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STATE EMPLOYMENT
RELATIONS BOARD

2003 MAY 23 A 10: 28

IN THE MATTER OF CONCILIATION

BETWEEN

OCSEA/AFSCME Local 11 (Unit 3)

AND

STATE OF OHIO

BEFORE: Robert G. Stein

Conciliation

Hearing held April 17, 2003

PRINCIPAL ADVOCATE(S) FOR THE UNION:

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AND

PRINCIPAL ADVOCATE(S) FOR THE STATE:

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INTRODUCTION

Bargaining Unit 3 consists of 8,474 members. The positions included in Bargaining Unit 3 are as follows: Shooting Range Attendant, Correctional Firefighter, Security Technician 1, Security Technician 2, Psychiatric Attendant, Psychiatric Attendant Coordinator, Security Officer 1, Security Officer 2, Juvenile Correctional Officer, Correction Officer, Correction Sergeant/Counselor, Youth Leader (Blind/Deaf School)

In early 2003 the parties went to fact-finding and the distinguished Arbitrator, Dr. Harry Graham, presided over the proceedings. It must be stated for the record that the economic climate in which these negotiations took place are a far cry from the boom time of the 1990s. For many bargaining unit members and managers alike, current conditions represent an abrupt change from "business as usual" when it comes to contract resolution. It is in this climate that Unit 3 of OCSEA rejected Dr. Graham's report and proceeded to conciliation. The remainder and majority of the OCSEA bargaining unit, as well as management, did not reject the Fact-finding report.

In matters of conciliation it has been well established since the passage of ORC 4117 that conciliation is a process by which the parties narrow their differences and attempt to resolve what was not settled in Fact-finding. In this narrowing process the undersigned Conciliator reviews the recommendations of the Fact-finder providing the following: (1) they are based upon essentially the same facts; (2) they follow the statutory guidelines; (3) they are free of error; and (4) they represent sound reasoning in a collective bargaining context. The late Dr. John Drotning, a distinguished Ohio Arbitrator and Mediator established this approach to conciliation in one of the first conciliation awards issued under ORC 4117. In following the guiding principles first established by Dr. Drotning, the undersigned Conciliator will seriously consider the recommendations in Dr. Graham's report.

In order to expedite the issuance of this Award, the Conciliator shall not restate the actual text of each party's proposal on each issue but instead will reference their Position Statements. The Union's Position Statement shall be referred to as UPS and the Employer's Position Statement shall be referred to as EPS. The State will be referenced as "Employer" or "State." The Union will be referenced as "OCSEA" or "Union." Rationale and evidence proffered by each party will be considered in its entirety, but summarized in this Award for purposes of efficiency. Issues covering the same general area will be grouped together.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (G) (7) establishes the criteria to be considered for conciliators. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements, if any, between the parties;
2. Comparison of issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interests 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. The stipulations of the parties;
6. Such factors not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, conciliation, or other impasse resolution procedures in the public service or in private employment.

These criteria provide the basis upon which the following recommendations are made:

20.03 – Health Plan Characteristics**Union's position**

SEE UPS

Summary of Rationale

Future health care increases will not be as steep as thought. The 2003 Segal Health Plan Cost Trend Survey projected health care premium cost increase for the midwest for PPOs is 12.6% for 2003 and 13% for HMOs. Throughout bargaining, the state had estimated the future increase for July 2003 to be closer to 19%. A more realistic figure is probably around 13%. This figure is dramatically reduced by the changes we made to plans. In these negotiations the union has agreed to increases in the plan document for BU3 employees that will save money:

1. Added a formulary to the drug plan and requires employees to pay the difference between name brand and generic drugs when generic is available
2. Increased the emergency room co-pays
3. Increased out-of-pocket maximum
4. Doubled the amount of co-insurance employees will pay

The total savings for instituting these changes for BU 3 is \$8.5 million in the first year of the contract. In addition, the agreement between the union and the state for the other 8 bargaining units will save the state another \$33 million in the first year alone. Thus the total savings derived from these changes for all units will save the state \$42 million in premium in the first year of the contract. We know that for the non-BU 3 employees the premium increase is just around 2% for the benefit year that starts July 2003.

