

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
September 8, 1998

STATE EMPLOYMENT
RELATIONS BOARD
SEP 11 10 23 AM '98

In the Matter of:)
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The Portage County)
Nursing Home)
)
and) 98-MED-04-0457
)
AFSCME Ohio Council 8)
Local 3630)
)

APPEARANCES

Local 3630:

Kenneth Stress, Staff Representative AFSCME
Shirley Stare, President Local 3630
Marcey Bayless, Bargaining Unit Representative
Terry Ciandelbaugh, Bargaining Unit Representative
Karen Easter, Bargaining Unit Representative
Margaret Shayfer, Bargaining Unit Representative

The Portage County Nursing Home:

David Benjamin, Attorney
Larry Marburger, Nursing Home Administrator
Allison Box, Bargaining Team Member
Lynn Leslie, Bargaining Team Member
Susan Marks, Bargaining Team Member
Betsy Silver, Bargaining Team Member
Marina Turner, Bargaining Team Member

Fact Finder: Dennis M. Byrne

Background

The Fact Finding involves the Portage County Nursing Home (Portage County Commissioners) and AFSCME Ohio Council 8, Local 3630. Prior to the formal Fact Finding Hearing there were numerous negotiating sessions. In addition, the parties met with the Fact Finder on August 12, 1998, in a protracted mediation effort. The mediation effort resulted in a frank discussion of the areas of disagreement between the parties and a number of issues were resolved. Prior to the mediation there were nine outstanding issues: 1) Recognition, 2) Non Discrimination, 3) Sick Leave, 4) Funeral Leave, 5) Insurance, 6) Wages including shift differential language, 7) Duration, 8) Welfare to Work Initiative Language, and 9) Vacancies/work assignments. Three issues (recognition, non discrimination, and sick leave) were resolved during the mediation, and there was a prolonged discussion of the remaining issues. However, six issues are still at impasse. The major difference(s) between the parties center on two issues: 1) wages and 2) vacancies/work assignments; and if these two issues could be settled, the parties could reach agreement on a new contract, i.e., the other outstanding issues are less contentious.

The Fact Finding was conducted on August 25, 1998, at the Portage County Nursing Home. The Hearing started at 9:30 A.M. and adjourned at approximately 12:30 P.M.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 agree-upon dispute settlement procedures in the public service or private employment.

The Report is attached, and the Fact Finder hopes the discussion of the issues is sufficiently clear to be understandable. If either or both of the parties require a further discussion, however, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

INTRODUCTION:

The negotiations between the Portage County Nursing Home and AFSCME Local 3630 take place against a background of a changing environment for the home. The current facility is approaching the end of its useful lifetime and will be replaced within two years. The County's position on a number of issues is impacted by this fact, and the two major issues at impasse are directly affected by the prospect of a new facility.

Historically, the nursing home has been self-sustaining. The home generates operating revenue by offering services to its clientele. Until recently the revenues covered all operating expenses. However, private nursing facilities have opened in Portage County; and because these facilities are housed in modern buildings, the number of patients cared for in county home has fallen. The county is confident that this trend will be reversed when the new nursing home opens.

The decline in the patient census and the corresponding fall in revenue directly affect the county's wage offer. The nursing home is offering a modest wage package that is backend loaded. The county argues that it will be able to afford a greater yearly percentage wage increase when the new home opens. In this context it must also be noted that the county argued that regardless of any other fact, its wage offer is reasonable when all the relevant facts are examined.

A full discussion of the wage issue will be given later in this report; however, a few general comments are needed at this point. The nursing home argues that it always been self-sustaining, i.e., there has never been any financial support from the county's general

fund. Additionally, management's wage offer is based on the premise that the county will not use any money from the general fund to subvent the nursing home.

The Fact Finder finds this position somewhat unusual. The home is the Portage County Nursing Home. It is run by an administrator appointed by the commissioners. The commissioners are consulted on matters of policy and help decide bargaining strategy. It is clear that the county commissioners are intimately involved in the negotiations. The home's chief negotiator and the home administrator both consult with and report to the commissioners about the status of the negotiations. In addition, many of the county's positions are crafted by the commissioners, and they have the right to reject the contract. For the commissioners to be totally involved in the negotiations but then to divorce themselves from the practical impacts of any proposed settlement seems somewhat disingenuous.

