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STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE FACTFINDING:	)	BEFORE FACT FINDER:
	)	JAMES E. RIMMEL
	)	
TEAMSTERS LOCAL NO. 377	)	CASE NO. 97-MED-03-0362
	)	HEARING DATE: 6 OCTOBER 1997
And	)	LOCATION: WARREN, OHIO
	)	POST HEARING SUBMITTALS:
TRUMBUL COUNTY CHILDREN'S SERVICES BOARD	)	10, 13 & 22 OCTOBER 1997
	)	ISSUED: 17 NOVEMBER 1997

APPEARANCES

ON BEHALF OF TEAMSTERS:

Timothy R. Piatt  
Green, Haines, Sgambati, Murphy and  
Macala, Co., L.P.A

ON BEHALF OF THE BOARD

Sandra Conley  
Clemans, Nelson and Associates, Inc.

BACKGROUND

This matter comes on for fact-finding following impasse in negotiations on an initial collective bargaining agreement between Teamsters Local 377 (Teamsters) and Trumbul County Children's Services Board (Board). Following the State Employment Relations Board's (SERB) 20 February

1997 certification of the Teamsters as bargaining agent on behalf of this clerical work force, the parties are reported to have met seven (7) times with two (2) sessions with a Federal Mediator and two (2) additional mediation sessions with this fact finder. While some progress was made in tentatively agreeing to a number of provisions, there remained in dispute, more than a dozen issues that were brought to the fact-finding hearing.

At hearing, the parties were provided the opportunity to proffer evidence and argument in support of their respective positions, opportunities they availed themselves to on each of the disputed issues. There is of record 21 admitted exhibits from the Teamsters with 28 from the Board, all of which, along with relevant testimony and argument, have been considered fully by this fact finder in arriving at the recommendations that follow. The afore evidence and argument was weighed along with the criteria set out under Ohio Revised Code Chapter 4117-14(G)(7.) While the specific evidence and argument proffered by the parties has been considered, little iteration of that detail will be set forth in that which follows. The parties prehearing position statements are respectively appended as Teamsters Exhibits 1, 2 and 3 and Board 1.

## RECOMMENDATIONS/DISCUSSION

### ARTICLE 7 - GRIEVANCE PROCEDURE

#### PARAGRAPH MP 7.1

#### RECOMMENDATION:

Should a grievance or a difference arise between the Teamsters and/or its members and the Board during the life of this Agreement as to the applicability or interpretation of this Agreement, rights or obligations under any of its provisions, or the discharge or disciplining of any regular

employee covered by this Agreement, an earnest effort shall be made to settle such grievance or difference immediately as follows:

- (a) Step 1 - The aggrieved-of regular employee shall within ten (10) working days of the event giving rise to a grievance, reduce the grievance to writing, deliver one (1) copy of the grievance to his/her immediate supervisor and three (3) copies to the clerical steward, one of which is to be forwarded by the steward to the business agent of the Teamsters. The immediate supervisor may request an informal meeting to discuss the grievance between the parties. The Supervisor shall answer the grievance in writing within ten (10) working days of his/her receipt and provide two (2) copies of the answer to the clerical steward.
- (b) Step 2 - In order for a grievance to be considered further written notice of appeal shall be served within ten (10) working days after receipt of the supervisor's Step 1 answer, by the Teamsters Business Agent, to the Board's Executive Director. Upon appeal, the Teamsters Business Agent and the Board's Executive Director shall meet within ten (10) working days following the receipt of the appeal to discuss the grievance. The Executive Director will give the Teamsters his/her answer to the grievance within ten (10) working days of the meeting. Either party may use five (5) additional working days by notifying the other party should the need arise. Both parties can extend for a reasonable time by mutual agreement in writing.