A number of the changes the union has agreed to are no small concessions. By adding a formulary to the Ohio Med plan, our members will have to sift through formulary lists to make sure their doctor is prescribing from the formulary. This is a major change for over 40,000 state employees.

Other savings in future premium increases can be anticipated due to negotiated language that calls for greater wellness initiatives for state employees. Finally the union has agreed to a number of changes in the contract that may open up more competition from HMOs, which should further reduce premium costs.

2. *The Ohio Med PPO Health Care fund has been rebuilding and is healthier than it was 12 months ago. Additionally, by comparison, the cost of the health plans for state of Ohio employees is less than for other public sector employees. The union will present data that shows the health care fund is in a better position than it has been. The union will also show that by comparison with other public employers, the state pays less to provide health care for its employees.*
3. *The State could have saved money by self-funding the mental health benefit. By failing to follow the advice of its experts and the Joint Health Care Committee, the state lost an opportunity to save money by self-funding the mental health benefit.*
4. *The state has failed to take a leadership role in health care. While other states are forming multi-state purchasing coalitions, Ohio has done nothing. State of Ohio employees should not have to pay for this lack of vision on the part of the state. There have been any number of initiatives across the nation to reduce health care or drug costs. States like Michigan, Maine, Maryland, Vermont and Oregon have all been in the newspaper for instituting or at least attempting to institute sweeping changes in how health care is structured in their states. For over a year the union side of the JHCC has advocated that the state look into any number of innovative strategies. Had the state taken a leadership position on health care, significant savings might have already been achieved.*
5. Despite repeated requests from the unions who make up the JHCC to create a wellness initiative for state employees, the state failed to initiate any meaningful wellness programs. The union will show that these programs have a proven record of reducing claims costs and thereby reducing premiums. Had the state acted on the recommendations from its health care consultants and the JHCC, it could have realized substantial savings on the health care costs and thereby reduced premium costs.
6. Over the past three years the union has agreed to a number of programs that save the state money in health care costs. The union will demonstrate that the JHCC has agreed to a number of changes in the plans, like prior drug authorization programs and disease management programs that have saved and will continue to save the state money on the costs of claims.
7. BU 3 employees have already taken a big hit in the mediation settlement. The changes agreed to, such as the formulary, increased co-insurance, increased out-of-pocket maximum, increased employee co-pays for emergency room visits and having members pay the difference between certain name brand and generic drugs when a generic is available, will cost BU3 employees a lot. The impact of these changes is significant, and at a time when the state has offered no pay increases and is seeking to freeze steps and longevity, this impact is magnified. Employees

will see significantly increased out-of-pocket costs each year of this contract. To also ask employees to pay more of the premium is unfair.

8. State of Ohio employees already pay a greater share of the premium than most of the Great Lakes States' employees. The union will demonstrate that, by comparison, state of Ohio employees already pay more than most Great Lakes State employees.
9. The impact of a premium increase to 20% or even 15% would be severely felt by our members. The state's proposal of increasing the employee's premium share will significantly reduce employee's take home pay. This July the average employee will pay \$81 a month for family coverage. An increase of the employee's premium share to 15% for the employee will cost just under \$500 more a year. An increase of the employee's premium share to 20% would double that to just under \$1,000 more a year. This is a significant loss of take-home pay. These figures do not take into account the increase in premiums that are likely to occur, which of course would make the employee's share of the premium even higher.
10. The conciliator's award must result in a balanced total agreement for state employees. At a time when the state is seeking major financial concessions in the way of step and longevity freezes and no pay increases, it is important that the health care benefit not be severely compromised.
11. The state has finally indicated its willingness to make some sweeping changes to health care (like multi-state drug purchasing, wellness etc.). These changes can produce significant savings. Rather than implementing a change in the premium share, the state should let some of these innovative changes have an opportunity to reduce premium.
12. Health care is the number one priority of this union and the other unions who are represented on the JHCC. In every poll the union has taken, health care was ranked as the number one priority of our members. It is important that the conciliator's award factor that in.
13. The main issue here is one of how does the current office co-pay compare to what other public employees pay. The union will demonstrate that most other Great Lakes States' employees pay a lower annual deductible than what the state of Ohio is seeking. Other large public employers in Ohio also have lower annual deductibles than what the state is seeking. The union will further argue that to increase the annual deductible may discourage employees from seeking treatment. This could exacerbate medical conditions that in the long run will end up costing the plan more money.

