

OHPELRA Update

THE OHIO PUBLIC EMPLOYER LABOR RELATIONS ASSOCIATION NEWSLETTER, FALL, 2003

Letter From The President

Dear OHPELRA Members:

THIS LETTER FINDS ME SETTLING IN with the Columbus Public School System with all the attending challenges. It is hard to believe that I will be celebrating my one-year anniversary on September 3!

Your OHPELRA Board has been very busy this summer starting on June 11 with the Lunch Symposium "Tough Budgetary Times: What is the Impact in Negotiations and Human Resources?" The program gave members timely information from Cheryl Subler from CCAO and Steven Loeffler, the new Deputy Director of the State of Ohio Office of Collective Bargaining. This "no-cost" to members program was well attended and appreciated by attendees. We are very pleased with Grand Host East as a location for OHPELRA programs.

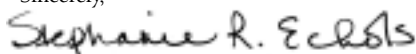
During the months of July and August, the OHPELRA Board met and mapped out the Annual Conference Program. Mark your calendar for February 1- 3, 2004, as we celebrate OHPELRA's 20th Anniversary! You won't want to miss this event and yes, we'll be back at Cherry Valley Lodge. Keep an eye on our website (ohpelra.org) for more details.

By the way, we are looking for OHPELRA memorabilia from members for display at the Annual Conference and we would appreciate any help from members. Please contact any board member or me with articles, stories, etc., representing OHPELRA's first 20 years.

On November 4, we will present our Fall Seminar at Deer Creek State Park. The topic for this program is "Leadership in Lean Times: The Four C's — Conflict, Communication, Coaching and Coping." The program will offer presentations from a number of excellent speakers, as is highlighted elsewhere in this issue. Please go to the OHPELRA website for a flyer and registration information if you have not yet received it. We'll be looking for you at the fall seminar.

OHPELRA is serious about providing our members with quality training programs, valuable resources and a wealth of knowledgeable practitioners in the area of labor relations. An important resource for members is the ohpelra.org web site where you can ask questions, share information, register your email address and build our digital community. As always, feel free to contact our diligent board members to pick our brains and or share ideas about what we can do to support you as a member of OHPELRA!

Sincerely,



Stephanie R. Echols
President

OHPELRA'S Fall Seminar Tuesday, November 4, 2003

"Leadership in Lean Times: The Four C's —
Conflict; Communication; Coaching & Coping"

ON NOVEMBER 4, 2003, OHPELRA IS PROUD TO PRESENT our Fall Seminar at Deer Creek State Park Lodge. The topic for this program was developed by your board of directors based on input from members and sponsors. "Leadership in Lean Times: The Four C's — Conflict, Communication, Coaching and Coping" is truly a reflection of where we are as we head into the year 2004. This quality program includes presentations from Felicia Bernardini, of Bernardini Consulting Services, discussing how to coach and motivate employees in times of financial stress and layoffs, and Lisa Merkle, Allen County CSEA Director, who will recap the recently ended Allen County CSEA strike. OHPELRA favorite Debbie Adams will return to share thoughts on having difficult conversations with employees, and we will even talk about how you can better cope in times that seem to see everyone mad at the Human Resources professionals. Please go to the OHPELRA web site for a flyer and registration information if you have not yet received it. We'll be looking for you at the fall seminar.



THE OHPELRA BOARD OF DIRECTORS MEETS IN GRANVILLE TO PLAN THE PROGRAM YEAR. Row 1: Jim Sennish, Kathy Weisgarber, Steven Barker. Row 2: Marsha Jordan-Smart, Joy Campbell. Row 3: Janet Campbell, Stephanie Echols. Back Row: Brooke Carnevale, Doug Duckett. Not pictured: Lisa deGuzman-Catlett.

Appellate Court Rules That S.B. 402 Is Unconstitutional

(from CALPELRA. Reprinted with permission of CALPELRA)

ON APRIL 22, 2002, THE FOURTH APPELLATE DISTRICT of the California Court of Appeals ruled that Senate Bill No. 402, which went into effect on January 1, 2001, is unconstitutional.

