Before the State Employment Relations Board
State of Ohio

In the matter of

Columbiana County
Department of Jobs and Family Services/Columbiana
County Board of County Commissioners
Lisbon, Ohio
Employer

Case No. 2015-MED-06-0586

And

Sandra Mendel Furman
Fact Finder

Ohio Council 8, AFSCME, AFL-CIO
And its Local 3192
Union

FACT FINDER'S REPORT

Procedural Matters

The fact finder was appointed by SERB notification dated October 2, 2015. The matter was scheduled for hearing on June 16, 2016 by agreement of the parties. Pre-hearing statements were received by the Fact Finder (FF) and served by each party upon the opposing party prior to the hearing. There has been substantial compliance with OAC rule 4117-9-05 (F).

The parties had engaged in several (4) bargaining sessions for a successor agreement. There was a mediation session facilitated by FMCS. After the mediation session on March 22, 2016 the parties signed a tentative agreement. (TA) The Union rejected the TA necessitating the appointment of the FF.

The FF engaged in mediation efforts which were unavailing.

The hearing was held at the Columbiana County Department of Jobs and Family Services (JFS) Building in Lisbon, Oh. A full hearing was had on the

remaining four (4) issues. The parties presented witnesses and exhibits in support of their respective positions.

Representing the Employer was Marc Fishel, Esquire. Also present and/or testifying on behalf of the JFS were the Department Director and the Human Resource Administrator.

Jack Filak, Ohio Council 8 Youngstown Regional Director and Staff Representative Tracy Oates represented the Union. Various members of the bargaining committee and Local officers were also present and testified as needed.

The report is submitted at the date stipulated by the parties.

Findings of Fact

- The Columbiana County Department of Jobs and Family Services (JFS or Employer) is under the Columbiana County Board of County Commissioners (BCC) for purposes of approval/funding of collective bargaining agreements. (cba)
- The JFS performs a multiplicity of human services functions dictated by state and federal law and regulations.
- The JFS has two bargaining units. The party herein –Ohio Council 8, AFSCME, AFL-CIO and its Local 3192 (Union) represent persons performing functions in income maintenance, JOBS, adult services, child support enforcement (CSE) and administration.
- The Union has been the certified bargaining representative since March 1995.
- The second JFS bargaining unit relates to employees performing functions relating to Children's Services. The bargaining agent for that separate group is the Glass, Molders, Pottery and Plastics & Allied Workers International Union AFL-CIO CLC (GMP).
- The BCC have/had a variety of other cbas with employees of the Treasurer, Clerk of Courts and Recorder.[1] It also has a Maintenance employees bargaining unit. The bargaining representative for those groups is the GMP.

[1] The parties agreed that the Clerk of Courts unit was recently decertified.

- The record does not contain any demographic information as to the population, economy or features of the County.
- As of May, 2016 there were seventy–nine (79) employees in the Union.
- The JFS employs 131 employees in total including the group represented by GMP and non-bargaining unit managers, supervisors and administrators.
- The parties have had a collective bargaining relationship for more than twenty (20) years.
- The most current cba expiration date was November 30, 2015.
- It was a three (3) year agreement.
- There is no dispute that wage increases will be retroactive and increases in health insurance premiums are retroactive to the start date as well.
- There is no joint bargaining in the JFS.
- There is no “me-too” language in the cba relating to holidays or sick leave.
- There was testimony that JFS seeks parity among its two (2) units.
- The Union has a longevity pay benefit, the GMP unit in JFS does not.
- Internal comparables on the remaining disputed issues for the other BCC unionized employees reflect the following:
    - GMP-Clerk of Courts: 15 days sick leave/year
    - GMP-Recorder: 15 days sick leave/year
    - GMP-Treasurer: 15 days sick leave/year
    - GMP-BCC: 15 days sick leave/year
    - GMP-JFS: 13 days sick leave/year
    - GMP-Clerk of Courts: 10 holidays with me too language on Christmas Eve and New Year’s Eve
    - GMP-Recorder: 10 holidays with me too language on Christmas Eve and New Year’s Eve
    - GMP-Treasurer: 10 holidays with me too language on Christmas Eve and New Year’s Eve
    - GMP-BCC: 10 holidays
    - GMP-JFS: 10 holidays

- GMP-Clerk of Courts: one hour paid lunch
- GMP-Recorder: one hour paid lunch
- GMP-Treasurer: one hour paid lunch
- GMP-BCC: one hour paid lunch