14. The main issue here goes beyond how the current drug co-pays compare to what other public employees pay. The union has already made a number of changes in the plan documents that will cost employees a substantial amount of out-of-pocket expenses. The union also agreed to add a formulary to the Ohio Med PPO and the one HMO that did not have one which will save the state money. A formulary adds major restrictions to those drugs employees can have. Most great lakes states' PPO plans do not have a formulary. To ask the union to also agree to higher co-pays is simply too much. Increasing drug co-pays will discourage some employees from taking much-needed drugs. This will lead to increased hospitalization and emergency room visits, which will add unnecessary costs to the plan.
15. The main issue here is one of how does the current office co-pay compare to what other public employees pay. The union will demonstrate that \$10 is, in fact, the average office co-pay paid by Great Lakes State employees, Ohio non-state public employees and private sector Ohio employees. The union will also demonstrate that the savings generated by increasing the office co-pay is relatively small to the state. The union will further argue that to increase the office co-pay unfairly disadvantages employees using the lowest, most cost-effective level of medical treatment. By doing this employees will be discouraged from using the benefit and may not get much needed preventive care which in the long run saves the plan money.

Employer's position

SEE EPS

Summary of Rationale

The ever-increasing cost of healthcare insurance is making it necessary for employees to share a greater burden of these costs. Prior to 1992, State employees paid fifteen percent (15%) of the healthcare costs. At that time, the State's healthcare costs approximated \$250,000,000. Today the costs are approaching \$500,000,000, double the amount of ten (10) years ago.

In 1994, the State reduced the employee's share to ten percent (10%) in return for certain concessions in coverage, HMO limitations and the use of a statewide average for HMO costs. These changes resulted in the State's share of the costs going down, even with the increase in its percentage share. It took five (5) years for the cost to return to its previous level. It has, now, almost doubled. This year, the cost increased approximately \$71,000,000. The State simply cannot afford additional increases of comparable amounts without employees paying a greater share.

In consideration of the ever increasing costs, the Union agreed to various plan changes which increased deductibles, co-pays, co-insurance and out of pocket maximums, etc. These changes are included in a tentative agreement on plan changes and are also contained in the Employer's last offer proposal, which was recommended by the Fact-finder. Accordingly, the Employer's position on these issues should be ordered by the Conciliator.

Discussion

There are two major factors supporting the Employer's position. One factor is the fact that the parties reached tentative agreement on the issue of the health care plan redesign. It was not an issue that reached impasse and had to be recommended by the Fact-finder. The second major factor in the Employer's favor is that the Fact-finder's reasoning is sound regarding an increase in employee premiums in the third year of the Agreement.

I concur with Dr. Graham's findings that the comparable data is at best mixed. Projecting the cost of healthcare increases is tantamount to picking a winning horse at Scioto Downs. Will it increase by 13%, 5%, or 35%? As concluded by Dr. Graham, health cost cannot be anticipated to cease their upward trend. The talk is never how much they will go down or stay the same, but rather it is how much they will rise. This is in stark contrast to a national economy, that according to Alan Greenspan, may be teetering at the brink of deflation. This is an economy in which major auto makers are forced to continue to offer no-interest financing in order to sell cars.

The prescription drug component of healthcare is leading the way in terms of cost. The national dialogue is once again beginning to become more pronounced regarding the cost of prescription drugs. Whether there is the will or means to make any tangible headway in controlling healthcare costs is anyone's guess.

In the meantime, all employers and unions can do is cope and take specific measures to control costs. OCSEA has been a leader in aggressively addressing healthcare coverage for its members. The Union and the State of Ohio have had a model Joint Health Care Committee (JHCC) for over 16 years. It has proposed many changes to health care coverage in order to control costs and remain ahead of the rapid changes indicative of this field. Certainly more could be done and I concur with Dr. Graham's notation that the State needs to implement wellness programs that the Union cited as a cost reduction factor. This collective expertise led to a tentative agreement that brought about plan design changes in order for employees to continue to have adequate health care coverage. It is recognized that out-of-pocket-expenses for all Unit 3 employees will rise. However, all non-Unit 3 employees who are members of OCSEA have already accepted these changes. Internal comparability is an important factor in these matters. Reason and cooperation are the mainstays to weathering the current health care storm. The agreed upon benefit changes, while not easy to make, are a product of the JHCC and should be respected as a result of the best Union and Managerial thinking.

