

IN THE MATTER  
OF  
FACTFINDING  
BETWEEN  
THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL WORKERS OF AMERICA  
UAW, LOCAL 658  
AND  
THE CLARK COUNTY BOARD OF MENTAL RETARDATION  
AND DEVELOPMENTAL DISABILITIES

Hearing: May 17; June 7; June 8; and June 29, 1995  
SERB Case No.: 95-MED-02-0108  
Date of Report: July 7, 1995  
Issue: Factfinding

Union Representative: Ronald V. Rhine  
International Representative  
UAW, Local 658  
155 D Lyons Road  
Dayton, Ohio 45458

Board Representative: Jonathan J. Downes  
Downes & Hurst  
300 South Second  
Columbus, Ohio 43215-5095

REPORT AND RECOMMENDATIONS

Michael Paolucci  
Arbitrator

### Administration

By letter dated March 16, 1995, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as factfinder for the Parties. On May 17, June 7, June 8, and June 29, 1995, hearings went forward in which the Parties presented arguments and documentary evidence in support of positions taken. The record was closed at the end of the hearing on June 29, 1995, and is now ready for a factfinding report.

### Factual Background

The Board is responsible for essentially three functions within Clark County: operation of schools, workshops, and residential care facilities for the mentally retarded. The Union represents only those employees who work in the residential care facilities and their number is approximately one hundred forty (140) individuals. The parties have been bargaining since 1992 and have only had one previous Collective Bargaining Agreement, dated March 12, 1992, and expired on March 11, 1995. Negotiations for a new contract began early in 1995, and after several unsuccessful attempts to settle the outstanding issues, three mediation sessions with this Factfinder were held on May 17; June 7; and, June 8, 1995. Following the first day of mediation the Factfinder ordered that the Contract be extended until the end of June 29, 1995. The mediation sessions were followed by a factfinding hearing on June 29, 1995, with twelve (12) issues being presented. They are as follows:

1. Article 33 - Wages;
2. Article 33 - Wages (Cost of Living Adjustment);
3. Article 34 - Shift Differential;
4. Article 20, Section 20.1 - Extra Holidays;

5. Article 36 - Dental Insurance, Contribution;
6. Article 32, Section 13 - Calamity/Snow Days;
7. Article 35 - Tenure Bonus (Seniority);
8. Article 33 - Retroactive Pay (March 11, 1995);
9. Article 11, Section 11.7 - Pay for attendance at Union Meetings;
10. Article 16, Section 16.1 - Loss of Overtime during Union Business;
11. Article 20, Section 20.4 - Holiday Pay; and,
12. Article 23, Section 23.3 - Universal Leave (Respite).

Each will be addressed separately. Following the factfinding hearing, the Factfinder ordered that the Agreement be extended until the issuance of this report.

Section 4117-9-05 of SERB's administrative rules addresses the issues that a factfinder must consider when making recommendations. That section, in pertinent part, reads as follows:

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

- (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. (emphasis added)

The issues will be addressed separately giving consideration to all of the required factors.

## **ARTICLE 33 - WAGES**

### **BOARD POSITION**

The Board proposes a wage increase of 3%, 3%, and 3%, in each year of a three (3) year contract for each step of the wage scale and it proposes that the employees be frozen in their current step of the wage scale. The Board contends that the Union's claim that it is flush with money ignores the fact that all the money from the recently passed levy has been earmarked for use outside of wage increases; that although the levy funds the school and the workshop portions of the Board's functions, it is not permitted for use with the residential facility; that the internal and external comparables show that these employees are paid higher than similarly situated employees in other areas; that the workshop employees are not valid internal comparisons; and, that the mandated medications training is not a new duty since it has existed for at least the last three (3) years. Currently, employees move up one (1) step in the wage scale every year and the difference in pay is approximately 5% between each step. Sixteen (16) of the approximately one hundred forty (140) employees are at the top step. The Board contends that the Union's proposal would entail a six (6) percent wage increase for each year combined with a five (5) percent increase each year for moving up in the pay scale. The Board argues that its proposal is a reasonable wage increase and asserts that since tax dollars do not start until the end of 1995, then its ability to pay is handicapped.