Riverside County and the Riverside Sheriff's Association reached an impasse in negotiations about compensation for the county's probation department employees. The association demanded that the parties submit the dispute to arbitration under S.B. 402, but the county refused. The superior court granted an order compelling the county to submit the dispute to arbitration, and the county appealed the court's decision.

The appellate court found that S.B. 402 violates section 11, subdivision (a), and section 1, subdivision (b), of Article XI of the state Constitution. Section 11, subdivision (a), provides that, "The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions." The court found that S.B. 402 delegates to the arbitration panel, a private body, the power to control or interfere with county money because S.B. 402 allows the panel to choose which compensation package (either the union's or the employer's) the county must fund.

The court based its ruling on several findings. First, it found that local employee salaries are a matter of local concern. The status of public safety personnel does not transform the salary issue into a matter of statewide concern. The court rejected the argument that public safety compensation is a matter of statewide concern because labor unrest could have regional or statewide impacts. Because police and firefighters do not have the right to strike, there is no opportunity for local labor disputes to blossom into regional or statewide concerns.

Second, the court determined that in addition to violating section 11, subdivision (a), S.B. 402 is unconstitutional under section 1, subdivision (b) of the state Constitution when applied to counties. That section provides that, "The governing body [of a county] shall provide for the number, compensation, tenure, and appointment of employees."

SIGNIFICANCE

This is a clear legal victory for cities and counties. It is likely that the appellate court's decision will be appealed to the state Supreme Court. Meanwhile, another appellate decision is pending regarding the constitutionality of S.B. 402. This case involves the City of Redding, and its firefighters' demand to arbitrate under S.B. 402. We will keep CALPELRA Web site visitors apprised of any new developments affecting the applicability of S.B. 402

OHPELRA Website Changes

BE SURE TO CHECK OUT THE OHPELRA WEB SITE at www.ohpelra.org for new information online. Remember, for discussion board and other member only sections, the user name is "ohio" and the password is "buckeye."

Sad News About Pat Webster

By Doug Duckett
OHPELRA Treasurer

JUST WEEKS AFTER WE MARKED THE DEATH of OHPELRA past president Kevin Sellards, the OHPELRA family has suffered another major loss. Patricia Webster, who served as OHPELRA's Treasurer for many years in the 1990s, died on the evening of June 25 from an abdominal infection. Pat's death is an enormous shock; while she had experienced health problems over the past two years, she had been suddenly hospitalized with a perforated



bowel, and her body was unable to fight off the resulting infection.

OHPELRA members from the 1990s will remember Pat well. She was the warm, smiling face of OHPELRA at every registration desk for many years, and she did so much more than keep our finances running. She welcomed everyone, made sure that newcomers met a friend or two right away, and was an impeccable ambassador for our organization. Right after I became OHPELRA president, our then-treasurer resigned, and we found that our financial records needed a lot of work. Marsha Jordan-Smart, Pat's long-time co-worker in Greene County, suggested Pat, and I went along. Appointing her as Treasurer was the best decision I made as President. I remember showing up at Greene County's offices with a big messy box of records, and after hours of Pat's help, we were on track. When she left as Treasurer, we were financially healthy and very sound.

Pat had a wry wit that was unforgettable. I will always remember her at the euchre table (then a Sunday evening fixture at the OHPELRA conference), lambasting Marc Fishel for trumping her. Pat could be rather quiet, and her outburst was hilarious. We laughed for years over that — and I can't print exactly what she said.

Pat's job in Greene County had moved away from HR, and after she left as Treasurer, OHPELRA had not seen her at meetings for several years. No one could forget her, though. I last spoke with Pat in early January, when I called to plead with her to come to our conference at Cherry Valley. She was not able to come this year, but when I reminded her that next year marked OHPELRA's 20th anniversary, she replied, "Oh my, 20 years, that's not possible!" When I assured her that we are indeed at that point, she committed, "I wouldn't miss that for the world."

