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State of Ohio
State Employment Relations Board

In the Matter of Fact-finding between:

Erie County Department of Jobs and Family Services	:	Case No. 2016 MED 12-1401
and	:	Report and Recommendations
American Federation of State, County and Municipal Employees, Local 3616, AFL-CIO	:	Margaret Nancy Johnson Fact-finder

Statement of the Case

This matter came on for fact-finding on May 17, 2017, in a conference room at the Erie County Administration Building in Sandusky, Ohio. In compliance with Ohio Revised Code Section 4117.14(C)(3), the State Employment Relations Board (SERB) appointed Margaret Nancy Johnson to serve as fact-finder on March 16, 2017. The parties mutually agreed to extend the period of fact-finding and these recommendations are now issued pursuant to the mutual agreement of the parties.

Erie County Department of Job and Family Services, hereinafter "DJFS," "County," or "Agency" was represented in these proceedings by Mark Fishel, Attorney with Fishel, Hass, Kim, Albrecht, Downey. Also present on behalf of DJFS were: Karen Bakoni Ghezzi, Agency Executive Director; Debra Haer, DJFS Deputy Director of Finance; Nancy Ostrander, Director, Human Resources; Matt Wilson, Assistant Director, Human Resources; and Pete Daniel, County Administrator.

David L. Blyth, Staff Representative, with the American Federation of State, County and Municipal Employees, Ohio Council 8, hereinafter "AFSCME" or "Union" presented the position of its Local 3616. The following negotiating team members were in attendance: Pamela J. Hall, Beth Harris, Jennifer Neuman, Kimberly Faggionato, Steven Act, and Julie Kyer.

Excluding supervisory and confidential employees, the bargaining unit consists of approximately sixty-eight (68) employees engaged in social services for the residents of the County. Unit members work within four divisions of support: children services; child support; income maintenance; and jobs. Within these divisions, employees engage in child protection, support enforcement, monetary and employment assistance. Duties within job classifications may overlap and bargaining unit members work cooperatively towards a desired outcome for those individuals or domestic units in need of service and social assistance.

This unit is one (1) of three (3) bargaining units under the jurisdiction of the County Commissioners. In addition, the Office of the County Sheriff negotiates with four (4) units including both law enforcement and administrative assistants, and the Erie County Engineer is an appointing authority and party to its own Collective Bargaining Agreement.

The current three year Agreement between the County and DJFS expired on February 28, 2017. While agreement was reached on a number of issues, the parties were unable to negotiate a successor contract, giving rise to the appointment of this fact-finder. In compliance with ORC 4117.14(C)(3) both parties submitted timely Pre-hearing Position Statements for review. An attempt to mediate the outstanding issues having been unsuccessful, the parties had the opportunity to make opening statements, to examine and cross-examine witnesses, and to introduce into the record documentary evidence on matters remaining in contention. Tentative agreements on resolved issues are incorporated in these recommendations as if fully rewritten (Union Tab 39).

Issues in Dispute

Three economic issues remain unresolved: 1) Article 16, Vacation; 2) Article 18, Personal Time; and 3) Article 31, Wages.

Criteria

In submitting the recommendations which follow, the fact-finder has considered the statutory criteria set forth in ORC 4117.14(C)(4) (3) and OAC Rule 4117-9-05(K), to-wit: past collective bargaining Agreements; comparison of the unresolved issues relative to the employees in the bargaining unit with those resolved issues of other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved; interest and welfare of the public; the ability of the public employer to finance and administer the issues proposed, and the effect of adjustments on the normal standards of public service; the lawful authority of the public employer; stipulations of the parties; other factors normally and traditionally taken into consideration in the determination of issues submitted to a dispute settlement procedure.

Position of the Parties

1. Article 16 – Vacation

The Union

The Union proposes reducing the number of years needed to accrue vacation leave and to add language making employees eligible for six (6) weeks of vacation after the completion of 28 years of service. Arguing that its proposal is consistent with external units, the Union also asserts that should the County proposal on wages prevail, then the vacation enhancement should be implemented as a quid pro quo.

