

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT FINDING PROCEEDINGS
CASE NO.: 95-MED-05-0458

10/25/95
10:30 AM
STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO

IN THE MATTER OF THE FACT FINDING BETWEEN:

A.F.S.C.M.E., OHIO COUNCIL 8)
LOCAL 3794)

**REPORT OF FACT FINDER
AND RECOMMENDATION**

and)
)
LUCAS COUNTY BOARD OF)
MENTAL RETARDATION AND)
DEVELOPMENTAL DISABILITIES)

On the 24th day of October, 1995, the parties convened with this fact finder in conference at the offices of the Employer in Toledo, Ohio for the purpose of engaging in a mediation and to conduct a fact finding hearing.

Sally Powless, A.F.S.C.M.E. Representative, presented the case on behalf of the Union.

Mary Ann Burns, Esquire, presented the case on behalf of the Employer.

AUTHORITY OF FACT FINDER

The State Employment Relations Board by letter dated June 1, 1995, conferred authority as fact finder to Lawrence L. Mase.

Subsequent to the appointment, on June 1, 1995 of this fact finder in this matter before the State Employment Relations Board, there was some delay in establishing a mutually convenient date for the hearing and the service of the fact finder's report prior to the June 15, 1995 deadline. Accordingly, the parties, pursuant to Rule 4117-9-05 (J) requested a continuance, the same being approved and granted by this fact finder.

Accordingly, this fact finder is properly empowered to make a fact finding report, in compliance with the rules and regulations of the State Employment Relations Board and the Statutes of the State of Ohio.

MEDIATION

At the inception of the hearing, this fact finder suggested that an attempt be made at resolution of the issues that currently remained at impasse as it appeared there remained numerous unresolved issues; and this fact finder offered his services as mediator to the parties.

Both parties agreed that mediation at this time would be fruitless, as lengthy discussions had been conducted between the parties as to the various possibilities and alternatives in resolving the issues at impasse, however, to no avail, an accord could not be reached.

Accordingly, resulting from the parties' responsibilities attempt to solve their differences, the only issues remaining before this fact finder are as follows:

1. Union Stewards
2. Overtime
3. Sick/Personal Leave
4. Benefits
5. Salary Plan
6. Wages

At the conclusion of the preliminary discussions this matter was brought forth to fact finding and the hearing was conducted. Therefore, this opinion is based on the stipulations of the parties, testimony, position statements, and exhibits.

CRITERIA

Pursuant to the rules and regulations of the State Employment Relations Board, and the Statutes of the State of Ohio, a fact finder is required to take into consideration all reliable information relevant to the issues which are at impasse. Although not intending to be a limitation, the following were taken into consideration.

1. The past collective bargaining history and/or agreement, if any, between the Employer and the Union.

2. A comparison of 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 of factors peculiar to the Employer and to the members of the bargaining unit.

3. The interest and welfare of the public and the ability of the 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 Employer.

5. The stipulations jointly agreed to by the Employer and the Union.

6. Such factors, which are normally or traditionally take into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

ARTICLE 25 - UNION STEWARDS

The Union has proposed to increase the Employer Paid Release time of Unit Vice President from 3 hours per week to 4 hours per week.

In support of its position, the Union maintains that there are 8 facilities in the Toledo metro area and covered by the collective bargaining agreement, and 3 hours per week is not adequate for the Vice President to cover Union business.

The Employer in turn maintains that under the current contract not only does the Vice President get a Paid Release Time of 3 hours per week, but the President also receives 16 hours of Paid Release Time per week. The Employers further maintains that the current contract as to this article is quite ample as it exceeds the prevailing practice in the community.

Reviewing all the discussion and exhibits in this issue I am not convinced that the Union proposal is with merit. Although there are 8 facilities, they are within a 20 mile radius and do not necessitate each facility being visited on a constant basis. Accordingly, it is my recommendation that this issue be withdrawn.

ARTICLE 36 - OVERTIME

The Union has proposed to add the following language to section "A" of this article: and within affected classifications in the other facilities.

In support of its position, the Union maintains that in the past, when overtime was needed in a facility and an Employee from the same classification was not available, the Employer would not acquire an Employee from another facility with the same classification but would utilize an Employee with a different classification inside that facility.

The Union further maintains that the suggested language addition would solve 2 problems: A: The loss of overtime to qualified eligible employee within the same classification.

B: The use of unqualified personnel.

The Employer in turn argues to maintain the current contract language due to the fact that time constraints as well as different starting and quitting times in the various facilities warrant the distribution of overtime first to affected classifications in a facility and then to qualified employees in other classifications in that facility. To do otherwise would be futile.

In reviewing the discussion and exhibits on this issue, I believe a compromise is necessary from both parties to ensure efficient operation as well as protect the employees interests.

During negotiations the Employer in an attempt to settle this issue offered a sideletter to which the Union agreed as amended, which later was withdrawn.