All of us who knew and loved Pat really wish we could have welcomed her back for that celebration. We can be sure her spirit will be with us. What sets OHPELRA off from other business and professional organizations is that we are also a family of friends and colleagues. As we mourn this second loss of one of our leaders in as many months, we remember that both Kevin and Pat did so much to build that sense of family.

We Welcome New Members To OHPELRA!

Since the last issue of *OHPELRA Update*, the following new members have joined OHPELRA and NPELRA. Welcome to our organization, and we hope to see you at our next event!

Robert Beavis
Human Resources Director
Miami County Board of MR/DD

Michael Blackburn
Director of Public Service
City of Portsmouth

Kelly Anne Cicolani
Director of Human Resources
Richland County Commissioners

Carrie Leathers
Projects Director
Putnam County Board
of Commissioners

Stephanie Miller
Human Resources Manager
Crawford County Board
of Commissioners

Deborah Murphy-Williams
Director, Human Resources &
Administrative Services
Mid-Ohio Regional Planning
Commission

Deborah Ortiz
Assistant Director of Administration
Lucas County

Susan Sheikh
Personnel Director
City of Pickerington

Catherine Smith
Human Resources Manager
Mansfield-Ontario-Richland County
Health Department

Timothy Werdmann, Esq.
Assistant Law Director
City of Hamilton

Child Support Workers Back On The Job

(Reprinted with permission of LIMA News)

By Heather Rutz
419-433-2094

LIMA — FOLLOWING A 15-WEEK STRIKE, child support workers should be back at their desks this morning after ratifying a tentative agreement Wednesday.

Communications Workers of America Local 4319 members voted for the contract, struck last week between union leadership and Allen County Child Support Enforcement Agency management.

Union President Ron Honse would not give an exact count, saying it was a majority vote but not unanimous. Honse said about 40 union members would be back to work at 8 a.m. today.

Members approved a contract that includes wage increases of 4 percent, 3 percent and 3 percent, union President Ron Honse said. The contract also includes \$200 one-time payment and a 10 percent cap on health insurance cost increases, Honse said.

Agency director Lisa Merkle and attorney Marc Fishel dispute the union's assertion of a 4 percent raise. The agreement includes an adjustment in the wage scale that amounts to a 2 percent raise for the contract year, the two said.

The old contract expired on Oct. 26, 2002; when the union chose to strike, the agency said nothing bargained after a strike would be retroactive.

Because the raise is not retroactive and this year of the contract is in effect only until Oct. 26, the amount of the raise equals 2 percent for the year, Fishel said.

The cost to the agency will equal less than a 2 percent raise for the year, Fishel said.

"I don't know what the union said to sell it, but it's not a 4 percent increase to anyone," Fishel said.

The document signed by both parties indicates a 4 percent raise, from now until Oct. 26.

The document reads, "Wages – Drop entry level and move all wage steps to the left. Add new step F that is 4 percent about current step E" All wage steps are 4 percent apart.

Negotiations began in September 2002 and have been nasty at times, continuing through a strike that began March 26. Both sides said Wednesday they could put any bitterness behind them.

"These people are professionals," Honse said. "They'll conduct themselves in a professional manner and serve the citizens. They'll be back to work doing the job as if they never left."

Merkle said she hoped for the same thing, but expected some transition time.

"It will just take a while to mend fences," Merkle said. "If we all remember we're here to do a job, then it will be fine."

At A Glance

Details of the three-year contract:

- Raises of 4 percent, 3 percent, 3 percent
- Insurance premium increases capped at 10 percent
- One-time \$200 signing bonus upon contract ratification
- Though not in the contract language, a letter was written by the agency director Lisa Merkle saying management would not receive raises higher than those of bargaining unit employees.