The Union contends that the 19% predicted cost for healthcare is too high. It predicts PPO and HMO costs will rise between 12% and 13%. However, year after year increases of 12% will

have a significant cumulative impact on benefit costs. Consider for a moment what impact an annual increase of 12% would have on the cost of a new Ford truck that currently costs \$25,000. Using the "Rule of 78s," an annual 12% increase in the price of the truck in as little as six (6) years would result in it costing \$50,000. No one likes having to pay more for health care coverage; however, what Dr. Graham has recommended is not unreasonable. It is not unusual to find public and private sector employees paying 20% of their own premiums. There is a substantial majority of public employees in Ohio who pay a portion of their health care premiums, and the trend in that direction continues. As cited by Dr. Graham, employee health premiums among the Great Lakes States currently range between 0% and 18%. Dr. Graham's decision is based upon the economic realities of increasing costs. He maintains the 90/10 ratio for two years and changes it to an 85/15 ratio in the third year. This maintains Ohio employees in relatively the same position with other Great Lakes states, and there is no way of guaranteeing how many of those states will move toward a greater employee premium share in the future. Moreover, there is bargaining history prior to 1992 that demonstrates that Unit 3 as well as all non Unit 3 employees were responsible for paying 15% of their health care premium. Finally, from the standpoint of internal equity it is significant that the majority of the OCSEA bargaining unit outside of Unit 3 accepted the Fact-finder's report. And, if past history is an indicator, there will be pressure to perpetuate this pattern among smaller bargaining units in the state.

Award

ISSUE I AND II

The position of the Employer (consistent with the Parties' tentative agreement and the Fact-finder's recommendation) is awarded.

ISSUES III , IV, ARTICLE 36 GENERAL WAGE INCREASE, STEP MOVEMENT,

Union's position

SEE UPS

Summary of Rationale

1. The state's financial position does not give it an ability to pay increases in employee compensation in the first fiscal year of the contract.

The Union adopts the Fact Finder's recommendation on this issue.

2. The state's financial position is likely to improve during the term of the contract and the state's improved position will allow a modest pay increase later in the contract.

In examining the state's ability to fund a wage increase for its employees there are two important factors to consider. The most important is the national economy. In this instance, the national economy is showing signs of recovery for the future. Forecasters predict that prosperity will return. The second factor is the condition of the state economy. Ohio's economy is doing about the same as the national economy.

3. OCSEA has collaborated with the state to save money and should share in the gains realized.

The state and the Governor readily admit that the Quality Services Through Partnership Program saves the state and its taxpayers many millions of dollars each year. The activities of the Joint Health Care Committee continuously save the state millions of dollars by cooperatively seeking the best health care at the lowest possible cost. The Work Force Development Program, which was initiated and partially funded by the Union, has helped the state maintain a highly qualified work force in times when education is paramount to the task of delivering services to the citizens of Ohio. The cooperative posture of the Union should be rewarded with a reasonable wage increase.

4. The pay freeze offered by the state lags behind pay increases given by other states. *Several states have negotiated raises for the period of time covered by these parties' negotiations.*

1. The state's financial position does not give it an ability to pay increases in employee compensation in the first year of the contract.

The Union adopts the Fact Finder's recommendation on this issue.

2. The state's financial position is likely to improve during the term of the contract. The state's improved position will allow resumption of step increases in the second year of the contract.

In examining the state's ability to fund step increases for its employees there are two important factors to consider. The most important is the national economy. In this instance, the national economy is showing signs of recovery for the future. Forecasters predict that prosperity will return. The second factor is the condition of the state economy. Ohio's economy is doing about the same as the national economy.

3. The step increase compensation system has been in place since before the parties first engaged in collective bargaining pursuant to O.R.C. Chapter 4117 and should continue.

Step movement is a fundamental part of the state's compensation system. It allows new employees to slowly work their way up the ladder as they become more experienced. Before the fact finder three years ago, the employer argued strongly that it needed a new evaluation system tied to step movement. The

argument was that step movement would be a tool to foster better job performance. The employer even took away a step from the lower pay ranges so it could be added to the higher pay ranges. The argument was that the employer needed the extra step to entice and keep highly qualified employees.