- (c) Step 3 - Failing to agree, on written request of the Teamsters which is to be delivered to the Board within ten (10) working days of the receipt of the Executive Director's answer at Step 2, the Teamsters may then process the grievance to the Trumbull County Children's Services Board. The Board or its designee will hold a hearing within thirty-five (35) calendar days following the Board's receipt of the Teamsters appeal. The Board or its designee will issue a written answer to the Teamsters within five (5) working days of its next regularly scheduled Board meeting following the Step 3 hearing.
- (d) Step 4 - Failing to agree, on written request of the Teamsters which is to be delivered to the Board within ten (10) working days of receipt of the Board's answer at Step 3, the Teamsters and Board will select an arbitrator in accord with the current rules of the American Arbitration Association and the case will proceed in accordance with the applicable rules of the Association. The arbitrator shall decide the case within thirty (30) calendar days of the close of the hearing. The decision of the arbitrator shall be final and binding.

The arbitrator shall not have the authority to add to, subtract from, modify, change, or alter any of the provisions of this contract, nor add to, detract from, or modify the language therein in arriving at a determination of any issue presented that is proper within the limitations expressed herein. The arbitrator shall expressly confine him/herself to the precise issue(s) submitted for arbitration, and shall have no authority to determine any other issue(s) not so submitted to him/her or to submit observations or declarations of opinion

which are not directly essential in reaching this determination.

The cost of the arbitrator shall be borne by the losing party. Should the decision not affirm the position of either party, the arbitrator shall determine which party shall pay the cost of the arbitrator, or in which proportion the parties shall share the cost.

**RATIONALE:**

While the Teamsters' position relative to expediting the decision making process was persuasive, its insistence that Board members participate in all grievances appealed to Step 3 was not likewise advanced. I am, moreover, of the belief that each party should be free to designate their own representatives at each level of the grievance procedure.

**ARTICLE \_\_\_ - DISCIPLINE**

**RECOMMENDATION:**

MP\_\_\_ Non-probationary employees shall not be reduced in pay or position or disciplined except for just cause. In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive.

MP\_\_\_ Disciplinary action may include:

Documented verbal warning(s) including instruction and cautioning.  
Written warning(s) or written reprimand(s);  
Suspension;  
Demotion and/or discharge.

Discipline will be normally applied in a progressive manner. For matters considered to be serious misconduct/violations, the Board may employ more severe discipline, up to and including discharge.

MP \_\_\_\_\_ In determining the level of discipline to be applied, the Board will take into consideration the nature of the violation and/or misconduct; the employee's record of discipline, the employee's record of performance and conduct; and, the negative impact upon the agency, its clients and/or the agency's reputation. In advancing a negative impact charge, the Board will be required to bear the burden of establishing such impact, a burden not sustainable by the testimony of a single witness alone.

MP \_\_\_\_\_ Whenever the Board determines that an employee may be subject to a reduction in pay or position, suspended or discharged, the effective employee will be given an opportunity to respond to the alleged charges of misconduct prior to any action being taken or discipline imposed. The employee shall have the right to have a Teamsters' representative present at any pre-disciplinary conference; however, the conference shall not be delayed more than forty-eight (48) hours, except by mutual agreement, to accommodate a specific Teamsters representative. Any employee who elects not to have a Teamster representative present shall reduce such election to writing. Additionally, the employee will be provided general notice of the charges against him prior to the hearing, charges that may be affirmed, amended, modified or revoked based upon that which transpires at said hearing.

MP \_\_\_\_\_ The pre-disciplinary hearing should be conducted before an administrator selected by the Board who does not regularly supervise the involved employee, an administrator who will entertain written and verbal evidence from the employee in his defense, including verbal statements from other persons familiar with the circumstances surrounding the charges.

MP \_\_\_\_\_ Within no more than ten (10) calendar days after the hearing, the hearing administrator shall provide the employee, the Teamsters and the Board with a written statement based on the evidence given at the hearing by the parties, along with his recommendations, if any.

MP \_\_\_\_ Appeals of demotions, suspensions or discharge may be processed through the grievance procedure, provided the grievance is filed at the Executive Director's Step within ten (10) working days of any notice of discipline.

