

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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In the Matter of)
Fact-Finding Between:)

AFSCME, OHIO COUNCIL 8)
LOCAL 3284, AFL-CIO)

) Case No. 96-MED-09-0776

-and-)

) Jonathan I. Klein,
) Fact-Finder

ASHTABULA COUNTY NURSING HOME)
)
)

FACT-FINDING REPORT
and
RECOMMENDATIONS

Appearances

For Union:

Eva M. Burris, OC8, Regional Dir.
Kay Derylak, Pres. Local 3284
Lynn Myers, Vice Pres. Local 3284
Lola Bambarger, Exec. Bd. Member
Pam Reighard, Activities
Barbara Knight, Central Supply
Robert G. Bindas, CPA

For Employer:

Richard Gortz, Management Consultant
Judith Sulin, Administrator
Janet Sarai, Office Manager
Roger Corlett, S.R. Snodgrass

Date of Issuance: June 4, 1997

I. INTRODUCTION

This matter came on for hearing on May 1, 1997, before Jonathan I. Klein, appointed as fact-finder pursuant to Ohio Rev. Code Section 4117.14, and Ohio Admin. Code Section 4117-9-05, on November 29, 1996. The parties mutually agreed to extend the statutory deadline for issuance of the fact-finder's report and recommendations to and including June 4, 1997.

The hearing was scheduled between the Ashtabula County Nursing Home (Employer), and AFSCME, Ohio Council 8, Local 3284, AFL-CIO (Union), in the CEI building located at 4438 Main Avenue, Ashtabula, Ohio. The parties met prior to the fact-finding hearing on October 23 and 29, 1996; November 12, 18, 19, 25, and 27, 1996; December 4, 9, 13, 20, 23, and 30, 1996; January 3, 13, 21, and 27, 1997; and February 10 and 24, 1997, in an effort to resolve their differences. Despite such extensive bargaining efforts, the parties remained at impasse on the following issues: the merger of nursing assistant and specialized services aide classifications, health insurance for part-time employees, wages, and duration of the collective bargaining agreement.

The negotiations leading up to the present issues at impasse, including extensive involvement in interest-based bargaining (IBB), concern the terms of a successor collective bargaining agreement for a bargaining unit consisting of employees in the clerical, dietary, housekeeping, maintenance, transportation, laundry and nursing departments.¹ The

1. LPNs are included in the bargaining unit with the exception of certain
(continued...)

number of bargaining unit members is 242. (Joint Exhibit 3; Employer's Exhibit 11). There was no indication mediation would serve any useful purpose, and this matter proceeded directly to fact-finding.

II. FACT-FINDING CRITERIA

In the determination of the facts and recommendations contained herein, the fact-finder considered the applicable criteria required by Ohio Rev. Code Section 4117.14(C)(4)(e), as listed in 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-05(K)(1)-(6). These fact-finding criteria are enumerated in Ohio Admin. Code Section 4117-9-05(K), as follows:

- (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

1(...continued)
supervising LPNs. RNs are not included in the bargaining unit. (Joint Exhibit 1, Article 2).

dispute settlement procedures in the public service or in private employment.

III. FINDINGS OF FACT AND FINAL RECOMMENDATIONS

Background Facts

The Employer provides short and long-term nursing and rehabilitative patient care to the residents of Ashtabula County ("County"). In one form or another, the Employer has served the County's residents for more than 155 years. The facility is currently licensed for 295 beds. An administrator under the direction of the Ashtabula Board of County Commissioners ("Board") operates the Employer, but the Employer receives no financial support from the Board. Funding for the facility comes from Medicare, Medicaid and private pay residents.

A significant decline in the Employer's resident census has been cited as the cause of fiscal concerns and staff layoffs. The Employer's numbers on the declining resident census are not at issue, and they reveal a 12.5% decline in the two-year period from 1994 to 1996. In March 1997, the average monthly census was 227 residents as compared with an average monthly census of 262 in March 1995, and the census is continuing to fall. Two of the reasons offered for the declining census include increased competition from the private sector, and in-home assessments that have provided methods for prospective residents to remain in their own homes for longer periods. In an effort to reach industry standards for

the number of all full-time equivalent employees (FTEs) of 84.2 per 100 beds for similarly structured nursing homes (Employer Exhibit 2), the Employer has implemented layoffs. After the most recent layoffs, the ratio will be 82 FTEs per 100 beds. Additional discussion as to the Employer's financial condition will be addressed with the wage issue.

