

Before Louis V. Imundo, Jr., Fact Finder

In the matter of fact finding between

Trumbull County Department Of Job And Family Services

and

AFSCME, Ohio Council 8, Local #458

SERB Case No. 2014-MED-05-0729

This matter was heard before Louis V. Imundo, Jr., Fact Finder, in Warren, Ohio on April 10, 2015

1.0 Introduction

1.1 Appearing For Management

- Curtis J. Ambrosy, Esq., Attorney at Law
- John Gargado Esq., Director
- James W. Keating, Human Resources Director
- Anna M. Loney, Human Resources Administrator
- Debbie Santangelo, Trumbull County Chief Accountant

1.2 Appearing For The Union

- Cindy Michael, Staff Representative
- Denise Stark, President, Local 458
- David Davies, E-Board & Eligibility Spec. II
- Marge Seyer, E-board & Eligibility Spec. II
- Erin Whitson, Chief Steward & Eligibility Spec. II
- John Rutherford, Vice President & Eligibility Spec. I

2.0 Unresolved Issues

Article 12 – Bidding and Posting

Article 20 – Grievance Procedure

Article 28 – Health Insurance / Hospitalization

Article 29 – Retirement

Article 41 – Wages

Article 42 – Random Drug Testing

3.0 Findings And Recommendations

Article 3 – Bidding And Posting

The Parties negotiated a point system to score applicants who have met the minimum qualifications and demonstrated abilities. The applicant who scores the highest is awarded the position that he/she applied/bid for. The point system is rather complex and points are given or deducted in six categories. They are:

- 1) Education and Training – 10 points
- 2) Seniority – 20 points
- 3) Attendance – 10 points
- 4) Active Discipline – 10 points
- 5) Experience and Demonstrated Abilities – 30 points
- 6) Position Specific Criteria – 20 points

Appendix C identifies how points are given or subtracted for each factor. The factor or criterion that is problematic for the Union is attendance. The attendance factor reads:

Attendance – (Max. 10 points)
Absence in the last 6 months (Choose one)

1. 0 - 16 hrs. = 10 points
2. 16.5 – 24 hrs. = 6 points
3. 24.5 – 32 hrs. = 3 points
4. 32.5 or more = 0 points

Note: Absence means using sick hours.

It was the Union's position that the current language has had a negative impact on some members because it does not differentiate between excused and unexcused absences. The Union argued that a long term employee who, out of necessity, had to use a lot of sick leave could potentially lose in the bidding process to a much junior employee who had not used their sick leave.

It was Management's position that the current language has worked well and that even though attendance is not the major factor in awarding jobs it is nonetheless very important. Management argued that the Department has a significant attendance problem and this has adversely affected its ability to meet the needs of the people it serves. Management argued that it is very easy for employees to get medical excuses and if excused absences were exempted from being counted it could result in

employees with serious attendance problems being awarded jobs over employees with good attendance records.

In the Fact Finder's opinion Management and the Union made compelling arguments to support their respective positions. In the Fact Finder's opinion, Management not only has the authority they have a responsibility to take corrective action against those individuals whom they believe are excessively absent and are not legitimately ill or injured. The Fact Finder rejects Management's arguments that it is too difficult and/or too costly to take action against the employees who are suspected of claiming illness or injury and getting medical excuses to protect themselves from possible discipline or other forms of corrective action.

In the Fact Finder's opinion, given what currently exists in the Department it would be unwise to recommend that all excused absences be exempted from the point system. However, the Fact Finder also finds merit in the Union's position. Under the current system an employee who has had a model attendance record and becomes ill or suffers an injury for which he/she is under medical care and is absent for a week or longer would get no points. This could result in him/her not being award a job he/she bid on. While the probability of such occurring is relatively low it has occurred during the life of the Agreement.

The Fact Finder recommends that the current language be carried over intact into the successor agreement with one modification. That modification is that when an employee is absent for more than three consecutive days in the past six months and he/she has provided an excuse from a licensed medical practitioner for the total number of consecutive days of absence that he/she be given three (3) points irrespective of the total number of consecutive days of absence beyond three.

Article 20 – Grievance Procedure

Management seeks to have to have the second paragraph in Section 4 to read: Any written grievance not answered by the Employer within the stipulated time limits may be advanced by the Union to the next step in the grievance procedure. Any grievance not filed or advanced within the timeline set forth in this Article is waived or the Employer's last answer shall be the disposition of the grievance. All time limits on grievances may be waived upon mutual consent of the parties.

