

STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In The Matter of Fact Finding Between

AFSCME, Ohio Council 8	}	
AFL-CIO & Local 772	}	Case No. (s): 2014-MED-05-0771
Employee Organization	}	
	}	
AND	}	
	}	
Washington County Department of	}	Fact Finding Report
Job & Family Services	}	
Ohio Public Employer	}	Michael King, Fact Finder
	}	

This matter was heard on October 2, 2014, in the City of Marietta, Ohio.

APPEARANCES:

For The Union:

Gary W. Arnold, Staff Representative
AFSCME, Ohio Council 8, AFL-CIO
36 South Plains Road
The Plains, Ohio 45780

For The Employer:

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I. Introduction and Background

The undersigned, Michael King, was appointed Fact Finder by the State Employment Relations Board (SERB) on August 5, 2014. As Fact Finder the undersigned was tasked to conduct a hearing and issue a report with recommendations on each of the unresolved issues between the parties in their negotiations for a successor Collective Bargaining Agreement (CBA).

The Department of Job and Family Services operates under the authority of the Washington County Board of County Commissioners. It provides services and assistance to county residents including medical, food and cash assistance, as well as child care assistance and adult protective services.

The bargaining unit consists of approximately thirty-three (33) employees. This unit includes the following job classifications: eligibility referral specialist, investigator, social service worker, unit support worker and maintenance repair worker.

The collective bargaining agreement expired on August 2, 2014. Prior to and after expiration of that agreement the parties met and negotiated on numerous occasions, but were unable to conclude a new agreement. As of the date of hearing, at least fourteen (14) issues remained unresolved, although the parties had made significant progress in approaching agreement on many of those issues.

At the hearing the parties were able to reach agreement on all but two (2) issues: wages and use of active pay status to determine overtime pay. As fact finder I attempted to mediate those two issues, but that effort wasn't successful. Thereafter, I conducted a full hearing on the remaining two (2) issues.

Prior to the hearing the parties timely submitted pre-hearing statements pursuant to SERB Rules. Those statements were reviewed prior to the hearing, and discussed fully at the hearing. Each party was presented a full opportunity to present documents, exhibits and testimony as that party deemed appropriate.

II. Fact-Finder's Report

In reviewing the issues at impasse, and arriving at recommendations, I considered the parties written submissions and exhibits, oral presentations and testimony and the following factors as required by law:

- 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 interest 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 issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

In preparing this report I have attempted to make recommendations that are reasonable based on the evidence presented, and that balance the legitimate economic interests of both parties.

The fact-finding hearing in this matter occurred on October 2, 2014, and the record was closed immediately thereafter.

III. Issues Agreed Upon At Hearing

Article 2, Recognition

The Employer had proposed technical corrections in this article. Specifically, the change would include using the correct titles for current agency leaders, for example, “Director” and “Assistant Director” instead of “Administrator” and “Assistant Administrator.”

Article 3, Dues Check Off and Union Security

Although both parties offered proposals to modify this article, the competing proposals were withdrawn and the parties agreed to use current contract language without change.

Article 4, Union Representation

The changes proposed by the Employer provide for technical correction, deleting references to “Groupwise” prior to email. The agency no longer uses a Groupwise system. The parties agreed to the proposed change.

Article 9, Grievance Procedure

Again, the Employer proposed language cleanups in the article designed to reflect current position titles and to provide consistent names for meetings held at various steps in the grievance process. The parties agreed to the proposed changes.

Article 10, Disciplinary Records

Initially the Employer sought to increase the retention period for written and verbal employee discipline. However, the parties agreed that no changes would be made to this article. Current language will be maintained.

Article 12, Work Rules

The Employer proposed a change to this article that would permit it to electronically deliver employee work rules to employees, rather than having to always use paper copies. The parties agreed to the proposed changes.

Article 16, Safety and Welfare

The employer explains that it “proposes deleting Section 16.5 regarding Water and Restroom facilities and merging the language with current Section 16.7.” While this change wouldn’t alter the employer’s obligation to provide safe drinking water and restroom facilities, it would simply avoid duplication. The parties agreed to the proposed change.

Article 17, Hours of Work and Overtime

The Union has proposed to modify Section 17.8 in order to increase pager pay to \$150 from \$100. The Employer offered a counter proposal calling for a more modest increase in pager pay, but providing that such employees wouldn’t receive overtime pay unless they had to leave their home/location to respond to a page not otherwise connected to the employee’s regularly scheduled work hours. The parties determined to maintain current contract language on this provision.

Article 21, Holidays

The Union proposed to increase the number of to fourteen (14) from thirteen (13). This would be accomplished by increasing Christmas Eve and New Year's Eve each from half-day holidays to entire day holidays. The parties agreed not to make such a change and to maintain current contract language in this section.

Article 23, Annual Leave

The Employer proposed "to delete reference to 'Effective July1, 1999 and each agreement year thereafter, all' and simply state 'All full-time...'" This was explained as a mere cleanup of language. The parties agreed to the proposed change.

