

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD

SEP 1 10 02 AM '95

August 28, 1995

IN THE MATTER OF:

TRUMBULL COUNTY CHILD)
SUPPORT ENFORCEMENT)
AND)
AMERICAN FEDERATION OF STATE,)
COUNTY, AND MUNICIPAL)
EMPLOYEES, LOCAL 3808,)
OHIO COUNCIL 8, AFL-CIO)

CASE NO. 95 MED 05-0507

APPEARANCES

FOR THE EMPLOYER:

James Keating, Representative, Personnel Director
Christina Campbell, Agency Director
Sandra Weddell, Esq.
David Kessler, Consultant

FOR THE UNION:

Mark T. Carlson, Representative, Staff Representative
David Degifis, President, AFSCME Local 3808
Clarence Calderone, Vice President, AFSCME Local 3808
Mary H. Hagen, Executive Board Member

FACT FINDER:

Joseph W. Gardner, Esq.

INTRODUCTION

The parties and the fact-finder met on the 23rd day of August, 1995. The parties engaged in extensive mediation. During the mediation process the representatives for both sides presented all the points of all the issues. Some of the issues were withdrawn during the mediation and during the fact-finding process. After all the issues were identified and after the parties and the fact-finder mediated each one the issues, the fact-finding conference was opened.

At the outset of the fact-finding conference, the representative of the union claimed that he had never received the fact-finding report from the employer. The union representative moved the fact-finder to impose the remedy set forth in the Ohio Administrative Code, Section 4117-9-05(F). That section of the Ohio Administrative Code mandates that the failure to submit such a written statement to the fact-finder and the other party prior to the day of the hearing shall cause the fact-finding panel to take evidence only in support of matters raised in the written statement that was submitted prior to the hearing.

The undersigned finds that the union representative did not receive the fact-finding statement of the employer at least one (1) day before the fact-finding conference.

The representative for the employer stated that he did mail the fact-finding statement to the representative of the union. The undersigned finds that the representative of the employer did, in fact, mail the fact-finding report to the representative of the union in such a manner that he should have received it at least one (1) day before the fact-finding. There was some evidence that the union representative had moved his office and there may have been some confusion as to where the fact-finding report should have been sent.

In Section 4117-9-05 of the Ohio Administrative Code, it states that “a failure to submit such a written statement” will trigger the remedy of exclusion of evidence. In the sentence before, there is a mandate that each party shall submit and serve said statement on the other party, but only “a failure to submit” will trigger a remedy.

In Webster’s Collegiate Dictionary, 10th Edition, submit means to present or propose to another for review, consideration or decision. It appears that the representative of the employer, when he placed it in the mail, did present it to the representative of the union for review or consideration. In the clause that would mandate a penalty, there is no mandate that the representative must “serve” the other side.

In any event, all the remaining issues between the parties were brought up in the position of the union, therefore, no remedy would have been enforced even if the representative of the employer failed to submit the position statement. Evidence was taken for all matters raised in the Union’s fact-finding statement.

**ISSUE NO. 1:
ARTICLE 12, SECTION 5
DISCIPLINARY PROCEDURE**

Currently, records of verbal warnings and written reprimands are deleted from the employee’s records twelve months (12) after the effective date after such warning or reprimand for the purposes of determining and establishing progressive discipline. The employer desires to change the contract language and to increase the amount of months to twenty four (24) months

from twelve (12) months in said section. Management's proposal seeks this twenty four(24) month time period stating it would bring this contract section into line with current practice with many state agencies such as the State Personnel Board of Review.

The undersigned finds that there really is no disciplinary problems within the agency which would mandate that verbal warnings and written reprimands should remain in the persons' file for the purpose of determining progressive discipline.

RECOMMENDATION

It is recommended that the language in Article 12, Section 5, remain the same and that the employer's request be denied.

ISSUE NO. 2: ARTICLE 14, SECTION 3 POSTING AND BIDDING

Union seeks to add the word minimum to the phrase "minimum qualifications" for the consideration of promotional applications. The thrust of the argument of the union is that because of changes of technology and methodology, senior employee would lose promotional opportunities because of being less proficient in the use of technological changes such as the computer or word processor.

The union representative through his witnesses make a valid point. However, use of computers and other methodology is being implemented to increase the overall efficiency of all government agencies. Employees have an obligation to improve their skills so that they can use this technology.

RECOMMENDATION

It is the recommendation that Article 14, Section 3, remain the same and that the request by the union to alter that language of the contract be denied.

