

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT  
RELATIONS BOARD

2001 FEB 25 A 10:55

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In the Matter of Fact-finding	*	
Between	*	
	*	FINDINGS
UNITED STEELWORKERS OF	*	AND
AMERICA, LOCAL 8845-1,	*	RECOMMENDATIONS
AFL-CIO	*	
	*	Case No. 00-MED-10-1254
	*	
and	*	Anna DuVal Smith
	*	Fact-Finder
LORAIN COUNTY ENGINEER	*	
	*	

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Appearances

For the United Steelworkers of America, Local 8845-1:

William T. Mitchell, Staff Representative  
United Steelworkers of America  
42881 Russia Road  
Elyria, Ohio 44035

For the Lorain County Engineer:

Howard Hefflefinger, Executive Vice President  
Martin Bramlett, Senior Consultant  
Clemans, Nelson & Associates  
2656 South Arlington Road  
Akron, Ohio 44319

## INTRODUCTION

This matter came for hearing at 1:50 p.m. on January 30, 2001, at the Oberlin Inn in Oberlin, Ohio, before Anna DuVal Smith who was appointed Fact-Finder pursuant to Chapter 4117 O.R.C. on December 1, 2000. Representing the United Steelworkers of America, Local 8845-1, was William T. Mitchell, Staff Representative. Also present were James P. Hritsko, Chairman; Theodore J. Spillman, Secretary; and Patrick M. McLaughlin, Steward. Representing the Lorain County Engineer were Howard Hefflefinger and Martin Bramlett of Clemans, Nelson & Associates. Also in attendance were Jim Steele, Business Administrator, and Christy J. Tobias, Personnel-Payroll Officer. Both parties were afforded a complete opportunity to examine and cross-examine witnesses, to present written evidence, and to argue their respective positions. The Fact-Finder received pre-hearing statements and admitted two Union exhibits and six Employer exhibits into evidence. Following conclusion of the oral hearing at 3:20 p.m., the record was left open to receive written tentative agreements and side-letters agreed upon in mediation preceding the hearing. These documents were received on February 3, whereupon the record was closed. The parties granted the Fact-Finder an extension until March 2 to issue her Findings and Recommendations.

In rendering these Findings and Recommendations, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in §4117.14 (C)(4)(e) and Rule 4117-9-05 (J) and (K) O.A.C., to wit:

- (1) Past collectively bargained agreements between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

- (3) The interest 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) Stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## BACKGROUND

The United Steelworkers of America represents approximately 46 employees of the Lorain County Engineer. The most recent contract, effective January 1, 1998, through December 31, 2000, covered two bargaining units (a certified and a deemed-certified unit) in a variety of classifications. The Steelworkers represent six of the other 18 units in the country, but this is their largest unit.<sup>1</sup> Bargaining over a successive agreement was complicated by the fall 2000 election and the out-going County Commission's approval of pay increases for their own employees and the 9-1-1 agency. The Engineer's negotiations were ultimately unsuccessful, so the parties operated under an extension agreement and proceeded to fact-finding, bringing numerous unresolved issues involving 14 articles, 1 appendix, 24 existing side letters and 3 proposed side letters. Pre-hearing mediation by the Fact-Finder produced withdrawal of the Union's proposal on Dues Check-off, and tentative agreements on Union Recognition, Grievance Procedure, Military Leave, Hours of Work and Overtime, Report and Call-In Pay, Vacation, Bereavement Leave, Health Care, Uniforms, Life Insurance, Side Letters 1-4 and 6-24, and a new side letter governing the alternate method of selecting an arbitrator. The parties further agreed to retain current contract language of the Preamble,

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<sup>1</sup>The USW units in Lorain County are the Auditor, Clerk of Courts, Commissioners, Commissioners 9-1-1 agency, Engineer, Recorder and Treasurer.

Article 3-6, 8-12, 14, 16, 18, 20-22, 24-25, 29-35, and 37-38, and Appendices A-C and F.