DJFS

The County argues that the Union proposal is not consistent with either internal or external comparables. Moreover, this unit receives significant time off with pay. The Union proposal, therefore, lacks justification.

2. Article 18 – Personal Time

The Union

An additional personal day is proposed to offset the lack of any significant wage increase. The Union points out that the jobs performed by member of this unit are stressful and demanding. Services rendered warrant appropriate monetary compensation. The Union further argues that the reduction in the personal leave recently negotiated by the parties was to accommodate a need on the part of the County and that nothing was received in exchange for this reduction.

DJFS

Opposing an additional personal day, the County argues that this change was just negotiated by the parties and that the unit did receive a quid pro quo for the reduction in personal days. Having just recently negotiated this modification, the parties should retain current contract language.

3. Article 31 - Wages

DJFS

The Agency proposes a 1.5% increase, retroactive to March 1, 2017, for the first year of the contract and a wage re-opener for the second and third years. Its proposal arises from uncertainty about future state and federal funding for the activities of the Department as well as from recent reductions in state funding already implemented. Revenue shortfalls in the State will have a substantial impact upon the state budget and, consequently, on Agency operations. Once the state budget is approved, the parties will be better able to assess an appropriate wage increase for years two and three of the Agreement.

Compared with other counties, the employees of DJFS are well compensated. Moreover, bargaining unit employees have received better wage increases than non-unit employees within the County. The wage proposal of the Department is reasonable given the uncertainty in funding.

The Union

The Union proposes a 2% increase effective March 1, 2017, in the first year, 2% in the second year of the Agreement and a wage reopener for the third year. This proposal is consistent with increases that other Erie County bargaining units have received as well as with other JFS agencies in the area. Moreover, according to the most recent SERB Settlement Report, the increase is in line with increases for counties throughout the state and for the region.

The County has the ability to pay the increase proposed by the Union. Since the national recession, reserves in the County General Fund have increased. There is no legal authority preventing the Commissioners from using the General Fund for wage increases.

<u>Discussion</u>

Services Rendered

An overview of services rendered by members of the bargaining unit provides both background and a context for analysis of the substantive issues in dispute. As explained by the Executive Director, there are four "divisions" within which members of the unit work: children services, child support, income maintenance, and jobs. Ms. Balconni Ghezzi described activity within each of these divisions. Children services is the protective branch of the agency, entrusted with ensuring the welfare of minors by investigating reports of dependency, abuse, or neglect. Child support engages in the enforcement of child support orders as well as establishing paternity. Income Maintenance assists in-need residents with medicaid, food stamps and other types of financial assistance. The Jobs division helps residents with employment related issues, working with both potential employers and unemployed residents.

Testimony described the recent increase in children requiring the services of the Agency. Attributed largely to the opioid epidemic—a tragic crisis which is not unique to Erie County—since 2013, Children Services have been taking in more children and been less able to reunite them with their families within the two year restriction before requiring permanent placement. The Executive Director testified as to the types of facilities serving children in need, including group homes, residential placement, and foster care, which generate a cost paid for by the County Commissioners, as discussed below in more detail. In its Pre-hearing statement DJFS stated, "Currently, there are approximately 100 children in the custody of the DJFS. One child's placement cost is $11,550 per month" (DJFS Pre-Hearing Statement, 4).

Submitted to illustrate an increase in cost of social services provided by Erie County, the 2016-2017 PCSAO Factbook also underscores an increase in demand for services (DJFS Tab 6). Indeed, the numbers are startling. One (1) child out of every five (5) in Erie County lives in poverty. While families receiving in-home services declined form 37 in 2013 to 32 in 2016, the number of children placed out of the home increased from 154 to 179. Between 2013 and 2016, the median number of days a child remained in custody before emancipation *doubled.*

Like public employers across the state, starting in 2008 with the national recession, the County has experienced significant financial losses which have had an impact upon this bargaining unit. "In 2008, DJFS had 125 employees. Through layoffs and attrition it now has 86 employees," 68 of whom are unit members (DJFS Pre-Hearing Statement, 2). Local President Pam Hall testified pertaining to the impact on the unit of the down-sizing of the Agency.

