

**FACT-FINDING TRIBUNAL OF THE
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD

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IN THE MATTER OF:

**TEAMSTERS LOCAL NO. 284
Employee Organization,**

and

**FAIRFIELD COUNTY ENGINEER
Employer.**

REPORT OF FACT FINDER

CASE NO.: 00-MED-05-0615

DATES OF HEARING: September 22, 2000

PLACE OF HEARING: Lancaster, Ohio

FACT FINDER: Charles W. Kohler

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Robert K. Handleman, Attorney at Law

FOR THE EMPLOYER:

Robert Windle, Management Consultant

FACTUAL BACKGROUND

The Union represents a bargaining unit composed of Road Maintenance Workers, Road Sign Maintenance Workers, Mechanics, Heavy Equipment Operators, Welders and Vehicle Service Workers. The prior agreement became effective on September 1, 1997, and expired on August 31, 2000.

Prior to the fact-finding hearing, the parties engaged in a number of formal negotiation sessions, and met with a mediator appointed by SERB. Most of the disputed issues were resolved and have been tentatively approved by the negotiators. The tentative agreements of the parties on these issues are hereby incorporated by reference into this report as recommendations. In addition, unless the fact finder has recommended a change in the language of the expired agreement, or the parties have tentatively agreed to a change, the fact finder recommends that the language of the expired agreement be retained.

At the conclusion of the fact-finding hearing, the following issues remained unresolved:

1. Article 13.7 - Sick Leave and Other Absences (Bereavement Leave)
2. Article 15 - Insurance Benefits
3. Article 16 - Wages and Organizational Chart
4. Article 20 - Holidays
5. Article 25 - Duration and Termination
6. New Article - Work Rule - Cellular Telephones

ISSUES

Issue 1

Article 13.7 - Sick Leave and Other Absences (Bereavement Leave)

Position of the Union

The Union proposes the extension of bereavement leave to include grandparents and grandchildren. It also proposes that one day of bereavement leave be allowed for aunts and uncles. The Union contends that the great majority of labor contracts include bereavement leave for grandchildren and grandparents. The Union points out that the collective bargaining agreement between the Fraternal Order of Police and the Fairfield County Sheriff includes bereavement leave for both grandparents and grandchildren.

The Union asserts that aunts and uncles are often important members of the family, and employees should be able to use one day of bereavement leave in order to attend the funeral of an aunt or uncle. The Union notes that it is only proposing one day of bereavement leave for aunts and uncles, compared to the three or four days of bereavement leave permitted for other relatives.

Position of the Employer

The Employer proposes that the current language on bereavement leave be retained. It asserts that bereavement leave for aunts and uncles is not the norm in county engineer labor contracts. Further, no other agreements in Fairfield County provide bereavement leave for aunts and uncles. Aunts and uncles are not included in the bereavement leave provided to non-union employees of Fairfield County, nor are they included in the bereavement leave provision of the civil service laws of Ohio.

The Employer maintains that employees already have three personal days per year which can be used for attending the funeral of relatives who are not included in the bereavement leave provision.

Discussion

A review of the labor agreements for other county engineer offices in Ohio demonstrates that it is common to provide for bereavement leave for grandparents and grandchildren. Fairfield County provides bereavement leave to non-union employees upon the death of a grandparent or grandchild. However, bereavement leave provisions in the labor agreements of other county engineers do not normally provide any leave for aunts and uncles. Bereavement leave for aunts and uncles is not provided by Fairfield County to its non-union employees.

Recommendation and Rationale

It is apparent the vast majority of labor agreements in other county engineer offices provide for bereavement leave for grandparents and grandchildren. The fact finder believes that this benefit should be provided to employees in the new labor agreement.

The fact finder recognizes that the Union is only requesting one day of bereavement leave for aunts and uncles, compared with the three or four days currently allowed for other specified relatives. However, there is simply no precedent for extending leave in this manner. In addition, employees can use personal leave in order to attend the funeral of an aunt, uncle, or other relative for whom bereavement leave is not available.

