

Article 12.2, language changes as agreed to during the fact-finding hearing should adopted, i.e.,

Article 12.2 Breaks.

x x x However, its understood and agreed to by the parties that employees will be allowed to teke **one 15 minute break within every 4 hours worked** based on the needs of the clients and staffing. The facility will make available to all employees a break area for breaks and lunches.

The other issues listed as tentatively agreed to under the guidance of the Mediator also should be adopted.

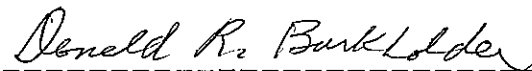
The Employer's proposed language is otherwise recommended, with the following exception.

Article 16.1 - Procedures

Overtime may be required x x x (dropping "**Employees understand that x x x**")

The high level of professionalism, courtesy, and helpfulness by participants is much appreciated. The parties were indeed well represented.

Respectfully,



Donald R. Burkholder  
Fact-Finder

1/30/15

This Fact-Finding report/recommendation is being forwarded electronically, simultaneously, to the parties and to SERB, as follows:

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DRB, 2/2/15, approximately 5:00 p.m.

STATE EMPLOYMENT RELATIONS BOARD

FACT-FINDING

SERB #14 MED 02-0101

Hearing Date: December 9, 2014

Issue: Contract Provisions, Language

In the matter of:

**Clark County Board of Developmental Disabilities (CCBDD)**

and

**International Union, United Automobile, Aerospace, and  
Agricultural Employment Workers of America, UAW, Local 658 (UAW)**

Fact Finder: Donald R. Burkholder, Ph.D.

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Appearances:

Employee Organization

Todd Turner, UAW Staff Member  
Rebecca Taylor, Local 658 Chairperson  
Dianna Tapogna  
Marcia Flax, Local 658 President

Employer:

Brad Bennett, Counsel  
Jennifer Rousculp-Miller, Superintendent  
Joseph Rocco Dennis, Unit Coordinator  
Stephanie Schoolcraft, Counsel  
Lesa Robinette, Supervisor  
Cheryl Fuson, Human Resources Consultant

The Employer operates three separate residential care units for developmentally disabled adults, with one unit scheduled to be closed by the end of 2015 due to decreases in funding. This would reduce the number of units at CCBDD's Mueller Residential Center [Mueller] to two. Mueller provides round-the-clock care. This care includes medical services, psychological consulting, occupational, physical and speech therapy, nursing staff and dietary services. The UAW is the certified bargaining representative for certain employees at Mueller. The bargaining unit is mainly comprised of employees who are direct support professionals and currently consists of 46 workers.

The collective bargaining agreement [CBA], or agreement, expired on March 11, 2013. The parties agreed to a one-year extension, which expired in March of 2014. Prior to, and after, the expiration of the extension, they met for multiple bargaining sessions in an effort to negotiate a successor agreement without the need for utilizing the statutory impasse process. However, the parties could not reach agreement.

The Union states that whereas finances and benefits are usually the main holdup, the "company" (CCBDD) now wants to change long-standing practices, contractual language and seniority rights, which are the primary concerns in each of the unresolved issues. Management asserts that the practices the UAW seeks to change, and related contractual language and seniority rights, as applied at the care units, have caused significant and unjustified cost over-runs, financial burdens which threaten the employer's odds of surviving as a viable entity during a time of reduced spending, which is the result of significant changes in public policy.

There were ten bargaining sessions from February through June 2014 plus two mediation sessions in August and September. The parties were unable to reach tentative agreements on all but eight open issues. The parties then proceeded to statutory impasse in their attempt to settle the unresolved issues.

Combining the unresolved issues they are as follows:

1. Article 12: Hours of Work
2. Article 16: Overtime
3. Article 19: Universal Leave
4. Article 20: Holidays
5. Article 21: Transfers, Vacancies, and Work Schedules
6. Article 23: Assignment of Employees
7. Article 25: Seniority
8. Article 32, Miscellaneous
9. Article 29: Sick Leave/Personal Leave

A fact-finding must deal with the context of the situation. This dispute, or combination of disputes, has developed because of major public policy and funding changes in state and national approaches to care for citizens who have experienced developmental disabilities. Obviously there is no simple measure or profit and loss margin in a governmental organization as an indicator of 'success'. And, as has transpired in similar or related areas of public policy and funding, e.g., mental health, there is a movement away from larger, centralized care centers and/or psychiatric hospitals in order, ideally, to enhance care, reduce demands on management and staff, and reduce cost to the taxpayer. At least one indicator of these changes is a significantly reduced census of residents in Mueller's three (soon to be two) current living areas. Additionally, there has been a 33 percent decrease nationally during the past ten years in the number of people living in large intermediate care facilities (ICFs).

The bargaining unit consists of two job classifications: Unit Counselors, House Parents and Recreational Instructors, a total of 44 employees who provide direct care for mentally and physically challenged individuals. The make-up and size of this bargaining unit has changed drastically since the contract's inception. The current contract is reflective of a much larger bargaining unit that was spread out over ten residential facilities, with management asserting that its provisions are not effective for dealing with CCBDD's smaller work force of today, and that the inflexibility of the contract exacerbates a very large and frequent problem with call-offs and attendance.