Issues

1. Merger of Classifications

The Employer has proposed to merge the Nursing Assistant 2 ("NA2") and Specialized Services Aide (SSA) classifications into a single generic classification known as Health Care Technician at Pay Range F. Currently, there are three classifications of nursing assistant, NA1s, NA2s and SSAs. During the IBB sessions, considerable discussion took place over the fact that due to the reduced resident census, there was no need to retain three levels of support personnel. The SSAs receive \$.35 more per hour than employees in the NA2 classification. This classification was created in January 1991 because of a need for additional programming and documentation, but the NA2s perform all functions except the activities of daily living, and Medicaid does not reimburse the Employer additional money for the SSAs.

The Employer proposes for the two classifications to be merged, and the incumbent SSAs to receive their current rate of pay until a catch up in the third year of the agreement. Moreover, all fourteen SSAs were placed on layoff status as of May 1, 1997, with some SSAs bumping into vacant NA2 positions, and others electing not to bump. The SSA

classification is currently vacant, and only 225 of the 295 beds are occupied. This proposal will provide greater flexibility for the Employer to compete efficiently in the marketplace for nursing home residents.

The Union does not dispute the factual accuracy of the Employer's description of the IBB process, and the proposed merger of the NA2 and SSA classifications. However, the SSAs are long-term employees who are generally considered to be the best of the aides. The classification has been in place for approximately five years, and it would be unfair to alter the classification at this time. In lieu of the merger of the two classifications, the Union proposes to maintain the wage rate for the SSAs and red circle the positions. The layoff could be rescinded and the SSAs should not be negatively impacted. While the Union is aware of increased market competition and the need for flexibility, those in the SSA classification have significant seniority, and are a small minority of the nursing group. Therefore, the proposed merger would not result in any major cost savings.

The fact-finder determines that the Employer has articulated a reasonable basis for the merger of the two classifications. Apart from the question of whether the absence of current employees within the classification renders this issue moot, the Employer's proposal will ensure that any incumbents who are merged are protected at their current rate of pay as "red circled" employees, and will not have their rate of pay reduced.

Final Recommendation

It is the fact-finder's final recommendation that as a full and final settlement of the dispute over the merger of the NA2 and SSA classifications, the NA2 and SSA classifications shall be merged into a single classification of Health Care Technician at Pay Range F. See the proposed Allocation To Pay Ranges, marked as Attachment "A," hereto. This recommendation is conditioned upon the inclusion of contract language in Article 41 - Wages, which will ensure that the SSAs who merge will not have their pay reduced. They will remain "red circled," and receive an increase once their rate falls within the schedule.

2. Duration

The term of the current collective bargaining agreement is December 14, 1993, to December 13, 1996. The Employer proposes a duration provision for the collective bargaining agreement from March 1, 1997, to February 29, 2000, in order to avoid wage retroactivity and achieve a cost savings by shifting the wage package several months. Further, to engage in negotiations during the end of the year holidays is burdensome. It has no objection to a December expiration date unless the first year increase were to include retroactivity and result in a large cash drain.

The Union counters that the question of retroactivity is the real issue here, and there exists money to pay for a reasonable wage increase which, in this case, is a 3 percent wage increase in each year of the agreement. It submits that the Employer already benefits from the fact employees are placed on the wage schedule as they meet their anniversary

dates. The effect of the staggered anniversary dates results in a 1% cost savings to the Employer due to the various start dates throughout the year for the bargaining unit members. Retroactivity is not a real factor since, in the Union's view, going one year without a wage increase is possible for some employees.