The Union seeks no change in the current language.

In the Fact Finder's opinion timelines at all steps of the grievance procedure are necessary. In the absence of timelines at all steps of the grievance procedure the likelihood of intentional or unintentional delays in the processing of grievances significantly increases. Delays in the processing of grievances will undermine the

process and employees' confidence in it is as a constructive way to address their concerns. The Fact Finder recognizes that there are many good reasons for occasions arising where both the Union and Management may not want to advance a grievance to the next step. In the Fact Finder's opinion, without timelines and consequences for not adhering to them delays in processing grievances are inevitable. With timelines and consequences delays in processing grievances become very unlikely.

The Fact Finder recommends that Management's proposed language be memorialized in the successor agreement.

The Fact Finder recommends that the administrative change the third paragraph's language, i.e., Appendix B as opposed to C be memorialized in the successor agreement.

Management seeks to have Section 5, Step 4, Paragraph A's language read:

- A. Any grievance involving the interpretation, application, administration, or enforcement of the provisions of this agreement, which has not been satisfactorily settled in the grievance procedure, may be submitted to Mediation prior to Arbitration, provided there is mutual agreement by the parties to mediate. Mediation shall be conducted by SERB or FMCS.
 1. CCL – Current Contract Language
 2. The parties will select and notify a Mediator within seven (7) working days of the parties advancing the case to mediation. The parties will make every effort to schedule the mediation session within 30 calendar days of notifying the mediator. The parties further agree that selecting a date for mediation shall be based on the mediator's availability. Nothing shall prevent the parties from extending the mediation process by mutual agreement. Said extension(s) shall be done in writing.

Management seeks a change in this language whereby mediation would occur only by mutual agreement. Management argued that mediation works only when the parties have a good faith belief that mediation could result in a mutually satisfactory resolution of the grievance.

The Union did not take issue with the proposed item 2, but objected to the requirement that mediation would occur only if there was mutual agreement. The Union argued that the current language whereby mediation can only be waived by mutual agreement has worked quite well and should not be changed.

In theory, the Fact Finder agrees with Management. However, considering that on those infrequent occasions when it has been used it has worked well as evidenced by the fact

that in the past nine years only one grievance was actually arbitrated the Fact Finder rejects Management's mutual agreement language, but recommends item 2's proposed language.

Management proposed that Section B's language read:

- B. The Union may initiate arbitration no later than fifteen (15) Working days after the date of an unsuccessful mediation or upon a refusal to mediate by the director.

The Union objected to this change.

The Fact Finder recommends no change in Section B's current language and that it be carried over intact into the successor agreement.

With respect to Section 5 the parties have agreed on the five permanent panel arbitrators and their names should be memorialized in the successor agreement.

Article 28 – Health Insurance / Hospitalization

The Union seeks to add the AFSCME Care Plan to the healthcare benefits plan currently in effect. The Union also seeks to have the TCJFS pay the full cost of Plan. Aside from the vision, hearing, dental, and prescription drug card benefits the Plan provides for, which would be a much desired benefit for employees the union argued that other AFSCME locals in the County who are covered under the same County wide plan as the Local's members also have the AFSCME Care Plan for their members. In effect, the Union seeks a "me too" provision.

It was Management's position that the current healthcare insurance coverage is very good and the AFSCME Care Plan, for many reasons, is unfair to the TCJFS and is too costly. Management argued that premium rates are set by AFSCME and are not subject to the bidding process nor are they negotiated with the County. Premiums are based on state wide claims history as opposed to the County's claims history. Management pointed out that AFSCME does not issue credits for overpayment. AFSCME also prohibits premium contributions from the employees. Last, Management pointed out that throughout the County a bargaining goal is to get the AFSCME Care Plan out of the agreements where it presently exists.

The Union pointed out the perceived inadequacies in the current healthcare insurance coverage and how such adversely affects employees whose wages have been stagnant for years.

The Fact Finder is very sympathetic to the financial plight of the bargaining unit's members. In the Fact Finder's opinion the behavior of healthcare insurance providers is

tantamount to legalized extortion. While healthcare insurance providers claim to make very little profit their executives are egregiously overpaid and their organizations are, for the most part, poorly managed. We are all victims of the oligopolistic power of the industry.

The question before the Fact Finder is not whether the employees should have better insurance coverage than what presently exists, but rather can the TCJFS afford to pay for it. After reviewing the Parties respective arguments and the wealth of supporting written information the Fact Finder has determined that given the Department's current financial condition this benefit is unaffordable.

