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OHIO STATUTORY IMPASSE PROCEEDINGS  
STATE EMPLOYMENT RELATIONS BOARD  
FACT-FINDING RECOMMENDATIONS

STATE-EMPLOYMENT  
RELATIONS BOARD  
NOV 13 10 09 AM '95

In The Impasse Between  
Between:  
  
LUCAS COUNTY COMMISSIONERS  
Child Support Enforcement Agency

-and-

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES  
Local 544

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\* SERB Case No. 95-MED-05-0457  
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\* Decision Issued:  
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REPRESENTING THE EMPLOYER

Steven Spirn

Labor Relations Director

REPRESENTING THE BARGAINING UNIT

Sally Powless

AFSCME Staff Representative

BACKGROUND SUMMARY

The Employer is the Lucas County, Ohio Child Support Enforcement Agency ("CSEA"). It is a County department, and under the direction and control of the Lucas County Commissioners. CSEA's one hundred five employees (excluding supervisors, exempt personnel, and staff attorneys) belong to a Bargaining Unit represented by Local 544 of the American Federation of State, County and Municipal Employees ("AFSCME"). Their wages, hours, benefits, and working conditions

have been set by a succession of Collective Bargaining Agreements; the last contractual term expired June 30, 1995.

CSEA and AFSCME did not begin negotiating for a new Agreement until May 10, 1995. They barely managed to establish ground rules and exchange proposals when state statutory time lines for intervention kicked in. On June 1, the State Employment Relations Board (SERB) directed them to submit to fact-finding.

June 10, 1995 was the first of three fact-finding hearings in Toledo, Ohio. The parties presented a nearly unmanageable number of impasse items. Initial proposals opened most of the Agreement for bargaining. Few if any were withdrawn or settled. At the Fact-Finder's request, the negotiating teams worked earnestly and constructively to cut their issues. They bargained with one another both during and between fact-finding meetings and, when the last session ended on September 26, 1995, the following were all that remained:

Article 1: In prior Agreements, Article 1 contained a list of Bargaining Unit classifications with attending pay ranges, a recognition clause, and language on probationary employees. The Local Union proposes raising some of the wage grades to match duties currently performed and those likely to be required because of workload changes slated for the near future. Also, the Union seeks to enlarge the scope of Article 1 by bargaining over numbers of employees in several classifications. It proposes adding: One Primary Operator, one Secretary, and two Legal Assistants in the Legal Department; one Clerk-3 and four Investigator-2 positions in the Review and Adjustment Department; one Investiga-

tor-1 in the IRS Department; one Case Manager for each unit in the Consumer Response Department. It should be observed that some, but not all these demands were settled or withdrawn after fact-finding commenced.

Article 4 is the Union Rights provision. AFSCME proposes new language to reduce the workloads of two Local officers. Its objective is to give them time to attend meetings and carry out their contract-administration duties. The language proposed is:

The Employer recognizes that specified Union activity on behalf of employees requires time away from assigned Agency duties, and will occur during normal working hours. These activities include: investigating, presenting and adjusting grievances and disputes; representing employees at hearings; participating in labor/management meetings; and any other activity authorized by this Agreement.

A. Release time to conduct Union business shall be under the following terms and conditions:

1. The [Local] Chairman [and Chief Steward] shall have a reduced work load of 50% of the average work load of employees performing the same function to which they are assigned.

Article 7 - Holidays: The current Agreement grants eleven full-day holidays plus half-days for Christmas Eve, Good Friday, New Year's Eve, and election day "as determined by the Board of County Commissioners as holidays."

The Union wants to convert Good Friday to a full day and add: "Any other days designated by an act of the President of the United States and/or Governor of this state as a day of mourning."

Article 9 - Sick Leave: Both AFSCME and CSEA had proposals on this Article. The Bargaining Unit's proposals were targeted to Sections 1 and 5. They were designed to allow employees to keep physician appointments without having to use sick leave, and to increase sick-leave conversion for retirement. The Employer's proposals were discussed, revised, and tentatively settled at the hearings. Those settlements will be recited as recommendations in this report.

