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STATE EMPLOYMENT  
RELATIONS BOARD

Jan 31 11 30 AM '00

IN THE MATTER

OF

FACTFINDING

BETWEEN

CLERMONT COUNTY COMMISSIONERS,  
DEPARTMENT OF HUMAN SERVICES

AND

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES  
(AFSCME), OHIO LABOR COUNCIL 8, LOCAL 3536,  
AFL-CIO

Hearing: January 12, 2000  
SERB Case Nos.: 99-MED-10-1028  
Date of Report: January 28, 2000  
Issue: Factfinding

Union Representative:

Walter Edwards  
Staff Representative  
AFSCME Ohio Council 8  
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Cincinnati, Ohio 45229

County Representative:

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REPORT AND RECOMMENDATIONS

Michael Paolucci  
Factfinder

### Administration

By letter dated December 1, 1999, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as factfinder for the Parties. On January 12, 2000, a hearing went forward in which the Parties presented arguments and documentary evidence in support of positions taken. The record was closed at the end of the hearing on January 12, 2000, and is now ready for a factfinding report.

### Factual Background

The Employer is the County Government of the county contiguous to the eastern part of Hamilton County, Cincinnati, Ohio, and is responsible for the administration of benefits to citizens who qualify for benefits of financial and other social services; its approximately forty five (45) bargaining unit employees are represented by the Union. The bargaining unit includes social workers, investigators, income maintenance workers, counselors, data processors, and systems coordinators. Prior to the beginning of the hearing, mediation was inquired into by the factfinder, but upon advice of both Parties, it was determined that such efforts would not be worthwhile and a hearing was held. During the factfinding hearing on January 12, 2000, approximately six (6) Articles were at issue with some of the Articles having multiple issues contained within. The Articles presented at the hearing are as follows:

1. Article VIII - Change term "Discipline" to "Corrective Action";
2. Article XIII, Section 3 - Compensatory Time off;
3. Article XVIII, Section 2 - Sick Leave, Maternity Leave and FMLA;
4. Article XIX, Section 2 - Accumulated Sick Leave usage and Term of Agreement;

5. Article XXV - Health Insurance;
6. Article XXIX, Section 2 - Wages.

Each issue will be handled below.

Section 4117-9-05 of SERB's administrative rules addresses the issues that a factfinder must consider when making recommendations. That section, in pertinent part, reads as follows:

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

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

The issues will be addressed separately giving consideration to all of the required factors.

## **1. ARTICLE VIII - CHANGE TERM “DISCIPLINE” TO “CORRECTIVE ACTION”**

### UNION POSITION

The Union proposes that the term “Discipline” be deleted and replaced with the term “Corrective Action” wherever it occurs in Article VIII. It believes that the term “corrective action” more accurately reflects how misconduct should be managed. It argues that the term “discipline” improperly construes the purpose of such management action by focusing on the punitive aspects rather than the need to correct behavior. As such, it asks that the more appropriate term “corrective action” be used.

### COUNTY POSITION

The County contends that changing the term from Discipline would lessen the seriousness of misconduct. It argues that employees who choose to act inappropriately need to know that they are being disciplined — not that corrective action is being used.

### RECOMMENDATION

This seemingly esoteric issue is a little difficult since a finding for either party would have virtually no affect on the collective bargaining relationship — either in the way it is administered or in the way it affects the members. While it is agreed that disciplinary action should be first corrective before it graduates to more serious discipline, that principle is adequately conveyed by the current language. It having no affect, and the use of progressive discipline being clear enough as the language stands, there is no real reason to modify the Agreement. More important issues existing, it is recommended that this language stay as currently written.

## 2. ARTICLE XIII, SECTION 2 & 3 - COMPENSATORY TIME OFF

### UNION POSITION

The Union proposes changing the number of hours that employees may use from fifty (50) to One Hundred Sixty (160) hours. The Union argues that its members are being forced to take a large amount of compensatory time in lieu of overtime payment. As a result, many employees are being forbidden from using their compensatory time since they are only allowed to use up to fifty (50) hours. It asks that the large amount of banked compensatory time be considered in granting its proposal to increase the allowed use of compensatory time off.

### COUNTY POSITION

The County argues that it has an absenteeism problem that must be corrected. In order to achieve that goal it makes several proposals designed to reduce the problem to a more manageable size. In an attempt to address the absenteeism problem, the County proposes amending Article XIII, Section 2 by deleting "sick leave" from time considered as time worked for the purpose of determining overtime compensation.

The County argued that the client oriented type of operation it manages requires employees to be there on a predictable basis. Its inability to maintain a reasonable level of absenteeism has affected client dissatisfaction and has increased the burden on other employees who report to work regularly. As the problem applies to the use of compensatory time, reduction of the use of sick leave for calculating compensatory time will help reduce the use of sick leave.

