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RELATIONS BOARD

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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

FACT FINDING PANEL

NATIONAL UNION OF HOSPITAL
AND HEALTH CARE EMPLOYEES,
S.E.I.U., DISTRICT 1199

AND

MONTGOMERY COUNTY
BOARD OF COMMISSIONERS
THE STILLWATER CENTER

CASE NO. 96-MED-07-0574

FACT FINDER'S
REPORT AND RECOMMENDATIONS

MICHAEL MARMO
FACT FINDER
NOVEMBER 14, 1996

- The lawful authority of the public employer,
- Any stipulations of the parties; and
- 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 and in private employment.

ARTICLE 19, SUCCESSOR CLAUSE

POSITION OF THE EMPLOYER

The County argued that the successor clause should be removed from the contract because it unduly restricts their ability to most efficiently provide services to the residents of the Stillwater Center. If at some future time, they contended, some other public or private entity could provide these services in a more cost effective manner, this contract language should not serve as a barrier to prevent such change. Further, they argued, such language is detrimental to the interests of Stillwater residents and contrary to public policy, because it restricts their ability to use limited resources most efficiently.

POSITION OF THE UNION

The Union pointed out that this clause has been present in the contract since it was first negotiated, and that it has never created any problems. Since the employer is attempting to alter the status quo, the union argued, the burden is on the County to demonstrate a compelling reason for the change. Should any change in control of the Stillwater facility occur, the union argued, the successor clause would enable them to effectively act to protect the interests of their members. Finally, the union points out that the County's contract with AFSCME Council 8, covering service and maintenance employees at the Stillwater Center which was recently re-negotiated, contains a successor clause.

FINDING OF FACT

As has already been indicated, fact finders are legally required to take "past collectively bargained agreements between the parties" into account when making their recommendations. Because such a successor clause is present in the current contract, the fact finder believes the Union is correct when it argues that the County must make a compelling argument to support such a change. The County has not sustained such a burden of proof. If the County truly believed that the existence of a successor clause is as onerous as they contended, he does not believe they would have agreed to a similar provision in their recently completed negotiations with AFSCME, Council 8.

RECOMMENDATION

For the reasons given, the fact finder recommends that no changes be made in Article 19, the successor clause.

ARTICLE 26, WAGES

POSITION OF THE UNION

The Union proposed a 4% across-the-board increase the first year of the contract and a 5% across-the-board increase for the second year. In support of its position, the Union pointed out that the larger AFSCME unit at the Stillwater Center had already settled a two year agreement providing for increases of 3% the first year and 4% the second year. Finally, the Union argued that it's wage proposal should not be too burdensome on the County since nursing expenditures represent a relatively small percentage of the total Stillwater budget.

Based on the Union's calculation's, their proposal on wages would have a two year total cost of \$88,359 while the County offer would cost \$53,611.

POSITION OF THE EMPLOYER

The Employer proposed a 3% across-the-board increase the first year of the agreement and a 2% across-the-board increase the second year. The County argued that wage increases for comparable employees have been very modest in recent years. It presented data showing that for local ICF/MR employers actual 1995 actual wage increases averaged 1.73%, and for 1996 such increases were 1.28%. For a group of sixteen area employer's, County data showed that actual 1995 wage increases were 1.65%, and in 1996 such increases amounted to 1.19%. Finally, the Employer provided a SERB survey showing that for comparable employers throughout the state, actual wages in 1995 increased by 2.74% and in 1996 by 2.85%

In addition, the County pointed out that the increases granted the AFSCME unit are not particularly relevant, since it is a comprehensive unit that is composed of very diverse groups of employees.

The County estimated the two year cost of the Union proposal at \$124,573, and the cost of their offer at \$102,748.

FINDING OF FACT

In any attempt to determine appropriate wage increases it is necessary to consider questions of both external and internal equity. External equity concerns how the wages of one group compare to the wages of employees of a different employer. Such comparisons are most appropriately used to recommend pay increases in two sets of circumstances: first, when internal comparisons are not feasible, and second, when wages of one employer are considerably out of line with other employers. In the latter instance, higher than average increases may be warranted for a group of employees with a lower base to allow them to catch-up. Similarly, employees with pay that is inexplicably high might appropriately receive lower than average increases.

However, when comparisons with other units of the same employer, or internal comparisons are possible, and wide discrepancies with other jurisdictions are not evident,

such internal comparisons should be given considerable weight. The fact finder therefore believes that the increases granted to the AFSCME unit are also appropriate for the District 1199 unit.

RECOMMENDATION

For the reasons given, the fact finder recommends a 3% across-the-board increase the first year of the contract and a 4% increase the second year.

Specifically, he recommends that Article 26, Section 1. (A) and (B) read as follows:

"Effective October 1, 1996, each step in the existing Pay Plan will increase by three (3%).

Effective October 1, 1997, each step in the existing Pay Plan will increase by four(4%)."

ARTICLE 27, EVALUATIONS AND MERIT INCREASES

POSITION OF THE EMPLOYER

Currently the Stillwater Center has a ten step merit system with a 3% differential between steps. The County proposed to delete this merit step provision in the contract. The County argued that by providing both across-the-board pay increases and merit increases their employees are receiving greater increases than are warranted.

POSITION OF THE UNION

The Union argued that this provision has been in the contract for a number of years and should not be removed at this time. They further pointed out that habilitation providers receive merit step increments and that nurses should not be denied a benefit that the habilitation providers receive.