Final Recommendation

The fact-finder determines that the question of retroactivity, particularly with respect to the corresponding cost implications, is best addressed within the context of the wage issue. The remaining reasons offered by the Employer for changing the effective dates of the collective bargaining agreement are unpersuasive. Article 48, entitled "Duration of Agreement" shall read, as follows:

Section 48.1

- A. This Agreement shall be effective as of December 14, 1996, and shall remain in full force and effect through December 13, 1999.
- B. [Current contract language]
- C. [Current contract language]

3. Health Insurance

Under provisions of the current contract, all employees within the bargaining unit are afforded the option of selecting between three health insurance plans. The Employer offers the same choices in insurance coverage and pays the same percentage as the County,

and it pays the entire cost of the health insurance for full-time and part-time employees. The current rates are, as follows:

	<u>Single</u>	<u>Family</u>
EPO	128.66	345.94
PPO	125.00	345.61
CCM	207.15	538.59

The Employer also pays a stipend each quarter to any eligible employee who declines health insurance, as follows: (a) \$200 per quarter or \$800 per year for single coverage; and (b) \$400 per quarter or \$1,600 per year for family coverage. The Employer argues that due to the current costs of insurance coverage, and the ability of part-time employees to obtain family coverage, some part-time employees received a benefit package which is greater than their wages. It proposes to continue to pay for single coverage for the current part-time employees as of the date of the current collective bargaining agreement.

If a part-time employee elects family coverage, the Employer’s proposal would require the employee to pay the difference in cost between family and single coverage. The stipend will not be available to any part-time employee after the date of this agreement. Any covered part-time employee who becomes full-time or terminates employment for any reason and returns to part-time employment, shall be considered a newly hired part-time employee.

The Employer reasons this proposal will not hurt the current full-time employees, and will generate an additional cost savings of \$40,668 per year. (Employer

Exhibit 5). Moreover, this insurance proposal is supported by comparable nursing home data in the region, Employer Exhibit 6, and none of these comparable facilities offer a stipend.

The Union argues that in order to be a full-time employee, the bargaining unit member must work a required number of hours -- between 33.75 and 40 hours per week. (Joint Exhibit 1, Article 17). The part-time employees are already used to the Employer's benefit, and it is simply refusing to create full-time positions. The smaller nursing homes cited by the Employer are not adequate for comparison purposes. Here, everything is performed in-house, and the part-time employees which number approximately twenty-eight out of the current workforce of 242 provide substantial operational savings. The Union concludes this benefit should continue in its present form.

The Employer counters that it does not hire the part-time employees to fill jobs on a part-time basis, but rather current employees opt for part-time status. Moreover, there are instances of job splitting, and under the current agreement the benefit costs double. Similarly, there are different work schedules available which would give an employee full-time status. Some shift schedules are regular, eight hour days while other shifts are eleven and 3/4 hour days.

When this issue is examined in light of the evidence and arguments presented by the parties, the fact-finder agrees that the current insurance provision for part-time employees cannot continue. There is no credible evidence that other comparable nursing homes provide the scope and cost of the coverage enjoyed by the part-time employees in this instance, or the payment of a stipend. The inequities built into the current language between

full-time and part-time employees on the question of benefits is obvious. The fact-finder determines that the Employer's proposal will generate considerable cost savings while simultaneously granting current part-time employees the benefit of 100% Employer paid single coverage.

Final Recommendation

It is the fact-finder's final recommendation that the language of Article 36 as proposed by the Employer shall be implemented as a full and final settlement of the dispute over health insurance coverage. A copy of the recommended contract language for Article 36 is appended hereto as Attachment "B."

4. Wages

The Union proposes a 3 percent increase effective December 14 of each year of the agreement. The Employer proposes a wage freeze in the first year, and a \$.25 increase in years two and three, with all step increases frozen for the duration of the agreement. A \$.25 increase in the hourly rate represents approximately a 3 percent increase.²

The Employer argues that its financial condition precludes a larger wage increase. It offered the testimony of Roger Corlett, CPA, who has performed audit and

2. Applying the \$.25 increase to the average hourly wage of \$7.48, the increase is 3.34 percent. (Joint Exhibit 3).

accounting for the Employer for the last three years. Corlett identified the three revenue sources, and their respective percentages: 16 percent of revenue from Medicare, 79-80 percent of revenue from Medicaid, and approximately 5 percent from private and miscellaneous sources. He described the Employer's operations as working on a modified cash basis by which revenues are booked although not yet received, and expenses are booked when the Employer writes a check to pay the expense. Through March 1997, the records show revenue year-to-date of \$1,979,306.67, and expenses at \$2,251,581.24. (Employer's Exhibit 1). Corlett said that he anticipated a loss of approximately \$200,000 for the year with a year-to-date loss of \$272,274.57, and there was a positive variance of \$169,509 when expenses were compared with the budget for the quarter. (Employer Exhibit 1).