MP \_\_\_\_ Records of disciplinary action shall cease to have force and effect for consideration in future disciplinary action in accordance with the following schedule, provided there has been no intervening discipline of the employee:

Verbal warnings -	12 months;
Written warnings -	18 months;
Suspensions -	24 months

MP \_\_\_\_ Prior to the scheduled time of a predisciplinary conference, the employee may waive in writing his right to such a conference. An employee who waives his/her right to such a conference may not grieve the manner in which the conference was scheduled.

MP \_\_\_\_ The Board and Teamsters agree all disciplinary procedures shall be carried out in private and in a business-like manner to the extent practicable.

#### **RATIONALE:**

Stated simply, the Board's desire to exclude verbal and written warnings from the just cause standard is simply not reasonable given the emphasis on progressive discipline. Likewise, the Teamsters' requested disciplinary expungement schedule has not been shown to be in order or prudent, especially under the initial Agreement.

#### **ARTICLE 13 - HOURS OF WORK AND OVERTIME**

#### **RECOMMENDATION:**

Incorporate into the parties' Agreement the following paragraph governing overtime:

MP\_\_\_\_\_ When a full-time employee is required by the Employer to work beyond forty (40) actual hours of work during a work week or eight (8) actual hours of work per work day, s/he shall earn overtime at time and one-half (1 ½). Overtime will be authorized in advance on a standardized form, with the exception of emergency situations.

MP \_\_\_\_\_ Employees who are scheduled to work outside the standard office hours of 8:30 AM to 4:30 PM may be assigned to an adjusted work schedule with notice. Absent a bonafide emergency, Management will give to any such scheduled employee no less than two (2) calendar weeks notice of his/her alternative schedule, which may or may not overlap the normal work schedule for clerical personnel but in no event will be in less than eight (8) hour work day increments.

**RATIONALE:**

The absence of any reliable cost projections as to the impact of the requested Teamsters change precludes its consideration. Moreover, comparative data would indicate that the paid lunch hour here is atypical and must be viewed as a benefit. As to the requested alternative/flexible scheduling, that which is recommended recognizes the needs of the business while providing certain safeguards relative to possible unfettered rights.

**ARTICLE \_\_\_\_\_ SHIFT DIFFERENTIAL**

**RECOMMENDATION:**

To incorporate the following into the parties' collective bargaining agreement:

MP\_\_\_\_\_ Whenever an employee is required to work more than four (4) consecutive hours between 4:30 PM and 12:30 AM, s/he will be paid a shift differential of \$.15 per hour for each hour worked during this period.

MP \_\_\_\_ Whenever an employee is required to work more than four (4) consecutive hours between 12:30 AM and 8:30 AM, s/he will be paid a shift differential of \$.25 per hour for each hour worked during this period.

**RATIONALE:**

It is clear that the Employer's desire to provide service beyond the normal business hours to the public is clearly appropriate in this day. It is likewise clear that in order to do so, the typical work pattern for bargaining unit employees might be changed to involve off-shift scheduling, scheduling that would be beyond that customarily worked by these employees. It is for that reason that a shift differential is warranted.

**ARTICLE 14. WORK ASSIGNMENT/JOB DESCRIPTIONS AND TEMPORARY ASSIGNMENTS**

**RECOMMENDATIONS**

Incorporate the following paragraphs into the parties' collective bargaining agreement:

MP \_\_\_\_ No supervisor or non-bargaining unit employee shall perform work on a job normally performed by an employee in the bargaining unit; provided, however, this provisions shall not be construed to prohibit supervisors/non-bargaining unit employees from performing the following types of work:

- a. Experimental work;
- b. Demonstration work performed for the purpose of training employees;
- c. Work required of the supervisors/non-bargaining unit employees by emergency conditions which if not performed might result in interference with agency business, bodily injury or loss or damage to property;

- d. Work which, under the circumstances that existed, it would be unreasonable to assign to a bargaining unit employee and which is negligible in amount; and,
- e. Work that historically has been overlapping in nature in that it has been normally performed by a supervisor/non-bargaining unit employee, even though similar duties are found in jobs in the bargaining unit.