ISSUE NO. 3: ARTICLE 16, SECTION 3 JOB DESCRIPTION/JOB AUDIT

The employer was seeking limited language in this article. However, during mediation and ratification at the fact-finding conference the management withdrew this proposal under this section.

RECOMMENDATION

It is the recommendation, because of the above withdraw that the change requested by management be denied.

ISSUE NO. 4: ARTICLE 18, SECTION 5 HOURS OF WORK

Employers seek to eliminate the paid lunch period for the employees. Management makes a strong case in that most other bargaining units, both in the public and private sector, do not have a full hour for a paid lunch. The argument is quite simply that the employees should be paid, with tax payers dollars, for the hours worked. This argument by management is compelling and would be accepted by this fact-finder if this was a newly formed agency with new employees. However, it is not. A paid lunch in this area has existed before there was union representation

and after there was union representation. This means that the real wage of the employee is tied into this paid lunch period. To unilaterally take away the paid lunch without some type of upward adjustment in the wage of the employees, would amount to a wage concession.

RECOMMENDATION

It is recommended that the request to eliminate the paid lunch for the employees be denied and that the current language in the contract under Article 18, Section 5 remain the same.

ISSUES NO. 5 AND 6 ARTICLE 19, SECTION 4, 5 AND 6 OVERTIME

After the evidence presented by both sides, it is clear that there is a problem with the payment of overtime under the terms of this present contract. Presently, overtime is paid if someone works more than an eight (8) hour day even though that person may not work a full forty (40) hour week. Overtime should only be paid if the employee works more than eight (8) hours a day and earns money for over forty (40) hours per week. In that situation, overtime is justified.

RECOMMENDATION

It is recommended that the following language replace the current language of the contract;

SECTION 4-All employees in the job classification covered by this agreement shall receive time and one-half their regular rate of pay for all hours worked in excess of forty (40) hours in one work week.

SECTION 5-All employees in the job classification covered by this agreement shall receive time and one-half their regular rate of pay for all hours worked in excess of forty (40) hours per week.

SECTION 6-Paid holiday hours shall be counted as hours worked for the purpose of computing overtime. For example; if an employee regularly works Monday through Friday and the holiday falls on Thursday and the employee works full days on Monday, Tuesday, Wednesday, Friday and Saturday, the employee shall receive time and one-half for all hours worked on Saturday.

**ISSUE NO. 7:
ARTICLE 29, SECTION 4
ATTENDANCE INCENTIVE**

From the evidence and the arguments made during the discussion on this issue, it is quite clear that there is an attendance problem with the agency. Discussions were had and evidence was introduced regarding the impact of negative incentives, in other words, punishment for absenteeism and tardiness. It the general consensus of both parties and of the undersigned, that negative incentive and punishment would not help the problem and most likely exasperate the problem.

The undersigned is uncomfortable with the concept of paying people for coming to work, in other words, paying people for doing something that they are supposed to do. There is evidence however, that when this type of incentive is properly applied within the proper environment and so long as the employees have the right attitude, this type of attendance incentive actually works.

RECOMMENDATION

It is recommended that the following language be inserted under Article 29, with the new Section 4;

Section 4. Attendance and Incentive. Employees who use no sick time in any calendar half and who otherwise have perfect attendance (no use of family and/or medical leave, unpaid sick leave or anything of the like) shall receive an attendance bonus of \$100.00 for each half year of perfect attendance. For purposes of this article, calendar half years are defined as August 10th through February 9th and February 10th and August 9th of each year of this agreement.

Use of regular vacation time, union leave, and/or personal leave shall not affect and employees' record of perfect attendance. Use of compensatory time, so long as the employee gives forty eight (48) hours to the director or her designee and so long as the director or her designee approves the taking of compensatory time, the use of that compensatory time shall not affect the employee's record of perfect attendance.

Tardiness, early leaves and/or the taking of emergency vacation time shall disqualify an employee from obtaining a perfect attendance record for that period.

The employer has the exclusive right to delete this section from the contract by sending notice via Certified U.S. Mail, Return Receipt Requested to the staff representative of the Ohio Council 8 and the local union president at any time after June 1, 1977 but before July 31, 1997 and said notice shall cause the deletion of this new section effective August 9, 1997.

**ISSUE NO. 8:
ARTICLE 21, SECTION 10
BEREAVEMENT LEAVE**

The proposal of the union of bereavement leave was withdrawn during mediation, and the withdraw was confirmed during the fact-finding conference.