The Fact Finder recommends that the current language as modified by the Parties temporary agreement relative to the Cost Containment Committee be memorialized in this successor agreement.

Article 29 – Retirement

At the Hearing the MOU that makes reference to a conversion plan was agreed to by the Parties. The MOU and the PERS approved conversion plan should be memorialized in the successor agreement.

Article 41 – Wages

By any metric, over the past 30 + years the citizens of Trumbull County have suffered great economic hardships when compared to nearly all the other counties in Ohio. The closing of large businesses and the smaller ones who depended on them; the loss of high paying jobs; high unemployment, loss of population, declining real estate values; an aging population; stagnant or lower incomes has resulted in considerable stress on individuals and families. The County's many services are, in large part, funded by revenues generated in the County. Although the County's management has been fiscally responsible most, and perhaps all, of the departments have had to do more with less. This operational environment is most evident in the TCJFS. As the County's economic climate deteriorated the resultant stress on individuals and families has resulted in increases in divorces, indulgency, mental illness, family violence, child neglect and abuse, substance abuse, and more. The demands for TCJFS's services has increased while staffing and funding has not kept pace. The work demands for bargaining unit employees has increased while their pay has declined relative to increases in the cost of living. There is no question that they deserve an increase in their wages. The question is how much can the TCJFS afford to pay?

Management proposed an increase of \$0.35 per hour the first year effective May 1, 2015; \$0.30 the second year effective January 1, 2016; and \$0.25 the third year effective January 1, 2017. Management argued that employee's compensation is higher

than the wage scale shows because of the generous longevity scale and the extra birthday holiday. In addition, the County pays nine percent of TCJFS employees' share of PERS obligations.

The Union seeks to have employees put on the same wage rate scale as others in the County as per the "Trumbull County Employee Salary Schedule". The rationale for the Union's position is that other AFSCME locals' members are on the Schedule and the County's finances have been steadily improving. The Union also argued that compared to Mahoning County JFS's AFSCME represented employees Local 458's members paid appreciably less per hour.

Ms. Santangelo, the County's Chief Accountant, testified about the County's financial condition. She often referred to the information in its Exhibit No. 11. The Union relied heavily on its Exhibit S, which was a four page letter from Mr. Mark Murphy, Fiscal Policy Analyst, AFSCME, Washington, DC. Mr. Murphy's analysis of the County's financial health was based on the following:

- The County's annual financial reports for 2008 through 2012. The report for 2013 was not yet available.
- Estimated budgets for the Public Assistance Fund for 2012 through 2014.
- Moody's Investors Service's September 28, 2011 credit rating statement for the County.

Management argued that Mr. Murphy's analysis does not reflect the County's current and projected financial condition. Ms. Santangelo's testimony and supporting documents reflect the County's financial situation from 2007 to March 2015. The Union pointed out that they asked Management for detailed TCJFS financial information and none was provided. Nor was such information provided to the Fact Finder at the Hearing.

After considering the Parties' respective arguments and the documentary information the Fact Finder does not believe that at this time bargaining unit employees should be put under the County's salary schedule. The Fact Finder believes that Management proposed hourly wage increase in the third year should be slightly improved. The Fact Finder recommends the following:

- \$0.35 per hour the first year effective May 1, 2015
- \$0.30 per hour the second year effective January 1, 2016
- \$0.30 per hour the third year effective January 1, 2017

The Fact Finder recommends that the language in Sections 3, 4, and 5 be carried over intact into the successor agreement.

Article 42 – Random Drug Testing

The Union seeks to have the word “Random” removed from the Article. Management wants the current language to be retained.

The Union contended that during the negotiations for the current, but expired Agreement Management said that random drug testing would apply to bargaining and non bargaining unit employees. Subsequent to those negotiations the Union was told that because non bargaining unit, i.e., supervisory employees were not considered to be “safety sensitive”, that they could not be required to be randomly tested, and could only be randomly tested if they agreed to it. Management first learned this by way of a written legal opinion from their insurance counsel. The Union argued that none of the bargaining unit members are “safety sensitive” either.

The Fact Finder finds the Union’s argument to be persuasive and recommends that the word “Random” be removed from the title and contents of the article.

The Fact Finder recommends that all of the tentatively agreed on language for the other articles and MOUs be memorialized in the successor agreement.

April 21, 2015

Date

Louis V. Imundo, Jr.
Fact Finder