MP \_\_\_\_\_ The parties acknowledge the guiding objective that work capable of being performed by bargaining unit employees should be performed by such employees. However, should the Employer deem it necessary to contract out specific tasks, it shall meet no less than 60 days prior to the planned contracting out with the local union president and business agent to discuss the basis for same along with alternatives proffered by the Union. The final determination as to whether or not to contract out specific work is reserved to Management.

**RATIONALE:**

The weight of comparative data of record, along with this being an initial Agreement, with an absence identifiable prior problems in these areas, require, on balance, the afore recommendations.

**ARTICLE 16 - PERSONAL DAYS**

**RECOMMENDATION:**

Incorporate the following paragraph into the parties' collective bargaining agreement:

MP \_\_\_\_\_ Bargaining unit employees are entitled to three (3) personal days per year. New employees earn personal days on a pro-rated basis as they accumulate employment time. Only full-time employees can earn personal days.

**RATIONALE:**

That requested by the Employer relative to the extension of holidays is simply not grounded

in this record upon a showing of abuse. It is, thus, not adopted. As for part-time personnel, while some benefit may be arguably appropriate given the regularity in use of same, this is not the benefit under this initial Agreement.

**ARTICLE 18 - WAGES:**

**RECOMMENDATION:**

MP\_\_\_ Effective 1 October 1997, establish minimum and maximum wage rates for each bargaining unit position employing that which exists as of 30 September 1997. As of the afore date, rates of all employees not at maximum will be increased by \$.25 or that amount necessary to reach maximum, whichever is less.

MP\_\_\_ Effective the first full pay period in 1998, the Employer will "pick up" all members PERS contribution at a rate of 3%.

MP\_\_\_ Effective 1 October 1998, the rates of all employees not at maximum will be increased by \$.25 or that amount necessary to reach maximum, whichever is less.

MP\_\_\_ Effective the first full pay period in 1999, the Employer will "pick up" the members PERS contribution at a rate of 3%, (6% total.)

MP\_\_\_ Effective 1 October 1999, the rates of all employees not at maximum will be increased by \$.25 or that amount necessary to reach maximum, whichever is less.

MP\_\_\_ Effective the first full pay period in 2000, the Employer will "pick up" the members PERS contribution at the rate of 2.5%, (8.5% total.)

MP\_\_\_ Effective 1 October 1997, each bargaining unit member who is not eligible to receive an increase in one or more years covered by this Agreement will be paid a personal out-of-line differential of \$.10 per hour as a lump sum payment paid quarterly. Each lump sum payment will be

incorporated into the employee's check in the first closed and calculated pay period following the end of each quarter. As of the effective date of any increases made in the job classification rates under this Agreement, the personal out-of-line differentials of all employees entitled to such shall be adjusted or eliminated by applying that part of the increase in the rate for the job which is attributable to the increase in the classification.

**RATIONALE:**

That which is recommended in total is clearly in excess of that provided under compensation packages being accepted throughout this state. It is believed, moreover, that in order to maintain structure integrity, the parties need to deal with classification issues outside of wage negotiations so that a proper classification system is maintained. To summarily increase classifications in order to provide all a wage adjustment is simply not the prudent way to proceed. Furthermore, the weight of comparative evidence suggests that bargaining unit positions are, for the most part, reasonably compensated vis a vis their peers throughout the state.

