

FEB 13 10 42 AM '98

Factfinding Report and Recommendations  
in the Matter of Factfinding Between  
Scioto County Department of Human Services  
and  
AFSCME Local 3501

SERB Case No: 97-MED-07-0738

MARCUS HART SANDVER, Ph.D.

FACTFINDER

Hearing Date: January 30, 1998

Report Issued: February 12, 1998

Representing the Union:

Ms. Sandra Shonborn  
Staff Representative  
AFSCME Ohio Council 8  
The Plains, Ohio

Representing the Employer

Mr. Kenneth Edsall  
Management Consultant  
Clemans, Nelson and Associates  
Columbus, Ohio



accordance with the Criteria for Factfinding as found in O.R.C. 4117.14(G)(7)(a-f).

The parties were asked to introduce exhibits into the record. Labeled as joint exhibit #1 was the most recent collective agreement between the parties. The pre-hearing statement of the employer was labeled as employer exhibit #1. A multi-tab notebook introduced into evidence by the employer was marked as employer exhibit #2. The pre-hearing statement of the union was marked as union exhibit #1 and the multi-tab loose leaf notebook introduced into evidence at the hearing by the union was marked as union exhibit #2. The parties waived opening statements and went immediately into a discussion of the issues.

### III. The Issues

#### 1. Issue 1. Article 3. Union Security.

##### A. AFSCME Position

The union position on this issue is that the fair share fee should be included in Article 3. In support of this position, the union representative pointed out that 61 of the 100 employees of the SCDHS are presently members of AFSCME Local 3501. The union representative stated her position that because the union has a duty of fair representation to all members of the bargaining unit that all members of the bargaining unit should contribute to the costs of representation.

##### B. Employer Position

The employer position on this issue is that the Scioto County Commissioners have a philosophical opposition to the fair share concept. In addition, the employer's representative directed the Factfinder's attention to employer exhibit #2 which contains a petition signed by 34 SCDHS employees stating that they do not want the fair share provision in the agreement.

C. Discussion

The fair share fee is a common provision in labor agreements. In union exhibit #2 it is noted that 90% of the 405 AFSCME negotiated agreements in Ohio have the fair share fee. In Scioto County, AFSCME has a fair share fee in the contract with the County Engineer and the FOP has a fair share fee in the contract with the Scioto County Sheriff. I see no reason why the County Commissioners would agree to the fair share fee in the Sheriff's department and the County Engineer's department yet oppose it in the Department of Human Services.

D. Recommendation

Article 3 be amended to add Section 3.10 fair share fee.

2. Issue 2. Article 5. Management's Rights

A. AFSCME Position

The union position on this issue is that the management's rights clause of the most recent agreement needs to be rewritten. The union proposal would be to substitute ORC 4117.08 for the current management's rights clause. The union representative stated her opinion that the management's rights clause in the most recent agreement is too broad.

B. Employer Position

The employer position on this issue is that the management's clause of the current agreement has served the parties well over the years and that there is no compelling reason to change Article 5. The employer position on this issue is to leave Article 5 unchanged.

C. Discussion

Discussion of this issue at the hearing was somewhat limited. The concept of management rights is one of great importance and concern to the employer and is understandably

something that the employer wants to protect. The union was unable to provide specific incidents or examples of problems arising from the language in the management's rights clause that would compel the factfinder to recommend change in this section of the contract. Absent concrete examples of how the language in Article 5 has led to problems between the parties, I see no reason to change it.

D. Recommendation

Article 5 of the most recent collective bargaining agreement remain unchanged.

3. Issue 3. Article 9. Vacancies and Postings

A. AFSCME Position

The union position on this issue is that Article 9 needs to be rewritten to give more weight to seniority in the filing of vacancies at the SCDHS. In addition, the union proposal on this issue would require the posting notice to specify the location, duties and rate of pay of the vacant position. Finally, the union proposal would require that the employer fill the vacant position no later than 21 days after the vacancy was posted and that positions be filled by bargaining unit employees before hiring those outside the bargaining unit.

B. Employer Position

The employer position on this issue is that the union language in proposed Article 9 is restrictive of employer rights to fill vacant positions. The employer representative agreed that union proposed Section 9.4 could be incorporated into the collective bargaining agreement but disagreed that anything else in the union proposal would improve the existing Article 9.