OHPELRA THANKS ITS 2003 CONTRIBUTING SPONSORS

See the links on our web site at ohpelra.org for links to these sponsors and more information. Please consider our sponsors when seeking professional services, and thank them for supporting OHPELRA!

Baker & Hostetter, LLP
Columbus,
Cincinnati, and
Cleveland

Bernardini Consulting Services
Columbus

CareWorks
Dublin

CompManagement, Inc.
Dublin

Coolidge, Wall, Womsey & Lombard
Dayton and Xenia

Diversity Effectiveness, LLC
Cincinnati and
Cridersville

Downes, Hurst & Fishel
Columbus

Dublin Management Group
Dublin

Frost Brown Todd, LLC
Cincinnati,
Middletown, and
Columbus

McGohan Brabender, Inc.
Dayton

Pepple & Waggoner, Ltd.
Cleveland

Personnel Profiles, Inc.
Covington, KY

OHPELRA's 20th Anniversary

WE ARE QUICKLY APPROACHING OHPELRA'S "20TH ANNIVERSARY". To help us celebrate and to reminisce, we are looking for photographs from over the years that depict some of the many conferences, events, and "get togethers" that have defined the life of OHPELRA. Please contact any board member if you have pictures to share.

State Civil Service Law Reform Overview

Important Business for Ohio — House Bill 94

OHIO'S CIVIL SERVICE LAW NEEDS TO BE AMENDED for increased operational flexibility, responsiveness, and efficiency while preserving employees' rights. Public employers in Ohio with non-union employees are currently constrained by human resource management laws that were written in the 1930's to eliminate the spoils system, the manipulation of government and the arbitrary removal of employees following a change in political power.

The Civil Service Review Commission, which consisted of 3 Senators, 3 Representatives, and 9 Governor appointments of professionals from unions, cities, counties, ODAS, and other public interests, was convened by Governor Taft in 2001 to review the various civil service laws and rules and regulations. Representative Stephen Buehrer and Senator Lynn Wachtmann co-chaired this commission. A comprehensive review took place the year of 2001, resulting in a list of key recommendations for the reform and reorganization of government. The recommendations are both targeted and wide-ranging, giving public agencies the ability to design personnel systems to meet their needs.

As it currently stands, many public agencies are doing as they please with disregard to state civil service laws, rules and regulations, and very few safeguards are in place to make sure the principles of merit and fitness, as mandated by the Ohio Constitution, are followed. The citizens of Ohio will be rewarded with more efficient government at a lower cost by implementation of recommendations contained in the December 31, 2001, Report to the Ohio General Assembly.

The bill includes many provisions, and following are just a few:

MANAGING & REDUCING WORKFORCE COSTS:

- Streamlines lay-off procedures.
- Allows for furloughs (up to 70 days in a fiscal year).
- Allows for the reduction in workweek hours (non-voluntarily for up to 70 days in a fiscal year).
- Counts only hours worked (not all hours in active pay status – such as sick leave, vacation time, etc.) when determining whether overtime compensation is warranted. This is consistent with how overtime is calculated under the federal Fair Labor Standards Act (FLSA).

EMPLOYEE CATEGORIES & CLASSIFICATIONS AND HIRING:

- Modifies the list of individuals in the unclassified service.
 - Provides that all department heads appointed by a board of county commissioners are unclassified.
 - Provides the board of county commissioners with unclassified positions (which is the same number statewide officeholders currently are granted) and 1 unclassified position per commissioner (since the board is a body made up of 3 elected officials), for a total of 7; currently commissioners are granted only 3 unclassified positions for the entire board.

- Provides that not more than 5 specified administrative positions within a county department of job and family services are unclassified.
- Extends from 60 – 90 days the time in which an appointing authority has to notify DAS regarding the appointment of an employee in the unclassified service.
- Allows the tests that constitute an examination for a position in the classified service to include: (1) structured interviews; (2) assessment centers; (3) work simulations; (4) examinations of knowledge, skills, and abilities, and (5) any other acceptable testing method.
- Requires an appointing authority to explain in writing to employees in the unclassified service the nature of their employment.
- Addresses job classifications and requires each appointing authority to establish the minimum educational and other qualifications for persons it employs rather than set by the State.
- Simplifies provisional, interim and temporary appointments funded by grants.

