

STATUTORY DISPUTE RESOLUTION PROCEEDINGS
STATE EMPLOYMENT RELATIONS BOARD
ADMINISTRATOR FACT FINDING REPORT

STATE EMPLOYMENT
RELATIONS BOARD
SEP 15 12 29 PM '98

In the Matter Between,

A.F.S.C.M.E. Ohio Council 8)	SERB Case No.
Local 3794)	98MED-04-0439
The Union)	
)	
-and-)	Report Mailed
)	14 Sept. 1998
Lucas County Board of Mental)	
Retardation and Developmental)	
Disabilities)	Fact Finder
)	Daniel L. Merritt
The Employer))

REPRESENTATION

REPRESENTING THE UNION

Sally Powless

Staff Representation
AFSCME - Local 3794
Ohio Council 8

REPRESENTING THE EMPLOYER

Mary Anne Burns

Legal Counsel
Lucas County Board
M.R.D.D.

BACKGROUND

AFSCME, Ohio Council 8 in the collective bargaining representative of three hundred and eighty persons in the unit currently at impasse with the Employer. The Union represents both paraprofessional and professional in an agency which provides diverse services for challenged individuals throughout Lucas County.

The current collective bargaining agreement expired on 30 June 1998, the parties met fifteen times between 24 April 1998 and 3 August 1998. The parties met with a mediator in an attempt to resolve outstanding issues. Eleven issues remained unresolved as of 3 August 1998 when they met with the fact finder. Mediation was attempted and two issues ARTICLE 38 SALARY PLAN and ARTICLE 57 HOLIDAY SHUTDOWN were resolved, nine issues remain unresolved and a fact find hearing was conducted on 3 August 1998. Both parties were aware that the fact finder would rely upon criteria listed in Rule 4117-9-05 (J) of the State Employment Relations Board.

UNRESOLVED ISSUES AND POSITIONS

The parties were unable to reach agreement on nine issues: ARTICLE 8 Job Posting, ARTICLE 25 Union Stewards, ARTICLE 41 Sick Leave, ARTICLE 59 Personal Leave, ARTICLE 54 Transportation, Employees, ARTICLE 61 Benefits, ARTICLE 69 Substance Abuse, ARTICLE 70 Wages, and ARTICLE 71 Term.

POSITIONS ON ISSUES

ARTICLE 8 Job Posting

The Union is proposing that this ARTICLE remain the same except for Section J: Transportation Department and Larc Lane School Internal Bid Procedures. The union wants to make the internal bid procedure available to all employees in all departments.

The Employer wants to retain the current contract language and asserts management rights would be impaired. All nine sections of management rights

stated in O.R.C. 4117 were noted in support of the retention of this provision. Also noted were other problems existed within the Transportation Department and were being addressed by a new head who has only been on the job for about one year. The Union asserted that job changes were slowed with this bid system and that "some people were stuck in low jobs." The Employer noted that in 1997 some 163 job assignments had taken place. The Employer further asserted that it's management right to assign staff within each facility made the agency more responsive to clients needs because management was able to more effectively manage the workplace.

The fact finder believes that the current Section J represents a compromise of competing interest that does serve the clients and the parties needs. Employees can bid on vacancies, The Employer can manage personnel charges more effectivley and the clients hopefully get their best qualified person to provide the service. The fact finder based upon the present supporting evidence will recommended that the current contract language be retained.

ARTICLE 25 UNION STEWARDS

The Employer believes that the current provision of sixteen (16) hours per week for the Chapter President and three (3) per week for the Unit Vice President is generous enough. In addition the Employer asserts that Union Stewards at each facility are permitted to leave the job without prior approval to investigate grievances and/or attending pre-disciplinary action within the stewards jurisdiction.

The Union stated that there are over five hundred (500) union members and the president attend all hearings and meetings pertaining to the membership.

The vice president consults on all grievances involving the three hundred eighty (380) of this unit.

The Union further asserts through comparable data that other units provide one hundred percent (100%) time for the president to conduct union business.