Decision

Article 13.7 shall provide as follows:

7. Bereavement Leave for the death of a member of the immediate family, including a spouse, child, grandparent, grandchild, parent or parent in-law, sibling or sibling-in-law, shall be three (3) days per occurrence, or when funeral services are out-of-state, four (4) days per occurrence.

Issue 2

Article 15 - Insurance Benefits

Position of the Employer

The Employer proposes that employees in the bargaining unit pay a portion of their health insurance premium. It proposes a monthly contribution of \$37.50 for single coverage and \$75.00 for family coverage. The Employer states that it is increasingly uncommon for public sector employers to pay 100 percent of the cost of health insurance. The Employer submitted contract provisions from other counties and data from SERB to support its contention that it is not uncommon for employees to pay part of their health insurance premium. It notes that the majority of other Fairfield County employees pay a portion of their premium, and the amount proposed is the most common amount paid by these employees.

Position of the Union

The Union opposes any premium contribution by the employees. It proposes that the current provision requiring the Employer to pay 100 percent of the health insurance premium be maintained. The Union maintains that the \$75.00 monthly payment for family coverage would be equal to \$.43 per hour, which is 3.9 percent of the wage of a Road Maintenance Worker I. The Union asserts that many counties continue to pay the full cost of insurance for employees. Further, the Union argues that wages are higher in some of the counties in which the employees make contributions. The Union notes that employees of the Fairfield County Children's Services Board do not make any contribution.

Discussion

The April 12, 2000, SERB Benchmark Report for engineers' offices in counties with a similar size population contains insurance information for ten other counties. In four of these, the employer pays 100 percent of the premium. Two counties have a fixed employee contribution, as proposed by the Employer. Two specify a fixed maximum

amount to be paid by the employer, with any excess to be paid by the employees. In the other two counties, the premium is shared, with both parties paying a fixed percentage.

There is clearly a trend toward having employees make a contribution toward the cost of their health insurance. However, many county engineers continue to pay 100 percent of the premium. As is illustrated by the SERB report, there are a variety of methods used to allocate the amount to be paid by each party. The evidence shows that, in Fairfield County, some employees make a contribution while others do not. Since health insurance is a necessity for most employees, the implementation of a premium contribution would have an adverse economic impact on employees by effectively decreasing the amount of any wage increase.

Recommendation and Rationale

Despite a trend requiring some employee contribution, the evidence shows many public employers continue to pay the full cost of health insurance. The current collective bargaining agreement provides that the Employer must pay the entire premium. While it is reasonable to propose that employees share in the cost of health insurance, the contribution can be made by a number of different methods, such as fixed contribution, percentage contribution, employer cap, etc. In some counties, the employer pays a different percentage for family coverage than for single coverage. For any individual employee unit, the determination of the best method will depend upon the composition of the employees and the type of insurance plan available. For this reason, it is best for the parties to negotiate the formula to be used. The evidence does not show that the formula proposed by the Employer is the one which best suits the parties. The fact finder will therefore recommend that there be no change in the current provision.

Decision

The fact finder recommends that the current language be retained in Article 15.

Issue 3

Article 16 - Wages and Organizational Chart

Position of the Union

The Union proposes a wage increase of \$1.25 per hour for the first year of the agreement, with the wage increase retroactive to September 1, 2000. It proposes an increase of \$1.10 per hour during the second year of the agreement, and an increase of \$.90 during the third year of the agreement. It also proposes an annual longevity payment of \$80.00 for each year of service, to begin after an employee's fourth anniversary date.

The Union asserts that the employees are significantly underpaid based on a comparison with other public employees in Columbus and the surrounding area. Area cities and counties have provided employees with wage increases from 3 percent to 4 percent in recent years. Further, wages are low compared with similarly classified employees in other Ohio counties in the 76,000 to 136,000 population range.

The Union contends that the current wages were established on the basis that Fairfield County was more rural than it is currently. At this time, the county is more a part of the Columbus metropolitan area, which has resulted in a higher cost of living.

