

STATE EMPLOYMENT
RELATIONS BOARD
OCT 27 8 43 AM '97

IN THE MATTER OF FACT-FINDING

BETWEEN

THE TUSCARAWAS COUNTY
DEPARTMENT OF HUMAN SERVICES

AND

AFSCME OHIO COUNCIL 8
AFSCME LOCAL 2308, AFL-CIO

BEFORE: Robert G. Stein

SERB CASE NO. 97-MED-06-0708

PRINCIPAL ADVOCATE FOR THE UNION:

Kenneth A. Stress, Staff Representative
AFSCME OHIO COUNCIL 8, AFL-CIO
1145 Massillon Rd.
Akron OH 44306-4161

and

PRINCIPAL ADVOCATE FOR THE COUNTY:

Michael L. Seyer, Senior Consultant
CLEMANS, NELSON & ASSOCIATES
2656 South Arlington Road
Akron OH 44319-2050

INTRODUCTION

The bargaining unit is comprised of approximately seventy-five (75) employees. These employees primarily provide assistance to the citizens of Tuscarawas County through a variety of social programs and welfare assistance. The Department also has responsibility for the separated function of Children Services, including Protective Services and Foster Care.

The parties have had a collective bargaining relationship since 1986. On October 17, 1997 a fact-finding hearing was held and the parties presented to the Fact-finder the seven issues in dispute and their respective positions on said issues. Subsequent to the presentations by both parties, the parties agreed to and welcomed an effort by the Fact-finder to mediate the dispute. A large block of time was devoted to mediation and the parties were successful in reaching a "conceptual understanding" on all of the issues. Both Advocates represented their respective parties well and actively pursued creative solutions to each issue in dispute. In order to bring closer to each issue the parties requested that the Fact-finder issue an "expedited award."

By mutual request of the parties regarding their need for an expedited report, the Fact-finder shall consider all supporting documentation provided by the parties, but shall forego substantive rationale which normally accompanies each recommendation. Each recommendation shall simply follow a summary of the parties' positions on each issue.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

ISSUE 1 FLEX TIME

Union's position

The Union proposes new language be added to the Flex Time Policy in order to ensure fairness and equity in the application of said policy.

Employer's position

The Employer proposes that current language be maintained. The Employer has verbally informed or reminded all supervisors that flex time may be used for employee medical appointments and may not be denied solely for that reason.

Discussion

Both parties agreed during the hearing that flex time was an important benefit to the employees and to the Department. In addition, the parties reaffirmed the need for each unit supervisor to treat all employees in a fair and equitable manner regarding the use of flex time and that flex time may be used for medical appointments. The Employer appeared to be serious about the need for each supervisor to allow employees to be allowed to use flex time in accordance with the policy, which includes the use of flex time for medical appointments. The current language of the Agreement in Appendix B addresses planned or scheduled situations.

Recommendation

Maintain current language

ISSUE 2 LAYOFF AND RECALL

Union's position

The Union proposes the following changes:

Section 3. Provide for laid off employees with the ability to bump less senior employees, outside their classification series.

Section 4. Amend current language to increase recall period from one (1) year to two (2) years.

New Section 7. Provide "Super Seniority" for the Local Union Officers, in event of Layoff.

New Section 8. Prevent Supervisory and Non-bargaining unit employees from displacing Bargaining unit employees, in the event of layoffs.

Employer's position

The Employer proposes maintain current language. The Employer argued that Supervisory employees have a right to maintain their civil service rights regarding layoff and by have a right to bump into bargaining unit positions as provided for in the Ohio

Revised Code. The Employer also argued that a one (1) year recall period is common among other employers in the geographic area.

Discussion

The Department experienced its first layoff about a year ago. This was obviously a dramatic event given the historical stability of employment in this Department. The comparables offered by the parties coupled with the conceptual (supposal) discussions lead to a reasonable framework for resolving this issue.

Recommendation

Maintain current language with the following exceptions:

Section 3 Any bargaining unit employee receiving notice of layoff shall have up to two (2) workdays following receipt in which to exercise his right to bump any less senior employee within the same classification series, provided the senior employee does possess the skill, ability, and qualifications to perform the work without further training.