The UAW was certified as the employee representational organization in October 1991. Shortly thereafter, the unit then known as MRDD Unit was assigned

to Local 658. The first collective bargaining agreement was negotiated in 1992, and successor agreements in 1995, 1998, 2001, 2004, 2007, 2010 and 2013, with a one-year contract extension agreement in 2013. On September 3, 2014, after several negotiation sessions attempting to bargain an agreement, the parties brought in Mediator Anton Naess for three (3) full day meetings.

The union notes as follows the changes agreed to, and the 2014 dates of agreement signing before bringing in mediator Anton Naess:

- Article 11 - 4/22
- Article 14 - 4/22
- Article 15 - 4/22
- Article 18 - 5/15
- Article 28 - 6/10
- Article 5 - 8/7
- Article 26 - 8/7
- Article 27 - 8/7

The following list of changes the Union tentatively agreed to while Mr. Naess was the Mediator:

- Article 31 - 9/3
- Article 35 - 9/3
- Article 36 - 9/3
- Article 6 - 9/13
- Article 10 - 9/13
- Article 33 - 9/13
- Article 34 - 9/13
- Article 33 - 9/13
- Article 34 - 9/13

The Union asserted that ---

...far from the normal collective bargaining process [which] is normally a give and take proposition and even though we have met many of the employer's needs the company, with limited discussions throughout negotiations, has refused to agree with most of the current long standing contractual language that the union feels is valuable to their membership.

Issues listed by the Union having major impact on membership are, in order of importance, Article 19, Universal Leave; Article 16, Overtime; Article 21, Transfers, Vacancies and Work Schedules; Article 12, Tardiness/Call-Offs/Absences; Article 25, Seniority; Article 28-B, Sick Leave/Personal Leave; Article 23, Assignments of Employees; Article 32, Miscellaneous. (Request for) New

Section 32.12, Trash Disposal; Article 20, Holidays. The parties agreed on Article 12 language during Fact-Finding hearing.

The union's strong desire to maintain the status-quo parallels the changes most critical to the CCBDD. To put it plainly, the employer seeks change in the work rules not simply to reduce the administrative complexity and chores required, but to enhance the long-term odds of the agency's survival as a viable public organization, given the funding realities. The CCBDD management wants to change the culture of this workplace from a work unit mentality, favored by the union, to a campus mentality more appropriate for a small workforce. This perspective is the driver behind what the Union sees as the intransigence of management's negotiating posture. It is apparent that long-term application of the contractual work rules has reinforced and ossified a culture that is a major negative in considering the organization's future. As the Employer has emphasized, the reduced size of the workforce along with fewer residents, means that change is imperative for the agency's survival. Practices or agreements suitable for a large and formerly well-funded organization that have been in place for 20 to 23 years are no longer viable.

In response to CCBDD's report on its financial predicament to the Ohio Department of Developmental Disabilities, Director John L. Martin suggested that Superintendent Jennifer Rousculp-Miller, review costs and staffing structure, noting the decrease in people being served, and urging CCBDD to adopt reduced or different staffing models. He included a comparison of Mueller's FY 14 rates and costs with other Intermediate Care Facility (IFC) providers that have similar scores and serve similar numbers of individuals, both per home and in aggregate, and followed up with a visit to the facility, accompanied by several consultants.

Comparative data forwarded by Director Miller indicate that Mueller's three care centers have the highest cost per diem of such agencies in Ohio, with an average of \$501.40. This is up to \$130 per day more expensive than the average of the eleven comparable facilities in the study. Thus it is significantly higher than any of the eight other intermediate care facilities, both public and private, in the report. After the review, the State declined to provide any assistance based upon Mueller's extremely high care costs, and the fact that over 80 percent of Mueller's direct care costs are personnel-related.

Considering the the loss of a Clark County millage proposal to help fund CCBDD in November 2013, the agency is at a cross-roads; it notes that with this situation, it is annually using more than one million of local tax dollars above its Medicaid reimbursement rates. CCBDD has announced that it is closing one of its residential units by the end of 2015. In a similar vein, the Employer states that ---

...While wages may not be an issue in front of the Fact-finder, changes to several open articles are motivated by their financial impact on the CCBDD, such as hours of work, overtime, and the change of universal leave. Should the Employer fail to find a way to cost-effectively run Mueller going forward, its very existence is jeopardized.

The interests of the disabled and their families and friends are represented by a national organization, in Ohio known as Disability Rights Ohio (DRO). This federally mandated protection and advocacy organization has formally asked that the State take immediate action to:

1. Significantly reduce the number of persons residing in developmental centers and ICFs,,, with a transition to small, integrated, community-based, non-IFC/IID placements;
2. Reduce its reliance on segregated workshops and enhance its capacity for supported employment; and
3. Reduce its reliance on facility-based habilitation and enhance its capacity to provide integrated day supports in the community.
- 4 ... make a firm commitment to transition a number of individuals from segregated, residential, employment, and day services and to rebalance its system as quickly and effectively as possible.

I am conscious of the fear and opposition of the UAW members to significant change in working conditions, e.g., universal leave. Nevertheless, in facing today's policy and funding, or political and budgeting situation, the bottom line comes down to survival of CCBDD's Mueller facility. Thus it is in the interest of the parties to adapt the CBA to today's realities. And, the continuing problems of call-offs and absenteeism must to be remedied in the interest of the CCBDD's primary clients, i.e., its residents, those who benefit directly from its existence.

The parties have been diligently working toward agreement. I trust that they will maintain a positive attitude as they work through the details of this fact-finding and its resultant recommendations.