FINDING OF FACT

This is a clause that has been in the contract for a number of years. The County has not demonstrated any change in circumstances that would warrant taking out the clause at this time.

RECOMMENDATION

The fact finder recommends that no changes be made in Article 27, Evaluations and Merit Increases.

ARTICLE 28, DURATION OF THE CONTRACT

STIPULATION

The parties stipulated that the agreement would expire on September 30, 1998.

POSITION OF THE EMPLOYER

The County proposed that the new agreement take effect when it is ratified by members of the bargaining unit. They argued that if the contract is made retroactive to the expiration date of the old agreement, problems could arise because of language changes from the old agreement, when supervisors were making decisions based on language in the old agreement.

POSITION OF THE UNION

The Union argued that fairness demands that unit members receive their wage increases from the time the old contract expired. The parties have always had a good relationship, the Union pointed out, and indicated that any contract language changes, other than the wage increases would not be used to disadvantage the employer.

FINDING OF FACT

The fact finder is required to base his recommendations on the "usual" practice in both the public and private sectors. Such usual practice, of course, is that new contracts are made retroactive to the expiration of the old agreement, absent any compelling reason not to follow this practice. Based on this usual practice and the long-term good relationship between the parties, such retroactivity is appropriate.

RECOMMENDATION

The first paragraph of Article 28, Duration of the Contract should read as follows:

"This Agreement shall become effective October 1, 1996, with the signatures of both parties and shall remain in full force and effect for the covered employees until September 30, 1998."

ARTICLE 29, DEFINITIONS

The parties stipulated that they did not wish to make any changes in this area.

RECOMMENDATION

No changes should be made in this clause.

NEW ARTICLE, DELEGATED NURSING

POSITION OF THE UNION

The Union proposed the addition of a new clause to the contract, reading:
"It is agreed that passing medication and other nursing functions for which licensure is normally required will not be delegated to unlicensed employees when such delegation would result in the layoff of bargaining unit nurses."

The Union argued that delegated nursing poses three major threats:
First, they are concerned that the quality of services provided to Stillwater Center residents will suffer as a result of the introduction of delegated nursing. They believe that the use of unlicensed individuals will result in "the degradation of the quality of care" and that this is the reason most nurses and patient care advocates oppose its use, except in limited circumstances.

Second, the Union is fearful that the onset of delegated nursing might endanger the licenses of bargaining unit members, who will be responsible for the actions of unlicensed personnel under their supervision.

Finally, the Union is concerned that delegated nursing could erode, or perhaps even threaten the very existence of the bargaining unit.

In addition, the Union pointed out that it had crafted its position very carefully, so that the "legitimate" needs of management would be protected; it does not prohibit the introduction of delegated nursing, nor does it prevent the layoff of bargaining unit members for reasons other than delegated nursing.

POSITION OF THE EMPLOYER

The County argued that the proposal is an attempt to restrict management rights which could potentially inhibit their ability to provide care in a manner consistent with industry standards. They stated their belief that they have previously been sensitive to the job security concerns of their employees and would continue this concern. However, they do not believe it is wise to contractually limit their options.

FINDING OF FACT

Although the Union clearly has a great interest and concern with the quality of resident care that is provided, the fact finder believes that the final say regarding the level of care provided resides with management.

The fact finder believes that the Union is correct when it says that the introduction of delegated nursing could increase the "exposure" of bargaining unit members regarding threats to their licenses. While such "exposure" is increased, however, it is not new. Several avenues already exist by which bargaining unit members can protect themselves from engaging in behavior that could threaten their licenses; they have both contractual and legal safeguards.

Two criteria that fact finders are legally required to follow are particularly relevant to this issue. First, fact finders are required to use the existing collective bargaining agreement as a starting point; and the current agreement does not contain a provision dealing with delegated nursing. Stated another way, this fact finder is loathe to recommend a new clause in a contract that is not the result of the normal quid pro quo bargaining process. Second, fact finders are legally required to examine the

"comparables"; the way in which a particular issue is dealt with by similar employers and unions. And, as the Union conceded at the hearing, this is a very new concern with few existing contracts addressing this issue. In other words, the comparables do not support the inclusion of such a provision in the contract.

In addition, the fact finder believes that while negotiations over the "impact" of delegated nursing is wholly appropriate, the question of "whether" it occurs is a management prerogative. The Union proposal, while very limited in many regards, probably does restrict the employer's right to introduce delegated nursing.

Finally, although both parties clearly stated that this was not a quid pro quo type issue, the fact finder is mindful of his recommendations on the other issues in dispute.

RECOMMENDATIONS

The fact finder recommends that the contract not contain the provision proposed by the Union dealing with delegated nursing.

This concludes the findings and recommendations of the fact finder.

Michael Marmo

Michael Marmo
Fact Finder
Cincinnati, Ohio
November 14, 1996

PROOF OF SERVICE

This is to certify proof of service this fourteenth day of November, 1996 by United States Mail, overnight delivery, to Al Arpad, 475 East Mound Street, Columbus, Ohio 43215; and Rebecca J. Foster, 451 West Third Street, PO Box 972, Dayton, Ohio, 45422; and by regular U.S. mail to G. Thomas Worley, 65 East State Street, Columbus, Ohio 43215-4213.

Michael Marmo

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