C. Discussion

There was a good bit of discussion about this issue at the hearing. The union

representative stated strongly her view that seniority was not being given enough consideration in determinations regarding the filling of vacancies. In support of this view the union cited management responses at the first and second step to grievance #97-08. Both responses state the view that the criteria in Article 9 for filling vacancies do not have any weighting or priority.

The management perspective on this topic is that the employer needs the flexibility to hire the most qualified person for the position. The requirement in the union proposal for Article 9 that seniority be the controlling factor in filling vacancies is objectionable to the employer.

I can see that some sort of compromise is necessary and possible on this issue. I am recommending that a sentence be added to existing Section 9.2 such that seniority becomes the controlling factor if all applicants are equally qualified. I am also recommending adding the language in Section 9.4 of the union's proposal to Article 9 of the agreement.

D. Recommendation

That Section 9.2 be amended to include the following sentence: "In the event all of the above named criteria are equal, seniority shall be the deciding factor.

Section 9.3 should be added to the agreement to read:

Section 9.3. When an employee is the successful candidate for a position, he/she shall be placed on the wage scale equal to his/her current step. In the event of a promotion, the employee shall be placed in the appropriate step that will afford the employee a minimum of a four percent (4%) increase.

4. Issue 4. Article 18. Miscellaneous

A. AFSCME Position

The union position on this issue is a proposal to amend the existing section of Article 18

and to add five additional sections. The parties are not in dispute over Section 18.1. In Section 18.2 the union proposal is to delete the requirements for receipts for reimbursement and to add a provision for a private room when staying overnight away from home. In Section 18.3 the union proposal is to not charge those on vacation with a vacation day for days of work that have been canceled due to a weather emergency. In Section 18.4 the union proposal would prohibit management personnel from performing bargaining unit work. In Section 18.5 the union proposal would allow for a check-off for the Public Employees Organized to Promote Legislative Equality (PEOPLE) Committee of AFSCME. In Section 18.6 the union proposal is for the SCDHS to provide vaccinations for its employees. In Section 18.7 the union proposal would provide for an equalization of case loads. In Section 18.8 the union proposal would provide for paper towels in the employee restrooms.

**B. Employer Position**

The employer position is to maintain status quo and to make no changes in Article 18.

**C. Discussion**

There was not a lot of discussion at the hearing concerning the union's proposed changes to Article 18, but there was some. In thinking over the union's proposed changes in Article 18 one is struck with the impression that there are certain subjects that are best left to the negotiation process and excluded from factfinding. The details of who should get vaccinations and who should not and whether there are paper towels or electric hand dryers in the restrooms are details that the parties need to work out in their day to day dealings with each other. The collective bargaining agreement cannot and should not govern every aspect and detail of an employees work experience.

D. Recommendation

No changes be made to Article 18.

5. Issue 5. Article 20. Paid Leaves

A. AFSCME Position

The union position on this issue is to add 3 personal days to the section on paid leaves. Presently, employees are allowed to use 3 sick days as personal days. The union proposal would also provide for 3 days of leave for bereavement upon the death of an immediate family member.

B. Employer Position

The employer position on this issue is to maintain the status quo on paid leaves.

C. Discussion

Presently there is a provision in the agreement for 3 personal days; these are charged against sick leave. This seems logical to me and gives the employee some flexibility in using sick leave on days when he or she is not really sick but for some reason needs a day off work.

The bereavement leave is a different matter and is probably justified. Five days is not much time to settle matters of an estate or to make arrangements for the burial of an immediate family member. The union proposal for a 3 day paid bereavement leave in addition to the 5 sick days in Article 23 makes perfect sense to me.

D. Recommendation

Section 20.4 remain unchanged.

Section 20.5 be added to read:

Section 20.5 Bereavement Leave

“Employees shall be granted three (3) days bereavement leave upon the death of a

member of the employees immediate family. Immediate family, for the purposes of this article is defined in Article 23. If additional time is needed, employees shall be permitted to use up to five days of sick leave per Article 23 Section 23.1(E).