The employer's proposal permanently reduces the pay scale for the entire bargaining unit. Once again the employer is arguing for a massive pay cut for the state's workforce. Although the employer hinted that the deletion could be temporary, they never advanced language to that effect or bargained with OCSEA related to the issue. The state is once again offering a permanent solution to a temporary budget problem and, furthermore, proposing a contract change

Employer's position

SEE EPS

Summary of Rationale

Simply put, the State has no money for increases in wage rates. The State is experiencing significant budgetary problems due to the bad economic climate in the United States. As a result the State has laid off numerous employees, shut institutions, frozen wage increases for exempt employees, and drastically limited hiring. Furthermore, the State will be closing more prisons and other institutions in order to balance next year's budget. There is no possibility of any form of immediate wage increase in the next biennium budget.

The Fact-finder reviewed the Employer's and the Union's arguments and recommended no general wage increase for the first and second years of the Agreement. The Union has not demonstrated any error by the Fact-finder. Accordingly, the Employer's position of no general wage increase for the first two years of the Agreement should be ordered by the Conciliator.

Due to the serious economic shortfall, it is impossible for the State to award step increases as they total approximately \$35,000,000 in costs each year. Hence, the proposal freezing step movement.

The Fact-finder reviewed the Employer's and the Union's arguments and recommended no general wage increase in the first and second years of the Agreement. Along with no general wage increase, the Fact-finder recommended no step movement in the first and second years of the Agreement. This is principally due to the Employer's demonstrated inability to fund any increases in personnel costs. The Union has not demonstrated any error by the Fact-finder. Accordingly, the Employer's position on freezing of step movement for the first and second years of the Agreement should be ordered by the Conciliator.

Discussion

The Fact-finder recommended no wage increase during the first and second year of the Agreement. He recommended a 2% lump sum ratification payment (based upon an employee's top step of the pay range which the employee is on as of December 1, 2004) in the first pay check of December, 2004 and a 4% wage increase for the third year. Dr. Graham also recommended a freeze on step movements from July 1, 2003 through June 30, 2005. The Union proposes having steps resumed on July 1, 2004 instead of July 1, 2005. The Employer adopts the Fact-finder's recommendation as its position.

From the evidence presented at the hearing and from the general state of the economy (factors generally considered in negotiations) I must concur with Dr. Graham's conclusion that "*The fiscal condition of the State is dreadful*" (p. 16 of FF Report). This conclusion was substantiated during the conciliation hearing by Jack Hersey, Deputy Budget Manager for the State. The Union's spokespersons, Richard Levin, consultant and Joshua Miller, AFSCME economist, spoke of a predicted turnaround in the economy and the prospect that Ohio's economy will recover during the life of the proposed Agreement. However, they did not disagree with the Employer's assertion that Ohio is currently in difficult financial straits.

During the past three (3) weeks the Stock Market has been rising at a modest rate. However, other indicators of the economy's health do not support the Union's optimism. On May 4, 2003 the Department of Labor reported that the national unemployment rate rose to 6%, the highest rate in eight (8) years. The Federal Reserve has cut the short term interest rates numerous times since early 2001 to stimulate the economy, yet during the past three (3) months, the Department of Labor reports that the economy lost an additional 565,000 jobs. It also has been widely reported that what profits businesses are reporting (save a few) have come from cost cutting and layoffs and not increased sales or productivity. One of Ohio's premier employers, Longaberger Baskets, laid off 461 employees in late April. On May 16, 2003 it laid off an additional 150 employees (Beacon Journal May 17, 2003). The State of Ohio has contributed to these statistics in a major way by closing prisons and laying off employees across the state in other agencies. These cuts have been made just to balance this fiscal year's budget. What's in store for the upcoming fiscal years is at best uncertain and at worst more sacrifice until the economy can recover.