## UNION POSITION

The Union asks that a 6% increase be made in each year of a three (3) year contract for each step in the wage scale and it opposes the Board's proposals regarding freezing of the wage scale. It argues that its position is justified in light of the fact that the Board can easily afford such a pay schedule; that Issue 5, recently passed in Clark County, provided the Board with an extra three (3) million dollars per year; that the employees are underpaid when compared with local facilities that perform similar work; that the employees are overworked as proven by the fact that over 70% of workers' compensation cases come from the Employer; that additional responsibilities have been placed on the employees since mandatory training is now required for passing medication; and, that the Board's proposal is unreasonable.

## RECOMMENDATION

It is recommended that the employees be given a 4% increase in each of three (3) years of the Agreement. The comparables submitted by the Board show that such an increase is reasonable and in line with what the Board can afford and compares favorably to the comparables submitted.

It is recommended that the pay scale not be frozen but that three (3) years be added to each step so that employees do not move up every year. The Board persuasively argued that the current method essentially provides every employee with a double raise; once for the across the board wage increase and once for the jump to the next step of the wage scale. Although the current wage scale contains this weakness, it should not be absolutely abolished since the Parties did negotiate it into the Agreement. Since freezing the scale for three (3) years could be reasonably foreseen to result in its eventual complete abolition, and since such is not justified, it is instead recommended that each

step in the wage scale be made to last three (3) years.

### **ARTICLE 33 - WAGES (COLA)**

#### **UNION POSITION**

The Union proposes that the 1967 Index be used to calculate a COLA increase in each quarter of every year. The Union contends that increase is appropriate.

#### **BOARD POSITION**

The Board opposes any COLA based on the fact that no costs estimates have been provided by the Union; it is a compounded cost over and above the general wage increase; no comparables have been introduced to substantiate its appropriateness; and there has been no demonstration of need.

#### **RECOMMENDATION**

It is recommended that the Union's proposal be rejected. Without comparables it is difficult to recommend this provision. It is recognized that the cost of living is a variable generally used when calculating the level of the general wage increase and is therefore inappropriate to separate. Therefore, the Union's proposal cannot be recommended.

### **ARTICLE 34 - SHIFT DIFFERENTIAL**

#### **UNION POSITION**

The Union proposes raising the shift differential from .15/hour to .40/hour. It contends that

a high percentage of employees on the second and third shift are forced to work those hours because no one else is willing to and thus, a higher rate is deserved.

### **BOARD POSITION**

The Board opposes a change in the shift differential and argues that the Union's proposal was unsupported; that the employees have the ability to choose their desired shift; and, that of the nine (9) other comparable jurisdictions, only one has any differential at all and it is less than the Union currently enjoys.

### **RECOMMENDATION**

It is recommended that the shift differential remain the same until the third year of the contract at which time it should be increased to .20/hour. Although the Board's comparables were strong evidence that the current rate is fair, it is reasonable to make increases over time so that the benefit maintains the same relative value. Since the Parties will have had the same shift differential for five (5) years by the third year of this contract, it is recommended that a modest increase be made in the amount of an extra .05/hour in the third year of the Agreement.

## **ARTICLE 20, SECTION 20.1 - HOLIDAYS**

### **UNION POSITION**

The Union proposes increasing the number of Holidays from thirteen (13) to seventeen (17). The added Holidays would be Thanksgiving Eve, Christmas Eve, New Years Eve, and Easter. It contends that these extra holidays are important since the employees have an important interest in being home with their loved ones. It argues that each of the listed holidays are reasonable to have

off and since the facilities are twenty-four (24) hours per day, seven (7) days per week, then these holidays are fair to have off.

#### **BOARD POSITION**

The Board opposes the Union's position and argues that the comparables do not support the proposal; that the comparables show that the current number of thirteen (13) is higher than anywhere else; that the employees receive a large number of days off through their use of Universal Leave; that the supervisors who receive fifteen (15) holidays are not comparable since they do not receive any Universal Leave; and that the increased costs of the paid holidays are prohibitive.

#### **RECOMMENDATION**

The Union's proposal cannot be recommended. The comparables overwhelmingly show that the current thirteen (13) is more than reasonable and that, when combined with the large amount of time off through Universal Leave, more holidays are unjustified.

### **ARTICLE 36 - INSURANCE COVERAGE (DENTAL ONLY)**

#### **UNION POSITION**

The Union's position is that the current no-contribution to Dental Insurance be maintained. It argues that the no-contribution was negotiated and to not include it would amount to a take away. It contends that the Board's claim that the advantages of the health plan offset the contribution of the Dental Plan is without support. The Union doesn't approve of the new health plan and argues that contribution will affect all other wage issues.