With a growing demand for essential services, DJFS now functions with almost one-third (1/3) fewer employees, who engage in highly stressful and demanding work. [1] While this unit is not designated a "safety service," it provides a safety net for some of the most vulnerable members of our society- - abused, dependent, and neglected children, at-risk youth, the impoverished.

Funding Sources

Funding sources for operations within the DJFS have been described in testimony, documentary evidence, and in the opening statements. State and federal funding is the primary source of revenue for the Agency. Many of the funding sources have specified restrictions on use, and cannot, for example, be used for wages. The Agency has described a decrease of 10.8% in funding between 2014 and 2017, while unit wages have increased by 4.5%, an increase negotiated and agreed upon by the Agency.

DJFS placed emphasis on a differing fiscal year for the County, State and Federal governments, arguing essentially that uncertainty in federal and state budgetary cuts necessitate the two year wage re-opener it proposes in these negotiations. Citing a news article suggesting a $400 million reduction in the state budget (See DJFS Tab 11), DJFS argues the reduction will have an impact upon County services. Interestingly, however, the article also quotes government officials including the Governor as stating that "funding to battle Ohio's opioid addiction and overdose death crisis likely will not be impacted" (I*d.).*

DJFS also cites the loss of sales tax revenue distributed from Medicaid Health Insuring Corporations, arguing that it stands to lose 3.9% of its sales tax income, a significant portion of its General Fund revenue (DJFS Tab 10). In response to this loss, *i*n the April, 2017 edition, *The Statehouse Report* published by Ohio County Commissioners had issued a call to action "to include complete and permanent replacement of Medicaid Managed Care Organization (MCO) sales tax revenue as well as additional funding to restore the 50/50 partnership with counties" (DJFS Tab 12).

The *Report* also urged constituents "to build awareness about support counties need in addressing the pressures caused by the Opioid Epidemic" and advocated for a substitute bill which will add "an additional $15 million per year in the state child protection allocation and an additional $10 million per

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1 It is noteworthy that in Ohio, County agencies incur significant costs due to caseworker turnover when caseworkers leave due to burnout or secondary trauma (See DJFS Tab 13, 3).

year to support TANF Maintenance of Effort funding to provide support for kinship caregivers along with efforts to increase foster caregiver assistance" (*Id).* While more cuts are anticipated, in the May 2017 edition, *The Statehouse Report* noted "the House increased the state's investment in child protection" as had been called for in the April *Report* (DJFS Tab 13). The House version is under review by the Senate.

Rather than arguing inability to pay, DJFS cites uncertainty as to income sources due to the unresolved state and federal budgets. Documentary evidence establishes that state budgetary losses are not unique or peculiar to Erie County, but will potentially have an impact upon County agencies throughout the state. Yet, all County Commissioners must bargain in good faith with those employees who provide potentially life-saving services to residents in need, especially children. When addressing the statutory criterion of comparability, consideration will be given to terms negotiated by other County agencies for their DJFS bargaining units.

Measures taken by Erie County DJFS to contain costs and increase revenue of the Agency were described in testimony at the hearing. These include economizing on properties and maintenance services, as well as leasing out available and unused space. Positions have not been filled and staff members, both managerial and unionized, are multi-tasking.

Although DJFS asserts that the funding provided by the Commissioners is somewhat unusual for a county of comparable size, (DJFS Pre-Hearing Statement 4), unlike most counties, Erie County DJFS is not supported by a local levy. Indeed, of the eighty-eight (88) counties in Ohio, more than half (47 counties) have a Children's Services levy (See DJFS Tabs 6 and 8). Erie County Commissioners have opted not to place a levy before the electorate and not to appropriate monies from the General Fund for unit wage increases (Pete Daniel Testimony).