- After mediation in March 2016 the parties reached a TA.
- The Union advised the JFS representatives that it was not recommending TA approval to its membership.
- The Union voted down the TA by a large margin: 50 “no” votes to 15 “yes” votes.
- Inability to pay was not an issue in bargaining or at fact-finding.
- The parties jointly request that all matters previously agreed to (i.e. not the matters at issue in FF)- be incorporated in the FF report.[2]

Issues to be determined

Issue 1.Sick leave Article 10

The FF has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e) and has followed the guidelines set forth in OAC 4117-9-05(J) and (K).[3] Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

The Union proposes increasing the accumulation rate for sick leave from 13 to 15 days per year.[4] It states that the vast majority of comparables for JFS and CSE in addition to the other BCC units support the upward adjustment; that there are no economic considerations barring the increase and employees have suffered hardships and exhausted benefits due to serious medical conditions. (Union Chart 1 and Union Exs.1 and 3) The JFS has not indicated that there are

[2] Rather than type out pages of language on the items previously agreed to and not in issue during the FF hearing, the FF believes and trusts that the parties themselves can identify those language changes previously agreed to with the necessity of reproduction herein. Those articles and signature pages were presented in the Employer’s exhibit book at the FF hearing.
[3] The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties’ stipulations and other traditional factors related to bargaining.
[4] The language actually refers to an earned rate of 4.6 hours of sick leave per pay period. For ease of reference the FF has chosen to convert the hours to days. The recommended language refers to hours earned not days.

or have been any issues with sick leave abuse or fraud. These are disciplinary matters if in fact these should occur and should not in any way be a factor in adjusting the accrual rate. The JFS has not hired temporary employees or awarded overtime to make up any deficit in work needed to be performed. The increase in hours will not affect retirement sick leave cash out as those hours are capped and no changes were proposed on the cap. It is unfair to expect employees to bank personal leave to have it in reserve for sick leave when the statutory norm, all internal comparables except the Children's Services group and the vast majority of other JFS cbas allow for 15 days/year.

The JFS counters that the employees have sufficient levels of sick leave. Data indicates high numbers of leave usage and granting more leave just increases the numbers of days off work. Whenever there is an employee off sick it affects productivity. it contends it would be unfair to other internal personnel (the GMP) to grant such an increase. The JFS argues that the loss of the two (2) sick leave days was a *quid pro quo* made in 1996 to gain a new benefit of two (2) (now three (3)) personal leave days. The FF should consider the past cbas as evidence weighing in favor of not granting the increase. The Union is seeking an enhanced benefit without trading anything in exchange. The parties made concessions on other issues and the Employer believed that all matters were concluded at the signing of the TA in March 2016. If the FF awards on the Union request it will encourage less transparent bargaining tactics in the future.[5]

In response to the Employer remarks on holding the parties to the TA, the FF notes that any time a TA is voted down it opens the issues up for re-visiting- by either side. That is inherent in the process and sanctioned by statute. This was a special case as well as the Union expressly stated to the Employer's

[5] The Employer cited to two other FF reports as support for its argument that the TAs were the best evidence of what the appropriate result should be in this matter. The FF read and considered the reports, which would at best be persuasive not binding on this FF in this case. The FF did not find Fitts' report (Employer Ex. 8) to be particularly relevant or useful in reasoning the result herein. Regarding Stanton's report (Employer Ex. 9) the factual background of that case and circumstances were strikingly different than those extant herein. The FF finds the Stanton report to be well-reasoned but not binding on this FF because of the stark contrast in the facts and circumstances. It bears noting that the holding would of course if followed without independent reasoning here shirk the FF's responsibilities under statute. It would also cause the Employer's new positions on the MOU and job bidding to fail.

bargaining team that it would not recommend passage of the TA. It characterized the TA as a final offer and stated it was pressured into its terms through the mediation process. While the FF generally holds to the precept- you are stuck with what you signed- the statute permits a vote by both sides on agreements. When one or the other-or even both- do a vote down, then the issues are all ripe for revisiting. This is not an instance of bad faith. The Employer also seeks language changes from the March 2016 TA.