Moreover, while it is true that the home has never received a general fund appropriation, the fact of the matter is that up to the current time the home generated sufficient funds to cover its costs. That has changed. Currently, and it may be for only a few years, the home needs financial help. Given all of these facts, the Fact Finder is forced to conclude that the county's financial position, not only the home's finances, is germane to this negotiation.

The second major area of disagreement concerns scheduling. Three years ago the parties agreed to a bidding procedure that allows the staff to bid for jobs. The home has five wings and three shifts. Theoretically, therefore, when a vacancy occurs, up to fifteen different bids (job assignment changes) are possible. In practice the number of changes

usually ranges between three and five; although in one instance there were seven moves caused by one vacancy. This problem is exacerbated by the fact the nursing staff in residential care facilities is extremely mobile. Nurses are constantly leaving and, as a consequence, vacancies frequently occur. Management claims the new bidding procedures have caused an administrative nightmare and affected patient care.

The prospect of the move to the new home enters the equation at this point. Both sides agree that the new home will have a different floor plan from the current facility. This may alleviate some of the problems. However, while both parties agree that the new facility will necessitate some changes in staffing, scheduling, etc., neither party can be sure of what will eventually happen when the move occurs. Moreover, neither side wishes to make a concession at this point in time based on what may or may not happen when the new facility opens.

Scheduling is the most contentious issue separating the parties. The union membership believes that a system that allows employees to bid on better jobs and/or shifts based in large part on seniority is a valuable right. In addition, the Union points out that it traded off other items for this benefit three years ago. The nursing home administration, especially the director of nursing, is equally adamant that some change is needed. The county's position is that the preceding negotiation created a "Frankensteinish" monster and that some changes must be made to the current system to bring rationality to the job bidding process.

The rest of the report will consist of a full discussion of the individual issues.

Issue: Article 29 Insurance

Note: There are two separate issues to be discussed on the insurance section.

Union Position: The Union demand is for an increase of \$2.00 per month per employee for dental insurance, an increase of \$1.00 per month per employee for life insurance, and a \$.50 per month charge for a hearing aid benefit. That is, the Union demands an increase of \$3.50 per month per employee for increases in the cost of insurance.

County Position: The County rejects the increase in the life insurance and hearing aid benefits. The County is willing to increase the dental benefit by \$1.00 per month per employee.

Discussion: The Union's demand is for \$3.50 per month per employee. To put this in context the total yearly charge for 60 employees would amount to less than \$2,500.00 per year. The Union wants the increase to fund increases in the AFSCME Care insurance premiums. AFSCME Care is offered to the employees as an addition to the County's insurance plan. It is a standard feature of almost all AFSCME contracts. The rate for this insurance is usually very competitive because of the group purchasing power of AFSCME units. In other words the Union believes that it is offering an excellent plan at a reasonable price.

The County is against this position for a number of reasons. The County argued strongly that it can purchase dental insurance for \$25.00 per month per employee and with the proposed increase in the current plan suggested by the Union, the AFSCME Care plan will be \$26.00 per month per employee. Essentially, the County argued that it could find a better value. A second consideration mentioned by the County is that the current plan

charges a flat rate rather than a different rate for a single participant versus a family plan. The County believes that this is not a good way to purchase insurance.

In addition, the County argued against the hearing aid charge because it was a new benefit not offered to other County employees, i.e., this benefit might set a precedent. The County believes that it offers an excellent plan and does not desire to add new benefits to its benefit package. Finally, the County believes that changes in insurance costs are an economic item and should be discussed as part of an overall wage settlement.

The County's argument that it can buy the same or better dental insurance for less money is compelling. However, this claim cannot be evaluated without supporting evidence about coverage, co-pays, deductibles, etc. If the County can provide superior coverage at a lower cost, then it should present this information to the Union in subsequent negotiations. However, without supporting documentation, the Fact Finder cannot evaluate the County's claim.