A summary of the projected cash deficiency resulting from a 3 percent wage increase for the period indicates a cash deficiency of \$214,501 for the period of April through December 1997 based on a census of 225 residents of which 175 are on Medicaid. However, if the employees laid off as of May 1, 1997 and the 3 percent wage increase are backed out, the Employer will have excess cash of \$67,074. (Employer's Exhibit 4 at 2). Corlett opined that for a twelve-month period in the first year of the agreement a 3 percent increase would cost \$88,643 for the bargaining unit without including overtime.

The Employer explained at fact-finding the presence of a "Cash Reserve Fund 034." (Employer Exhibit 2; Balance Sheet for Period Ending 12/96; Testimony of Corlett). The explanation for the presence of this reserve fund was that in 1993 the Employer's costs were overstated by the doubling-up of various cost items, including PERS and health

insurance. Because of the overstatement, the Employer was overpaid for these items and the overpayment was identified in October 1994. The deficit was calculated at more than \$1 million. Efforts to work out a payment plan with the Department of Human Services have collapsed, and the current debt which Corlett estimates to be \$891,079 has been turned over to the State of Ohio's Attorney General's office for collection.

Moreover, the County extracted \$100,000 for bond and note payments on the capital facility. He described how the per day ceilings of direct and indirect cost per resident also are causing the Employer to lose money. In 1995, the cost report set the costs for the period July 1996 through June 1997 at approximately \$5 per day, per resident, below the actual level of costs. The revenues have decreased due to a reduced census, but the costs have decreased at a less rapid rate.

On cross-examination, Corlett could not identify any documentation outlining the \$1 million overpayment of Medicaid costs to the Employer. He stated the liability has not been "booked," "because the [County] commissioners do not want to book it until they have to pay." In any event, the Employer asserted the revenue from the overpayment went into the cash fund, Fund 33. Moreover, in 1995 the County sold fifteen (15) beds to a local hospital for \$120,000, and those monies were placed into the cash reserve Fund 34.

The Union presented its own expert witness, Robert G. Bindas, a CPA with extensive experience in government accounting and as a manager of municipal fiscal emergencies. Mr. Bindas offered various findings based on the profit and loss statements for the Employer, the occupancy data, and budgetary accounting information of the Employer's

Fund 33 and Fund 34. (Union Exhibit 1). Bindas stated the disclaimer that this exhibit was neither an audit nor an opinion.

A comparative summary of income and expenses for the Employer revealed that for the year ending December 31, 1994 to year ending December 31, 1996, the Employer had a decline in revenue from \$10,162,349.62 to \$9,599,947.31. (Schedule A to Union Exhibit 1). While Bindas noted this decline of approximately 5.5% in revenue, the facility remained profitable because of increased cost containment and a significant decrease in the direct care cost of purchased nursing. He opined the Employer has done a good job in controlling costs, and the facility was profitable in 1996.

The analysis by Bindas further documented the decrease in bed occupancy by 13 percent, which decline also included the sale of fifteen licensed beds in 1995 for a reduction of 5,490 bed days. The decrease in occupancy accounted for the decrease in income reflected on the comparative summary. He further acknowledged that since nursing homes constitute a service industry, labor costs directly affect profitability. Bindas further described Funds 33 and 34, and since both funds have the same source of revenue, compliance with Ohio Rev. Code §5705.09 does not require a separate fund in this case. Thus, when the actual receipts and expenditures for 1996 are compared, including the resources available in Funds 33 and 34 with their unencumbered balances, there is an actual amount available for appropriations/expenditure from 1996 of \$714,730.19. (Union Exhibit 1, Schedule C-1). This compared favorably with the additional monies available for 1995 of \$442,627.54, despite a decrease in the actual resources in Fund 33 in 1996.

