

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of: :
 :
 : **2012-MED-09-0927**
International Brotherhood of :
Teamsters, Local 436 : **CONCILIATION AWARD**
 :
and : **July 31, 2013**
 :
Lorain County Home (aka Golden :
Acres) :

APPEARANCES

For the Union:

Howard D. Heffelfinger, Consultant/Employer Advocate
Kevin L. Shebasta, Senior Consultant
Jeri Dull, Golden Acres Administrator
James Cordes, County Administrator

For the Employer:

Chris Pavone, Vice President/Business Agent
Victoria Harsh, Steward
Stephanie Braker-Dalton, Steward

**Daniel G. Zeiser
Fact Finder
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I. BACKGROUND

The Conciliator was appointed by the State Employment Relations Board (SERB) on June 18, 2013, pursuant to Ohio Revised Code Section 4117.14(D)(1). The parties are Teamsters Local 436 (Union or Local 436) and the Lorain County Board of Commissioners and Golden Acres Nursing Home (Employer, County, or Golden Acres). The County is located in north central Ohio and operates a certified Medicare and Medicaid facility. Golden Acres has two (2) bargaining units, one that includes full and part time licensed practical nurses and a service unit including cooks, laundry workers, medical records technicians, food service workers, maintenance workers, and activities aides/nursing aides. This matter involves the LPN unit. There are approximately fifteen (15) employees in the bargaining unit.

The collective bargaining agreement expired on December 31, 2012. The parties have agreed to continue its terms while attempting to negotiate a new agreement and during the fact finding and conciliation process. They began negotiations in late 2012 and held eight (8) negotiating sessions. They reached a number of tentative agreements, but were unable to resolve twelve (12) issues. The parties engaged in fact finding with Robert G. Stein. The Fact Finder filed his report with SERB on May 21, 2013. The Employer adopted the report while the Union rejected it and the parties entered into conciliation. The Conciliator was mutually selected by the parties and appointed by SERB on June 18, 2013.

II. THE HEARING

The conciliation hearing was held on Tuesday, July 30 at the Lorain County Administration Building, 226 Middle Avenue, Elyria, Ohio. Each party provided a pre-

hearing statement. The hearing began at 10:00 a.m and adjourned at approximately 1:00 p.m.

The parties jointly introduced the following exhibit into evidence:

1. Agreement between International Brotherhood of Teamsters Local #436 and the Lorain County Commissioners Golden Acres Home, LPN Unit, Effective January 1, 2010, through December 31, 2012, 2009-MED-09-1020.
2. Agreement between International Brotherhood of Teamsters Local #436 and the Lorain County Commissioners Golden Acres Home, Service Unit, Effective January 1, 2013, through December 31, 2015, 2012-MED-09-0928
3. Fact Finding Report of Robert G. Stein.

Additionally, the parties introduced the following exhibits into evidence:

Employer Exhibits

1. Summary of Argument, Issue 1, Wages.
2. Summary of Argument, Issue 2, Sick Leave Incentive Bonus.
3. Summary of Argument, Issue 3, Health Insurance.
4. Summary of Argument, Issue 4, Low Census Policy.
5. Summary of Argument, Issue 5, Paid Time Off Program.
6. Summary of Argument, Issue 6, Hours of Work.
7. Summary of Argument, Issue 7, Longevity.
8. Summary of Argument, Issue 8, Existing Sick Leave Balances.
9. Summary of Argument, Issue 9, Tardy/Absenteeism Policy.
10. Summary of Argument, Issue 10, Mandatory Shifts.
11. Summary of Argument, Issue 11, Insurance Premiums.
12. Summary of Argument, Issue 12, Wage Reopener.

The Employer's exhibits correspond with the issues remaining at impasse. The Conciliator adopts all tentative agreements reached by the parties during negotiations.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-06(H) and are:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the 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; and
 - (6) Such other factors, not confined to those listed in this rule, which are normally or traditionally taken into consideration in the determination of issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

The Conciliator hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Conciliator would be glad to meet with the parties to discuss any remaining questions and clarify any ambiguities.