The Fact Finder understands the County's position concerning the extension of the insurance plan to cover hearing aids. But, the extremely low price of the benefit coupled with the fact that the benefit is part of the AFSCME Care insurance limits any precedential value that the inclusion of a hearing aid benefit should have versus other County employees. Given these factors, the Fact Finder is convinced that the request for this benefit is reasonable.

The Fact Finder is sympathetic to the County's arguments on this issue. However, the benefit to the employee coupled with the low cost to the employer convinces the Fact

Finder that the Union's position is justified on this issue. Of course, this does have a financial impact on the County that must be factored into the total settlement.

Finding of Fact: The low cost of the demand coupled with the County's lack of specifics about alternative less costly plans make the Union's position on this issue reasonable.

Note: Management's demand for language changes in Article 29 is discussed next.

County Position: The County demands that subsections 29.01 (c), (d), (e) be deleted from the contract.

Union Position: The Union rejects the County demand and wants to maintain the status quo.

Discussion: The sections of 29.01 in question define and limit the co-pays and deductibles that the Union membership pays for medical insurance during the life of the agreement. The employer argues that these sections are superfluous and should be removed as excess verbiage. The employer believes the language in 29.01 (b) makes the later sections of the article unnecessary. The language of 29.01 (b) reads.

"The Employer expressly reserves the right to change coverage or carrier , so long as the new coverage is equal to or better than the existing coverage."

This language does not seem to be on point. The question is not whether the County has the right to change coverage and/or carriers: it does. The question is what the insurance will cost.

In reality, the operative section of the article is 29.01 (h). This paragraph requires the nursing home employees to pay the same amount for medical insurance as all other county employees. That is, if and when the county's health plan changes for all

employees, the Local 3630 membership are obligated to pay the same costs as other employees. Therefore, the language in Article 29 gives the employer the right to change plans, carriers, and the cost of insurance so long as the changes affect all employees equally. The language in the contested sections simply defines the co-pays and deductibles for the existing plan. As such, it is unobjectionable. If the County wishes to change the co-pays and deductibles of the current plan, then it should negotiate that issue on its merits. The language in Article 29 in no way limits the County's ability to buy insurance and have the nursing home employees pay for changes in the plan. The sections do limit the employer's right to change the payment features of the current plan during the life of the contract.

Finding of Fact: The County did not prove that the suggested changes to Article 29 are necessary.

Issue: Article 26 Funeral Leave.

Union Position: The Union is demanding a change in the definition of the term "immediate family" used in Article 26.

County Position: The County is agreeable to the change if there is a quid pro quo in some other area.

Discussion: The Union demand is based on parity. Other bargaining units in Portage County and nonbargaining unit employees are covered by the language that the Union proposes. That is, the Union simply wants its language to be consistent with the definition

of “immediate family” that is in use for all other county employees. The Union sees this as a matter of equity.

The county did not offer specific language on this issue in its pre hearing statement submitted to the Fact Finder, and during the hearing indicated that the change was acceptable under certain conditions. The County argues that the proposed change will have a financial impact on the home. Therefore, the County contended that it should receive some benefit for incurring higher costs. The Fact Finder agrees that the suggested change will have some limited impact on the nursing home budget. The County suggested that the language changes it requested in Article 29 (i.e., 29.01 (c), (d), and (e)) as the quid pro quo. While the Fact Finder understands the County’s argument, a quid pro quo requires the trade of items of roughly equal value. In this case there was no testimony proffered on the potential cost of one item versus the other. Given the rather limited cost implications of the proposed changes in Article 26, the Fact Finder is not persuaded that this tradeoff is equitable.

Finding of Fact: Equity demands that all county employees be treated the same with respect to this issue.

Suggested Language: The definition of immediate family in Article 26 be amended to add the phrase, “grandchild, sister in law, brother in law, mother in law, father in law, daughter in law, son in law, a legal guardian or other person who stands in place of a parent.”

Issue: Article 30 Wages/Shift Differential

Union Position: The Union demands a 4% wage increase in each year of the proposed contract.

County Position: The County is offering 1 1/2% in the first year, 2 1/2% in the second year, and 3 1/2% in the third year of the proposed contract.