6. Issue 6. Article 22. Job Descriptions

A. AFSCME Position

The union proposal on this issue is to amend Article 22 Section 1 to provide for current job descriptions and to add a Section 22.2 which would create a labor-management committee to study the development of new job descriptions.

B. Employer Position

The employer position on this issue is to maintain the status quo and to not make any changes to Article 22.

C. Discussion

The debate on this issue was quite interesting and quite lively. The union position that employees should have a copy of their current job description is quite persuasive. Who could argue against giving an employee a job description? On the other hand, the employer argues that writing the job description is a management right and not subject to negotiations.

I can agree with both sides on this issue. I would recommend that the current job description be provided to employees, but would not recommend that the job descriptions themselves be developed jointly by the union and the employer.

D. Recommendation

That Section 22.1 of Article 22 be rewritten to say:

Section 22.1 "The employer agrees to provide the union with a copy of the current job descriptions and as they are revised agrees to provide employees with a copy of their job description."

7. Issue 7. Article 23. Sick Leave

A. AFSCME Position

The union position on this issue is to change Section 23.1 to allow for sick leave to be taken in 1/4 hour (15 minute) increments. Currently the contract provides for 30 minute increments. Secondly, the union proposes that ½ of all accumulated sick leave be "cashed out" at retirement. Currently the "cash out" is limited to 60 days or 480 hours.

B. Employer Position

The employer position on this issue is to agree with the union proposal to allow sick leave to be used in 1/4 hour (15 minute) increments. The employer, however, does not agree to the "cash out" of ½ of all accumulated sick leave at retirement.

C. Discussion

Presently employees accumulate 4.6 hours of sick leave per pay period or about 12 days per year. With ten years of perfect attendance an employee would accumulate 120 days of sick leave. In 20 years that amount would be 240. It seems to one that the 60 day maximum is fair and equitable. I know of several public employers that limit the "cash out" to 30 days. The provision to take sick leave in 1/4 hour (15 minute) increments was agreed to by both parties at the hearing.

D. Recommendation

That Section 23.1 of Article 23 be changed to allow sick leave to be taken in 1/4 hour (15 minute) units. All other provisions of Article 23 are to remain unchanged.

8. Issue 8: Article 24. Holidays

A. AFSCME Position

The union proposal on this issue is to add two new holidays to Article 24; the day after Thanksgiving and the employee's birthday. In support of this position the union produced collective bargaining agreements negotiated with the Scioto County Sheriff, the Scioto County Engineer, the Lawrence County DHS, and the Lawrence County BCC.

B. Employer Position

The employer position on this issue is to agree to add the day after Thanksgiving to the list of paid holidays.

C. Discussion

The day after Thanksgiving is increasingly being seen as a holiday in labor agreements. I see that the Scioto County Engineer and the Lawrence County DHS both name this as a holiday. Further, the union exhibits show that the state wide computer system (CRIS-E) is shut down on the day after Thanksgiving as well. There is much less data to support the naming of the employee's birthday as a holiday, however.

The issue of timing for the new holiday was raised at the hearing. Because Thanksgiving 1997 has come and gone and employees worked the day after Thanksgiving because it was not a holiday in the old contract, this holiday will begin in 1998. I see no reason to make a new benefit retroactive to the expiration date of the old contract.

D. Recommendation

Article 24 Section 24.1 should be changed to add an 11<sup>th</sup> holiday, the day after Thanksgiving. Effective 1998.

9. Issue 9. Article 25. Vacations

A. AFSCME Position

The union position on this issue is to accelerate the vacation accrual schedule such that employees accumulate more vacation in a shorter period than in the present agreement.

Secondly, the union proposal would allow employees to take vacation in 1/4 hour (15 min.) increments. Thirdly, the union proposal would allow employees to receive prior service credit for time served with the State of Ohio or any political subdivision thereof. Finally, the union proposal would allow vacation scheduling for periods of less than 16 hours at the discretion of the employee.

B. Employer Position

The employer agreed at the hearing to allow vacation to be taken in 1/4 hour (15 minute) units. The employer agreed at the hearing to allow prior service credit with the State of Ohio or its political subdivisions to count towards vacation accrual. The employer did not agree with the union's accelerated accrual proposal or with the proposal to waive supervisory approval of vacation leaves of less than 16 hours in length.