III. ISSUES AND RECOMMENDATIONS

Introduction

Golden Acres is the County's nursing home. In the past, all 88 counties in Ohio operated a nursing home. Over the years, 58 of these have closed. Of the remaining 30, only 13, including Golden Acres, are certified to handle Medicare and Medicaid patients. Golden Acres receives no public funding. It is a stand alone operation that is funded solely by Medicare and Medicaid reimbursements and payments from its

residents for services. Until 1997, the County had a levy that helped fund the home and provided a reserve when expenses exceeded receipts. At the time the levy ceased, it provided a reserve of \$5 million. Since it ended, Golden Acres has used the levy to pay for capital expenditures and cover losses. As of 2008, the reserve was over \$2.4 million. Currently, it is approximately \$1.7 million.

Golden Acres has lost money in recent years. It lost \$455,000 in 2012, \$140,000 in 2011, and had a profit of \$71,000 in 2010 only because the County funded its health care costs for the first three (3) months of the year. Otherwise, it would have lost \$85,000 in 2010. For the first six (6) months of 2013, Golden Acres has lost \$241,000. Overall, expenses have remained relatively consistent over the past several years, though health insurance costs have increased, while income has dropped. This is the result of several factors. One is that Medicare and Medicaid reimbursements have been decreased for nursing home care to encourage patients to receive care in the home or less costly environments. Another is that the home's patient census has decreased. The County has considered closing the home, but is willing to continue operating it if it can return to a self-sustaining operation. The County has negotiated with both bargaining units in the attempt to reduce costs and return Golden Acres to profitability. Should the home close, the County will need at least \$1.4 million for closing costs, to pay expenses such as accrued leave earned by employees and unemployment compensation.

The Union acknowledges that Golden Acres has lost money and currently is operating at a deficit. It has several concerns, including that the bargaining unit is not to blame for the losses, that the bargaining unit is not the only group to bear the brunt of

cost cutting, and that the Employer has not taken any steps, such as advertising for more patients, to improve the situation. The Union concedes that the Fact Finder's report is accurate as to the finances and recommended reasonable steps to cut costs. The Union proposed wages increases that were given to other County employees, a sick leave incentive of \$1 per hour, and to maintain health care with the rest of the County. It objects to some sick leave being converted to paid time off as unfair to employees, since they must give two (2) weeks notice to use it. It seeks to retain the nine (9) holidays and fifteen (15) sick days in the current agreement.

The Employer counters that many of the cost savings proposed do not affect current employees and only apply to newly hired employees. Since employee turnover in the first year is approximately 32%, however, this will provide some relief to Golden Acres. Additionally, employees in the two (2) bargaining units comprise the largest number of employees. There are only thirteen (13) employees in administration. Unless the bargaining unit costs are reduced, cutting expenses of only administrative employees will not be sufficient and the home cannot continue to operate. If the bargaining unit costs can be reduced, Golden Acres will then look to administrative costs to reduce expenses and can use the \$1.7 million reserve for some capital improvements such as a new roof and computer system. Golden Acres can then advertise and take other steps to increase the number of residents. It concedes that, given the uncertainty surrounding the home's continued operation, it has been limited in what it can do to attract new residents. Finally, the service unit used the same Fact Finder and agreed to his recommendations, which were consistent with this unit. The service unit and Golden Acres agreed to a new contract based on those

recommendations, with some slight modifications. Golden Acres seeks the same terms with the LPN unit.

Local 436 responds that the service unit was not a conciliation unit and could strike as its only avenue. The unit chose not to strike, which is not the same as agreeing to the report.

Next, the Conciliator must address what weight to give the fact finding report. In this Conciliator's view, the Fact Finder's report and recommendations are entitled to due deference. Any change in circumstances, the experience and expertise of the fact finder, the persuasiveness of the report, the quality of the parties' presentations at the fact finding hearing, and the grounds asserted for challenging the recommendations are factors to consider. Here, the parties made the same presentation to the Conciliator as they did the Fact Finder. There has been no change in circumstances; Golden Acres's financial situation has not changed. Mr. Stein is an experienced and well respected neutral, has served as fact finder in dozens of cases, and has experience in the health care industry. Additionally, the Union does not argue that the Fact Finder erred or his recommendations are not sound. Finally, if conciliators did not give deference to fact finding without a sound basis for deviating from the recommendations, parties would be encouraged to take every contract to conciliation in the hope of doing better than they did in fact finding. In short, the Conciliator gives due deference to Fact Finder Stein's report and recommendations. Unless the Union can show he somehow erred or his recommendations are not sound, they will be accepted.