In Schedule C-2, a similar comparative summary was compiled using the current County certification for 1997. Based upon the certification and estimates, the additional amount available for appropriation is \$124,500.11. Additional schedules were prepared which reveal an estimated Fund 34 balance for 1996 of \$4,800, compared with the funds actual balance of \$285,866.98. (Union Exhibit 1, Schedule C-3). There were additional actual transfers to Fund 33 of \$150,000 in 1995, and \$70,112 to Fund 34 in 1996, which were not included in the estimates. (Union Exhibit 1, Schedule C-3). In 1997, another \$100,000 was estimated to be transferred into Fund 33 from Fund 34. (Union Exhibit 1, Schedule C-4). In Fund 33 for 1996, there was \$108,724.29 of appropriated funds which were not expended in 1996, and more than \$162,000 in other unexpended appropriations in other categories both of which Bindas described as "available for something else." (Union Exhibit 1, Schedule C-6).

As for the current year's appropriations, Bindas's figures paint a far different picture of monies available for wages. There are two components to the potential sum of monies available for wage increases. First, there is the salary account balance remaining after actual Fund 33 expenditures in 1996 of \$108,724.29. This sum is to be added to the difference between the 1996 and 1997 appropriations, particularly after the layoff of the SSAs which classification had accounted for \$305,000 of the total 1997 salary appropriation, as well as the 1996 overage. The latter figure is \$128,334.

To these numbers Bindas would add the additional amount of \$124,500 available for appropriation in 1997 as set forth in Schedule C-2, and \$200,000 transferred out

of Funds 33 and 34 which no one has included as estimated revenue in other funds. The grand total of available funds is \$561,558.29. Bindas further said that he could not find a source on the pay-in receipt from the sale of the resident beds, but Fund 33 or a bond retirement fund would both be proper for receipt of the money from the sale of the beds. Finally, if the Employer has a liability of around \$800,000, it should be recorded as such when the Employer was aware it existed and there was a probability it would be paid.

On recall, Roger Corlett stated he agreed the liability for \$891,000 should be of record. He further indicated he had no problem with the numbers, appropriations or estimates, which are contained in the Bindas Report. (Union Exhibit 1). He asserted, however, that the 1997 appropriations were based on a 240 bed occupancy in December 1996, and it is necessary to obtain a handle on expenses when a precipitous drop in the census occurs as it did between January 1 and March 31, 1997. He agreed that \$200,000 was transferred out of Funds 33 and 34 as loan repayments for Medicare/Medicaid, and not included as revenue in another fund. Corlett disputed the inclusion of any unencumbered carryover balance from Fund 33 as available funds, stating that all monies are encumbered in Fund 33.

Several factors have been considered prior to making a recommendation on this issue. First, there is the undeniable decline in the resident census. Along with a declining census comes a decline in revenue. While some of this census decline may be due to increased competition from private nursing homes, it also is apparent that changes in determining when nursing home care is appropriate for a resident of the County have

impacted the overall census. However, there was no probative, quantitative evidence on this factor. Regardless, the uncertainty caused by the rapidly changing service provided by the Employer and the bargaining unit members, cannot be discounted. The real potential for a further decline in the census must temper the wage increase sought by the Union.

Second, the fact-finder finds it more probable than not that a significant financial liability relative to reimbursement of Medicaid overpayments must be addressed by the Employer. Absent evidence of the precise amount, it is reasonable to conclude this liability, which has not been placed "on the books," is more than \$800,000. Third, the fact-finder has taken into account in making his recommendation the acknowledged accuracy of the report prepared by Robert Bindas, CPA, and the monies which he has noted as available to the Employer for wage increases.

Finally, the extended negotiations and unsuccessful contract ratification votes have further impacted the process and contributed to general ill will. The adverse reaction to the often long and arduous process of collective bargaining has served no useful purpose. Despite the antagonism present from this lengthy process, the fact-finder believes the residents of the County can be well served by the Employer's current staff and Administrator.