LOCAL OPTIONS & FLEXIBILITY:

- Requires DAS to allow appointing authorities of a county to develop and administer in a manner it devises an evaluation system for the employee it appoints.
- Addresses alternative holiday, sick & vacation schedules in response to a recent Attorney General's Opinion.
- Allows counties and others to establish veteran's preferences that differ from state policy, while establishing a minimum requirement in compliance with the Federal "USERA" Law.

EMPLOYEE DISCIPLINE & APPEALS:

- Clarifies that local employees come under the same whistleblower protection law that state employees come under (rather than having local employees come under the private sector whistleblower law).
- Allows for "last chance agreements" between an employee & employer that outline the type of behavior that, if it occurs, will automatically lead to removal of the employee without the right to appeal to the State Personnel Board of Review (SPBR).
- Allows an appointing authority, in its discretion, to place an employee on unpaid administrative leave for a period not to exceed two months if the employee has been charged with or is being investigated for a violation of law that is punishable as a felony. If employee is not charged or found guilty, employee's wages plus interest must be paid.
- Provides that certain appeals from SPBR must be filed in the home county of employer.
- Eliminates employee witnesses' right to legal counsel during meeting with an employer when they are not the subject of the investigation.

OTHER ITEMS:

- Changes the law so that current alcohol abusers are not deemed "disabled" and cannot claim protection under state disability statutes. (Federal law protects "former" abusers.)
- Requires DAS to develop and conduct supervisory training programs & best practices plans. Also requires DAS to develop merit-hiring processes.
- Recommends that an ad hoc committee be formed to review and study greater awareness of the use of mediation and other alternative dispute resolutions procedures in appeals to the State

Continues on page 5

Arbitration Decisions

We continue our series of reports and summaries on arbitration decisions submitted by members. The views expressed herein are those of the member and do not necessarily represent any evaluation or opinion of OHPELRA or its Board of Directors.

Greene County Sheriff's Office v. Fraternal Order of Police, Ohio Labor Council, Inc.

Arbitrator: Harry Graham

Issue: Jail Deputy was removed on July 12, 2002 for conduct unbecoming and untruthfulness surrounding a sexual harassment complaint by a female deputy; use of the county's e-mail system to forward sexually and obscene oriented jokes; and dissemination of confidential information. This was a true "she said, he said" case.

Outcome of the Case: The removal was reduced to a 10-day suspension without pay, and the Deputy was awarded full back pay and benefits. The Arbitrator found that the two deputies engaged in mutual consensual sexual activity, and that the Employer terminated the male deputy without just cause and without progressive discipline.

Rating of the Arbitrator (with 5 as the highest):



- a) Conduct of hearing: 5
- b) Grasp of issues: 5
- c) Soundness of the overall decision: 3
- d) Avoidance of bias: 4
- e) Willingness to decide case rather than split the decision: 5
- f) Willingness to use this arbitrator again: 3

Greene County Sheriff's Office v. Fraternal Order of Police, Ohio Labor Council, Inc.

Arbitrator: Dennis Burn

Issue: Road Deputy Sheriff suspended for 15 working days for insubordination when he refused to work an overtime assignment mandated because of minimum staffing. The arbitrator recognized a prior 1995 15-day suspension for insubordination as a precedent within the Green County Sheriff's Office.

Outcome of the Case: The 15-day suspension was upheld.

Rating of the Arbitrator (with 5 as the highest):

- a) Conduct of hearing: 5
- b) Grasp of issues: 5
- c) Soundness of the overall decision: 5
- d) Avoidance of bias: 5
- e) Willingness to decide case rather than split the decision: 5
- f) Willingness to use this arbitrator again: 5

For more information regarding these cases, contact Marsha Jordan-Smart, Human Resources Director, Board of Greene County Commissioners.