The Union presented unrebutted testimony on several points. It indicated there are/have been no claims of abuse or fraud that would alarm or negatively impact the Employer. It argued that in years past the Union sought the creation of a sick leave bank to address the needs of employees with serious medical conditions that would wipe out sick leave and force employees to go without pay. The Employer had always rejected such proposals. It pointed out anecdotal evidence of certain employees needing but not having sufficient sick leave balances to deal with serious health conditions. It is a no cost item as there has been an uninterrupted history of the Employer not replacing even long term absent employees with temporaries or assigning overtime. External comparables and the other BCC bargaining units and the RC overwhelming support the sought for increase in hours. Holding the Union to a bargain made twenty (20) plus years ago is unreasonable and ignores current realities. These arguments were more compelling than the position stated by the JFS.[6]

The FF notes that in recommending the Union desired increase in sick leave accrual skews the internal comparable with the GMP unit. But she was not privy to how the bargaining occurred for that GMP unit of Children Services workers. She does not know the concessions made to gain in other areas. She does not even know if changes in sick leave accrual were even proposed by the GMP. Internal comparables are one (1) factor to be considered but not a conclusive or definitive factor. Absent a coordinated bargaining schedule, me too

[6] To chart (JFS Ex. 4-5) that employees have and take their leave in the amounts indicated is non-determinative on the issue of enhancing sick leave available accrual. Leave exists to be used when and under the circumstances prescribed by the cba. Under all the facts and circumstances present in the record the benefit should be enhanced.

language or joint bargaining it is not unlikely or unusual that internal comparables are different. It is a factor but just one to be considered. To the extent that the BCC maintenance unit/Clerk of Courts/Treasurer/Recorder's offices are also internal comparables as BCC employees those four (4) groups earn at the 15 days/year rate as well.

The FF recommends the Union's proposal on sick leave.

RECOMMENDATION

Article 10 should be amended as follows:

10.2

All full-time employees shall earn sick leave at the rate of 4.6 hours per pay for each completed bi-weekly pay period and may accumulate such sick leave without limit. An employee who transfer from another Columbiana County agency to the DHS shall retain any sick leave balance.

The parties stipulated to include the following language for section 10.9:

Employees who maintain attendance, excluding vacation, personal leave and compensatory time, of at least 99% or better in a calendar year, and having a sick leave balance of at least 160 hours will be given the option of converting up to twenty-four (24) hours of sick leave to vacation leave. [7]
[all other language current language]

ISSUE 2. Article 24.1 Holidays

The FF has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-

[7] There is language in the TA regarding a meeting to be held on May 1, 2016. The record is silent as to whether or not such a meeting was held. If the parties intend/need such a meeting to discuss the feasibility of cash out that meeting does not seem to need to be recorded in cba language.

This language also provides an incentive not to use sick leave. It seems that this is a countervailing argument to the Employer's stated concerns: if the Employer says it is concerned about the employees having sufficient leave now then this provision serves an Employer interest of potentially decreasing sick leave but allows increasing another leave balance: vacation. The result does not lessen the number of days off available to the employee: it just changes the pot s/he draws from, i.e. moves it from unscheduled (sick) leave to scheduled (vacation) leave. The obvious conclusion is: employees have leave to use it or bank it. There are financial incentives to bank sick leave both in cash out and in allowing conversion at retirement.

05(J) and (K). [8] Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

The Union seeks the addition of two (2) ½ day holidays, bringing the total paid holidays from ten (10) to eleven (11). It specifically seeks the addition of a ½ day on Christmas Eve and a ½ day New Year's Eve. In support it argues regarding comparables from other jurisdictions who receive more paid holidays/year. It cites to other JFS state-wide and geographically proximate who allow for the Christmas Eve and/or New Year's Eve holidays as full holidays. (Union Ex.2 and Chart 1) It states that these two dates are historically very low client volume days at the JFS. It points out that it is merely seeking a half-day on each holiday. It cites to other BCC employees who may have those two (2) whole days off through a me-too provision. See Employer Ex. 10-12. The economic impact of this proposal is minimal as at most it affects productivity-on two of the slowest days of the year- when most persons are unaware of the open JFS operation.

The Employer argues that the bargaining unit employees have plenty of leave and do not need more. It cites to the internal comparable of the Children's Services classifications/GMP cba which has the same ten (10) holidays as this unit. It argues against the anomalous situation that would exist if the AFSCME unit has the days off but not management. It points to the fact that the majority of jurisdictions do not recognize those holidays. Although there is language in the GMP cbas at other elected County officials' offices testimony was mixed at best as to whether or not the me-too benefit language has ever kicked in.