The fact finder agrees that given the size of unit and the level of activity that some change in time set and for union business is warranted, but not at the level set by the Union

ARTICLE 41 SICK LEAVE

The Union argued that the current contract language be retained. The Employer wants to reduce the rate at which employees accumulate sick leave by reducing the rate from 4.6 hours accumulated for each eighty (80) hours of service to 4 hours accumulated for each eighty hours of service. The Union further asserts that O.R.C. Section 124 Provides 4.6 Hours per 80 hours of service. Union also asserts that the members currently are forced to deduct personal days from sick time unlike management. Finally the Union stated that its members deal with clients who have infectious diseases and need adequate sick leave because they are at risk.

The fact finder agrees with the Union position that the present sick leave provision is justified by the risk of the employees exposure to sick clients.

ARTICLE 59 PERSONAL LEAVE

The Union wants the two days of personal Leave To NOT be deducted from sick leave. The Employer would only agree to the Union position if changes were made in ARTICLE 41 otherwise the Employer would retain the current language in ARTICLE 59.

The fact finder believes that the current contract language should be changed to reflect leave needs separate from illness. Therefore a recommendation that personal days NOT be deducted from sick leave days will be stated.

ARTICLE 54 TRANSPORTATION EMPLOYEES

The Union proposes to change Section B(10) so that if "proper procedure" is not followed the employee who missed an assignment would be paid. The Employer would retain current contract language. The fact finder finds that if current contract provision B (10) is violated a grievance can and should be filed. The suggested Union Language is presumptuous and would most likely cause more confusion than resolution.

The Employer suggested changes in Section C(1), (2), and (3). The Employer would limit the selection of drivers to regular Transportation Department Staff. The Employer would also eliminate C(2) which provides for assignment input by mutual agreement of Labor and management: C(3) would be retained but renumbered to C(2).

The fact finder agrees that there are assignment problems within the Transportation Department, but none of the changes suggested will resolve the problems. Indeed the Employers remedy would severely restrict the assignment list and eliminate cooperative attempts to resolve the problems through Labor Management meetings. The Union changes almost presume an error in procedure on management part and impose an economic burden with the presumption.

The fact finder will recommend that current contract language be retained and that both parties infuse it with the spirit that such a provision deserves.

ARTICLE 61 BENEFITS

The Employer proposed a plan that would require that employees effective March 1999 would pay fifty per cent (50%) of any increases in premiums in the cost of hospital, medical, prescription drugs, or dental benefits. Further the Employer would make employees who opt for more than the cheapest health plan offered by the county would pay for the cost over the cheapest plan offered. Finally the employee would restrict coverage to married couples who work for the Employer to one spouse at no cost.

The Union would retain current contract language and introduced comparables to show that other county employees have similar contract language. The Union also has worked with the Employer to reduce the number of HMO's available in order to reduce or maintain the cost of health care plans.

The fact finder is persuaded that ability to pay has never been in question and that county employees do enjoy basically the same level of health benefits. The fact finder will recommend that current contract language be retained.

ARTICLE 64 SUBSTANCE ABUSE

The Union proposed that current contract language be retained. The Employer wishes to change this ARTICLE to expand the right to terminate on a first offense and would from a Union perspective also subject employees on approved leave to drug/alcohol testing.

The present substance abuse program is adequate from the Union perspective. The Employer would introduce more potential for drug testing and have a reasonable suspicion threshold for management to assert. The history of

substance abuse as submitted in evidence does not warrant such expansive changes in a substance abuse program section. Under present provision the employee must notify within five days of any criminal statute violation or workplace violation. They must satisfactorily participate in a drug abuse assistance or rehabilitation program or face suspension or termination at the discretion of the Employer. The current contract language is aimed at rehabilitation of the employee and deserves to stand. Under the terms of current contract language a substance abuse committee will be established to recommend any new changes. The fact finder will recommend the retention of current contract language,

ARTICLE 70 WAGES

The Employer has recommend a two percent (2%) increase for each of three years and have step increases for 0-11 at 3.9% at 11-15 at 3% and 15-18 at 2%. The Employer would start wages with the signing of the contract.

The Union Proposed a five per cent (5%) increase for each of three years of the contract for steps 0-11 and would increase step wages to 3.9% at steps 11-15 and 3.9% at steps 15-18.