**ARTICLE 20 - HEALTH INSURANCE:**

**RECOMMENDATION:**

MP\_\_\_ The employees in the bargaining unit who are regularly scheduled to work twenty (20) hours or more may choose to be covered either by the Trumbull County Children's Services Board's health insurance plan or by the Teamsters health insurance plan. If the eligible employees in the bargaining unit choose to remain with the Trumbull County Children's Services Board's health insurance plan, they must accept all of the plans conditions, requirements and cost savings measures as determined by the Board. If eligible employees in the bargaining unit choose to sign off of the Board's plan and join the Teamsters health insurance plan, then the Trumbull County Children's

Services Board will pay the cost of the Board's single or family health insurance coverage towards the Teamsters health insurance plan for each eligible bargaining unit employee through December 31, 1998. The weekly cost of the Teamsters health insurance coverage has been determined as follows:

Family/Single Coverage - 9-01-97	\$138.00 per week
9-01-98	\$151.80 per week
9-01-99	\$165.98 per week

Should the cost of the Teamsters plan exceed the cost of the Board's plan, the difference shall be paid by the participating employee. The employee, therefore, must sign a voluntary payroll deduction form in order to participate in such coverage. Bargaining unit employees may choose this option at any time during the course of this Agreement.

MP\_\_\_ During the course of the Agreement, the Trumbull County Children's Services Board will pay medical insurance premiums for disabled employees who are enrolled in the Agency's or Teamsters medical insurance at the time disability occurs, for up to 12 months following the disabling event.

MP\_\_\_ Should a unit member decline coverage under the Employer plan and Teamsters plan, then that employee shall receive payment from the Employer of \$100.00 each month. Any such selection must be made in writing between 1 December and 15 December of any year prior to the calendar year it is to become effective, a selection that may not be rescinded until the next calendar year window period.

**RATIONALE:**

In this age of dual family employment, the availability of additional compensation for opting out of coverage represents a win-win proposition. As for the rights of part-time employees for this

benefit, such is appropriate for those who regularly work more than 20 hours per week.

**ARTICLE 20 - VACATION:**

**RECOMMENDATION:**

Incorporate the following as the parties vacation schedule under their new Agreement:

MP \_\_\_\_ Full-time bargaining unit employees are entitled to vacation with pay after six (6) months of continuous service with the Employer. The amount of vacation leave to which an employee is entitled is based upon length of continuous service with the Employer as follows:

One (10 Year of Service	Two (2) weeks*	4.6 hrs per pay period
Two (2) Years of Service	Three (3) weeks	4.6 hrs per pay period
Eight (8) Years of Service	Four (4) weeks	6.2 hrs. Per pay period
Twenty-five (25) yrs of Service	Five (5) weeks	7.7 hrs per pay period

\* Employees are eligible to take one (1) week of vacation after six (6) continuous months of service.

**RATIONALE:**

This schedule is reasonable for an initial Agreement and in keeping with comparative data of record.

**ARTICLE 31 - DURATION**

**RECOMMENDATION:**

Incorporate the following provisions into the parties' new Agreement:

MP \_\_\_\_ This Agreement shall be in full force and effect from 1 October 1997 through 30

September 2000, unless a sixty (60) day written notice is given to the other party prior to 30 September 2000 of their desire to amend or modify this Agreement.

MP \_\_\_\_ Such notice shall be by certified mail, return receipt requested. The parties shall commence negotiations for the next contract as mutually agreed upon but no later than 1 June 2000. The clerical steward will be compensated by the Trumbull County Children's Services Board for all regularly scheduled time spent in negotiations.

**RATIONALE:**

While there is much dispute as to the cause of the delay in consummating this initial Agreement, a three (3) year Agreement commencing 1 October 1997 is appropriate under all circumstances involved, including time spent by the parties negotiating two (2) other agreements.

**ARTICLE - PART-TIME TO FULL-TIME STATUS:**

**RECOMMENDATION:**

None

**RATIONALE:**

The present weekly usage and number of part-time employees simply has not been shown to warrant this type of provision in an initial Agreement.

**ARTICLE - ME TOO**

**RECOMMENDATION:**

None

**RATIONALE:**

That proposed by the Union does not envision quid pro quo in any form. It is also not supported as to its merits by comparative data of record.

Respectfully submitted,

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JAMES E. RIMMEL  
FACT FINDER