

** Processed next business day**

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the matter of Fact Finding between:)	SERB Case No.
)	2015-MED-07-0648
SERVICE EMPLOYEES INTERNATIONAL)	
UNION, DISTRICT 1199,)	Hearing: April 4, 2017
Employee Organization,)	at Medina, Ohio
and)	
)	Date of Report:
MEDINA COUNTY DISTRICT LIBRARY,)	May 9, 2017
Public Employer.)	

Before Mitchell B. Goldberg, Appointed Fact Finder

Appearances: Joshua Norris, SEIU Public Division Director, for the Union; and
James P. Wilkins, Attorney for the Employer.

I. Introduction and Background.

The State Employment Relations Board (“SERB”) appointed the undersigned as the Fact Finder of this public employment labor dispute on December 3, 2015 in accordance with Section 4117.14(C)(3) of the Ohio Revised Code. The parties agreed to schedule and hold a hearing on April 4, 2017. This was done after lengthy administrative and legal proceedings concluded over the issue of whether they were obligated to participate in Fact Finding under the provisions of O.R.C. 4117.14 and related sections and regulations under their Dispute Settlement Procedures set forth in Article XXV of their CBA that expired on September 30, 2015. The parties agreed to operate under the terms and conditions of their expired CBA until a successor CBA is agreed upon and executed.

They timely filed their position statements with the Fact Finder and they served each other with their position statements. They presented oral evidence and submitted documentary exhibits at the hearing. The following recommendations on each of the unresolved issues are done on an issue-by-issue basis. The recommendations take into consideration the factors outlined in Ohio Revised Code Section 4117.14(G)(7). They are summarized as follows: (1) past

collectively bargained agreements; (2) comparisons with other public and private employees performing comparable work, while considering factors peculiar to the area and job classifications; (3) the public interest and welfare, the ability of the public employer to finance and administer the proposed issues, and the effects of the adjustments on the normal standards of public service; (4) the public employer's lawful authority; (5) the parties' stipulations; and (6) other factors normally or traditionally considered in determining the submitted issues to mutually agreed upon dispute settlement procedures in the public service or in private employment.

The Employer operates a public library with branches in Medina County, Ohio. The Union is the exclusive bargaining representative for all employees of the Library employed on a full-time or part-time basis, excluding supervisory, managerial, confidential, janitorial and professional employees, and excluding seasonal, temporary and casual employees. The Union grade job classifications and job titles are set forth in Appendix A to the expired CBA, and the hourly pay grades (1-4) are set forth in Appendix B.

The parties agreed at the outset to engage in mediation in order to reduce the number of unresolved issues set forth in their position statements. The following recommendations for the final resolution of the outstanding issues hereby incorporate all unchanged terms and conditions of the expired CBA, all tentative agreements reached during their negotiations, and the tentative agreements reached at the hearing through the successful mediation of those issues. The unresolved and outstanding issues are:

- (1) Article XIX, Employee Benefits, Section 1(c).

The Library proposes reducing its percentage payment of premiums for all tiers of coverage except employee only coverage for full-time employees from 85% to 80% beginning January 1, 2018. The current language states that employees working less than 37.5 hours per

week may be asked to contribute more than the stated 15%. Under the Library's proposal those employees could be asked to pay more than the 20% if its proposal is accepted.

The Union opposes any increase in plan premium contributions. The Union offers that the increase being proposed by the Library provides only a very minimal savings to the Library while placing an undue financial hardship on the small number of members it will impact. The totality of the savings recognized by the Library in the proposal would be less than \$5000 annually. I find that the present contribution levels are in the normal range for Ohio public employees based upon SERB statistical information.

RECOMMENDATION: No change.

Section 1(d), Section 3. The Library maintains a Health Reimbursement Account ("HRA") and contributes toward the account on an annual basis for employees enrolled in the medical insurance plan, and those employees who are not enrolled in the plan. The employees may use such contributions to cover medical, optical, dental expenses and/or dependent care assistance. The Library proposes that its expenses in this area should be brought under control so that its expenses are more in line with other comparable public library CBAs. It contends that its health care plans and its HRA are equal to or better than those in other comparable public libraries. Accordingly, it proposes to grandfather its HRA contributions for its current participants, but terminate contributions for employees enrolled on or after June 1, 2017.

The Union opposes this benefit reduction for new enrollees. It believes that the amounts contributed by the Library are reasonable and affordable. The Union also offers that while grandfathering the current members in the existing benefit guarantees the benefit level for them, it does not provide the benefit for future generations, and that it will be hard pressed to see that benefit returned once it has been eliminated.