Discussion: The parties presented data from comparable jurisdictions to support their respective positions. The County presented data from other nursing homes in Portage County. The Union presented information from other county nursing homes from around Ohio that are represented by AFSCME. It is noteworthy that in this instance there is not one jurisdiction that appears on both lists. In some ways it is a case of comparing apples and oranges. The Fact Finder believes that the parties selected their comparables based on reasonable criteria, not simply in an attempt to buttress a weak position. Nonetheless the comparables give little guidance when used by the Neutral to evaluate the parties' respective positions on the wage issue. Parenthetically, the Fact Finder urges the parties to develop some consistent notion of comparability during the next round of negotiations.

The County argued that its list showed that the nursing home employees are among the best paid extended care facility workers in Portage County. The County believes that this evidence justifies its wage offer. In addition, the County stressed that the nursing home had always paid its own way with no support from the general fund. Because of the age of the facility the patient population is down and the home is generating less revenue than it generated in prior years. The County argued that this means the 1 1/2%, and 2 1/2% increases are all that it can afford in the first two contract

years. The Fact Finder believes that as a matter of fact, the nursing home is part of the infrastructure of Portage County and is eligible for aid from the County, especially in the short run. Therefore, the Fact Finder is not persuaded that the low offers in the first and second contract years is realistic. (See the Introduction of the Report for a discussion of this issue.)

The Union, for its part, argued that the data from other County homes throughout Ohio shows that the Portage County workers are in the middle of any comparables list of other county nursing home employees with regard to wages with one exception. The Union believes the data show that for one job title, Portage County workers make less than workers in other county homes. Based on this evidence, the Union is demanding 4% per year, and it believes that the data support the demand.

In addition, both sides presented evidence based on the Consumer Price Index. According to that data, both offers are somewhat reasonable. In the case of the County, their first year and second year offers are somewhat low based on historical data and full year inflation projections for 1998. In the case of the Union, the demand for 4% per year is somewhat high compared to the historic and projected inflation rate.

The Fact Finder believes that the data, taken as a whole, show that the Portage County workers are not the worst paid nursing home workers within the Portage County/Ohio area with one possible exception, regardless of which jurisdictions are determined to be comparable. This means that there is no pressing need for a special equity adjustment to the base wage.

The data on wage increases for Ohio indicate that wage settlements are in the 3% to 3 1/2% range. The Fact Finder believes that the evidence supports a conclusion that the nursing home employees are neither overpaid nor underpaid compared to others performing the same or similar work. Rather, the data shows that there are other homes in the Portage County area that pay wages comparable to the county home. There are other county homes throughout Ohio that pay more, but there are also homes that pay less. Therefore, the data support a conclusion that the employees should be treated similarly to other extended care facility employees.

This finding is supported by the testimony proffered at the hearing. Neither side made a strong argument for either an exceptionally high or an exceptionally low offer. Both sides believe that their data shows the workers are within a reasonable distance of other similarly situated workers. Neither side believes the workers are either grossly over or under paid.

The result is that the Fact Finder believes that the record supports a conclusion that the employees should get an average wage increase.

Note: the second part of the wage package concerns a shift differential.

Union Position: The Union demand is for a shift differential of \$.25/hr on the second shift and \$.35/hr on the third shift.

County Position: The County is offering \$.20/hr for all employees who work a minimum of 4 hours between the hours of 3 PM and 6 AM, and for all hours worked on weekends.

Discussion: The concept of a shift differential is not in question. Both sides testified that there is a concern about staffing and both see the differential as a way to encourage

workers to work on the second and third shifts. Shift differential pay for this reason is standard industrial practice.

Management's position is somewhat unusual in that it calls for the employees to work for a minimum of 4 hours to be eligible for the bonus, and the proposal does not cover the last hour of the third shift. The reason for this offer is that management is afraid that any worker who works one or two hours at the beginning or end of a shift will file a grievance if they are not paid the differential for all hours worked in the second or third shifts. Therefore, management believes that a worker must work 4 hours to be eligible for the differential.

The usual way these eventualities are covered is by reference to either a call-in pay or overtime pay provisions in the contract. In general, a shift differential is paid to employees whose regularly scheduled hours cover the second or third shift. That is, any employee who works on either the second or third shift, but who is not working his/her regularly scheduled shift is compensated by either call in pay or overtime pay. The Fact Finder believes that these provisions should minimize any potential grievances, and a standard shift differential provision seems to fit the parties' needs.