While the County rejected the Union's proposal, it offered to delete the requirement that compensatory time be used within six (6) months. It argues that permitting the Union to gain even

more compensatory time while not allowing the County to address the absentee problem will only increase the abuse. It contends that the offer to remove the six (6) month rule would allow employees more flexibility in the use of the fifty (50) hours they now accrue. It asserts that if it is given the relief it seeks, then compensatory time limits may not be as necessary. Moreover, no matter what problem exists, it maintains that there is no reason to triple the compensatory time balance.

### RECOMMENDATION

Because of the importance of this issue and since the problem is addressed in several proposals, one recommendation will be made under Paragraph 4.

### **3. ARTICLE XVIII, SECTION 2 - SICK LEAVE, MATERNITY LEAVE AND FMLA** COUNTY POSITION

Consistent with the absenteeism problem discussed in section 2, above, the County proposes amending Article XVIII, Section 2 by making FMLA leave run concurrently with any other leave taken for a reason which would entitle a member to take leave under the Act. In the alternative, and to address the same problem, the County proposes deleting Maternity leave from Article XVIII, Section 2 if the contract is not modified to allow the concurrent running of FMLA leave. If the first proposal is adopted (time running concurrently) the County would remove the second part of this proposal.

The County contends that the Agreement is silent on the running of FMLA but that it has been its practice to run the FMLA time after other accrued time is exhausted. Since the Agreement

is silent on the issue, the matter must be bargained for. The County contends that the change it seeks will make the practice consistent throughout the County. It argues that if the FMLA leave is left in place, an employee can extend a six (6) month leave to a nine (9) month leave and push the resources of the County to its limit. It states that if the FMLA leave is made consistent with the County policy, then it will remove the Maternity Leave proposal.

### UNION POSITION

The Union contends that since its unit is made up of mostly females, then this item is of particular importance. It also contends that management has caused the amount of stress on the job to increase thus resulting in a corresponding increase in the use of sick leave. It contends that if absenteeism is a large problem, then the Employer has the contract to deal with the problem through corrective action. It contends that using these items in negotiation is the wrong method and should be rejected. It contends that the clients being served are often in a contaminated environment that results in the employees catching many illnesses. For these reasons, it asks that the sick leave be kept *status quo*.

### RECOMMENDATION

Because of the importance of this issue and since the problem is addressed in several proposals, one recommendation will be made under Paragraph 4.

4. **ARTICLE XIX, SECTION 2 - ACCUMULATED  
SICK LEAVE USAGE AND TERM OF AGREEMENT**

## COUNTY POSITION

Again because of the absentee problem, the County proposes that the Sick Leave Conversion benefit should be modified so that the amount of accumulated sick leave required before a member may convert unused sick leave days to personal leave days is increased from two hundred forty (240) hours or thirty (30) days, to four hundred eighty (480) hours, or sixty (60) days.

The County also asks that the term of the Agreement be kept at two (2) years. It asks that this be done to give it flexibility to consider various options to provide services to clients. The County intends to initiate a "pay for performance" plan for non-bargaining unit employees that, if successful, it hopes to extend to bargaining unit employees including this unit. If the term is reduced to two (2) years, it will allow the County to negotiate a pay for performance plan based on the experience it has with the non-bargaining unit employees.

## UNION POSITION

Since the problems raised are similar or are the same as those raised in Item 3 above, the Union made the same or similar arguments in opposition to changing the language.

## RECOMMENDATION

The County established that it has an absenteeism problem. The Union established that some of its members are being asked to forego some benefits that are otherwise required by contract. While the complaining employees were not altogether clear as to how prevalent or how problematic the problem is, they were able to show that at least some employees were being forced to unreasonably forego benefits through the method in which compensatory time off must be used or

when work must be done. Since the evidence was not conclusive and was certainly not specific with regard to how often; what precise benefits were being foregone; what employees were affected; and what supervisors were acting inappropriately, it is impossible to base a recommendation on these employees' perceived mismanagement. However, the record was clear enough to make some recommendations with regard to changes in the Agreement. The recommendations based on the position of both Parties is as follows:

1. It is not recommended that FMLA be modified so that it runs concurrently with any other leave. However, it is recommended that any employee who wishes to use FMLA leave only be permitted to do so under the following constraints:
  - All contractual leave benefits must first be exhausted;
  - If the time taken following exhaustion of contractual leave benefits is equal to or greater than FMLA leave alone, then only thirty (30) days of FMLA is permitted following exhaustion of contractual leave benefits;
  - If the time taken following exhaustion of contractual leave benefits is less than FMLA leave alone, then FMLA leave will be permitted for the remainder of the period in which FMLA leave alone would have provided, plus thirty (30) days if there is enough FMLA leave remaining.