I believe that this sideletter as amended with the language including on the list classifications from other facilities is the proper solution to both parties concerns, and it is therefore my recommendation that it be utilized in place of additional contract language.

ARTICLE 41 - SICK LEAVE

ARTICLE 59 - PERSONAL LEAVE

The Employer has proposed as a package Articles 41 and 59 where the effective language changes would result in reducing sick leave from 15 days to 10 days for 12 month employees and 7 days for 9 month employees, in exchange two personal days plus a \$300.00 bonus.

The Employer admits that this is a departure from the 4.6/80 hours per Ohio Revised Code, which is the current prevailing practice for Ohio Public Employees, however supports this position by arguing that employee absenteeism is excessive and is presently in excess of the National Average. The Employer further states that although it has the right to punish abusers ,it wants employees to be at work on a consistent basis and believes that the proposed changes will accomplish this.

The Union in turn maintains that the current contract language should not be changed. In support of its position the Union argues that all Lucas County Employees accumulate 15 days of sick leave per year and this had been in effect since 1972. The Union further argues that its members are exposed on a daily basis to numerous infectious diseases and medical conditions notwithstanding that many are beat up on a regular basis by violent clients. Economically the Union argues that they will lose 48 hours over the life of the agreement and the \$300.00 represents approximately \$6.25 per hour. Additionally, the Employer in order to hinder abusers can require a doctors statement if deemed necessary.

Although I agree with the Employer that excessive absenteeism in any industry is a problem that greatly affects productivity as well as efficiency, I am not convinced

that the reduction of a long-standing benefit will resolve that problem. Although one incentive program was attempted with failure, I believe that the proper use of an incentive program with built-in safeguards (Required Doctors Statements) could greatly reduce any excessive absenteeism that may exist. Therefore, I am not persuaded by the Employers argument and therefore recommend that this issue be withdrawn.

ARTICLE 61 - BENEFITS

At hearing on this issue both parties clearly indicated to this Fact Finder that all Lucas County Employees have a "cadillac" health benefit program. This program is not contracted for by the Employer, but is in fact negotiated by the County Commissioners and in turn offered to the various groups of employees. (County Plan) Through the years, employees have not been required to make any contribution toward any increases in premium which is commendable in the present era of ever rising health care costs. However, to meet these ends some changes were necessary, specifically the change from Blue Cross to H.M.O. plans.

The Employer has proposed several changes in these benefits, specifically :

1. Requiring employees to contribute 50% of any increase in premiums.
2. Amend the eligibility of requirements for part time employees.
3. Permit the Employer to unilaterally change carriers provided benefits remain the same.

The Union in turn has proposed to remain with the current contract provided that the Employer will not switch from the County Plan and will further follow the Lucas County Eligibility Rules for Part Time Employees.

In support, the Employer argues that the prevailing practice statewide is to require Employee contribution for premium increases and 50% is not unreasonable. The Employer further argues that by not having an employee contribution costs will be shifted to the Employers plan i.e. insuring employees spouse where said spouse could be insured by there own Employer.

The Union in turn argues that the Employer does not contract for benefits and the Union negotiates directly with the County Commissioners. It is further argued that never has there been an argument of inability to pay and under the County Plan the current contract allows the change of Carriers.

In reviewing the discussion and exhibits it appears that the Employer is seeking the option to deviate from the County plan if in its judgment deemed necessary. With this I cannot agree. The County Commissioners have with the approval of employees, maintained continuity of benefits with the County plan. I am therefore convinced that the County plan should not be disturbed and that negotiations should remain with the Commissioners. I therefore recommend that the Employers proposal be withdrawn. To further the ends of continuity of benefits and also recommend that per paragraph "C", part time employees pay accordingly to the Lucas County Eligibility Rules, which will result in a very small financial impact to the Employer.

ARTICLE 38 SALARY PLAN

The Employer has proposed amendment to the salary plan wherein salaried employees are paid every two weeks thus creating 26 pay periods per year. However, in the years 1999-2000 for 9 month employees and in 2001-2002 for 12 month employees there will be 27 pay periods. The Employer claims that this 27th pay period will cost approximately 200,000.00 in todays dollars, thus the Employer proposes dividing the annual salary by 27.

The Union in turn claims that the 27th pay does not occur during the life of this agreement and therefore should not be addressed in this fact finding. Further, claims the Union, the Employer has more than ample time to plan for this event.

In reviewing the arguments and submissions of both parties, it is my opinion that this issue encompasses matters that are not within the time frame of the present contract and accordingly should not be addressed by this Fact Finder. It is therefore my recommendation that this issue be withdrawn.

ARTICLE 70 - WAGES
UPGRADES

The Union has proposed to upgrade by one range the salaries of Licensed Practical Nurse, Workshop Specialist and Vocational Trainer.

In support of its position the Union maintains other similar agencies have higher salaries than these classifications in the within bargaining unit and their salaries should be similar. The Union further contends that job duties and paperwork have increased over the years thus justifying the upgrade.