Rationale for not funding a wage increase from the General Fund includes, first, that "the general fund has never been used to pay for negotiated wage increases" (DJFS Pre-hearing Statement, 4). Second, the Agency argues the "general fund is struggling" (*Id*. 5). Third, the loss of sales tax from Medicaid Health Insuring Corporations will adversely affect total general fund revenues. Fourth, the shortfall in State revenue will impact local governments including counties. DJFS concludes "in light of this uncertainty, the general fund cannot commit more money to the DJFS" (*Id.).*

In the years subsequent to 2008, all governmental entities experienced revenue loss. Nine (9) years later, however, some measure of balance has been restored. The fact-finder notes, for example, that in 2015, General Fund Revenue exceeded, however modestly, total General Fund expenditures (DFJS Tab 9).

DJFS emphasizes that the sales tax loss referenced above as well as expected federal and state reductions will have a negative impact on General Fund revenue. Even so, the anticipated losses in state revenue or tax income has not deterred the County from plans to upgrade software for the Auditor's Office at a cost of $500,000-$750,000; or to expand the jail for perpetrators of *misdemeanors* at a cost of $3 million to $5 million and another $1 million annually for operations; or to expend another $3 to $5 million for the Family Court building (See DFJS Pre-Hearing Statement). Nor has the potential revenue loss from the state precluded wage increases for other public sector employees within the County.

Allocation of available resources necessarily involves the exercise of some discretion. The question herein is what allocation for this bargaining unit is consistent with statutory criteria. Monetary issues disputed by the parties must be viewed within the financial and social context just discussed.

Issues

1. Article 16- Vacation

While DJFS argues for current contract language, the Union seeks to enhance its vacation benefits. As the party proposing the modification, the Union must present evidence justifying the changes for which it argues. Evidence establishes that the current vacation schedule for DJFS employees is consistent with internal units as well as with comparable jurisdictions.

Employee time off creates expense for an employer. In these negotiations the Employer is endeavoring to contain its costs. While some adjustment in income is appropriate, the manner in which the unit experiences financial improvement should be consistent with established criteria. There does not appear to be any statutory justification for the changes sought by the Union.

The fact-finder recommends current contract language.

2. Article 18- Personal Time

Evidence establishes that during negotiations for the predecessor Agreement, the Union agreed to reduce Personal Days from forty (40) hours to thirty-two (32) hours. Considerable discussion and disagreement concerning facts precipitating the modification were exchanged at the hearing for the present impasse. The parties have differing recollections of bargaining history pertaining to the Personal Day reduction. Nonetheless, whatever the rationale for implementing a reduction in Personal Days, a change in the language was agreed upon without any stipulations as to impermanence or a return to the forty hours at a subsequent time.

As previously stated, fact-finders expect the proponent of change in contract language to provide a basis for the modification. Fact-finders also fairly consistently agree that once a change in language has been implemented, intent is that absent some intervening cause, the negotiated change will remain in subsequent labor agreements. Changes to contract language are rarely deemed temporary. Indeed, a purpose of collective bargaining is to ensure stability and continuity. The criterion of past collectively bargained agreements is not to redo prior negotiations but, rather, to build upon those terms and conditions of employment. Applying these concepts to the matter at hand, a return to four (4) Personal Days cannot be justified.

Nor can the proposed change be justified on the basis of other statutory criteria. Four (4) Personal Days is consistent with both unit and non-unit employees of the County. While the Union cites the Sheriff's labor agreements (Union Tab 34 and 35) providing for five personal days, it is important to note that safety service units do not work traditional hours and that benefits such as Personal Days compensate for the holiday, week-end and evening shifts that such employees must work. There is no provision in the Sheriff's agreements for a flexible work schedule (See Union Tab 6).

Moreover, the current provision is in line with Personal Days negotiated by other Counties with their social services bargaining units. Although Lake County and Huron County have negotiated greater personal day benefits, the fact-finder does not have access to the bargaining history of those two counties, but notes that the Lake County Agreement is unusual in that the Five Personal Days are designated as "sick days" (See Union Tab 37 and 38). Evidence elicited does not persuade this fact-finder that the current Personal Day provision of Erie County DJFS is inconsistent with comparable units doing comparable work.