Position of the Employer

The Employer proposes an increase of \$.30 per hour for all employees with an additional \$.20 per hour for employees in pay range 5, and \$.40 per hour for employees in pay range 6. The Employer proposes that these increases become effective with the first full pay period following the date of ratification of the agreement. It proposes an increase of \$.30 per hour for all employees during the second year of the agreement, and \$.30 during the third year of the agreement. The Employer also presented a proposal to clarify the uniform and shoe allowance.

The Employer contends that its wages are competitive with similar jurisdictions, and that the proposed increases are comparable to increases in similar jurisdictions. In order to make the compensation more competitive, it has proposed the additional

increases for the two highest classifications. The Employer is opposed to longevity payments as it feels that the current structure of step increases provides sufficient compensation as employees increase their length of service.

In 1999, approximately 22 percent of the revenue of the Employer came from gasoline tax, which is distributed by the State of Ohio to political subdivisions. The Employer is concerned about the effect of rising gasoline prices, as a reduction in the volume of gasoline sold will result in less revenue.

Discussion

There is a significant difference in the proposals of the parties. For a Grade 4 employee in the top step, the first year wage rate increase varies from 9.8 percent under the Union proposal to 2.4 percent under the proposal of the Employer. For a top step employee in Grade 5, the Union proposal amounts to a 9.7 percent wage rate increase during the first year, while the Employer proposal provides a 3.9 percent increase. For a top step Grade 6 employee, the Union proposal provides a first year wage rate increase of 9.5 percent, while the Employer proposal provides a wage rate increase of 5.3 percent.

Top step employees in Grade 4 would receive a second year increase of 7.9 percent, and a third year increase of 6.0 percent, pursuant to the Union proposal. The Employer proposal would provide Grade 4 employees with an increases of 2.3 percent in the second and third year.

For top step employees in Grades 5 and 6, the second year increase under the Employer's proposal is 2.2 percent and 2.1 percent, respectively. This compares with wage increases under the Union proposal of 7.8 percent and 7.6 percent, respectively. During the third year, top step employees in Grade 5 and 6 would receive 5.9 percent and 5.8 percent under the Union proposal, and 2.2 percent and 2.1 percent under the Employer proposal.

Although there are differences in percentage increases due to the fact that both proposals are in the form of a fixed increment rather than a percentage, the average increase can be approximated. The average wage increase proposed by the Employer

is between 2.3 and 3.3 percent per year for top step employees, but first year increases for Grades 5 and 6 would be 3.9 percent and 5.3 percent, respectively. The Union proposal is slightly over 9.5 percent for the first year, between 7.5 and 7.9 percent for the second year, and between 5.5 and 6.0 percent for the third year. Employees who are not in the top step would have slightly larger percentage increases under both proposals.

Cities in Fairfield and surrounding counties have employees who perform work similar to members of the bargaining unit, and the fact-finder has considered the information submitted by the Union. However, information from other comparable counties is more germane to the issues herein as county engineers have similar statutory responsibilities and funding sources. Thus, the fact finder must give more weight to the data from other counties.

The SERB Clearinghouse Report of 13 counties with similar populations, dated April 12, 2000, shows that those employees at the top step in Grade 4 are paid very close to the average of \$26,077. In Grade 5, the top step average is \$29,527, while the wage in Fairfield County is \$26,832, or \$2695 below the average. In Grade 6, the top step average wage is \$29,070, while the Fairfield County wage is \$27,352, or \$1718 below average. It is apparent that there is some overlap in classifications between the categories of jobs in the SERB report, and the classifications used in the various county engineer offices. Thus, the SERB information cannot be used to calculate a precise wage adjustment. The report does show, however, that employees in Fairfield County in Grades 5 and 6 are generally lower paid than their counterparts in comparable jurisdictions.

Recommendation and Rationale

A different wage adjustment must be made in Grade 4 than in Grades 5 and 6, based on the data from comparable jurisdictions. Employees in Grade 4 have wages in line with the other jurisdictions, but must be given a wage increase in order to maintain parity. Wage increases for county engineer offices have been in the range of 3 to 4 percent, while hourly increases have varied widely from \$.30 to \$1.00. Both parties have

shown a preference for a fixed, across the board wage increase, rather than a percentage, and the fact finder will therefore recommend a fixed increase. For employees in Grade 4, the fact finder recommends an increase of \$.45 per hour for the first year of the agreement, and \$.40 per hour in the second and third years of the agreement. This will provide top step Grade 4 employees with an average increase of 3.3 percent per year.

