

**CONCILIATION REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
March 27, 2009**

STATE EMPLOYMENT
RELATIONS BOARD
2009 MAR 30 P 12:46

In the Matter of:

Professionals Guild of Ohio

08-MED-06-0680

and

Clark County Board of Mental Retardation
and Developmental Disabilities

**REPORT OF CONCILIATOR
TOBIE BRAVERMAN**

APPEARANCES

For the Employer:

Lori Torriero, Counsel
Ravi Shankar, Comptroller
Jennifer Kolde Anderson, Human Resource
Director
Lisa Berry, Guest Adult Workshop Nursing
Coordinator
Diane Fralick, Nurse Coordinator

For the Union:

Amy B. Whitehair, Professionals Guild of
Ohio
Gregg Fry, RN - Union President
Joyce Eichelberger, LPN - Bargaining
Committee
Nanette Moss, LPN - Bargaining Committee

INTRODUCTION

The undersigned was duly appointed by SERB by letter dated February 3, 2009 to serve as Conciliator in the matter of the Professionals Guild of Ohio (hereinafter referred to as "Union") and Clark County Board of Mental Retardation and Developmental Disabilities (hereinafter referred to as "Employer) pursuant to Ohio Revised Code §4117.14(D)(1). A Factfinding Report was issued in this matter by Factfinder Michael Paolucci on January 15, 2009. That report was rejected by the Union, and the matter therefore proceeded to conciliation. Hearing was held at Springfield, Ohio on February 25, 2009. The Union was represented by Amy Whitehair, Chief Negotiator, and the City was represented by Lori F. Torriero, Counsel. The parties stipulated that there are no issues regarding retroactivity, and further waived the composition of a verbatim transcript (a copy of which waiver is attached hereto). The parties each filed timely Position Statements with the Conciliator. The parties were permitted to present testimony and exhibits concerning each of the outstanding provisions on which agreement has not been reached.

Pursuant to Ohio Revised Code §4117.14, the Conciliator has considered the past collectively bargained agreements between the parties, comparison of the issues submitted relative to other public employees doing comparable work, the interests and welfare of the public, the ability of the Employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service, the lawful authority of the Employer, and other factors traditionally considered in the determination of issues submitted.

FACTUAL BACKGROUND

The Employer is located in Springfield, Ohio and provides services to mentally retarded and developmentally disabled citizens within Clark County, Ohio. It operates a residential Intermediate Care Facility for the Mentally Retarded which is staffed twenty-four hours per day seven days per

week. It also operates an Adult Services Facility, commonly referred to as the “Workshop” which operates from 8:00 a.m. through 4:00 p.m. Monday through Friday. These facilities are staffed by seventeen full-time and part-time nurses which include both R.N.’s and L.P.N.’s, and who are represented by the Union. Two of these bargaining unit positions will be lost this year, diminishing the bargaining unit to fifteen. This is the second Collective Bargaining Agreement between these parties. The first Agreement expired by its terms on September 16, 2008. The Employer also has Collective Bargaining Agreements with United Auto Workers, Local 658 which represents the Employer’s Counselors, House Parents, and Recreation Instructors, and with Teamsters, Local 957 which represents the Employer’s Vehicle Operators, Transportation Safety Aides, Automotive Mechanic, and Assistant Automotive Mechanic. All tentative agreements made between the parties are deemed to have been incorporated herein and are adopted as part of the parties’ final agreement.

The unresolved issues are as follows:

Article 15 - Hours of Work - Overtime

Article 15 - Hours of Work - Timekeeping

Article 16 - Wages

Article 16 - Shift Differential

Article 19 - Holidays¹

ISSUES

ARTICLE 15 - HOURS OF WORK - OVERTIME

Section 15.3 - Overtime

Employer Position: Employees are currently paid overtime for all work over eight hours

¹ The parties agreed at hearing that they are in agreement on the issue regarding Longevity Pay. That language will mirror the language in the Teamsters Collective Bargaining Agreement as recommended by Factfinder Paolucci.

per day and forty in a work week. The language of the Agreement permits the Employer to alter schedules, and the Employer is interested examining this possibility in an effort to bring down costs and restructure for greater efficiency. The Employer would like to be able to consider the possibilities of twelve hour shifts, ten hour shifts or a combination of eight, ten and twelve hour shifts, but it is unrealistic to do so in the absence of its proposed language which would eliminate overtime for work over eight hours in a day. In an effort to examine this possibility, the Employer is proposing language which would obligate the Union to negotiation regarding a change in the overtime provisions in the event a schedule change is implemented during the life of the Agreement. A survey of area private nursing facilities indicates that there is a trend toward longer shifts in the industry.

Union Position: The Union does not accept the Employer's proposal because it gives the Employer carte blanche to eliminate overtime for over eight hours work per day and to alter the current eight hour schedule. In a poll of bargaining unit employees, it was clear that many work for this Employer rather than in the hospital setting because of the eight hour shifts, which they seek to retain. The Union seeks to protect the eight hour shift as much as the overtime. A review of SERB data demonstrates that many bargaining units which include nurses are paid overtime for work in excess of eight hours in a day.