Thus, where the potential use of nine (9) months of leave could be done if an employee combines FMLA leave and Maternity leave, such would only be seven (7) months. The intent in making this recommendation is to prevent the full potential nine (9) months off that an employee could take off, yet without robbing employees

of the total benefit that was previously in place. Seven (7) months is more than a reasonable period in which an employee must be gone from the job. Consequently, it is recommended that the maximum period in which an employee can be away from the job, whether it is paid, whether a portion is FMLA, or otherwise, is seven (7) months.

2. Based on this recommendation, it is also recommended that the Maternity Leave benefit remain as is.
3. It is recommended that the number of hours that an employee may use for compensatory time be increased to sixty (60) hours. All evidence indicates that a modest increase is due.
4. It is recommended that the six (6) month requirement for use of compensatory time off be deleted.
5. It is recommended that the use of sick leave in determining time worked for overtime computation be eliminated. Overtime is intended to be a penalty against the employer for working an employee more than is considered reasonable. If an employee is sick, then that is the only benefit that should be paid. To allow the time on sick leave to be counted toward overtime computation is double punishment. Overtime pay should be based chiefly on time actually worked. For these reasons, it is recommended that the use of sick leave in computing overtime be removed.
6. It is recommended that the sick leave conversion be increased from two hundred forty (240) hours to two hundred eighty (280) hours. All evidence indicates that a modest increase is due.

**5. ARTICLE XXV - HEALTH INSURANCE**

UNION POSITION

The Union proposes changing the health insurance language so that the level of benefits and premiums are not changed during the life of the Agreement. The language proposed is as follows:

“The level of benefits and premiums currently paid by the employee shall not be changed during the term of this contract unless mutually agreed to between the Department of Human Services and the Union.”

The Union makes this proposal to protect the health benefits that it has bargained for. It wants to insure that the benefits it has taken efforts to bargain for are not unilaterally changed by the Employer.

COUNTY POSITION

The County argues that the Union is adequately protected by the current language since bargaining unit employees are guaranteed to receive the health care benefits that all other employees, including management employees, receive. Since management will not make changes that hurt management’s own health care unless such is absolutely necessary, then the County contends that the health benefits for the bargaining unit members are adequately protected.

RECOMMENDATION

It is recommended that the current language be maintained. While the Union’s interest in keeping the health care benefits at a certain level is legitimate, the language in place adequately

protects the Union while at the same time maintains flexibility for management. The true risk of being hit with unexpected health care costs are lessened when management will be hit with the same such changes. Moreover, the ability of management to bargain for all of its employees at the same time is critical for it to be able to keep costs down. Therefore, the interest of management in keeping all employees together outweighs whatever interest this unit has for keeping the benefits stagnate. For these reasons, it is recommended that the current language be kept as is.

**6. ARTICLE XXIX, SECTION 2 - WAGES**

**COUNTY POSITION**

The County asks that the wage increase be a 2% general wage increase for each year of a two (2) year contract.

The County has proposed a pay for performance plan that the Union has flatly rejected. It believes that the pay for performance plan would increase employees level of performance that the flat wage increases now in place do little to promote. In addition, this unit's pay when compared to similarly situated employees in nearby counties shows that they are the highest paid. Based on their current comparative salaries, the County argues that a cost of living increase is the only justified increase. Since the past two (2) year cost of living has only been about 2%, then it argues that it is the only wage raise that is justified.

As it regards the 6% wage increase that management employees received, the County points out that the wage increase was for the past two (2) years of work in which management received no wage increase. To make up for lost time, the County gave management one 6% increase.

## UNION POSITION

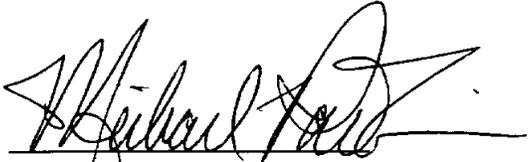
The Union asks that it be paid a 6% general wage increase for each year of a three (3) year contract. It contends that the County's offer is extremely low. Since management employees recently received a 6% wage increase, then it asks for the same amount.

## RECOMMENDATION

It is recommended that a 3% wage increase in the first two (2) years of a three (3) year contract be made. This is intended to be based on a cost of living increase with a cushion in the event that the cost of living in the area is higher than the previous two (2) years. In addition, it is based on the historical raise for the last three (3) years in the amount of 3% each year. Moreover, since the County wants the flexibility to open the issue of wages and pay for performance after two (2) years, it is recommended that a wage and pay for performance re-opener be included. This will not leave the entire contract open for renegotiation, just the potential for bargaining for the pay for performance based on its success or failure with other non-unit employees.

However, the right to reopen negotiations comes with a cost. Here, the cost is a wage increase that is higher than what otherwise might be justified based on the evidence submitted. However, based on the cost of living; accounting for some cushioning in the event of higher than expected cost of living; and to pay for the right to reopen the issue in only two (2) years, the 3% wage increase is recommended.

January 28, 2000  
Cincinnati, Ohio



Michael Paolucci