The second question is the size of the differential. Management has offered a straight \$.20/hr. The Union has asked for \$.25/hr on the second shift and \$.35/hr on the third shift. Because this is a new benefit, the Fact Finder believes the base rate should be the \$.20 offered by the County for the second shift. However, one aspect of a differential is the desire to entice employees to work on less desirable shifts. Therefore, the third shift bonus is usually higher than the second shift payment. In this instance, where attendance

is a problem, the Fact Finder believes that the third shift differential should be higher than the second shift differential and recommends \$.25/hr.

Two final points need to be addressed. The County offered a differential of \$.20/hr for all hours worked on the weekend. Since the Fact Finder has recommended a modification of the County's offer, the Fact Finder believes that the parties should discuss this offer. Because it works to the benefit of all employees, there is no reason for the Union to reject the offer if it is still on the table. The Fact Finder believes that it is reasonable and should be entered into the contract.

A second modification to the wage article is that the County wishes to pay newly hired nurse aides \$7.25/hr immediately. While this is above the current contractual rate, the County believes that it must raise the wage offer to nurse aides to attract qualified employees. There was no objection from the Union to this proposal and the testimony showed that no current nurse aide is paid less than \$7.25. Given all the circumstances surrounding this issue, the Fact Finder believes that the County's position is reasonable and recommends acceptance of this modification.

Finding of Fact: The data show that the Portage County employees are neither overpaid nor underpaid when all the evidence is examined. In addition, both sides have submitted language on a shift differential, and a shift differential is needed at the nursing home as a way to encourage workers to bid on the second and third shifts.

Suggested Language: The wage scales listed in Article 30 of the current contract shall be amended to show a wage increase of 3% in the first contract year, 3% in the second

contract year, and 4% in the third contract year. The wage increase shall be retroactive to July 1, 1998.

Suggested Language: Section 30.05 (new)

A shift differential of \$.20/hr shall be paid to all employees whose regularly scheduled shift is between the hours of 3 PM and 11 PM (the afternoon shift). A shift differential of \$.25/hr shall be paid to all employees whose regularly scheduled shift is between the hours of 11 PM and 7 AM.

Issue: Article New Welfare to Work Initiative Participants

Union Position: The Union demands the inclusion of language into the contract that limits the ability of the nursing home administration to use welfare recipients to perform work usually performed by bargaining unit employees.

County Position: The County rejects the union's demand, and insists on the right to use welfare recipients in certain instances.

Discussion: The Union demand is an attempt to keep bargaining unit work for bargaining unit members. The Union fears that the nursing home administration, in an attempt to reduce cost, may use welfare workers as custodians and/or housekeepers. In support of its demand, the Union presented the Department of Human Services contract which contains the language the Union proposes for the Nursing Home contract.

The County argued that the Federal Government mandated a "welfare to work" program. Therefore, the County contends that it must use these workers. The County believes that the Department of Human Services contract is not a precedent because DDS

personnel require a college education to do their jobs along with experience in the field, job skills that welfare recipients do not have. The County claims that the same situation would apply to nursing personnel employed by the nursing home. However, the County claims that there are times when welfare/workfare workers might do housekeeping or manual labor. The County did state that it has no intention of allowing welfare/workfare recipients to take bargaining unit work.

The County's main concern is the prospect of grievances. The County believes that if it assigns welfare/workfare workers to do any work, it opens itself up to grievances filed by the Union membership over staffing levels, overtime assignments, etc. Consequently, the combination of the real prospect of grievances coupled with a federal mandate leads the County to reject the Union's demand.

This is an issue that has valid and cogent arguments to support each side's position. The Union has legitimate concerns that bargaining unit work will be taken by non bargaining unit employees. At the same time, the County has real concerns about its position federal government and the current nursing home staff.

The Fact Finder believes that this is an issue that turns on the exact language of the proposed article. The Union must be offered some protection for bargaining unit members, but the nursing home administration cannot be hamstrung in its attempt to meet federal regulations.