RECOMMENDATION: The Library's proposal for reducing its costs in this area is accepted. Contributions under both Section 1(d) and Section 3 should cease for any employee not already enrolled as of June 1, 2017.

Sections 6 and 7. The Library further proposes to increase the eligible working hours for the insurance benefits provided for dental expenses, vision expenses and life insurance from 25 scheduled hours per week to 30 scheduled hours per week. Current participants, those employees who are enrolled as of June 1, 2017, would be grandfathered. The new 30-hour threshold tracks the eligibility for medical insurance under the ACA. The increased minimum for obtaining the life insurance benefit of 30 scheduled hours per week is consistent with the benefits provided by other comparable public libraries.

The Union believes that these benefits should not be curtailed for new hires. They are reasonable and affordable at the current 25 scheduled work hours limit. To allow this type of change would permit the Library to curtail hours and creates the possibility that all members would be taken below 25 hours per week and thus the benefits would be eliminated completely.

RECOMMENDATION: The Library's proposal is accepted. The scheduled working hours per week qualification for receiving the paid life insurance, dental expenses and vision expenses should be increased from 25 scheduled work hours per week to 30 work hours per week for any employee not already enrolled as of June 1, 2017.

Section 1(e). The current language in this section provides that any employee who feels that his or her spouse's insurance is substandard and would create a hardship may seek relief from this surcharge with the Health Care Committee. The surcharge is \$100/month. The Library proposes to change this procedure to require employees to seek relief from the Board instead of the Health Care Committee. The Union proposes to eliminate this spousal restriction in its entirety. The evidence shows that spousal restrictions of this type are included in many

public CBAs due to the fact that many spouses are employed and have medical insurance coverage equal to or better than the Library's plans. The Library further offers that the current system has served the members and allowed equal input and determination for the consideration of hardships presented by both bargaining unit and non-bargaining unit staff of the Library. The Union argues that this would provide the employer with more autonomy than what has been successfully bargained for and has requested that the Fact Finder eliminate the spousal surcharge altogether or at minimum maintain the current language and practice.

RECOMMENDATION: No change. The current language and hardship appeal procedure to the Health Care Committee is reasonable as it stands.

(2) Article XX - Wages.

The Library proposes a one-time lump sum across-the-board payment that reflects a 2% increase in the base hourly rate for all standard hours worked in 2016. The Library further proposes increasing non-probationary employees' base rate of pay by 2% prior to calculating their 2017 base rate increase. Additionally, the Library proposes a 2% wage increase for 2017 and a 1.75% wage increase for 2018 and 2019.

The Union proposes across-the-board wage increases as follows: Effective October 1, 2015 - 2%; effective October 1, 2016 - 2%; effective October 1, 2017 - 2%; effective October 1, 2018 - 3%; and effective October 1, 2019 - 3%. The Union offers that the Library is not in a position of financial hardship and that these proposed wage increases are both fair and commensurate with the comparables presented at the hearing and within the State of Ohio's Public Library Systems. The Union also argues that the delay in arriving at fact-finding was no fault of the Union's and that the retroactive payments should be calculated on all hours worked and not simply on the hours scheduled.

RECOMMENDATION: Based upon the economic and financial information in the record, I recommend that lump sum payments to the base should be paid to all bargaining unit employees in the amount of 2% for 2016, and the non-probationary employees' base rate of pay should be increased by 2% prior to calculating their 2017 base rate increase. Two percent (2%) across the board pay increases for all bargaining unit employees shall be paid for years 2017, 2018 and 2019.¹

Associate Float Position (New Employer Proposal).

The Library proposes to pay an associate who is designated to float between branches an additional \$.50/hour. This would help compensate employees for working multiple work sites and more variable hours.

RECOMMENDATION: The Library's pay increase for associates who float is accepted.

Commercial Driver License Pay (Employer).

The Library proposes those employees required to have a CDL be paid an additional \$1.00/hour on their base pay. The current language provides for premium pay at \$1.50/hour for all "on-the-road time plus one-half (½) hour for vehicle preparation for each vehicle run." The Library proposes to pay for all hours worked by CDL employees, not just for on-the-road time, but wants to reduce the premium rate to \$1.00.

The Union accepts the Library proposal for pay for all hours worked, but wants certain current language in the article removed.

RECOMMENDATION: The Library's proposal for for Section 7 is accepted.

Passport Training Pay (New Union Proposal).