Article 29, Travel and Meal Allowance

Again, the Employer proposed language modifications that wouldn't change any material rights of either party under the contract. Specifically, it would delete reference to "ODJ&FS" and instead insert "WCDJFS." This change would recognize that the reimbursement form is a Washington County Department of Job and Family Services form. The parties agreed to the change.

Article 30, Severance Pay

The Union proposed to increase the amount of severance pay employees receive upon separation from the agency. However, the parties agreed to current language for this section of the collective bargaining agreement.

Article 34, Duration

The parties agreed that the collective bargaining agreement would have a duration of three years.

IV. Unresolved Issues

Issue # 1 Article 17, Hours of Work and Overtime

Here, the parties disagree on whether overtime pay should be calculated based on active pay status, or on actual hours worked. The recently expired contract contains language on the matter as follows:

Section 17.5. Scheduled overtime opportunities shall be distributed equally insofar as may be reasonably practicable, among those employees who normally perform the job duties in that classification. Distribution shall be as follows:

1. Available overtime will be allocated evenly per worker. Assignments will be given by the unit supervisor.
2. In the event an employee declines or is unable to utilize the overtime offer, those hours shall be returned to a common pool. The unassigned hours then identified shall be totaled and offered to the remaining employees eligible for the overtime based on bargaining unit seniority. Management shall determine the time-frame for the intended use. The employees shall then indicate how many hours of the remaining time they would be willing to work.

Once scheduled overtime is announced, an employee may not use more than four (4) hours of unscheduled annual leave in the work week in which the overtime is to be worked and remain eligible for the overtime.

When the Employer has determined the need for overtime and a sufficient number of employees have not accepted the offer, the Employer reserves the right to require the least senior employee(s) who normally perform the job duties to perform said overtime.

When the Employer has determined an emergency condition exists, any and/or all employees may be required to work overtime.

Section 17.6. When an employee is required by the Employer to be in active pay status for more than forty (40) hours in a work week, s/he shall be compensated with overtime pay or compensatory time (at the employee's option) for such time over forty (40) hours at the rate of one and one-half (1-1/2) times his/her regular hourly rate for each one (1) hour, or fraction thereof, of overtime worked. Compensation shall not be paid more than once for the same hours under any provision of this Article or Agreement. Employees may accumulate up to forty (40) hours of compensatory time. Compensatory time may be used for any reason, subject to the same time frame requirements as defined for AL/EIL in Article 23.

The Employer seeks to eliminate the four-hour maximum personal time off request in this section, and base overtime pay eligibility on actual hours worked, rather than active pay status.

Employer Position And Proposed Changes:

The current system is more generous than what is required either under the Ohio Revised Code or the federal Fair Labor Standards Act. An employee can technically be paid overtime even when actually working fewer than the normal forty (40) hours per week. That's because current contract language predicates overtime pay eligibility on active pay status, rather than on actual hours worked. The employee receives overtime when actual hours worked, plus leave time used, exceed forty (40) hours during a work week. The situation is complicated when employees have an unexpected need for time off for such things as sudden illness or family emergency. As the Employer explains:

Based upon the current language, the WCDJFS could reject all requests for personal time off beyond four hours once overtime is worked/scheduled. During the life of the agreement, situations arose where employees would work scheduled overtime and then request more than four (4) hours of leave during the week for unfortunate events, such as family deaths. As noted, based upon the language of the contract, the WCDJFS could have denied such requests for time off as they exceeded four (4) hours in the week in which overtime is worked. However, denying the time off would lack compassion. As a result new contract language is necessary.

The problem described here occurred twice during the prior three-year contract. The overtime pay requests were denied, and the two employees involved filed grievances. The total amount in controversy was under \$100. Recognizing the cost of the grievance process, the Employer decided to settle the matter by paying the overtime, and then "handling it in negotiations."

Overtime based on actual hours worked is the County's policy for non-bargaining unit employees and for some employees who are represented by other bargaining units.

Union Position:

The Union strongly opposes the changes offered by the Employer. First, the Union notes that active pay status for overtime is a bargained-for part of the contract for numerous years. It has been in the contract for more than fourteen (14) years, and there has been no history of employee abuse of the provision. Next, the Union points out that some collective bargaining agreements for employees within Washington County also have active pay status, including employees at the Child Support Enforcement Agency. Finally, the Union stated that as many as seventy (70) percent of the public sector labor contracts it negotiates in the region include active pay status.

Finding And Recommendation

To buttress its argument, the Employer submits several fact finding reports from unrelated cases. Included among those awards was one I issued. The reports offered are:

Coshocton County Engineer's Office and AFSCME, Ohio Council 8
Case No. 12-MED-04-0517

Service and Clerical Workers and City of North Canton
Case No. 08-MED-12-1415

United Steel, Paper & Forestry Rubber, et. al. and Lorain County
Board of Commissioners
Case No. 09-MED-09-0866

Fulton County Engineer and Ohio Council 8, AFSCME
Case No. 95-MED-06-0579

Ohio Patrolmen's Benevolent Assoc. and City of Kirtland
Case 95-MED-08-0684

I reviewed each case in its entirety. To the extent those reports included a rationale for the stance taken on active pay status in overtime calculation, I believe the reasoning contained was sound. However, I don't find these prior reports useful in determining the appropriate recommendation in this case.