The Fact-finder's recommendations for no wage increases for the first two years and a lump sum payment of 2% in December of 2004 is admittedly a vast change from the past contractual increases. From a personal perspective it is a bitter pill to swallow. However, as Dr. Graham stated, "*The present situation is a complete reversal of that of three years ago*" (p. 16 of FF Report). These are difficult times similar to the severe economic downturn experienced by the State when Governor Rhodes was in office. Since Dr. Graham's report was issued, there have been no notable changes in the national economy and in particular in the state economy. The one very bright spot is the success of the United States in the war with Iraq; however, that has not translated into a perceptible economic boom for Ohio as of the date of this Award. If anything, the prospects for improvement in Ohio's fiscal crisis have somewhat dimmed as the Governor's office and the state legislature struggle over how to balance next year's state budget and how to

generate additional revenue. Dr. Graham did not err in his report, and I find he applied the statutory criteria in a very balanced way by making well-reasoned recommendations in a very difficult economic climate.

The silver lining among all of this dismal financial news, if one can label it as such, is the fact that the consumer price index has remained under 1% for the past six (6) months (D.O.L news release 5/16/03). With few exceptions such as health care, prices have been fairly stable. The members of non-Unit 3 OCSEA bargaining units did not reject (therefore accepted) the Fact-finder's recommendations, and this internal comparable is significant in this matter.

Award

ISSUES III AND IV

The position of the Employer is awarded (consistent with the Fact-finder's recommendation).

ISSUE V - ARTICLE 36.06 ROLL CALL PAY

Union's position

SEE UPS

Summary of Rationale

1. Deletion of the Article raises security concerns in the prisons and juvenile corrections facilities.

Roll call is an accepted practice for security in the prisons. The shifts must overlap so that there will be uninterrupted supervision of inmates during shift change. It is also used to exchange information between outgoing shifts and newly arrived officers concerning security problems that arise during the day.

2. Deletion represents a permanent pay cut for corrections officers.

Roll call pay originally came to the table many years ago during discussions about hazardous duty pay. The roll call pay formula was agreed to settle the hazardous duty issue. At a time when the state is closing prisons the result is more inmates per prison and increased hazard for the corrections officers guarding them. This past week we marked the tenth anniversary of the Lucasville riot. It is more than ironic that we are discussing reduction of corrections officer's and juvenile corrections officer's pay. We learned many lessons in the aftermath of Lucasville. Now ten years later some seem to have forgotten those lessons.

Employer's position

SEE EPS

Summary of Rationale

The present practice of paying thirty (30) minutes at one and one-half (1½) time, or forty-five (45) minutes, to DR&C employees for showing up ten (10) minutes before their shift is a practice that cannot be sustained in these economic times. Roll call pay's costs to the Department of Rehabilitation and Correction are approximately \$18,000,000 each year. Changing the payment to straight time will reduce the forty-five (45) minutes to thirty (30) minutes and reduce the cost of roll call pay by one-third (1/3) or \$6,000,000. Additionally, this is a very abnormal benefit, as a survey of other public employers in the state clearly demonstrates that roll-call pay is rarely paid. Lastly, it is highly inappropriate to pay one group of employees within the same bargaining unit a greater sum of money for doing the same thing. Accordingly, the Conciliator should grant this proposal to the Employer.

Discussion

With regard to this issue, I disagree with the Fact-finder's recommendations after considering all the data that expose a fundamental disparity between Correction Officers from DYS and DR & C. In conciliation, the Employer submitted a convincing case supporting a correction of an inequity that exists between bargaining unit members who get paid different amounts for performing the same work. Corrections Officers in DR & C are paid 45 minutes of pay (30 minutes x time and one-half) for 10 minutes of roll call. Juvenile Correctional Officers in DYS, who are members of the same Union and who are in the same pay range as Correction Officers in DR & C, receive 30 minutes of straight-time pay for reporting to roll call. The issue of roll-call pay is distinguished from the issues before this Conciliator based upon the concept of internal equity. When economic times are good, a disparity of this nature draws less attention. However, when times are lean, a disparity of this nature draws the attention of an employer who is seeking to save money and the employees who are on the "short end of the stick." Such is the case with roll call pay.