Last, time is of the essence in this matter. The parties have requested an expedited award so they can determine whether Golden Acres will remain operating.

The Conciliator has agreed to the expedited time frame. Rather than setting forth the parties' positions and reviewing the Fact Finder's recommendations in detail, the Conciliator will determine whether to uphold the recommendation on each issue.

Issue 1: Article 27, Wages

Findings: The Fact Finder proposed increases of 3% effective April 2013, 2.5% in April 2014, and a reopener in 2015 on the issues of wages, health care, and paid time off. These are the wage increases Teamsters Local 436 sought for 2013 and 2014, though not for 2015. The Fact Finder recognized employees had not had an increase in several years and granted them while giving Golden Acres time to become self-sustaining again. He also allowed for negotiations in 2015 based on whether certain financial targets were met.

Award: Adopt the Fact Finder's recommendation as to wages and the reopener.

Issue 2: Article 32, Sick Leave Incentive Bonus

Findings: The Employer adopts the Fact Finder's proposal providing for payment of a \$1 per hour sick leave bonus on straight time hours only, paid when an employee does not miss work for two (2) consecutive bi-weekly pay periods. The Union proposed the \$1 per hour bonus, which the Fact Finder amended it based on the two (2) conditions above. This was a trade off to switching to a paid time off system. The Union has not shown a sound reason to modify the Fact Finder's recommendation.

Award: Adopt the recommendation of the Fact Finder.

Issue 3: Article 28, Health Insurance

Findings: There is no question that health care costs continue to be a major factor in the cost of labor. The Employer currently pays 90% of the approximately \$1600

monthly cost of insurance. The Union proposes to maintain the current arrangement. The Employer proposes to cap monthly premiums for employees at \$1,200 per month for a family plan and \$480 per month for single coverage. Employees can choose from any of three (3) plans providing for various levels of coverage.

The County established that it is losing money, that its health care costs are high, and that it needs relief from these costs. Capping the monthly contributions is a reasonable solution. The Fact Finder also recommended, and the Conciliator awards, a reopener in 2015 for wages, health care, and paid time off. If Golden Acres becomes or approaches being self-sustainable, the parties can modify health care costs.

Award: Health care costs are to be capped at \$1,200 per month for family coverage and \$480 per month for single coverage. The Employer can also modify its insurance offerings or the contribution rates to comply with the Affordable Care Act and avoid penalties.

Issue 4: New Article, Low Census Policy

Findings: Currently, Golden Acres must provide two (2) weeks notice before adjusting staff levels. This prevents it from quickly modifying the number of staff when its resident census count decreases. Giving it flexibility to adjust staffing levels would help to decrease costs. The Fact Finder recommended a new article permitting Golden Acres to reduce staffing. The Union objects to the recommendation because Golden Acres continues to utilize agency employees. Golden Acres countered that it currently does not have the ability to adequately use part time employees and therefore must utilize agency employees. Additionally, the changes permit greater use of part time employees, who will be in the bargaining unit, and should lessen the need for agency

employees. In short, the Union has not established a sound reason to modify the recommendation.

Award: Adopt the Fact Finder's recommendation.

Issue 5: New Article, Paid Time Off

Findings: The Fact Finder recommended, and the County adopted the recommendation, that all bargaining unit employees be credited with or accumulate paid time off. Paid time off would replace the current set of holidays, vacation, and sick/incentive/bereavement leave currently provided. As noted above, the sick leave bonus was recommended as a trade off for moving to a paid time off system. The Union objects the paid time off system and proposes current language for Articles 16, 17, and 18. As noted above, the Union acknowledges that Golden Acres is losing money and needs to cut costs to continue to operate. It has not established a need to reject the recommendation.

Award: Adopt the new article on paid time off, delete Articles 16, 17, and 18.