C. Discussion

There was little discussion of this proposal at the hearing. The employer representative did point out to the Factfinder that there would be financial implications to the employer of accelerating the accrual schedule of the vacation benefit.

In support of their position, the union provided data from the labor agreements negotiated with the Scioto County Engineer, the Scioto County Sheriff, the Lawrence County DHS and the Lawrence County BCC. By my reading, the data do not show that the vacation schedule in the most recent collective bargaining agreement is much, if at all, out of line with the comparison employers. The comparison data, in my mind, do not justify accelerating the vacation accrual for the employees of the Scioto County DHS.

D. Recommendation

Section 25.3 of Article 25 be changed to allow vacation to be taken in units of 1/4 hour (15 minutes). That Section 25.4 of Article 25 be rewritten to read: "Employees shall be entitled to vacation service credit or prior service credit for tenure with the State or any other political subdivision of the State of Ohio." All other sections of Article 25 are to remain unchanged.

10. Issue 10. Article 27. Insurance

A. AFSCME Position

The union position on this issue is four fold. The first position is to cap employee contributions to the health insurance premium at \$30.00 per month for family coverage and \$15.00 per month for single coverage. The second union proposal is establish a labor management committee to evaluate alternative health care insurance carriers and to make recommendations to the County Commissioners. The third proposal is to allow employees to "opt out" of the health insurance plan for a \$1500 lump sum payment. The fourth proposal is for the employer to provide SCDHS employees with the AFSCME Council 8 Care Plan.

B. Employer Position

The employer position on this issue is to accept the \$30/\$15 premium share but to reject

all other changes in Article 27 proposed by the union.

C. Discussion

There was a good bit of discussion about this issue in the hearing. Both sides used comparison data to support their positions. The employer used SERB data which showed that the SCDHS premium share for employees health insurance is lower than for the average county employee in the State. The union data from the Scioto County Sheriff, the Scioto County Engineer, the Lawrence County DHS and the Lawrence County BCC shows that the Scioto County Engineer provides AFSCME Care free to its employees and that the Lawrence County DHS provides for an insurance plan "opt out."

While the AFSCME Care Plan may be a good plan, there is a cost involved. By the employer's calculation, the cost would be \$63, 798 per year beyond present costs. The insurance "opt out" is a bad idea, in my opinion, and would I believe set a dangerous and unwanted precedent. I can not recommend such a provision in the agreement.

D. Recommendation

Article 27 Section 27.1 be rewritten to provide a \$30.00 family plan health insurance monthly premium cap and a \$15.00 single plan health insurance monthly premium cap. All other provisions of Article 27 are to remain unchanged.

11. Issue 11. Article 28. Wages

A. AFSCME Position

There were a number of issues addressed by the union in its wage proposal. The first was the annual step increase. The union position on this issue was to ask for a 5% increase per year for each year of the contract. In addition, the union was requesting a 50¢ per hour increase

retroactive to September 22, 1997. The union proposal also provided for the base rate for longevity pay to be the current base wage rate not the rate in Appendix 3.

#### B. Employer Position

The employer position on this issue is to provide for a 50¢ per hour wage raise upon ratification of the agreement, a 3% raise in the second year of the agreement and a 2 ½% raise in the third year of the agreement. The employer made no other proposals on wages.

#### C. Discussion

In looking over employer exhibit #2 under Tabs K5-14 it can be seen that Scioto County currently is about in the middle of the pay distribution for most jobs for the comparison counties: Athens, Lawrence, Adams, Ross, Pike and Muskingum. The data in exhibit K-18 shows that most of these comparison counties plan to give raises in the 3-3 ½% range over the next couple of years. It seems to me that a raise package of 50¢/3%/3 ½% would maintain Scioto County's position in the wage distribution and may bring it up slightly. A raise package of the dimensions outlined above is fair and would not move the employees of Scioto County DHS much above or below comparable employees in comparable counties.

The longevity issue raised by the union is a good one. I don't see any reason why an employee's longevity pay should be related back to some historical wage rate. We live in the present, we work in the present, we should be paid in present dollars. I would agree to delete references to Appendix 3 in Section 28.5, but would cap the longevity pay at 10% of the base rate.