The FF finds that the greater weight of evidence does not support a finding in favor of the Union's position. Internal comparables at other BCC units offer minimal support but the me-too language has been moribund not active. External comparables illustrated on Union Chart 1 were a mixed bag with no clear demonstration that the majority of JFS/CSE units provide for more holidays.

[8] The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.

It was a very mixed bag as to the numbers of comparables that allow ½ day for either or both of the two (2) holidays now proposed by the Union. If a particular unit did have more holidays, there was often a trade off in having lesser personal days than this unit. Evidence showed that no one has been denied use of vacation leave or personal leave for those dates if requested. Christmas Eve and New Years Eve are not universally recognized as holidays. This was a Union new proposal made post defeat of the TA and had no historical antecedents in attempts to make gains as did the sick leave issue.

RECOMMENDATION

No change to Current Language

Issue 3. Job Bidding Article 27

The FF has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K). [9] Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

The Union proposes language agreed to in the March 22, 2016 TA signed by the parties. It argues that there is no good reason to impede the ability of employees who want a voluntary demotion to bid with equal standing with those who seek a promotion or lateral transfer. This is a non-economic item. It serves the interests of the employee, the public and the Employer to no longer have an employee in the position in which s/he no longer wishes to perform. This proposal just puts anyone seeking a job change on an equal footing in the bidding procedure.

The JFS states its earlier agreement made at the time of the TA on job bidding was ill-considered. It seeks current cba language as more in the public interest. The goal of the cba language should be to encourage advancement not support demotions. Employees who are unwilling to serve in a higher level

[9] The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.

position always have the choice to demote back during the probationary period. This is a sufficient benefit and more is not required.

The FF finds the Union position more consistent with the factors listed in statute. There are many comparables listed in the Union Ex.4 that support a voluntary demotion option. The language has no economic impact. It allows more job movement by employees which typically enhances morale. If an employee seeks a voluntary demotion there are reasons that no doubt if expressed would indicate that the public, co-workers and management are best served by allowing the employee the opportunity to take a position with less pay and in many instances lesser responsibility and duties. A person seeking a voluntary demotion through dint of this added language stands as an equal with others competing for the vacancy.

The Employer's counter is that the unhappy employee can return to the other position prior to the end of the probationary period. Without reference to cba language it is unclear whether this occurs voluntarily or not. But it seems the better option is to allow the move to occur voluntarily at any point a vacancy is otherwise available. The Employer was initially willing to agree to this language. No changed facts have occurred since March 2016 to support the reversion to the prior cba language.

Comparables, public interest, the effect on public services, and generally labor principles supporting posting of vacancies being weighed and considered, the Union's position is more persuasive.

RECOMMENDATION

Section 27.1

Current Language

Section 27.2
These provisions shall apply when a vacancy exists in the bargaining unit and the Employer intends to fill the vacancy. The Employer has the sole discretion to determine if a vacancy shall be filled. A vacancy is defined as an opening in a particular classification where the Employer has created a new classification or has increased the number of jobs in an existing classification, or where an opening occurs in a classification as the result of a promotion, transfer, voluntary demotion, quit, discharge, or other termination of employment.

Section 27.3
Prior to posting a vacancy, the Employer shall initially post the vacancy as an intra-classification transfer for two (2) work days and shall occur one time during a vacancy. The Employer shall utilize the criteria set forth in this section. The Employer shall only post the initial vacancy as an intra-classification transfer. Additional vacancies that may arise after the intra-classification process is utilized shall be in accordance with the following paragraph.

After the Employer exhausts the above procedure, if applicable, the vacancy shall be posted on the agency bulletin board and by email for a period of five (5) working days. Each vacancy will specify the job title, hours, location, pay range, program, job description, date of posting, qualifications and name of supervisor at time of posting. Employees within the bargaining unit shall have the first opportunity to fill such vacant position. The employee wishing to be considered for such vacant position shall indicate in writing to the Director or her designee during the posting period. The employee shall be given a receipt acknowledging the bid. The Employer shall not be obligated any application not timely filed. The Employer shall not discourage any employee from applying.

27.4
The procedure contained in this Article shall apply to lateral transfers, voluntary demotions, and to promotions. Lateral transfers are transfers from one classification to another classification when both classifications have the same pay range assignment or are transfers within the same classification. Promotions shall be when there is movement from one classification to another classification and has a higher pay range assignment. Voluntary demotion shall be where an employee ids on a position in a lower pay range.