Discussion: The documentary evidence and testimony presented at hearing established unequivocally that the Employer is facing substantial revenue reductions from several sources. The elimination of the Ohio personal property tax will result in a reduction of local tax revenues in the amount of approximately one million dollars by 2017. State revenues are also on the decline as a result of budget cuts. Expected cuts for the year from this source are \$378,478.00. Federal funding is additionally being cut, but there may be some recoupment, although amounts are still unknown, from the Federal Stimulus Package. The Employer's revenues are expected to decrease because of thirty-two consumers moving out of the Employer's residential facilities to a community setting, resulting in a revenue decrease of 2.8 million dollars by 2010. Finally,

revenue in the amount of \$460,893 will be lost due to the selection of a new adult services day program provider by two area care facilities. The Employer does currently have a three million carryover, which could if necessary cover two months' expenses. The scenario for the next few years for the Employer is thus clearly grim, but not yet dire. The testimony of Ravi Shankar, Comptroller, indicated that with budget cuts and greater efficiencies, the Employer can maintain fiscal solvency.

In light of the Employer's budget constraints, it will be mandatory that it maximize efficiencies in its delivery of services. Although the Employer has clearly retained the right to restructure the workday and workweek as necessary to promote efficiency, its ability to do so is effectively stymied by the eight hour overtime provision which would render any change far too expensive. The Union acknowledges this fact by indicating that it is not the change in overtime so much as the change in schedule with which it is concerned. It seeks to bargain regarding changes in schedules, but has made no proposal to obtain that right which it conceded in bargaining the previous Collective Bargaining Agreement. Apparently being unable to obtain greater bargaining rights concerning scheduling changes, the Union opposes the overtime provision to prevent any relevant scheduling changes. The Union's approach, although understandable, is not reasonable under the circumstances. The Union conceded the Employer's right to restructure schedules. It should not now be permitted to control scheduling and block greater efficiencies which may be required by protecting overtime payments of more than eight hours in a day.

The Employer's proposal is accepted and Section 15.3 shall be amended as follows: "The parties agree to negotiate a change in overtime calculation to overtime paid for hours worked in excess of forty (40) hours actually worked in a work week, if a change in scheduling is required during the life of the agreement due to changing work load and operations. Appendix A will expire at that time."

Section 15.6 - Timekeeping

Union Position: The Union proposes language which would require the Employer to negotiate concerning any policy changes that might be required regarding the implementation of an electronic timekeeping system. The Union is concerned that any timekeeping system be implemented fairly and uniformly. It is willing to negotiate regarding the subject, but needs additional information before reaching agreement.

Employer Position: The Employer proposes language which will permit implementation of its electronic timekeeping system as to this bargaining unit. The majority of this bargaining unit works in the Employer's residential facility. The rest of the staff in that facility has already been utilizing the electronic timekeeping system for ten years. It has become burdensome to maintain the employees of the facility on two separate systems, and the Employer therefore seeks to put these employees into the electronic system. The Union has not articulated any specific concerns or questions, and there does not appear any need for additional bargaining on the issue. The Employer is willing to meet to answer questions regarding implementation of the system.

Discussion: The Union has failed to articulate any clear rationale for its position that the Employer's offer to discuss implementation of the electronic timekeeping system is insufficient to address any concerns which it may have. It appears that while the Union is resistant to the idea of electronic timekeeping, it cannot articulate any valid reason for desiring to cling to an antiquated paper system. As noted by Factfinder Paolucci, in the event that the system is implemented unfairly or is in some way inequitable, the Union can file a grievance concerning any alleged flaws in the system. It is not reasonable, however, to block the implementation of an electronic timekeeping system which has been in place since 1999 as to these employees by insisting on further bargaining in the absence of some clearly articulated and reasonable objections.

The Employer's proposal is accepted. Section 15.6 shall be amended to delete current language and replace it with the following: "The Employer will meet with the Union at the

union's request to discuss implementation of an electronic timekeeping system"

ARTICLE 16 - WAGES

Section 16.1 - Wages

Union Position: The Union proposes a 2.75% increase in each year of the Agreement as well as a 2.75% increase in the minimum and maximum wage rates for each wage classification in the Agreement. This is a small bargaining unit, and the cost of this wage increase to the Employer is therefore relatively minimal. When comparable wage rates are examined, the wages of this bargaining unit are approximately in the middle. This proposed wage increase will enable the bargaining unit employees to retain that position. Finally, the Teamsters bargaining unit will receive a 4.4% increase in 2010, and non-bargaining unit employees received a 2.75% increase in 2008.