#### D. Recommendation

Section 28.1. Effective September 22, 1997 all permanent bargaining unit employees

shall receive a fifty cents (50¢) per hour across-the-board wage increase to those pay ranges and steps as identified in Appendix 2. Retroactive payment shall be made in a separate check.

Section 28.2. Effective the first day of the first full pay period following the first anniversary of this Agreement, all permanent bargaining unit employees shall receive three percent (3%) across-the-board wage increase to those pay ranges and steps as identified in Appendix 2.

Section 28.3. Effective the first day of the first full pay period following the second anniversary of this Agreement, all permanent bargaining unit employees shall receive a three and one half percent (3 ½%) across-the-board wage increase to those pay ranges and steps as identified in Appendix 2.

Section 28.5.

- A. Beginning on the first day of the pay period within which the employee completes five (5) years of total service with the Employer, each employee shall receive an automatic salary adjustment equivalent to two and one-half percent (2.5%) of the base rate. Each employee shall receive thereafter an annual adjustment equivalent to one-half of one percent (.5%) of his or her applicable longevity base rate, until a maximum of ten percent (10%) of the employee's classification longevity base rate is reached.
- B. In the calculation of any wage increase or supplement, including the minimum wage rate increase following a reclassification, pursuant to Article 28, or a reassignment pursuant to Article 15, the longevity pay supplement shall not be included in the base rate or wage rate.

- C. Longevity pay adjustments shall be come effective at the beginning of the pay period within which the employee completes the necessary length of service. Time spent on authorized leave of absence shall be counted for purposes of longevity pay.

12. Issue 12. Article 34. Duration

A. AFSCME Position

The union position on this issue is that the agreement be a 3 year agreement retroactive to September 22, 1997.

B. Employer Position

The employer position on this issue is that the agreement become effective upon ratification and continue in effect until 3 years from ratification.

C. Discussion

This is an issue that Factfinder's often face; especially when negotiations have continued after the expiration of the old agreement. The union's members continued to work after the contract expired and undoubtedly expected that the wage rate changes in the new contract would be retroactive. No one likes to think that they would be working under a collective agreement that would not provide for wage raises that would be retroactive during the period after the old contract expired. I see no evidence of bad faith bargaining on either side, and I do not feel the union members should be penalized (or that the County should benefit) simply because the negotiations went on a little longer than anyone had planned.

D. Recommendation

Section 34.1. This agreement shall be effective as of September 22, 1997 and shall

remain in full force and effect through midnight, September 21, 2000.

12. Issue 12. New Article. Paycheck Withholding

A. AFSCME Position

The union is in opposition to this proposal.

B. Employer Position

The employer position on this issue is to withhold 4 hours of pay from each employee's paycheck for 10 payroll periods to establish a 40 hour payroll "bank" for each employee. The payroll "bank" would be paid upon separation of employment. The purpose of the payroll "bank" is to move away from the "pay current" method of pay to a "40 hour reserve" method of payroll.

C. Discussion

There was an interesting debate about this issue at the hearing. While I can understand why the employer would want to have a 40 hour reserve, I can also understand why the employees would resist having 4 hours taken out of their checks for the next 10 pay periods to be held in some sort of non-interest bearing reserve fund. The employer was not persuasive in establishing the need for such a reserve.

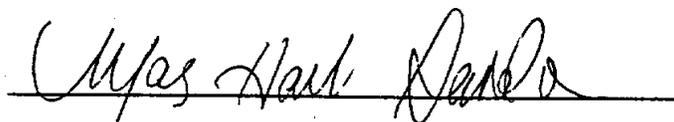
D. Recommendation

The payroll withholding plan is not recommended.

13. All issues tentatively agreed upon between the parties are to be part of this Factfinding Report and Recommendation.

#### IV. Certification

This Factfinding Report and Recommendations are based upon evidence and testimony presented to me at a factfinding hearing conducted on January 30, 1998 in Portsmouth, Ohio. This Report was developed in conformity with the Rules for Factfinding found in O.R.C. 4117 and associated administrative rules.



MARCUS HART SANDVER, Ph.D.

FACTFINDER

Columbus, OHIO

February 12, 1998