These agreements are expressly incorporated into this report of Findings and

Recommendations as if written at length as the Fact-Finder's recommendations. Further,

language submitted on February 3 as side letters to govern pre-emption of statutory language

and inclusion of part-time employees (attached herewith as Appendix A and B) but not signed

by the parties is also expressly recommended by the Fact-Finder. Evidence and argument were

taken on the remaining three issues:

1. Wages (Article 26 and Appendix D)
2. Duration (Article 39)
3. Sick Leave/Incentive Leave (Article 23)

## ISSUES

### Issues 1. Wages

Union Position. The Union seeks an immediate across-the-board adjustment of \$1/hour plus 5% on December 31 each year for three years beginning in 2000. It argues that such an increase is justified in the interest of parity with what the Commissioners approved on November 30 for their employees and the 9-1-1 unit. It does not know if their non-bargaining units received the \$1 across-the-board increase, but they did get 5%. Other USW bargaining units can be expected to follow the pattern and there is no reason to expect that the UAW units will roll over and die. The Union has already agreed to parity with other appointing authorities in the County on other issues such as healthcare. Parity should be granted on this one as well. To deny it is to deny these employees their fair share. The Union says that it has reason to believe the Commissioners will approve what the Union asks. If the Engineer can't

afford it, which the Union doubts, it has the right and obligation to ask the Commissioners for additional funds.

Turning to the Employer's arguments, the Union points out that the Engineer's exhibit on pay increases for other county engineers only reports percentages, not wage level. As for the \$1 that the bargaining unit got nine years ago, that was then, this is now. The Employer wants to make it sound as if it did a big favor for the Union then, as if the Engineer did not benefit. This is not true because the Engineer got a trained labor force for its \$1. Thus, both parties benefitted. The Union does have some problems with it today and is willing to trade it away, but still wants the dollar the Commissioners granted others.

The Union submits that their offer is affordable for several reasons. One of these is management compensation. On average, management earns over \$7 more per hour than bargaining unit employees do, yet the Union is not seeking parity with management, just with other hourly employees. It also submits a newspaper article to show that the Engineer's own salary was increased 10% in December to \$84,619 and he earns another \$8.50/hour when he is working. The Union submits that it is irrelevant that the State of Ohio granted this increase. The dollars to fund it come from the Engineer's funds. The Engineer also feels it is appropriate to buy seven Crown Victorias for management to use on the job and commuting. The Union estimates this cost to be over \$100,000. The Union further points out that the nine employees who left since 1998 and who have not been replaced save the Engineer \$200,000 a year. Finally, the Union attacks the Engineer's financial data. First, it contends that increasing gas prices mean higher revenue. Second, although automobiles have a longer life today than formerly, they are still licensed every year. Third, the Engineer does not disclose

either its cash balance or what Issue II reimbursements are. For all these reasons, the Union asks that its wage proposal be recommended.

Employer Position. The Employer proposes a two-year agreement with wage increases of 4% and 3% upon execution of the Agreement and the first full pay period in January 2002, respectively. The Employer further proposed in its pre-hearing statement (but did not address further in mediation or at hearing) that employees who receive a SEOP supplement for being certified on a piece of equipment requiring a Commercial Driver's License and who lose their CDL also lose their supplement. Second, it would add a sentence clarifying that the 10¢/hour first aid/CPR supplement counts towards the maximum SEOP supplement.

The Engineer supports its position with four arguments: internal comparisons, external comparisons, rate of inflation and affordability. First, it argues that the role of the Fact-Finder is to maintain the bargaining unit's relative wage position, which is what the Employer's proposal would do. It submits a tabulation of wage increases in Lorain County agencies since 1996, which it claims shows a fairly consistent countywide pattern. For 2001, while three Commissioners' units got \$1 plus 5%, the County Home and the Drawbridge employees got 5%, but not the \$1. Moreover, on the same day the Commissioners approved the \$1/5%/5%/5% for their own employees, they also approved 4%/3.75% for two of the Sheriff's units (which have a direct impact on two other Sheriff's units by virtue of their rank-differential language). This, the Engineer says, shows what the Commissioners will do for other appointing authorities. Even if the Fact-Finder decides 5% is justified, the \$1 is unwarranted, because for the past nine years all the Engineer's bargaining unit employees have been eligible for up to \$1.53/hour in skill supplements. It submits data to show that almost all

receive the additional money either as an SEOP supplement or had it rolled into their base rate in the last contract. In other words, they have already been receiving the \$1 that just now has been granted to Commissioners' employees.