The Union membership has a legitimate interest in job security. It is unreasonable to expect that the Union membership will willingly agree to any plan that may lead to work being "contracted out," and the current contract contains a clause to protect the

membership from that eventuality. This clause provides some job security for the membership. At the same time the clause allows the nursing home administration to contract out work in certain circumstances.

Article 35, Section 01 defines two cases where contracting out is allowed. These are situations that require 1) special skills, or 2) extensive work that requires outside intervention. Section 02 states that contracting out shall not be done for purposes of eroding job classifications, the work week, or rates of pay. The clause further states that contracting out cannot be done to avoid hiring full time personnel.

The situation discussed here is analogous. The result is that management's legitimate desire to provide employment opportunities for welfare recipients can be accommodated under language similar to the wording of Article 35. The major difference is that the welfare/workfare workers have little human capital (skill.) That is, the special skills language in Article 35, Section 01 is inoperative.

Practically, this means that the nursing home could always have some welfare/workfare personnel available to perform assignments that are either not being completed or jobs that are not being completed in a timely manner. If the Union membership desires to have no welfare/workfare personnel on call, then the membership must be able to complete all the required work, regardless of the disagreeableness of the task, in a timely and efficient manner. It is clear that absenteeism and employee turnover will have an impact on the need for such workers.

Finding of Fact: The Union membership has a legitimate interest in maintaining the integrity of the bargaining unit. The parties have already agreed to contracting out language to achieve the same goal.

Suggested Language: Article New

01. The Employer reserves the right to utilize welfare/workfare personnel in situations where necessary work is either not being performed or not performed in a timely manner or in such cases where the work is of such an extensive nature that, in the Employers sole discretion, performance by bargaining unit members is not practical.

02. The use of welfare/workfare personnel shall not be done for the sole purpose of reducing the employees' work week, or hourly rates of pay, or eroding of job classifications.

03. The Employer agrees to notify the Union in the event welfare/workfare personnel are utilized.

The use of welfare/workfare personnel shall not be prohibited where such use in to maintain staffing efficiency and patient care,. but will not be used to avoid hiring.

Issue: Article 39 Vacancies, Job Posting and Job Assignments

Union Position: The Union has proposed some language changes in article 39, but essentially the Union is satisfied with the status quo.

County Position: The County wishes to rework the current scheduling system to give the nursing home administration more flexibility to assign personnel to certain tasks.

Discussion: This issue along with the wage issue are the major issues dividing the parties. The nursing home consists of five wings and, given the around the clock nature of the operation, three shifts. Consequently, there are fifteen possible job assignments, i.e., five wings times three shifts. During the last round of negotiations, the parties changed the job bidding procedure to a system where a person could bid on a wing and a shift. This became their “job”.

The Director of Nursing claims that this system has created an administrative nightmare in her department. Because the nursing staff in extended care facilities is extremely mobile, there are always job openings. Whenever a job opens, it is posted and filled by bid with the most qualified senior person getting the job if there is more than one bidder. Of course this leads to another job opening which leads to another posting and another round of bidding, etc. In theory any opening might lead to fifteen separate job assignments.

A second factor enters the equation at this point. Again, according to the Director of Nursing, the most experienced (most senior) nurses are bidding into the best jobs. Of course, this is exactly what this type bidding system encourages. However, in this case there is an unintended side effect. The best jobs in the nursing home are often in a wing where the patients need the least care. The worst jobs are in the wings where the patients need more attention. Consequently, the most experienced nurses are attending the patients who need the least care on average, while the least experienced staff are attending the patients who need the most care.

Again, according to the Nursing Director, this has led to another unintended effect. Each nurse now has a wing/shift assignment, a unique job. According to the testimony, this has led to a situation where the nursing staff will not help out in other areas of the home because "it is not my job." This has the potential to affect patient care. For the reasons enumerated above, the nursing home administration, especially the Director of Nursing, want to change the bidding process. It should be pointed out that the current system is not creating severe problems in housekeeping or custodial services. The major problems center in the nursing function.

Not surprisingly this is a standard problem in organizations where bidding systems such as the one in place at the nursing home are used. The most senior staff, who are usually also the most qualified employees, always bid for the best jobs; this is one of the major benefits of a bidding system. Such a system always leads to a number of moves within a division or department. Therefore, the problems faced by the nursing home are standard under a bidding system where seniority is a contributing factor.