27.5
Current Language

27.6
Current Language

27.7
The Department may temporarily fill a position vacated by vacation leave, sick leave or any other reason. Generally, the Department shall not temporarily fill a position for longer than fifteen (15) days. If the Department desires to temporarily fill a position for longer than fifteen (15) days, it shall use the procedures set forth in this Article. The Department may temporarily fill a position for longer than fifteen (15) days if necessitated by an extended absence of an employee, provided that such

temporary appointment cannot exceed the time such employee is absent. Any employee who temporarily fills a position with a higher pay range shall be paid at the higher rate during this period.

27.8
Current language

27.9
Current language

27.10
Current language

Issue 4. <u>Article 17 Overtime Lunch Hour MOU</u>

The FF has taken into consideration relevant factors set forth in R.C. 4117.14 (C) (4) (e), and has followed the guidelines set forth in OAC 4117-9-05(J) and (K).[10] Some of the listed factors were not relevant. Other factors had no evidence or arguments in support presented in the record.

The cba currently provides for an unpaid half (1/2) hour lunch. The Union had made proposals for an hour paid lunch. In response to the Union's proposal the Employer offered to pilot a trial period for employees to take at their option a forty-five (45) minute unpaid lunch by giving up the morning fifteen (15) minute break. There were a variety of conditions to the pilot which appear below in the recommended language.

The Union accepted the proposal and it was part of the TA signed March 22, 2016. However when the TA was defeated in the Union vote the Employer withdrew its support for the MOU. It argues the provision will be labor intensive to enforce. It argues that it will be hard to police the employees to make sure that someone in fact is skipping the morning break. It stated it would have to change payroll processing software.[11] It remarked that it is an unnecessary benefit as most employees bring their lunch or order in. The new location thus poses no

[10] The relevant factors to be considered are: past collective bargaining agreements; comparables as defined in the rules; public welfare and interest; ability to pay and administer; effect on public services; lawful authority of the employer; parties' stipulations and other traditional factors related to bargaining.
[11] There exists no evidence is in the record on this to indicate its scope and cost if any.

impediment to having a lunch break. The MOU was offered as a *quid pro quo* to resolve then pending issues. That is not the case in the present moment.

The Union counters that comparables support a longer, paid lunch break and this MOU isn't even close to that. All other County workers in the GMP units enjoy a one (1) hour paid lunch. Union Chart 2. It argues that the JFS building's relatively remote location from area eateries makes it practically impossible to get there and back within a half (1/2) hour let alone leave time to eat. The employees need to be responsible about the conditions for the lunch break. Otherwise the trial period will not result in an extension or can also be a predicate for discipline if not following the rules. The Union seeks this bare bones improvement to the current lunch break language and there are no reasons worthy of weight to oppose it.

The FF finds that the MOU as originally proposed now withdrawn by the Employer should be implemented. The dates will necessarily be changed to conform with the extended time the parties have been bargaining. The pilot time period and the small administrative tasks involved in monitoring support the implementation of this non-economic benefit. Comparables would support a more generous lunch break but this MOU was sufficient for the parties' interests just three (3) months ago and there has been no change in circumstances meriting a change.

RECOMMENDATION

Memorandum of Understanding on Lunch Period

Effective August 1, 2016, bargaining unit members may take their morning break in conjunction with their lunch period. Employees who elect this option must commit to this schedule for a calendar month and notify their supervisor by the 15th day of the prior month. Employees on this schedule must take their lunch between 10:30am and 1:30pm.

This MOU shall remain in effect until December 31, 2016. The parties shall revisit the MOU at that point. The Employer can cease this schedule after discussions with the Union after January 31, 2017.

Issue 5. Tentative Agreements

At the request of the parties the fact finder incorporates herein as if fully rewritten all tentative agreements initialed by both parties during bargaining *except as* otherwise recommended above.[12]

Respectfully submitted,

s/Sandra Mendel Furman

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Certificate of Service

An electronic copy of the FF report were sent by electronic mail to the State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215; to the JFS/BCC c/o Marc Fishel and to the Union c/o Jack Filak on July 7, 2016.

s/ Sandra Mendel Furman

Sandra Mendel Furman, Esq.

[12] The FF did not re-type the various TAs previously agreed to as the parties are aware of each and this would unnecessarily burden the report with matters not in dispute. The FF did notice some apparent typographical errors which should be corrected prior to printing/publication of the final cba.