Have a case you want us to summarize? Please send the information in this format to Jim Sennish at JSennish@erie-county-ohio.net

Save The Date For The 2004 Annual Conference!

OHPELRA'S 20TH ANNIVERSARY ANNUAL TRAINING CONFERENCE will be held at Cherry Valley Lodge in Newark on February 1-3, 2004. As mentioned elsewhere in this issue, your board is planning a special program focusing on OHPELRA's 20 years of progressive leadership in public-sector labor relations. The year 2004 also marks the 20th anniversary of Ohio's public employee collective bargaining law, so this is a time to reflect where we've come from and prepare for what lies ahead.

The Board of Directors met August 21-22 to plan the program, and while details remain to be confirmed, the professional program will be top-notch, as our members have come to expect. Speakers will reflect on what we've learned in 20 years, the impact of the weak economy and budget cuts on collective bargaining and human resources, legal updates on state and national developments, including changes to the FLSA, and how we can grow as professionals through criticism. The conference will offer two days packed with practical, professional training, plus evenings of fun and friendship with your OHPELRA colleagues.

Mark the dates now and start planning for this in your 2004 training budget. Better yet — encourage a friend or colleague who has never been to an OHPELRA program to come with you.

Law Reform from page 4

Personnel Board of Review (SPBR).

- Permits local adoption of alternative selection procedures for a chief of police or chief of fire. The existing law mandating appointment of the highest-scoring candidate from within the jurisdiction's department is too restrictive considering the importance of the position in the affairs of the community. A charter form of government has this option.
- Statutory cities in Ohio must use the selection procedures outlined in Chapter 124 that mandate in many respects how candidates are chosen for original appointment or promotions. The use of multiple-choice examinations are common. Candidate scores can be separated by very small margins and the application of bonus points can, and often do, change the composition of a selection pool. Using the statutory scheme of ORC 124.44 and 124.48 for the promotion of Patrolmen and Firemen, decimal points make the decision since it is required that the highest-scoring candidate be appointed.
- Establish a "rule of three" for selection in the promoted ranks in police and fire departments.

This method of choice is currently the standard for promotions in non-safety force positions.

Fifth District Upholds Reversal Of Arbitration Decision

By Jonathan Downes
Downes, Hurst & Fishel

THE FIFTH DISTRICT COURT OF APPEALS upheld a trial court's ruling that Arbitrator Louis Immundo exceeded his authority in overturning lay-offs by the Perry County Sheriff's Office. *FOP/OLC v. Perry County Commissioners*, 2003 Ohio 4038, 2003 Ohio App. LEXIS 3601 (July 24, 2003).

The crux of the grievance was the interpretation of the parties' collective bargaining agreement

language that provided that when the employer determined that layoffs were necessary, it was required to notify the affected employees ten (10) working days in advance of the effective date. The agreement also provided that the employer was required to determine in which classification the layoffs would occur. The arbitrator found the language to be ambiguous and then moved to other, outside sources to determine that: (1) the County Commissioners, not the Sheriff, were the employer; (2) the

Commissioners' funding of the Sheriff's office violated state law; and (3) the layoffs should therefore be overturned.

The court of appeals approved the trial court's resolution of the issues. The court found that, in evaluating the entire county budgetary process, the arbitrator acted outside the scope of the collective bargaining agreement. The court further found that the parties intended to be governed by the strict terms of the collective bargaining agreement, not civil service law governing lay-

offs. Finally, the court held that pursuant to the terms of the collective bargaining agreement, the decision to lay-off employees was within the sole discretion of the employer, and that the employer did not have to establish the necessity for the layoffs pursuant to the terms of the agreement.

In summary, the Court found that the arbitrator "ignored" the language of the written agreement and considered factors outside the parties' agreement in order to issue "his own brand of justice."

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OFPELRA Update

c/o Erie County Department of Human Resources
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Sandusky, OH 44870