The function of roll call is to report any updates from the previous shift and to update employees coming on a shift on any matters of importance. It is an important function that ensures a safer environment, and it has existed for years in law enforcement. Roll call generally requires an employee to report to work about ten (10) minutes prior to his shift. For coming in early he receives the incentive of thirty (30) minutes of pay. DR & C has inexplicably paid overtime, not based upon time worked or even time on the job, but on negotiated "pay supplement." As stated below, the negotiated supplement was for "triple time pay (i.e. 30 minutes of pay for 10 minutes of work). DYS pays roll call in accordance with this negotiated formula. However, DR & C in essence pays quadruple and one-half (4.5) time pay. Where is the equity in this arrangement? To put both of these examples in perspective, if actual roll call time were paid at overtime rates ten (10) minutes of work time it would yield eighteen (18) minutes of pay (2 tenths of an hour at time and one-half (1.5). Based upon the evidence presented, a reasonable person could not

conclude that the roll call for DYS officers is any less important than the roll call period for DR & C officers, yet this disparity exists.

A matter related to roll call was arbitrated by the parties, and an Award was issued on October 26, 1988. In this Award, the well-respected Arbitrator, Jonathan Dworkin, ruled in favor of the Union on the issue of disciplining employees for reporting to roll call late or not at all. Although this case involves discipline, the arguments in this case are noteworthy because they reveal how roll call pay came about and how it is regarded. In this case the Union's position was based upon the perception that roll call "*...was regarded mutually from the start as creating a supplemental benefit, not mandatory overtime*" (p. 6 Dworkin Report). In its grievance the Union demanded that employees not be required to report ten minutes before their regular shift for roll call. The employer's insistence that roll call attendance was mandatory prompted the grievance. In its position in this case, the Union acknowledged that when the roll call provision was negotiated, it was part of a last minute settlement and was incomplete in nature and was to be fleshed out in post negotiations discussions (p. 8 Dworkin). Arbitrator Dworkin went on to state:

"The Union concedes that the accord which emerged from their post-contract negotiations did not meet all of its expectations. It did not create a pure, unqualified wage supplement in lieu of hazardous-duty pay. The benefit was conditional. In order to obtain triple wages for the ten-minute, pre-shift session, employees had to attend.

The Union argues that the roll-call language was not included among overtime Provisions precisely because it was not intended as an overtime allowance. It was Inserted in the Article pertaining to wages because the triple pay rate was a supplemental wage (p. 8,9 Dworkin).

When and why the Employer paid 45 minutes of pay to Correctional Officers in Corrections and 30 minutes of straight-time to Correctional Officers in DYS is unclear. However, it appears that when this was done it created an inequity. The parties simply intended to create a supplemental pay amount of 30 minutes for 10 minutes of work.

It is the position of the Employer that a negotiations mistake was made, and they are seeking to correct it. The Employer argues that the cost of paying roll call would be reduced by 6 million dollars annually if roll call were paid on a 30 minute straight-time basis as was originally intended. The Employer made the point that 6 million dollars translates into over 100 Correctional Officer positions. From the standpoint of the public's welfare, it is better served by correcting an unintentional overtime payment and keeping an additional 100 Correctional Officers on the job. The point of saving an additional 100 jobs was not lost on the Conciliator, and it should not be lost on the Union. For many people losing their job is losing their identity and its impact goes well beyond loss of income. In our current economy, where good jobs with benefits are scarce, any opportunity to preserve jobs cannot be dismissed lightly. Having been a victim of a layoff, this Conciliator has intimate knowledge of the effects of suddenly finding yourself without meaningful work for an extended period of time.

The Union argues that safety is a factor, and it cites the anniversary of the Lucasville riots. No one can argue with the bravery and dedication of the men and women who perform the job of

Corrections Officer. It is a difficult and sometimes thankless job. Yet, I do not see the connection between paying Corrections Officers 30 minutes of straight-time versus 30 minutes at time and one-half for roll call and safety. Thirty (30) minutes of roll call is paid to Juvenile Corrections Officers in DYS for the same function, and they are no less dedicated to their work.

I agree with the position the Union took in the 1988 arbitration decision cited above. Roll call was “*not intended to be an overtime allowance.*” It was intended to be a triple pay supplemental rate as is the case in DYS. Conciliation is an extension of the negotiations process and is not arbitration. The evidence and arguments of the Employer justify the correction of a past negotiations mistake.

Award

ISSUE V

The position of the Employer is awarded.