Final Recommendation

Based upon these facts, it is the fact-finder's final recommendation that Article 41 - Wages, provide for the following wage increases as a full and final settlement of the wage issue:

- (a). Effective March 1, 1997, the bargaining unit employees shall receive a wage increase of 3 percent. There shall be no step increases during the first year of the agreement.
- (b). Effective December 14, 1997, the bargaining unit employees shall receive a wage increase of 2 percent. Step increases shall resume on an employee's anniversary date during the second year of this agreement commencing December 14, 1997.
- (c). Effective December 14, 1998, the bargaining unit employees shall receive a wage increase of 3 percent. Step increases shall be implemented on an employee's anniversary date during the third year of this agreement commencing December 14, 1998.

In addition, Article 41 shall contain the following provision:

Specialized Service Aides, whose classification is merged into the Health Care Technician classification effective with this Agreement, will not have their rate of pay reduced, but will remain "red circled" and receive no wage increase until their rate of pay falls within the schedule for the new classification.



JONATHAN I. KLEIN, FACT-FINDER

Dated: June 4, 1997

ALLOCATION TO PAY GRADES

PAY RANGE A

Custodial Worker
Food Service Worker
Laundry Worker
Receptionist
Resident Services Aide
Utility Worker

PAY RANGE B

Custodial Worker (Floor Care)
Personal Clothing Aide
Maintenance Worker

PAY RANGE C

PAY RANGE D

Cook
Transportation Coordinator
Maintenance Assistant

PAY RANGE E

Inventory Coordinator
General Activities Therapist
Nursing Assistant I
General Office Clerk

PAY RANGE F

Accounts Receivable Clerk
Cosmetologist (without "Manager's License")
Medical Clerk
Health Care Technician

PAY RANGE G

Accounts Payable Clerk
Clinical Nutrition Aide
Custodial Work Supervisor
Food Service Work Supervisor
Laundry Work Supervisor
Maintenance Repair Worker II
Payroll Clerk
Social Services Aide
Special Services Coordinator

PAY RANGE H

Cosmetologist (with "Manager's License")
Assistant Maintenance Supervisor

PAY RANGE I

PAY RANGE J

LPN

Attachment "A"

ARTICLE 36
HOSPITALIZATION

Section 36.1 During the term of this Agreement, the Employer agrees to provide to each full-time employee the same choices of coverage, and pay the same percentage of the cost of providing the coverage, as provided by the County Commissioners to employees paid from the General Fund of the County.

Section 36.2 Part-time employees [defined as employees regularly scheduled to work less than the full-time schedule for that classification for a period of sixty (60) days or more] on the active payroll as of the date of this agreement shall be eligible for the same coverage as full-time employees, however the employer will pay for single coverage only. Should such part-time employees elect family coverage, the employee will pay the difference in the cost between family and single coverage through payroll deduction.

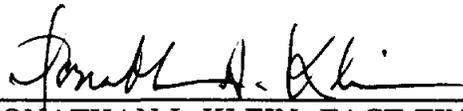
Part-time employees hired after the date of this agreement, or employees who become part-time after the date of this agreement shall have no health insurance benefit. Should any covered part-time employee become full-time or terminate employment for any reason and return to part-time employment, he/she shall be considered a newly hired part-time employee for purposes of this section.

Section 36.3 No part-time employee shall be eligible for the "health insurance waiver stipend".

Attachment "B"

CERTIFICATE OF SERVICE

Originals of this Fact-Finding Report and Recommendations were served upon Eva Burris, Regional Director, AFSCME Ohio Council 8, AFL-CIO, 150 S. Four Mile Run Road, Youngstown, Ohio 44515-3137; and Richard P. Gortz, Gortz & Associates, Inc., 24100 Chagrin Blvd., Suite 260, Beachwood, Ohio 44122, each by express mail; and upon G. Thomas Worley, Administrator, Bureau of Mediation, Ohio State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, by regular United States mail, sufficient postage prepaid, this 4th day of June 1997.



JONATHAN I. KLEIN, FACT-FINDER