Employees in Grades 5 and 6 must be given a larger increase based on the data from comparable jurisdictions. Although the wages of these employees lag behind, the entire difference cannot be made up at once. The information from comparable jurisdictions shows that equal pay increases should be provided to Grade 5 and 6. In order to bring these employees closer to the average, the fact finder recommends an increase of \$.65 per hour for the first year of the agreement, \$.60 per hour for the second year, and \$.60 per hour for the third year. This will provide top step employees in Grades 5 and 6 with an average increase of 4.8 percent and 4.7 percent per year, respectively. The evidence does not show that the Employer will have any difficulty funding these increases.

The fact finder believes that the existing pay step plan adequately raises compensation as employees increase their length of service. Therefore, the fact finder will not recommend any longevity pay.

The last collective bargaining agreement expired on August 31, 2000. Although the Employer has proposed making wage increases effective upon ratification, it has not presented any evidence to justify the reduction in the amount the wage increase which would result from its proposal. The fact finder feels that it would be most equitable to make the wage increases effective as of September 1, 2000.

The fact finder will recommend adoption of the Employer's proposal regarding uniforms and work shoes. The Union has not stated any opposition to the proposal.

Decision

The current language shall be retained in Article 16, except that:

1. Wages shall be increased by forty five cents (\$.45) per hour for all employees in Pay Grade 4, effective September

1, 2000. Additional increases of forty cents (\$.40) per hour will be effective on September 1, 2001, and September 1, 2002.

2. Wages shall be increased by sixty five cents (\$.65) per hour for all employees in Pay Grades 5 and 6, effective September 1, 2000. Additional increases of sixty cents (\$.60) per hour will be effective on September 1, 2001, and September 1, 2002.

3. Language pertaining to the implementation of the previous agreement shall be deleted.

4. The last paragraph shall be deleted and replaced with the language in the second paragraph of the Employer's proposal relating to uniforms and work shoes, as contained in the Employer's fact-finding binder at Tab 6.

Issue 4

Article 20 - Holidays

Position of the Union

The Union proposes the addition of the day following Thanksgiving as a paid holiday. It contends that this day has almost become a national holiday, with most businesses either closed or operating with a skeleton crew. It asserts that this additional holiday would allow employees more time to travel and visit with relatives who do not live close by. The Union states that the Employer would still be able to require employees to work in the event that snow removal was required. The Union points out that the Employer has not had problems in securing employees for snow removal duty on any of the other cold weather holidays.

Position of the Employer

The Employer contends that the additional holiday would interfere with its ability to provide an acceptable level of service. Since the proposed holiday falls during the

snow season, the Employer desires to have adequate staff immediately available to handle emergency work. The Employer states that it currently allows as many employees as possible to use pre-approved leave on the day after Thanksgiving. It argues that allowing all employees off would make it difficult to respond to a weather emergency. Since the holiday would give all employees four consecutive days off, there is a greater likelihood that they would be out of town and unavailable to be called in.

Discussion

Certainly, the day after Thanksgiving is a desirable day to have off. However, there is no evidence to show that any employees in Fairfield County have a scheduled holiday on this day. In addition, there is no evidence that any other county engineer departments in Ohio designate the day after Thanksgiving as a paid holiday. The Employer currently is willing to allow as many employees as possible to use pre-approved leave, so long as sufficient personnel are available to provide essential services. The proposal of the Union would give employees four consecutive days off, which would encourage employees to leave town, and be unavailable for emergency call in. This could result in a dangerous situation in the event of a significant snowfall during the holiday period.

Recommendation and Rationale

The proposal of the Union must be rejected because of a lack of evidence to show that the holiday is provided to employees in other county engineer offices. In addition, the proposed holiday could result in the inability of the Employer to provide essential services to the public.