Issue 6: Article 25, Hours of Work and Overtime

Findings: Currently, Golden Acres creates a schedule every two (2) to four (4) weeks. It seeks changes to allow it to schedule employees more effectively. The Fact Finder recommended changes requiring Golden Acres to create a schedule for the rest of the year within sixty (60) days of execution of the contract. Employees will then have ten (10) days to sign up for a shift by seniority within their classifications. Golden Acres is to offer a new schedule each November, with any vacancies filled at Golden Acres' discretion. The home can establish alternative schedules and shifts after notice to and discussion with the Union. The Fact Finder provided changes to overtime scheduling,

utilizing part time employees or employees who had their hours reduced that week due to low census, allowed for time and one-half pay for working certain holidays, and permitted trading of shifts.

The Union rejects the recommendation and proposes current language, arguing that mandatory overtime has been improperly handled. The Fact Finder's recommendation gives the Employer more flexibility, is reasonable and well thought out, and takes into account the use of part time employees and those whose hours are reduced due to low census count. The Conciliator is not persuaded that the recommendation should not be adopted.

Award: Adopt the recommendation.

Issue 7: Article 30, Longevity

Findings: The only change is that employees hired after the effective date of the agreement are not eligible for longevity pay. The Union proposes that longevity pay not be changed. The proposal keeps longevity pay for current employees while giving the County some relief.

Award: Adopt the recommended change.

Issue 8: New Side Agreement, Existing Sick Leave Balances

Findings: As a companion to the paid time off policy, the Employer proposed and the Fact Finder recommended a new side agreement to deal with accumulated, but unused, leave. Effective January 1, 2014, all accumulated but unused vacation and incentive leave will be transferred to each employee's paid time off bank. Forty-eight (48) hours of sick leave for each employee will also be transferred into the PTO bank, with any remaining balance maintained in a long term sick leave bank for use when illness or

injury exceeds six (6) days. The Union rejects paid time off, as noted above, and the proposal on the basis employees have earned and saved sick leave and should be able to use it as they see fit.

Employees will not lose any accumulated leave and can fill up their PTO bank. Those with greater leave will have a long term sick leave bank and employees will be able to cash out any extended sick leave bank upon retirement. On this record, this is a sound and reasonable approach.

Award: Adopt the new side agreement on existing sick leave balances.

Issue 9: New Side Agreement, Tardy/Absenteeism Policy

Findings: The County proposed and the Fact Finder adopted a new side agreement consistent with the paid time off policy. The definitions of “Late” and “Tardy/Leaving Early” remain the same, while those of “AWOL” and “Unexcused Absence” are modified to provide two (2) hours notice to conform to the PTO policy. The point system also modifies discipline levels for tardiness and absenteeism. The Union rejects the PTO policy and this side agreement. It seeks to retain the current language.

Award: The new side agreement on Tardy/Absenteeism is to be adopted to conform with the paid time off policy and modify the discipline levels.

Issue 10: Side Agreement, Mandatory Shifts

Findings: Currently, employees who volunteer or are required to work back-to-back shifts receive double pay for all such shifts. The Fact Finder recommended that employees receive double time only when the employee works three (3) or more back-to-back shifts in a bi-weekly pay period. The Union proposes to retain the current

language. However, Golden Acres needs to reduce costs and this will help cut the costs of overtime.

Award: Adopt the Fact Finder's recommendation.

Issue 11: Side Agreement, Insurance Premiums

Findings: The County proposed and the Fact Finder recommended deleting this side agreement. This is a "me, too" clause, whereby the bargaining unit employees are to be given the same treatment the County gives other bargaining unit employees. Given the changes being made to the contract and the reopener in 2015 that includes health care, this side agreement is no longer applicable.

Award: Delete the side agreement.

Issue 12: Side Agreement, Wage Reopener

Findings: The reopener expired at the end of 2009. Given the wage increases awarded here and the wage reopener in 2015, the side agreement is no longer necessary.

Award: Delete the side agreement.

All tentative agreements reached by the parties during negotiations are incorporated into this award.

Dated: July 30, 2013



Daniel G. Zeiser
Conciliator