RECOMMENDATION

It is the recommendation that bereavement leave remain the same as set forth in the contract.

**ISSUES NO. 9 AND 10
EQUITY WAGE CLASSIFICATION
WAGES CONTRIBUTION**

All exhibits and evidence was reviewed. It was asked whether or not one of the defenses to the requested pay increase was the employers inability to pay. Evidence from both sides was that of uncertainty. It appears that this agency is run under a budget that no one knows the budget from year to year. There was not even a projected budget presented by the employer or the union. The danger with granting pay increases without a projected budget is that if the funding is suddenly cut off, layoffs are the only answer. Both parties seem to be aware of this condition

There was no evidence brought out by either the employer or the union as to whether or not there was increased productivity in the agency. In the private sector, the increase of productivity means the savings of tax dollars and better services provided to those who need the

agency. The undersigned suspects in the future that those considerations will become more and more important. The undersigned recommends the following equity adjustments and the following pay increases.

RECOMMENDATION

Appendix B of the contract shall be adjusted as follows;

<u>Classification</u>	<u>Pay Grade</u>
Cashier One	Pay Grade 2
Cashier Two	Pay Grade 5
Collections Specialists	Pay Grade 5
Account Clerk One	Pay Grade 3
Account Clerk Two	Pay Grade 4
Modification Specialists	Pay Grade 6
Enforcement/Establishment Aide 2	Pay Grade 4

It is recommended that the employees of the bargaining units shall receive the following pay adjustments, retroactive from the first date of this contract to-wit August 10, 1995;

Across the board pay raises:

- 1st year - 3% across the board wage increase plus one and one-half (1 1/2) % PERS employers pickup
- 2nd year - 3% across the board wage increase plus one and one-half (1 1/2) % PERS employers pickup
- 3rd year - 3% across the board wage increase plus one and one-half (1 1/2) % PERS employers pickup

ISSUE NO. 11 MEMORANDUM OF UNDERSTANDING

There has been much talk of reorganization of the agency. It appears that the agency is not running as efficiently as it should be. There is a concern that new technology and new operating procedures will probably displace certain workers.

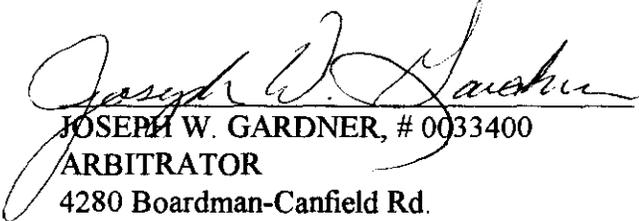
Although all employees fear displacement because of new technologies and reorganizations of their workplace, the undersigned believes that most employees would adapt and improve themselves if given a chance to do so. Furthermore, many employees could provide a vast amount of information and experience to the reorganization process. It is recommended that the following Memorandum of Understanding be placed inside the contract.

Memorandum of Understanding

1. The parties agree that the purpose of the organization is to establish and collect support obligations.
2. The parties shall work together to make the organization meet that purpose.
3. The agency shall allow direct participation from the union representative in planning and modifying the restructuring of the agency, keeping in mind the purpose of the agency.

Commencement and Ending of Contract

It is agreed to by the parties that the contract shall begin on the 10th day of August 1995, retroactively and the contract shall terminate August 9, 1998.


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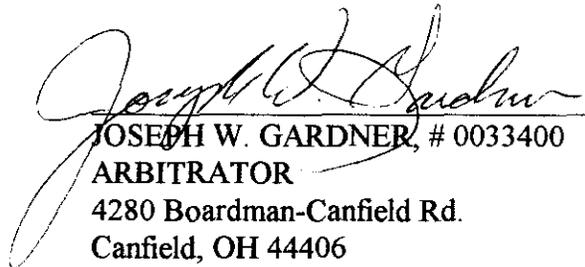
CERTIFICATION

A copy of the foregoing Fact Finding Report was sent by regular U.S. Mail to the following:

Mr. James Keating, Representative, Personnel Director
160 High Street, NW
Warren, OH 444

Mr. Mark T. Carlson, Advocate, Staff Representative
AFSCME, Ohio Council 8, AFL-CIO
150 S. Four Mile Run Road
Youngstown, OH 44515

Mr. G. Thomas Worley
State Employees Relations Board
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