The Employer in turn maintains that the salaries for the above positions are competitive and that since 1987 salaries have been adjusted on a periodic basis to remain competitive. The Employer further maintains that said salaries are easily in the mid to upper pay range when compared to all the comparable submitted.

In reviewing all the above I am more persuaded by the Employers argument. While the above salaries are not the highest in the state, they appear to be clearly competitive and it is my opinion that they should not be upgraded. It is therefore my recommendation that this issue be withdrawn.

ARTICLE 70 - WAGES
NEW CLASSIFICATION

The Union has proposed the creation of a new job classification ("Intensive Training Technician" - Grade 6) which is an upgrade from the classification of Habilitation Technician.

Supporting its position, the Union claims that more duties are required, including but not limited to: Riding Busses, meeting with the Psychologist, restricted dress code, requires staffing for behavioral problems, additional charting, restriction to a locked room all day. The Union further contends that the Intensive Program requires special talents and an incentive should be given to those who deal with these special needs individuals. The Union further claims that once a Habilitation Technician is in the

Intensive Program, they cannot get out because if they try to bid out they are refused on the basis that a Habilitation Technician can't bid to another Habilitation Technician position within the facility. The only way out is to bid to a position in another facility.

The Employer in turn, referring to the job description of Habilitation Technician claims all the above duties fit within said job description. The Employer further contends that the present existing pay scale adequately compensates a Habilitation Technician who is in the Intensive Program.

In reviewing this issue at great length, I cannot agree with the Employer. Although some of the duties argued by the Union clearly fall in the job description of Habilitation Technician, many do not. Most importantly, I am led to believe that these duties as required are of a much higher degree demanding constant diligence. For this additional condensation should be paid. I therefore recommend the creation of the job classification "Intensive Training Technician - Range 6:.

ARTICLE 70 - WAGE INCREASES

In addressing this issue, much discussion was brought forth by the Employer concerning the credibility of the Employer with the Residents, Chamber of Commerce, small business and Toledo Blade of Lucas County. It appears that approximately 65% of the Employers revenue comes from property taxes with approximately 14-15% additional coming from Medicaid. The Employer has strongly stressed that Congress is presently proposing Medicaid cuts and that a 14% cut would require a budget reduction of approximately 4-5 million dollars per year. The Employer has further strongly asserted that the community wants no additional tax increases if in the event said Medicaid cuts would occur. Any further tax increases would drive new business entities away, thus raising the possibility if an umbrella levy. The Employer in essence, while having a present budget excess, does not claim a present inability to pay, but clearly expresses concern over what will happen in the future.

The Union in turn while also concerned about the possible Medicaid cuts claims that there is an ability to pay and further that there has only been 1 levy lost since 1960, all others having been passed or reviewed.

The Union also contends that all other bargaining units under the Lucas County Commissioners have received a 3% increase in 1995.

The Union has proposed as follows:

Wage Increases

Salaried Employees:

3% retroactive to 7/95 with 4% step - 7%

3% effective 7/96 with 4% step = 7%

3% effective 7/97 with 4% step = 7%

Hourly Employees

3% retroactive to 7/95

3% effective 7/96

3% effective 7/97

with longevity pay retroactive to 7/95. Employer will pay hourly employees a longevity pay at the completion of the following years of service.

The Employer in turn has proposed as follows:

Wage Increases

Salaried Employees:

2% effective on signing with 4% step = 6%

2% effective 7/96 with 3.9% step = 5.9%

2% effective 7/97 with 3.9% step = 5.9%

Hourly Employees:

2% effective on signing

2% effective 7/96

2% effective 7/97

with longevity pay effective on signing. Employer will pay hourly employees a longevity pay at the completion of the following years of service.

The parties are in further dispute as to the retroactively of any wage increase.

In reviewing all of the documents submitted and giving close consideration to the concerns of all parties. My recommendation for this issue is as follows:

Wage Increases

Salaried Employees

3% retroactive to 7/95 with 4% step = 7%

2% effective 7/96 with 4% step = 6%

Wage reopener for 7/97 period.

Hourly Employees

3% retroactive to 7/95

2% effective 7/96

Wage reopener for 7/97 period.

I have reached this recommendation in most part due to my concerns over what will happen with the Medicaid funding in the future. I believe these increases are within the comparables submitted and further feel that at present, the Employer does have the ability to pay. However, I would like to leave the parties the option of having a reopener for the 3rd year to address wages if and in the event such a drastic cut in revenues would occur.

I believe by then more light will be shed on the Medicaid subject which will place all parties concerned in a better position to negotiate.

In conclusion, the parties are cautioned to review the State Employment relations act so as to determine the impact of which this fact finder report and recommendations will have on the relationship and so that one party or the other does not become bound by law to accept a recommendation by which they may not wish to be bound.

 11-7-95
LAWRENCE L. MASE, Fact Finder
Exp. Term in Lucas County Ohio