### BOARD POSITION

The Board argues that, except for this issue, the remaining health care provision has been settled. It argues that the history of this plan shows that all employees participated in its development. The net result of the plan was an out of pocket reduction because of the changes in the plan. It contends that of all the employees in the County, only this bargaining unit and the deputies in the Sheriff's Office do not contribute to the Dental Plan. Further, since the Dental Plan is voluntary, only those bargaining unit employees who choose to participate will pay.

### RECOMMENDATION

It is recommended that the Board's proposal be adopted. The basis for this recommendation rest in the fact that the plan is voluntary; that all employees participated in its modification; that the net result is a reduction in contribution when major medical is considered; and, the fact that employees make no contributions to their major medical coverage. It is rare to see a plan where employees make no contributions to their health care and, since such exists here for major medical, then requiring a contribution for only Dental coverage becomes all the more reasonable.

## ARTICLE 32, SECTION 13 - CALAMITY SNOW DAYS

### UNION POSITION

The Union proposes including language that would give employees who make it to work on a calamity or snow day a compensatory day off outside of the Universal Leave. It contends that the language is consistent with the practice prior to the first negotiations between the Parties; that it gave employees incentive to come to work when conditions were bad; and that it would be good to have

the benefit again.

### **BOARD POSITION**

The Board opposes inclusion of the language and argues that the Parties already signed off on the entire Article on May 17, 1995; that since the Article was signed off on, it is inappropriate to have before this Factfinder; that the Universal Leave was intended to cover this type of situation; and that the request would amount to rewarding someone for performing work they are already duty bound to complete.

### **RECOMMENDATION**

It is recommended that the Union's proposal not be included. Since it is recommended that it not be included, the procedural objection made by the Board does not need to be addressed. The recommendation is based on the fact that Universal Leave was intended to cover the type of situation the Union is concerned with and thus, the calamity day is unnecessary.

## **ARTICLE 35 - TENURE BONUS**

### **UNION POSITION**

The Union proposes increasing the current tenure bonus by .25/hour in each of the four levels. It asserts that experience is valuable and the long-term employees should receive more compensation since they deserve special consideration for their dedication.

### **BOARD POSITION**

The Board opposes any increase since there has been no demonstration of need; that the increase is unreasonable in the amount of .25/hour, approximately a 100% increase; that the proposal

would double current costs; that the comparables show that no other facility receives this type of longevity pay; and that the impact on increased costs to wages as well as to the ancillary costs associated with wages, make the proposal cost prohibitive.

#### RECOMMENDATION

It is recommended that the Union's proposal not be adopted. The comparables alone show that any Tenure Bonus at all is exceptional. Moreover, it must be recognized that the Union's proposal is a huge jump in compensation. Based on the lack of comparables and the extremely large amount asked for, it must be recommended that the proposal not be adopted.

### ARTICLE 33 - RETROACTIVE PAY

#### UNION POSITION

The Union proposes making the wage increase retroactive to the expiration of the previous Agreement on March 11, 1995. It asserts that the negotiations have been long, hard, and unusual with the core issues still being unresolved. It contends as difficult for any Union to negotiate this long and not receive retroactive pay. It argues as unreasonable the Board's position that the increases should be made on July 1, 1995.

#### BOARD POSITION

The Board proposes making the wage increase effective July 1, 1995 based on the historical practice of the Board. It contends that it has historically given wage increases in July, including July 1994. It asserts that even during the last Agreement, although it was signed prior to July 1, 1995, (signed May 26, 1992 with an effective date of March 12, 1992) the Parties agreed that wage increases would not be implemented until July 1, 1992. Since wage increases were given one (1)

year ago, it argues as unreasonable to have the wage increases be made retroactive to the end of the contract since doing so would effectively give the employees two raises in less than a one (1) year period.

### RECOMMENDATION

It is recommended that the wage increase only be made retroactive to July 1, 1995. The Board persuasively argued that raises have historically been paid in July and therefore the otherwise acceptable method of paying retroactive to the end of the previous contract is inapplicable. To do otherwise would give employees a double raise, once in July, 1994, and then another at the expiration of the Agreement. Twice in less than one (1) year cannot be recommended. It is recognized that retroactive pay is given for raises that would otherwise have already been implemented had the Parties not been engaging in negotiations. Since such is not true in the instant matter, the retroactive date should be the historical one of July 1, 1995.