ISSUE VI - ARTICLE 36.07 LONGEVITY PAY

Union's position
SEE UPS

Summary of Rationale

1. The state's financial position does not give it an ability to pay increases in employee compensation in the first fiscal year of the contract.
2. The state's financial position is likely to improve during the term of the contract and the state's improved position will allow a resumption of longevity movement in the second year of the contract.

Longevity is one of those provisions that has been in the contract since the beginning. It confers benefits to the employer in reduced turnover. It is a long-standing benefit to the employees. Longevity is common in other states.

Longevity movement should resume in the second year of the contract because the state's financial position will have improved.

In examining the state's ability to fund longevity for its employees there are two important factors to consider. The most important is the national economy. In this instance, the national economy is showing signs of recovery for the future. Forecasters predict that prosperity will return. The second factor is the condition of the state economy. Ohio's economy is doing about the same as the national economy.

Employer's position

SEE EPS

Summary of Rationale

Simply put, the State has no money for increases in longevity payments. The state is experiencing significant budgetary problems due to the bad economic climate in the United States. As a result the State has laid off numerous employees, shut institutions and frozen wage increases for exempt employees and drastically limited hiring. Furthermore, the State will be closing more prisons and other institutions in order to balance next year's budget. There is no possibility of any form of immediate wage increase (longevity) in the next biennium budget.

Due to the serious economic shortfall, it is impossible for the State to award longevity increases as they total approximately \$15,000,000 in costs each year. Hence, the proposal freezing these benefits.

The Fact-finder reviewed the Employer's and the Union's arguments and recommended freezing longevity payments for the first two (2) years of the Agreement. Along with no general wage increase, the Fact-finder recommended no longevity percentage movement in the first and second years of the Agreement. This is principally due to the Employer's demonstrated inability to fund any increases in personnel costs. The Union has not demonstrated any error by the Fact-finder. Accordingly, the Employer's position on freezing of longevity percentage increases during the first and the second years of the Agreement should be ordered by the Conciliator.

Discussion

After a careful review of the facts and in consideration of the reasoning put forth in the previous discussion regarding wages, the Conciliator concurs with Dr. Graham's recommendations that longevity pay be frozen for the first two (2) years of the Agreement. Once again, I find no fault with Dr. Graham's reasoning, his application of the statutory criteria, or his conclusions. Furthermore, there is no evidence that the Fact-finder erred in any way in arriving at his conclusions.

Award

ISSUE VI

The position of the Employer (consistent with the Fact-finder's recommendation) is awarded.

ISSUE VII – ARTICLE 43.05 CONTRACT FINALIZATION PAYMENT

Union's position

SEE UPS

Summary of Rationale

1. The state's financial position is likely to improve during the term of the contract and the state's improved position will allow a 2% lump sum payment in December 2004.

If the Conciliator does not adopt the Union's position of a 2% general wage increase in January 2005, he should adopt the Fact Finder's recommendation for a 2% lump sum payment. It would be inequitable and punitive to deny a pay supplement to BU 3 employees while also denying them other compensation requested in 36.02.

Employer's position

SEE EPS

Summary of Rationale

The Fact-finder reviewed the Employer's financial problems and, essentially, recommended no increase in continuing costs for the first two (2) years of this Agreement. The only payment during the years is a one-time two percent (2%) payment to be made in December 2004 and not added to the wage scale. Any Union position to permanatize any part or all of this payment in 2004 will result in it being paid again in 2005 and every year thereafter. Given the Employer's poor financial condition, creating a permanent increase in costs is highly inappropriate. Accordingly, the Fact-finder's recommendation should be ordered by the Conciliator.

Discussion

See discussion under Issues III and IV above. The 2% lump sum payment shall be preserved for Unit 3 on the basis of equitable treatment for all OCSEA bargaining unit members.

Award

ISSUE VII

The position of the Employer (consistent with the Fact-finder's recommendation) is awarded.

TENTATIVE AGREEMENTS

During negotiations and fact-finding, the parties reached tentative agreement on several issues. These tentative agreements are awarded as part of this report.

The Fact-finder respectfully submits the above award to the parties this 22nd day of May 2003 in Portage County, Ohio.

A handwritten signature in black ink, appearing to read 'Robert G. Stein', written over a horizontal line.

Robert G. Stein, Fact-finder