Article 12 - Job Posting: The proposals by both the Agency and the Union are primarily administrative. Many were settled and withdrawn. Two proposals in Section 1 will be addressed by the recommendations.

Article 15 - Hours of Work and Overtime: In the Fact-Finder's judgment, this combination of AFSCME and CSEA proposals is ill conceived and premature. The Union's chief request was for a flex-time program, but it was not sufficiently fleshed out for serious consideration. The arguments supporting it were persuasive, and the concept clearly merits management-labor discussion in the future. But it is not ripe for a fact-finding recommendation. The proposal was:

All employees may work a flexible schedule. Employees may work anytime from 7:30 a.m. to 5:30 p.m. as long as they work eight (8) consecutive hours. Coverage must be maintained from 8:30 a.m. to 4:30 p.m.

CSEA made a minor concession during fact-finding concerning time clocks. It will be recommended.

Article 25 - Compensation and Benefits: AFSCME originally proposed 10 percent wage increases for each year of the three-year contractual term. At the fact-finding table,

it reduced its demand to 5% + 5% + 5%. The Agency offered 1.5 percent for the first year with wage reopeners for the second and third years. Also, the Union proposed adding the following provisions for bilingual pay and PERS pickup:

**SECTION 4.**

PERS PICKUP - The Employer will pay on, behalf of each employee, the employee's portion of the Public Employees Retirement System (PERS) contribution (8.5%)

BILINGUAL PAY - A bilingual (Hispanic) premium of 5 percent will be awarded [i.e., "added"] to an employee's hourly rate, if the skill is required in relating to a client or case. The minimum time charged will be one (1) hour. All bilingual usage time will be authorized by the employee's immediate supervisor.

Articles 27 & 28 - Incentive Pay and Production Bonus:

Both parties have proposals on these complicated provisions. Some of the controversy was tentatively settled at the table after fact-finding started. The Recommendations will try to incorporate those agreements and deal with the few that are left.

DECISIONAL GUIDES

OHIO REVISED CODE §4117.14(G) (7) and SERB Rule 4117-09-05(J) require fact-finders to apply the following guidelines:

(a) Past collectively bargained agreements, if any, between the parties;

(b) Comparison of the issues submitted . . . relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing

comparable work, giving consideration to factors peculiar to the area and classification involved;

(c) 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;

(d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the 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 Fact-Finder examined these components to the extent they were relevant and/or addressed by the Advocates. Some had little material value to the case while others were weighty.

Pursuant to their statutory right to design their own dispute-resolution process, AFSCME and CSEA directed the Fact-Finder to issue recommendations without supporting rationale, except to the extent that the Fact-Finder deemed it necessary to provide such rationale. A copy of their directive is attached hereto as Exhibit A.

While there will be no in-depth discussion of the reasons for the recommendations, a few basic factors should be noted:

1. The Agency cannot make a genuine ability-to-pay argument. It has sufficient resources to fund all or nearly all of the Union's proposals. However, internal parity presents a serious barrier.

CSEA is but one Lucas County Agency, and probably will be a lighthouse for later negotiations in others. Ideally, an interest arbitrator or fact-finder should view a bargaining unit as an enclosed entity, unaffected by the goals of other units and free to conduct independent negotiations with its employer. Though that is the ideal, it is not realistic for public-sector units. The plain fact is that the overall employer -- Lucas County -- will have to achieve some sort of parity for the bargaining units that are coming to the table later. That is the reality.

2. The members of this Unit are not poorly paid. Their wages and allowances are at or near the top in all comparisons of employees doing similar work in other Lucas County Agencies. Also, they rank very high when compared to child support enforcement bureaus in other Ohio counties.

3. Parking is especially a problem. Recently, CSEA moved to a downtown Toledo office building with an attached parking garage. As a result, employees who used to park free now have to pay \$3.50 per day or \$60 per month. The Agency has declined to reimburse the added cost of coming to work. In these negotiations, the Union proposed new language on the subject:

#### **PARKING ALLOTMENT**

The Employer will pay a stipend on an annual basis of thirty dollars (\$30.00) per month that an employee can use to pay parking costs.