### ARTICLE 11, SECTION 11.7 - PAY FOR ATTENDANCE AT UNION MEETINGS

#### UNION POSITION

The Union proposes that where a committee-person is required to attend a meeting at the Union Hall, they would be paid as if on the clock. It contends that this is the current practice and it has not been abused. It asserts that management has never put the Union on notice that the practice has been discontinued and therefore, it is ongoing. It argues that the practice should be made part of the Agreement.

#### BOARD POSITION

The Board contends that the practice and the proposed language are not consistent. It argues

that the current practice allows a Union committee-person to request permission to attend meetings at the Union Hall and are paid when the matters affect the Board. The proposal, it asserts, would affect all Union activities and would remove the prerogative of management to deny requests.

#### RECOMMENDATION

It is recommended that the Union proposal not be adopted. Management has a legitimate interest in maintaining control over the use of time away from work for meetings at the Union Hall. Further, as written the proposal would allow the Union committee-person to determine whether the activities fall within the purview of "union activities." Such is an unreasonable relinquishing of management control and thus, the proposal cannot be recommended.

#### ARTICLE 16, SECTION 16.1 - LOSS OF OVERTIME DURING UNION BUSINESS

##### UNION POSITION

The Union proposes that whenever a committee-person loses overtime due to time spent attending Union business, that that person will be permitted to make up any lost overtime opportunity. It argues that the current practice is an inequity since time spent fulfilling obligations under the Agreement forces committee-persons to lose overtime opportunities.

##### BOARD POSITION

The Board contends that the Union's proposal was generated due to one (1) occurrence to one (1) person and as such, no compelling need has been shown to justify this proposal. It argues that the loss of overtime occurs when an employee is engaging in activities that fall outside the Agreement; that the employee's do not lose anything, they just do not get overtime; and, that this would amount to a windfall. Further, the Board objected to the inclusion of the issue due to

procedural issues related to the same portion of the Agreement already having been tentatively agreed to.

**RECOMMENDATION**

It is recommended that the Union proposal not be adopted. The Board persuasively argued that one occurrence does not justify this proposal. Without a need being established, this proposal is without support.

**ARTICLE 20, SECTION 20.4 - HOLIDAY PAY**

**UNION POSITION**

The Union proposes that whenever an employee works a double shift during a Holiday, that that employee's pay for the second shift should be at double time. Since the first shift is paid at time and one half, plus the pay for the Holiday, the Union argues that such equals double-time pay and its proposal is to maintain that rate for any second shift worked.

**BOARD POSITION**

The Board raises the same procedural objections as listed previously. Furthermore, it argues that the employees already receive time and one half for all hours worked on a Holiday and increasing that rate is not justified. It asserts that since most employees get to choose whether to work a holiday or not, the increased rate is not reasonable. Finally, it maintains that it is rare that any employees work a double shift during a Holiday and thus, the proposal is unnecessary.

**RECOMMENDATION**

It is recommended that the Union's proposal not be adopted. The premium for working a

holiday is time and one half. The fact that an employee also receives pay for the actual holiday does not make the entire shift's rate equal to double time. Thus the Union's rationale is flawed since a second shift is currently paid at the same rate as the first shift; the rate does not change just because holiday pay is thrown in as well. Therefore, the Union's proposal can not be recommended.

**ARTICLE 23, SECTION 23.3 - UNIVERSAL LEAVE (RESPIRE)**

**UNION POSITION**

The Union proposes making what it views as a practice into binding contractual language. Whenever no residents are in a home, the proposal would mandate the transfer of the affected employee to other locations. It argues that the practice works and it believes it beneficial to make it part of the Agreement.

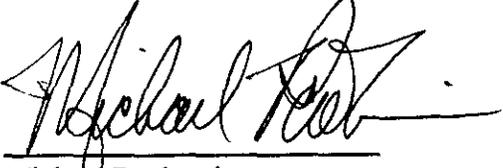
**BOARD POSITION**

The Board raises the same procedural objections and argues that the proposal is not the same as the practice. The difference is that the proposal makes the transfer mandatory while the current practice gives management some decision making power, and the proposal only permits the transfer when no (0) residents are left while the current practice permits the transfer when the number is low.

**RECOMMENDATION**

It is recommended that the Union's proposal not be adopted. The Board's position is justified since making the transfer mandatory would severely hinder its ability to exercise its management prerogative.

July 7, 1995  
Cincinnati, Ohio

  
Michael Paolucci