In one instance the factfinder accepted a change from active pay status overtime determination merely by noting that the change was consistent with the federal Fair Labor Standards Act. In others cases, the requested change was one among numerous economic proposals wherein the Employer claimed hardship and a need for economic relief. Even when the evidence was incomplete in those cases, Employers still made arguments about significant potential savings with a more uniform overtime policy across employee groups.

When one examines, as we are required by law to do, the history of bargaining between these two parties, we find that for years the parties bargained and agreed to an overtime system above the minimum required under state and federal statutes.

I find there was no evidence in the present case of changed circumstance since the initial agreement to active pay status overtime. I find no evidence of employee abuse of the system, or of actual or potential harm to the Employer that is other than *de minimus*. I find it instructive that the estimated harm over the prior three-year contract was less than one hundred (\$100) dollars.

For the reasons set forth above, I recommend rejection of the proposed contract change, and that current language be continued for this section.

Issue # 2 Wages

Employer Position:

The Employer proposes a general wage increase of two (2) percent in the first year of the contract, retroactive to August 3, 2014, two (2) percent in the second year, and two (2) percent in the third year. The Employer notes that the wage increase proposal is consistent with what other county employees have received. Also, a Factfinder recently recommended a two (2) percent increase for the Washington County Sheriff's employees. It argues that the appropriate communities for comparison are Athens County DJFS, Belmont County DJFS, Morgan County DJFS, Muskingum County DJFS, and Noble County DJFS.

Union Position:

The Union proposes a general wage increase of five (5) percent in the first year of the contract retroactive to August 3, 2014, two (2) percent in the second year, and two (2) percent in the third year. The Union didn't offer comparables and acknowledged that there isn't a significant wage gap between bargaining unit members and similarly situated other workers. However, the Union stated that the wage increase proposal is consistent with what this same union has recently negotiated but not finalized with other Job & Family Services in the general area. A wage increase of that magnitude would prevent a wage gap from developing between this bargaining unit and similarly situated units.

Finding And Recommendation

I find that employees in this case are appropriately compared to similarly situated employees in Athens, Belmont, Morgan, Muskingum, and Noble counties.

Table A: Population Growth, By County

County*	2010 Population**	2015 Pop. Projection***	Growth %
Athens County	64,757	64,180	-0.89%
Morgan County	15,054	14,880	-1.16%
Muskingum County	86,074	85,790	-0.33%
Noble County	14,645	14,762	0.80%
Perry County	36,058	36,850	2.20%

Washington County	61,778	60,410	-2.21%
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*South Central DJFS is a Combined DJFS comprised of Vinton, Ross and Hocking Counties and is therefore not included in this table.

**Taken from provided materials, and checked against U.S. Census Data (appear to be based on 2010 population numbers).

***Taken from Ohio Development Services Agency Public Records

Using data given in the exhibits, (checked against US Census Data) and data found in Ohio public records about county population estimates, Table A compares Washington County to each neighboring county presented as comparable in the case, and presents the population for each, the 2015 population projection, and the calculated population growth. The differences in population growth between counties was negligible, with only a total range of 3.35% between the highest and lowest growth percentage, so this computation gave us very little information to work with regarding the determination of comparable counties. However, what is significant is that Washington County has negative population growth, and a comparable county, would need to be both similar in size and relatively similar in projected growth. (For example, a county of similar size with a high positive population growth would not be suitably comparable in this instance.) Utilizing the basic population numbers for each county in question, Table A demonstrates that Athens County and Muskingum County (highlighted) represent the counties most easily comparable to Washington County. The Table also shows that Athens County and Muskingum County both have negative population growth, thereby also satisfying our first condition.

**Table B: Investigator Current Wage Comparison,
by Comparable Jurisdiction**

Jurisdiction	Investigator Current Wages (Annually)	
	Entry	Top
Athens Co. DJFS	\$ 34,257.60	\$ 35,276.80
Muskingum Co. DJFS	\$ 32,177.60	\$ 32,177.60
Washington Co. DJFS	\$ 32,780.80	\$ 40,664.00
Selected County Average*	\$ 33,217.60	\$ 33,727.20

*Does not include Washington County

This analysis allows us to suitably compare the wages for various job functions under Washington County Department of Job and Family Services with similar job functions in comparable counties. Table B shows a comparison of entry and top current wages for Investigators in Washington, Athens, and Muskingum Counties, annually. The following graphs represent this information visually for Investigators, Social Service Workers, and Social Service Workers II.

I recommend a general wage increase for this bargaining unit of two (2) percent in the first contract year, retroactive to August 3, 2014, with an additional two (2) percent general wage increase in the second contract year, and an additional two (2) percent general wage increase in the third year.

Additional Finding and Recommendation

As noted above, I find that the parties reached agreement at hearing or otherwise on several contract provisions. I recommend that all those tentative agreements be approved, and incorporated into a successor collective bargaining agreement of three years duration.

Michael King
Appointed Fact Finder

Date: October 7, 2014
Beachwood, Ohio