The Agency is adamant on this item. It has drawn a line in the sand, declaring that a recommendation adopting this proposal will guarantee rejection of the fact-finding report. The Fact-Finder would prefer to think that his suggestions have a chance of settling the dispute and, therefore, will not recommend the Union's proposal. Nevertheless, he will not lose sight of the justification for the proposal. There are other ways to substantively recommend it.

#### RECOMMENDATIONS ON REMAINING IMPASSE ITEMS

##### Article 1

Either by amending the Agreement or through a joint memorandum of understanding, it is recommended that the Employer make the following personnel changes in the Legal Department:

Add one Legal Assistant at pay range 19.

Add one Secondary Operator at pay range 15.

Upgrade the current Legal Assistant to Lead Worker at pay range 20.

Upgrade the current Clerk-3 to Clerk-4 at the Clerk-4 pay range.

The Fact-Finder recommends that AFSCME withdraw its other proposals on Article 1. They are premature now. After the Agency converts to the state-wide computer system, and workloads change, the underlying issues should be addressed. Therefore, the Fact-Finder



recommends that the parties adopt a reopener limited to Article 1, to take place six months after the conversion is completed.

#### Article 4

The Fact-Finder recommends that the following language be added to Article 4 in an appropriate Section:

The Employer recognizes that specified Union activity on behalf of employees requires time away from assigned Agency duties, and will occur during normal working hours. These activities include: investigating, presenting and adjusting grievances and disputes; representing employees at hearings; participating in labor/management meetings; and any other activity authorized by this Agreement.

A. Release time to conduct Union business shall be under the following terms and conditions:

1. The Local Chairman and Chief Steward shall have a reduced work load of 20% of the average work load of employees performing the same function to which they are assigned.

#### Article 7

It is recommended that the following be added to the Article:

Any other commemoration or mourning days in honor of which the County Commissioners shut down other than essential services (e.g. public safety) shall be a paid holiday for members of this Bargaining Unit.

The Fact-Finder recommends that the proposal to convert Good Friday from a half-day to a full-day holiday should not be adopted and that the Union should withdraw it.

Article 9

The Fact-Finder recommends against AFSCME's proposals for Sections 1 and 5, and urges that they be withdrawn. He further recommends that Section 2, Subsections B, C, and D be amended as follows:

- B. An employee wishing to use sick leave to cover absence must present to the Employer a satisfactory written and signed statement justifying the use of sick leave. Such requests are to be submitted to the employee's supervisor on form upon his request.
- C. If, upon an employee's return to duty, said employee fails to submit the required sick leave approval form, the requested and/or required medical certification, such leave may be considered an unauthorized leave and shall be without pay. Any abuse of sick leave can be just cause for disciplinary action independent of any denial of paid status for sick time away from the job.
- D. Employees must call the Agency Payroll Officer or her voice mail at 259-3105 prior to 8:30 a.m. to leave a message reporting their absence, the circumstances, the expected duration and where they can be reached.

Article 12

It is recommended that the following language be added to the paragraph on awarding bids:

If the Employer determines that two (2) or more employees on the list of three are equally qualified for a position, the tie(s) will be broken by seniority.

Article 15

It is recommended that the Union withdraw its proposal(s) to change this Article, including its request for flex time. The only amendment that the Fact-Finder recommends ought to be accomplished by a memorandum of understanding rather than formal contract language. It is that at least one time clock be added at a convenient location to accommodate the needs of employees who cannot clock in early and are docked for clocking in late.

Article 25

The wage recommendation is for 4 percent to be added to the wages of all employees on each anniversary of the Agreement (4% + 4% + 4%), the first such increase to be retroactive to July 1, 1995.

The Fact-Finder recommends against the PERS pick-up demand and encourages the Union to withdraw it.

It is further recommended that the Union's bilingual pay request be granted and that the following language be added to Article 25, Section 4:

BILINGUAL PAY - A bilingual (Hispanic) premium of 5 percent will be awarded [i.e., "added"] to an employee's hourly rate, if the skill is required in relating to a client or case. The minimum time charged will be one (1) hour. All bilingual usage time will be authorized by the employee's immediate supervisor.