In the event an employee is unable to bump in accordance with the above referenced procedure, said employee may bump the least senior employee within a classification(s) previously held provided;

- (1) The bumping employee has more seniority than the employee who is to be bumped and
- (2) The bumping employee meets the minimum qualifications in effect in the classification/position when and where the bumping occurs.

An employee who is bumped from his position shall have two (2) work days in which to exercise his bumping rights in a similar manner. Any employee does not have sufficient seniority and/or skill, ability and qualifications to bump another employee as described herein shall be laid off and placed on the appropriate recall list.

ISSUE 3 Article 19 DUES DEDUCTION

Union's positions

The Union is seeking to establish fair share fee. Currently, over 82% of the bargaining unit are union members.

Employer's position

The employer is philosophically opposed to the fair share fee concept and further argues that the Union's proposal is vague and does not appear to meet the requirements noted in applicable law.

Discussion

The Union demonstrated considerable flexibility and was willing to modify their proposal to include a grandfathering provision. However, the Employer remained steadfast in its philosophical opposition to a fair share fee. This is a common collective bargaining provision in many jurisdictions and the Union has demonstrated the ability to recruit a significant percentage of the bargaining unit. Nevertheless, with the assistance of the Fact-finder the conceptual understanding reached by the parties lead to following recommendation.

Recommendation

Maintain current language.

ISSUE 4 ARTICLE 24, LABOR/MANAGEMENT MEETING

Employer and Union Position and Recommendation

The Employer and the Union agreed to request the assistance of the Tuscarawas County L/M Council to schedule training program(s). A formal Letter of Understanding is to be drafted by the Employer and is to be signed by the parties. It shall read as follows:

During the first six (6) months of the Agreement, the Employer shall contact the Tuscarawas County L/M Council to schedule training program(s) Such training shall be subject to the availability of the representatives of the T.C.L.M. Council.

ISSUE 5 Article 35 HOSPITALIZATION AND LIFE INSURANCE

Employer's position

Maintain current language.

Union's position

Maintain current plan, but raise cap from \$400 to \$450.

Discussion

The increase in the health care premium was effective June 1, 1997. The increase raised the family premium to \$381. There is no way to effectively predict what the premium changes will be during the last two years of the Agreement; however, the during the past several years the increases have been moderate.

Recommendation

Maintain current language.

ISSUE 6 Article 37 WAGES

Employer's position

Effective upon execution of the Agreement, 2%, 2% each of the next two years of the Agreement.

Union's position

Effective 9-1-97 4%, 4% each of the next two years of the Agreement.

Discussion

The parties were able to reach conceptual agreement on the wages with a greater emphasis being placed on the first year of the Agreement.

Recommendation

Wages shall be increased by 4% effective the first full pay period following September 1, 1997; 3% effective the first full pay period following the first anniversary date of the Agreement (September 1, 1998) and 2% effective the first full pay period following the second anniversary of the Agreement (September 1, 1999).

ISSUE 7 NEW ARTICLE SUBCONTRACTING

Union's position

The Union proposed language to protect the bargaining unit in the event of subcontracting.

Employer's position

Maintain current language.

Discussion

This was a contentious issue for the parties. Welfare reform is on the horizon and there are a lot of unanswered questions. However, the parties agreed on the effectiveness and dedication of the Department's employees and found a way to agree upon a balance between employee job security and the need for management flexibility.

Recommendation

The following new article of the Agreement is recommended:

SUBCONTRACTING

During the term of this Agreement, sub-contracting may occur for documented purposes of efficiency or economy; availability of funding; in the event that there are insufficient employees to perform the necessary work; or when employees do not have the skill, ability, technical knowledge, or training and equipment to perform such work.

Any sub-contracting that is presently, historically, and/or legally mandated or required in the future to be performed may continue and/or be completed for the duration of this Agreement at the discretion of the Employer and in accordance with the applicable sections of Article 4.

TENTATIVE AGREEMENTS

All other issues tentatively agreed to prior to fact-finding are considered to be part of this report and are recommended to the parties.

The Fact-finder respectfully submits the above recommendations to the parties
this 22nd day of October, 1997 in Summit County, Ohio.



Robert G. Stein, Fact-finder