The Employer would provide 3.25% increase for each of three years for hourly employees upon signing and the Union would provide 6% increase retroactive to July 98 and 6% increase for each of the remaining years in the contract.

The fact finder reviewed comparables and ability to pay and finds that an increase is warranted, but such a recommended increase will be somewhere between the positions proposed.

ARTICLE 71 TERM

Both parties agreed to a three year term by the end of the hearing. The fact finder will recommend a three year term for the collective bargaining agreement July 1, 1998 - Through July 1, 2001.

RECOMMENDATIONS

ARTICLE 8 JOB POSTING AND BIDDING

Retain Current Contract Language

ARTICLE 25 UNION STEWARDS

Section G:(1) The Local President will be permitted to set aside three (3) full days per work for Union Business. The Executive Vice President will be permitted to utilize the above days when the Local President is on vacation or extended leave.

Section G(2) Vice President

The unit Vice President will be permitted to set aside up to four (4) hours per week during non-direct service time, whenever practical.

ARTICLE 41 SICK LEAVE

Retain Current Contract Language

ARTICLE 59 PERSONAL LEAVE

Retain (1), (2) and(3)

Remove (4) "These personal days will be deducted from earned sick leave days."

Renumber (5) as (4) to appear as follows:

ARTICLE 59

PERSONAL LEAVE

Two days of personal leave, on an annual July 1 basis (non-cumulative), will be approved if it is requested on an approved form at least one day in advance and meets the following criteria:

1. One person per classification per facility will be approved for leave per day.
2. Personal leave days will be granted on a first requested basis.
3. Principals/Facility Managers may, at their option, approve leave for more than one person per classification per day.
4. Personal days may be taken in half (1/2) day increments.

ARTICLE 54 TRANSPORTATION EMPLOYEES

Retain Current Contract Language

ARTICLE 61 BENEFITS

Retain Current Contract Languages

ARTICLE 69 SUBSTANCE ABUSE

Retain Current Contract Language

ARTICLE 70 WAGES.

- A. The salary schedule shall be effective upon signing of the agreement. Automatic steps shall be effective first full pay on or after July 1, 1999 and July 1, 2001.

- B. Employees will be placed on their correct range and step based on total years of service with the Employer except that employees who have not held a salaried position transferring from hourly to salaried positions will be granted 75% (comprising whole years only) credit for years of service with the Employer for placement on the salary schedule for the first 10 years of service and 50% for years of service over 10.

Wage increases

Salaried Employees

3% retroactive to July 1998 with 3.9% on steps 0-11 = 6.9%

3% effective July 1999 with 3.9% on steps 0-11 = 6.9%

3% effective July 2000 with 3.8% on steps 0-11 = 6.8%

steps 11-15 = Remain at 3%

steps 15-18 = Remain at 2%

HOURLY EMPLOYEES

4.25% Retroactive to July 1998

4.25% Retroactive effective July 1999

4.25% effective to July 2000

ARTICLE 71 TERM

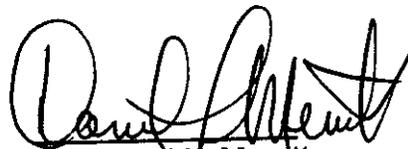
The Term of this Agreement is from July 1, 1998 through June 30, 2001

FACT FINDER'S CONCLUSION

In the Fact Finders opinion the foregoing recommendations provide for fair and equitable resolution of the impasse. In the event that any of the recommendations fail to meeting the tentative agreement established between the parties it is noted that Ohio Revised Code 4117.14 (c)(b) permits corrections and modifications by mutual agreement of the parties.

CERTIFICATION OF SERVICE

This is to certify that the foregoing Fact Finder Report Case Number 98MED-04-0439 was sent by U.S. Postal Service Overnight Mail to: Mary Anne Burns Legal Counsel 2001 Collingwood Blvd., Toledo Ohio 43620 for the Employee, Sally Powless Staff Representative, 420 S. Reynolds Rd. Toledo, Ohio 43615 for the Union, and by regular first class mail to G. Thomas Worley Director Bureau of Mediation: SERB 65 East State St. Columbus Ohio 43215 on this 14th day of September 1998.



Dr. Daniel L. Merritt
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Fact Finder SERB