Moreover, the problems facing the Director of Nursing, multiple job postings and numerous job bids, have been faced by many other administrators and remedies have been devised. Most organizations, including both unions and management, find that they must address the problem because no system can function smoothly when there is a never-ending series of job changes.

There are a number of ways that firms have dealt with the issue. One is a bidding day. In this scheme everyone gets to bid on certain days. If a job opens between bid days, it is filled temporarily. The proposal put forth by management is a variant of this scheme.

Another way to address the problem, and the one recommended in this instance, is to limit the bids. Under this plan the bidding chain is halted at a preselected point, and any other job opening is filled by management. In this instance when a job comes open, it is posted and filled by bid. This creates a second opening that is also posted and filled by bid. This creates a third opening that is not posted and which is filled by the Director of Nursing. Under this plan the employees have the right to bid for a better job and seniority plays a role in job selection. However, the never-ending rounds of bidding stops and the Director of Nursing is able to fill jobs with the person she selects.

This plan does not fully address the issue of the most qualified (most senior) employees getting the “best jobs.” However, seniority does give an employee certain privileges. In the prior negotiations the parties bargained a system that meets the union’s needs and which the union membership wishes to keep in place. Management feels the system does not meet its needs. Rather than changing the system in its entirety, the Fact Finder believes the system should be modified to meet some of management’s concerns.

The Fact Finder is aware of the County’s concerns about patient care. However, the new nursing facility will have a different floor plan, and the parties have negotiated a shift differential into the current contract which may affect the bidding process; therefore, to change the current system in its entirety might create further unintended problems. If the modifications proposed here do not work in the new facility, then the next round of negotiations can reexamine the subject.

The Union also presented a number of language changes on this issue. Given the discussions surrounding the issue, a number of minor modifications are in order. The

parties had long discussions about absenteeism. As a way to encourage attendance, the Union proposed changing the language in 39.03 to stress attendance as a contributing factor to job advancement. However, the parties decided to keep the current attendance policy in place, and the changes suggested by the Union to 39.03 do not seem warranted given that fact. The other proposed change to Section 39.03 would increase the weight seniority has on job bidding. The change is reasonable from the Union's perspective; however, given the problems that have surrounded Article 39, this change cannot be agreed to by management. Therefore, the Fact Finder cannot recommend its inclusion into the contract.

The other change in 39.08 suggested by the Union might actually increase job mobility within the home. Given the problems this article has caused, any language change that increases job movement cannot be accepted. The proposed change to 39.15 is a "housecleaning detail" and should be adopted.

The Director of Nursing also indicated that she had a problem with multiple postings of the same job. In other words a job is posted and remains unfilled. After a time the Director moves to fill the job, and someone claims that they want to bid on the job and it should be reposted. These complaints have led to a situation whereby the Director is often forced to repost the same opening numerous times. The Union agreed this was never the intended impact of article 39 and proposed language to alleviate the problem.

Finding of Fact: The current job bidding procedures in Article 39 which were entered into the contract in the last round of negotiations have caused the nursing home administrative problems.

Suggested Language: Section 39.04 New. (Note all subsequent sections need to be renumbered.)

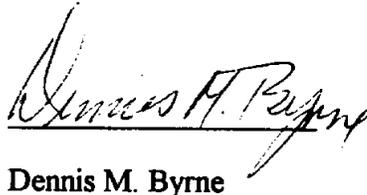
39.04 When a vacancy is filled by an internal applicant and the successful applicant's job is now vacant, that job shall be posted and bid. However in the event that a further opening is created, the nursing home administration can fill that vacancy with the person of their choice.

Suggested Language: addition to 39.01.

The Employer shall only be required to post each vacancy one (1) time per job opening.

Issue: Article 48 Duration

The parties both agree that a three year contract is desirable. Therefore, the Fact Finder recommends that Article 48 be amended to read that the contract shall become effective July 1, 1998 and expire on June 30, 2001.

A handwritten signature in cursive script that reads "Dennis M. Byrne". The signature is written in black ink and is positioned above the printed name.

Dennis M. Byrne