage would be more difficult and adding more leave time would cause greater hardship. Second, it would provide more leave based solely on an employee's arbitrary date of hire. Third, the Union has offered no justification for the special treatment.

Finding and Opinion

It is the opinion of the Fact Finder that the supplemental leave proposed by the Union is not justified, and should be denied. It would make staffing and assignments more difficult to manage. Also, the employees currently have adequate leave under the CBA.

Recommendation

Therefore, it is recommended that Union proposal as to Section 34.9 be denied and not incorporated into the successor CBA.

J. Longevity Increases

Union's Position

The Union proposes a new Section 34.10, effective January 1, 2016, an employee upon completion of his fifth (5th) year of employment shall receive a longevity increase in base wages of two and a half percent (2.5%) and additional half percent (.5%) each year thereafter. Any employee whose current rate of pay includes prior earned longevity will not receive the two and a half percent (2.5%) and shall only receive the half percent (.5%) yearly starting January 1, 2016.

Employer's Position

The Employer is opposed to reintroducing longevity increases. The Employer has not experienced any difficulty in retaining senior employees. The Union has not offered a performance based justification for a longevity increase. Moreover, the only bargaining unit employees who would benefit during the next three years are the highest paid employees in the unit. The Employer further states that the Union seeks additional compensation that would benefit only the employees who were employed at the time the Agency's 2009 layoffs. Also, according to the Employer the payment of the 2.5% longevity bonus to only the two (2) employees hired back by the Agency from the 2009 layoff list would create yet another immediate and permanent pay disparity within the bargaining unit.

Finding and Opinion

Based upon the current wage rates of the employees who would benefit from the longevity increase, external and internal comparables, the recommended increases, the past bargaining agreement, and the lack of evidence of the need for such increase, the longevity increase proposed by the Union cannot be justified.

Recommendation

Therefore, it is recommended that there be no provision for a longevity increase as proposed by the Union during the term of the successor CBA, and that such not be adopted.

ARTICLE 37

CONTRACT DURATION

Union Position

The Union in Article 37- Contract Duration- proposes the successor collective bargaining agreement be effective on and from January 1, 2015 and not the date of ratification by the members of the Union.

Employer's Position

The Employer proposed that the Contract be effective upon ratification by both parties and remain in full force and effect for a period of three (3) years from the effective date.

Finding and Opinion

As has been recommended in this report the first wage increase should be effective with the first full pay period in January, 2015. It is the opinion of the Fact Finder that the CBA should be effective from the date of January 1, 2015 through December 31, 2017 with the wage rates retroactive to the first full pay period in January 2015.

Recommendation

Therefore, it is recommended that Article 37 – Contract Duration, Section 37.1 read as follows:

The collective Bargaining Agreement shall remain in full force and effect from January 1, 2015 through December 31, 2017, inclusive. A Notice to Negotiate a successor agreement shall be given by either party no sooner than one hundred twenty (120) days, but no later than sixty (60) days, prior to the expiration date of this Agreement. Discussion will begin no later than sixty (60) days prior to the expiration date of this Agreement.

IV
CERTIFICATION

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted August 5, 2015. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan
John F. Lenehan
Fact Finder

September 4, 2015

V

PROOF OF SERVICE

This fact-finding report was electronically transmitted this 4th of September 2015 to the persons named below.

Union Representative:

Mr. Christopher S. Peifer
Barkan Meizlish, LLP
50 E. Broad Street, 10th Floor
Columbus, Ohio 43215
Phone: (614) 221-4221
Email: cpeifer@barkanmeizlish.com

Employer Representatives:

Mr. Donald R. Keller
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
Phone: (614) 719-5955
Email: dkeller@mwncmh.com

SERB:

Mary.Laurent@serb.state.oh.us, med@serb.state.oh.us

/S/ John F. Lenehan
John F. Lenehan