Article 27

It is recommended that the Group Incentive program be added to the Agreement pursuant to the following guidelines:

1. For all three years of the contractual term, the Merit Payout will be paid to all LCCSEA employees based on the following formula. For the purposes of this provision, a year shall be January 1 through December 31.

2. The total expenses to the LCCSEA Administrative Fund for a calendar year will be deducted from the total receipts to the LCCSEA Administrative Fund for the same calendar year.

3. The first \$200,000 will be multiplied by 75% and the resulting amount will be divided by the total number of Agency staff (not just members of the Bargaining Unit).

<u>EXAMPLE:</u>	Total Receipts	\$7,568,205.22
	Total Expenses	<u>\$7,195,305.41</u>
	DIFFERENCE	\$ 372,899.81
		\$ 200,000.00
		X <u>75%</u>
		\$ 150,000.00
		+ <u>134 Employees</u>
		\$ 1,119.40 each

4. Incentive calculations shall be made at the end of the calendar year. For the first calendar year, incentive pay (if any is due) shall be for the entire year -- January 1, 1995 through December 31, 1995.

5. If Administrative expenditures in a calendar year are equal to or greater than receipts, no incentive will be paid for that year.

6. Employees who have not been employed for one full year will receive a prorated incentive amount based on the number of months worked. No employee who is not on the payroll on December 31 or who has not completed his/her 120-day probationary period on December 31 will be eligible for incentive pay for that calendar year. Employees shall not become eligible for full or prorated incentive until they have completed their initial 120-day probation period, nor shall their probation time be included in the calculation.

#### Article 28

The Fact-Finder recommends the Employer's proposal, but with the following changes in stipends and language:

1. Each member of the Bargaining Unit shall be granted one personal day per year to be used for personal reasons. Except in an emergency, the employee must give 24-hours advance notice of his/her intention to use a personal day. Personal days shall not be cumulative from year to year.

2. The current Production-Bonus Program will remain in effect through December 31, 1995. Beginning January 1, 1996, the Production Bonus will be awarded biannually. The first period will be January 1 through June 30 and the second period July 1 through December 31. To be eligible to receive the Production Bonus an employee must have

had to be in a "production status" for the scheduled number of base production hours less a maximum of twenty (20) hours which would be considered for tardiness or absenteeism.

3. Any employee who meets these requirements will receive a Production Bonus of \$500.00 for each period, not to exceed \$1,000.00 per year. An employee who meets these requirements, but uses his/her personal day in a qualifying period shall receive \$250.00 for that period and an annual Production Bonus not to exceed \$750.00.

4. Except for the personal-day reduction in Paragraph 3, the Production Bonus will not be impacted by earned vacation time, holidays, compensatory time, or other personal days granted under this Agreement.

The Fact-Finder recommends withdrawal of all other proposal and counter proposals on this item.

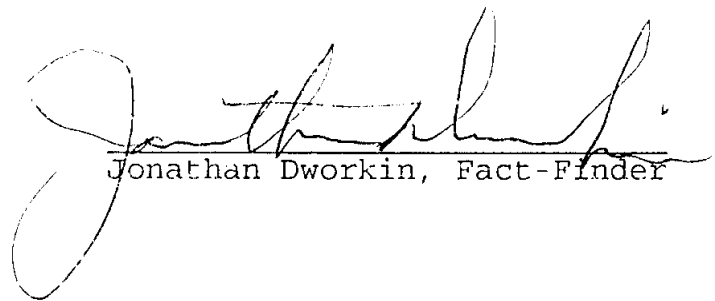
New Language (AFSCME Proposals)

The Fact-Finder recommends that AFSCME abandon for now its proposals for flex time and parking stipends.

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These Recommendations were issued at Lorain County, Ohio, November 9, 1995. True copies hereof were sent prepaid by Federal Express, next-day delivery, addressed to Steven Spirn, Director of Labor Rela-

tions, Principal Representative of the Agency, 1218 Bernath, Toledo, Ohio 43615, and Sally Powless, AFSCME Staff Representative, Principal Representative of Local 544, 119 Capistrano, Toledo, Ohio, 43612, this ninth day of November 1995. A copy also was mailed the same day by regular U.S. mail to SERB in accordance with law and regulations.



Jonathan Dworkin, Fact-Finder