Employer Position: The Employer proposes an increase in the minimum pay ranges and each employee's pay would increase by 2.25% per year effective July 1 of each year of the Agreement. The Employer also proposes language stating that the raises could exceed the maximum pay range in order that those few employees who will reach the maximum of their pay grade during the life of the Agreement will still receive the 2.25% increase during the term of the Agreement. The Employer has also adopted the Factfinder's recommendation that in the event of an agreement is reached on altered work schedules and the elimination of overtime for work over eight hours, the employees would be given a .50% increase at that time, and annual increases would thereafter be 2.75% for the remainder of the Agreement. In view of the current economic times, this proposed increase is reasonable and the maximum that the Employer can reasonably pay. The additional increases contingent upon an agreement which provides flexibility with regard to scheduling and overtime are only realistic if those scheduling goals which will provide efficiency and wage savings can be accomplished.

Discussion: Although the Conciliator would like to adopt some blend of the two

proposals, this being conciliation, only one or the other of the two proposals can be accepted. There can be no doubt but that the Employer is facing difficult economic times as discussed in more detail above. On the other hand, its current budget was based upon an assumed 2.5% wage increase for these employees, thus indicating a belief that an increase in at least that amount was affordable. Further, the Employer has attained the flexibility regarding scheduling and overtime which it felt necessary before awarding a larger wage increase. The wage increase proposed by the Union is comparable to that given to non-bargaining unit employees and would maintain this group of employees in the center of comparable similar bargaining units.

The Union's proposal is accepted. Section 16.1 will be amended to provide that effective July 1 of each year of the Agreement the minimum and maximum pay rates will each increase by 2.75%. Employees will each receive a 2.75% pay increase in each year of the Agreement effective July 1.²

Section 16.3 - Shift Differential

Union Position: The current Agreement provides for a shift differential in the amount of .35 per hour for employees who work between the hours of 4:00 p.m. and 6:00 a.m. The Union proposes that shift differential be expanded to include weekend work hours in order to compensate employees for the burden and inconvenience of weekend work. Of the comparable data submitted, three entities include shift differential for weekend work.

Employer Position: In the current economic times this additional new benefit is simply not supported. In a twenty-four hour seven day nursing operation, weekend work is simply expected. Weekend work is rotated so as to not unfairly burden any particular group of employees, and this new benefit is not warranted.

Discussion: Although three of the entities for whom the Union submitted comparable

² The Conciliator assumes that the Union's proposal was not intended to give a double increase to an employee who may be affected immediately by the increase of either the minimum or maximum pay rate. It is intended that no employee receive more than a 2.75% pay increase in each year of the Agreement.

data provide shift differential for weekend work, the majority do not. No other group within this Employer receives such a differential for weekend work, and in light of current economic conditions, the Employer's financial situation and the other wage increase provided to these employees, the additional shift differential is not justified.

The Employer's proposal is accepted. Section 16.3 shall remain unchanged.

ARTICLE 19 - HOLIDAYS

Union Position: The Union proposes that the current language be changed to clarify what has been the practice with regard to payment of holiday pay. That is, employees who work a holiday are paid their holiday pay of eight hours at their straight time rate plus pay at time and one half for all hours worked on the holiday. This language change is necessitated by the Employer's announcement that it intends to alter payment for hours worked on a holiday by applying the contractual language as it believes it is intended, for payment for holiday hours worked at the straight time rate. Not only will the Union's proposal maintain the current holiday pay, but it is supported both by the language in the Employer's UAW Agreement as well as by the comparable Agreements submitted by the Union at hearing.


Employer Position: The Employer argues that the language of the Agreement is clear in that it requires payment only at straight time rates for hours worked on a holiday. The Employer's prior payment of time and one half was mistaken, and it should be permitted to correct that mistake. The elimination of the payment of time and one half for holiday hours worked would save the Employer approximately nine thousand dollars per year, which in difficult economic times is an important and appropriate consideration.

Discussion: The parties agree both that members of this bargaining unit were paid at the rate of time and one half for holiday hours worked in addition to their regular straight time holiday pay during the term of the prior Collective Bargaining Agreement, and that the Employer has made its intention to cease payment in this manner clear. The documents presented at

hearing demonstrated that under the terms of the UAW Collective Bargaining Agreement, the language clearly articulates that employees are paid at time and one half for hours worked on a holiday. The Teamsters agreement contains language similar to this Agreement, and holiday work has been paid at straight time rates, although unlike this bargaining unit which works all holidays, there is only minimal holiday work in the Teamsters bargaining unit. The Union further presented data from comparable jurisdictions showing that a number of bargaining units are paid for holiday work at time and one half. In light of this, the Union makes a compelling argument for continuation of payment for holiday work at time and one half in addition to straight time holiday pay. While the savings to the Employer is of course a valid and not insignificant consideration, in view of the savings which is likely to be generated by the overtime language discussed above, the Union's case is the more compelling.

Article 19.3 shall be amended to include the following sentence as proposed by the Union: "Applicable rate of pay is defined as time and one-half an Employee's regular rate of pay."

Dated: March 27, 2009


Tobie Braverman, Conciliator