¹Payments should be coordinated with the agreed term of the CBA, which is effective June 1, 2017 and expires at 11:59 pm on May 31, 2020.

The Union proposes that employees who perform passport services receive an additional \$1.00/hour on their base. This work is legal in nature and involves complex work. Employees are required to obtain certifications each year. The work involves an increased workload during busy periods. A busy weekend could involve 10-30 passports, each of which takes about 15 minutes of time. Moreover, the work produces substantial revenue for the Library. The first 2 months of the year brought in \$30,000. One weekend of work in Medina brought in \$7,000. The work sometimes requires 2 employees who have the training, and sometimes leaves the front desk shorthanded.

The Library opposes this additional pay. The work is not performed during all hours of the workday. The work is not more complex or more involved than other tasks and duties provided by the employees. The specialized additional work has provided job security and more work hours for the employees, when Library circulation and visitation has declined. Other employees who require extra training are not provided with additional compensation.

The evidence produced at the hearing indicated that management has not completely focused upon the Union's evidence with respect to the nature and complexity of the work, the work involved in annual certifications, and the merits of the Union's claim. Management stated that it would continue to investigate the claims of the employees performing these duties, and it will review the merits of an equitable pay adjustment.

RECOMMENDATION: No change at this time. The fact finder recommends that this is an appropriate topic for continued discussion at labor management meetings and reminds the parties that nothing would prevent them from reaching an agreement as a result of those meetings in the form of an MOU.

Senior-in-Charge Pay (Union).

The Union proposes additional pay of \$.50/hour for those employees performing the senior-in-charge function at the smaller branches on evenings and Saturdays. The Library presently pays a senior-in-charge premium for this work at the larger branches (Medina and Brunswick). The Union further opines that this is a matter of fundamental fairness and that the workload and expectations of the Seniors-in-Charge are the same at each branch and that the Library can afford such a recognition as it has seen appropriate to do so at the other locations. The Library believes that the workload at the other branches does not warrant an increase.

RECOMMENDATION: No change.

Equity Pay (Union New).

The 2012-2015 CBA does not contain a provision for equity pay. The prior CBAs during the recession (2008-2009) did provide equity pay when the Library could not afford wage increases. The equity pay was agreed upon in consideration for not receiving normal wage increases. The clause was deleted in the 2012-2015 CBA when the economy recovered and wage increases could be paid. The Union proposes adding equity pay to the above compensation levels. The Union further argues that the Equity Pay language is not only a matter of fairness, but it serves to insure that the Library is not permitted to bestow upon the workforce outside of the bargaining unit increases at levels above those provided for members of the bargaining unit. This would “set the minds at ease” of the membership that the financial picture painted by the Library is genuine.

RECOMMENDATION: No change.

Delivery/Maintenance Pay (Union).

The Union proposes that all delivery/maintenance drivers receive an additional \$1.00/hour for all hours spent driving. The Library opposes this proposal, citing evidence that the present pay is comparable with other public employees performing like work.

RECOMMENDATION: No change.

(3) Article XXV - Negotiation and Dispute Resolution Procedures.

The Library proposes changes in the existing dispute resolution procedures that supersede the procedures set forth in Ohio Revised Code, Section 4117.14 and related sections and regulations. The Union wants to maintain the current language, but modify it with language that more closely mirrors the ORC. The Union has established through administrative and judicial review that the parties can and should be able to arrive at fact finding if the parties are unable to amicably resolve their issues at the bargaining table in a traditional fashion. The existence of a MAD in a collective bargaining agreement, while not uncommon, should not limit one party's ability to seek relief already provided in law. The Union wants to keep the same provisions in place (i.e. maintain the status quo). The Library proposal would seek to eliminate the possibility of the parties arriving at fact-finding at any time in the future. As evidenced by the struggle and legal back and forth over the last 2 years, it is apparent that the existing language, having been recently defined and supported by law, there is no legitimate reason to change it at this time.

RECOMMENDATION: After reviewing and considering the past administrative and judicial disputes between the parties over these provisions, I find no compelling reason to change the existing provisions.

Date of Award: May 9, 2017

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Mitchell B. Goldberg, Fact Finder

CERTIFICATE OF SERVICE

This Fact Finding Report was served upon the following parties this 9th day of May, 2017
by electronic mail:

1. SERB, med@serb.oh.us.

2. Union representative, Jnorris@seiu1199.org.
3. Employer representative, Jwilkins@KWWlaborlaw.com.

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Mitchell B. Goldberg