The fact-finder recommends current contract language.

3. Article 31- Wages

Insofar as the parties are in agreement as to a wage re-opener for the third year of the Agreement, the wage dispute concerns the first and second years of the Agreement. The Union seeks a 2% increase for each of those years while the DJFS proposes a 1.5% wage increase retroactive to March 1, 2017 in the first year and a wage re-opener for both the second and third years. Wage increases sought by the Union (2% in two years) cost out to an undisputed $257,380 without roll-ups (Union Tab 2).

Financial aspects of this case are complex and unique in that funding for social services is principally from multiple state and federal grants, and, *to a degree,* beyond the control of the Commissioners. Grants come with restrictions depending upon specific operational purposes. Considerable testimony was elicited as to the loss of funding and the increase in departmental costs. DJFS documents a funding loss of $277,164 this past year (DJFS Tab 3) and an increase of $117,538 in total wage costs for the same period of time (DJFS Tab 5). In Income Maintenance alone, funding for this one year period of time decreased by $120,461 (DJFS Tab 4).

The extent to which the Agency has lost funding due to the discontinuance of a Title IV-E Court is not clear. Nor is it clear why the County no longer has a Title IV E Court other than testimony to the effect that the federal government "tightened requirements" (Balcon Ghezzi Testimony). What is clear is that costs previously reimbursed by the Title IV-E Court grant are now an Agency responsibility (Beth Harris Testimony).

As with the reduction in Personal Days, the parties disagree as to reasoning for negotiating an earlier wage freeze. Again, though, the purpose of this impasse proceeding is to move the parties forward under difficult financial conditions. In this pursuit, it is not the function of the fact-finder to question administrative decisions, either in regard to a Title IV Court or promoting personnel to effect technological improvements within the Agency. Rather, the responsibility of the fact-finder is to make recommendations consistent with statutory criteria.

In this regard, external comparables are relevant and persuasive. In considering the comparable data, the Agency has set forth comparative entry and top level wages rather than percentage increases (DJFS Tab 14), arguing that among comparable units in all classifications, members of this bargaining unit are well compensated. Using the comparables cited by the Agency, compensation paid to this unit ranks either as the highest or second to the highest wage rate.

Ranking or placement of different jurisdictions on a salary scale, however, is the consequence of years of negotiating wages for successor labor agreements, taking into consideration demographic, socio-economic and geographic features. Reiterating a prior observation, the purpose of this proceeding is not to re-adjudicate wage increases previously negotiated by the parties, but to determine what is a fair and reasonable rate increase for a successor contract. To this end, instead of focusing on salaries, fact-finders routinely consider the percentage increase provided by comparable units.

A useful guideline is the Annual Wage Settlement Report issued by SERB which provides average wage settlements by regions, jurisdiction and unit type. In 2016, County increases averaged 2.23% and increases in the north western region of the state averaged 2.3%. (Union Tab 26). More determinative as to comparable wage increases, however, are statistics pertaining to wage increases for the particular public sector unit having similar geographic, demographic, and economic characteristics. Counties which both parties have cited as comparable include Huron, Lorain, Sandusky, Williams and Wood Counties.

Huron County has negotiated a 3% increase for its DJFS for 2016, 2017, and 2018. Lorain County negotiated 4% and another 2% increase in 2014, and a 1.75% increase in 2015. Sandusky - 3%, 3% and 2%, for 2015, 2016 and 2017 respectively. Wood County negotiated 3% for 2015 and 2.5% for 2016, with a "Me, Too" clause referencing other units with which County Commissioners negotiate.

Terms negotiated by Williams County are of special interest to the fact-finder because, like the DJFS proposal in this case, the parties agreed to a wage reopener for contract years 2017/2018 and 2018/2019. Significantly, though, for contract year 2016/2017, Williams County negotiated a 3% increase in exchange for the double re-opener. Thus, unit members are guaranteed at least a 3% increase for the duration of the Agreement.