Decision

The current language should be retained in Article 20.

Issue 5

Article 25 - Duration and Termination

Position of the Employer

The Employer proposes a three year agreement, to be effective upon ratification.

Position of the Union

The Union proposes a three year agreement, to be effective as of September 1, 2000. It specifically requests that all wages and benefits be retroactive to September 1, 2000. The Union states that it has negotiated in good faith with the Employer. It argues that the Union should not be penalized for the delays which have occurred between the expiration date and the fact finder's report.

Discussion

As stated in the discussion on wages, the fact finder believes that it would be most equitable to make all increases in wages effective on September 1, 2000. There is no reason to penalize the employees by delaying wage increases for approximately two months.

Decision

The first sentence of Article 25 will provide as follows:

This Agreement shall be effective as of the 1st day of September 2000, and shall terminate at the end of the 31st day of August 2003.

The remainder of the Article will be the same as in the current agreement.

Issue 6
New Article
Work Rule - Cellular Telephones

Position of the Union

The Union has proposed that employees be permitted to carry cellular telephones while they are working. This proposal was made in response to a work rule adopted by the Employer which prohibits using or carrying cellular telephones during working hours. The Union points out that a labor-management committee, established under Article 22, agreed that employees could use cellular telephones during breaks and lunch periods. The Employer rejected the recommendation of the committee and adopted the aforementioned work rule.

The Union states that the current policy is overly rigid. It asserts that when employees attempted to discuss the rule with the Employer, he told them to bring it up in negotiations. The Union points out that employees work in areas where pay telephones are not readily available, and a cellular telephone could be beneficial in an emergency. The telephone would also enable an employee to be notified in the event of an emergency involving a family member. The Union asserts that employees should at least be permitted to use cellular telephones on their lunch periods, which are unpaid.

Position of the Employer

The Employer is opposed to any rule allowing employees to carry cellular telephones. It states that there are no other Ohio county engineer collective bargaining agreements which allow the use of cellular telephones. It maintains that none of the other collective bargaining agreements in Fairfield County have such a provision. The Employer alleges that there would be a significant potential for abuse and loss of production if cellular telephones were allowed.

The Employer asserts that the engineers in Portage County and Butler County have similar rules regarding cellular telephone use, and both also have a collective bargaining agreement with the Teamsters. The Employer points out that all trucks have

two-way radios which can be used in a emergency. The Employer states that it has agreed to allow employees to carry a cellular telephones when needed for a specific reason.

Discussion

The Union has presented some valid arguments to support its position. Employees often work away from the Employer's facility and may have difficulty locating a pay telephone. Important personal matters may require that an employee use a telephone. However, the Employer has a legitimate concern about the possibility of unnecessary and excessive use of cellular telephones. The Employer has indicated that employees are allowed to stop at pay phones when an important call must be made. The Employer has also represented that, when necessary, employees can use the two-way radios, which are in all of the trucks. Messages can also be relayed to employees by use of the radios.

Recommendation and Rationale

The Employer in this case has evaluated the situation and has implemented a policy. The policy allows for exceptions in special situations. The policy allows the use of pay phones and two-way radios when necessary. The Employer has presented a rational explanation for the policy. The existing policy is not arbitrary or capricious. There is no evidence that other public employer bargaining units have contractual provisions allowing the use of cellular telephones during working hours. Thus, there is an insufficient basis for recommending that the proposal be adopted.

Decision

The proposal of the Union for the use of cellular telephones should not be included in the new agreement.

The above recommendations are respectfully submitted to the parties for their consideration.



Charles W. Kohler
Fact Finder

CERTIFICATE OF SERVICE

I do hereby certify that on this 26th day of October 2000, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Robert K. Handleman, Esq., Handleman & Kilroy, 360 South Grant Avenue, Columbus, Ohio 43215; and upon Frank Anderson, County Engineer, Fairfield County Courthouse, Room 105, 210 East Main Street, Lancaster, Ohio 43103; each by Airborne Express overnight delivery; and upon George M. Albu, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.



Charles W. Kohler, Fact Finder