Wage re-openers are expedient in times of uncertainty, but contract negotiations are disruptive to normal operations, efficiency and productivity. Parties collectively bargain three year contracts to ensure stability in the workplace and to minimize the recurrence of tensions and distractions caused by contract negotiations. Furthermore, establishing wages for a given period of time benefits both the employer and the employee for purposes of financial planning. The fact-finder recommends agreeing upon a wage increase for 2017 and 2018 and, then, subsequently addressing available funding sources for contract year 2019.

In her testimony, the Executive Director stated the agency did not have funding for the 2% increases sought by the Union both for 2017 and 2018 and that "the County was not in a position to make across the board wages increases," but she did not aver an inability to pay any increase. Indeed, the County has proposed a 1.5% increase for 2017, retroactive to March 1, 2017. Moreover, internal comparability belies inability to pay, and while funding sources may differ, internal comparability is a matter of parity frequently cited by fact-finders as a "traditional factor."

With the two other units with which it bargains, the County has negotiated for contract years 2016-2018, a total of 5% and 6% for the Sanitary Engineer unit and the County Home unit, respectively (DJFS Tab 16). The County Home is especially of note because it, too, may be affected by reductions in funding for social services. For funding purposes, though, the clientele at the County Home is entirely different from the population served by the DJFS. While the County Administrator testified that wages at the Home were paid from Home funds, residents at the Home can contribute towards their residential costs; children in county custody cannot do so.

Relating to ability to pay, between 2014 and 2016 DJFS management wages increased by 5.5% compared with 4.5% for unit members (DJFS Tab 15). In 2017 non-union employees reportedly received a 2% increase (Union Tab 7). The news article quoted the County Finance Director as to a "projected $456,000 surplus generated in the local government's general fund" *(Id)*. Although the General Fund may be struggling, the Fact-finder cannot find an inability to pay the wage increase recommended herein.

Perhaps the most compelling statutory criterion in this case is the infrequently cited "interest and welfare of the public." In 2016, the "public" included: 243 neglected children; 60 physically abused children; 58 sexually abused children; 4 emotionally mistreated children; 52 children with multiple allegations of abuse/neglect; and, 90 families requiring social services (See DJFS Tab 6). Needs of this population are serviced by approximately 68 bargaining unit members. The interest and welfare of these children and families necessarily affect the interest and welfare of the entire county, and justify a wage increase for their advocates that is commensurate with that received by colleagues working in comparable counties as well as with the wage increases granted to other public sector employees within the county.

Patterned on the wage settlement reached by Williams County, the fact finder recommends a 1.75% increase retroactive to March 1, 2017 and a 1.25% increase, effective March 1, 2018. Rather than the 3% in the first year followed by two wage re-openers, as negotiated by Williams County DJFS, the fact- finder recommends one re-opener for the final year of the Agreement with two modest and fiscally conservative wage increases for the first and second years of the Agreement. The Fact-finder believes these recommended increases are consistent with statutory factors, specifically comparability, ability to pay, internal parity, and the interest and welfare of the public.

The fact-finder recommends a 1.75% increase retroactive to March 1, 2017; a 1.25% increase effective March 1, 2018. and a wage re-opener for the third year (2019) of the Agreement.

4. Tentative Agreements

The Fact-finder incorporates herein tentative agreements as if fully rewritten.

Recommendations

1. Article 16 – Vacation Time: The fact finder recommends current contract language.

2. Article 2 – Personal Time: The fact-finder recommends current contract language.

3. Article 31 – Wages: The fact-finder recommends a 1.75% increase retroactive to March 1, 2017; a 1.25% increase effective March 1, 2018; a wage re-opener for contract year 2019.

4. All tentative Agreements are incorporated herein as if fully rewritten.

Respectfully submitted,

s/s Margaret Nancy Johnson
Fact-finder

Service

The foregoing report and recommendations were issued by electronic service on May 29, 2017, to Erie County DJFS, mfishel@fishelhasscom; to AFSCME Local 3616, dblyth@afscme8.org; and to SERB at MED@serb.state.oh.us.