Regarding external comparisons, the Employer offers the wage increases of the employees of eight other county engineers, selecting counties contiguous to Lorain and counties with cities of comparable size or larger. Its own proposal, it contends, is more in line with the increases granted in these counties than the Steelworkers' proposal is. Moreover, its offer exceeds the inflation rate for this region of Ohio, currently running at about three percent.

With respect to affordability, the Engineer contends that it can afford 5% a year in a two-year agreement, but only if it realizes savings elsewhere. Its revenues derive principally from motor vehicle licenses and gasoline taxes. They have been growing at about 2% a year since 1994 and are projected at \$6.3 million in 2001. However, personnel costs have been growing 4-5% a year and comprised 52-57% of the budget in 2000. This means there is less and less available to replace aging equipment, buy supplies and make repairs. Under its own proposal, personnel costs will comprise 53% of the 2001 budget whereas under the Union's proposal, they would add well over \$100,000 more to expenditures than the Engineer's offer would, increasing personnel costs by 13½% in the first year. It points out that revenues exceeded expenditures in 2000 by only \$100,000. In sum, the Engineer is concerned.

Nothing indicates that the State will increase the tax on gasoline and while the Engineer has no doubt that the Commissioners would approve the Union's proposal if recommended by the Fact-Finder, that is not the same as agreeing to fund it. When the Engineer spoke to Lorain

County administration about it at the end of the year, it got a flat-out "No." Granting the Union's request would thus put the Engineer into a layoff position.

With respect to the Union's contentions, the Engineer admits that it is buying some Crown Victorias, but says that they are only two or three used cars with mileage of around 80,000. These cars will come from the Ohio Highway Patrol to replace older vehicles with mileage in excess of 100,000 that have become too expensive to maintain. They cost \$5500-\$6000 each, for a total of only \$16,000-\$18,000 (if three are purchased), not the \$100,000 alleged by the Union. Second, it points out that gasoline tax is levied per gallon, not on dollar sales. Finally, with respect to management pay, it notes that managers are highly educated professionals. The difference between their salaries and hourly employees' reflects those qualities and what the market demands. Moreover, the Engineer does not set his own salary. Although he was granted a 7.3% increase this year, there have been years with no increases at all such that between 1992 and 2000, his pay increased on average only 1.9%/year whereas the bargaining unit's increased 3.3%/year in the same period.

### Discussion

The Fact-Finder agrees with the Employer that her role, at least in part, is to maintain relative wage positions where justified. However, the data submitted by the Employer does not support its contention that its offer would maintain the Engineer's employees' relative wage position. For instance, in the years reported by the Employer, the Engineer's increases have never tracked the Sheriff's. Indeed, with average annual wage increases of 3.2% from 1996 through 2000, the Engineer's unit is falling behind the Sheriff's corrections officers, deputies and promoted units, whose wage increases averaged 3.8% in the same period. During this

period, which came after the SEOP was created to remedy pay inequity and to develop a skilled workforce, the Engineer more closely tracked Job and Family Services and the Commissioners' drawbridge unit (3.2%/year), and the Auditor, Clerk of Courts, Commissioners, and the Recorder (3.4%/year). The average annual increase for the 9-1-1 unit during this period is difficult to pinpoint, but it appears to be 3% or better. Of these seven units, three have received 5% for 2001 (two of which also got an additional \$1), one is negotiating but not yet settled, and three appear likely to reopen. Since there is no evidence that employees in the Commissioners' three units were underpaid relative to the other four, the historic wage patterns which existed at least since 1996 will have been disturbed by the Commissioners' action last fall unless comparable increases are provided to the other units. In other words, to maintain the wage relationships with other employees whose pay increases closely tracked the Engineer's, employees of the Engineer should receive \$1/hour plus 5% in 2001, then 5% in succeeding years of the contract.

As far as external comparisons are concerned, the data submitted, consisting only of a couple of years and no raw wages, is too sparse to draw any conclusions with reasonable certainty.

Having determined that internal parity justifies matching the Commissioners' increase, the question is whether the Engineer has the ability to fund it. Although the Engineer did submit some revenue and expense data, and also the impact of the two proposals on personnel costs and their share of budget, it did not reveal its cash reserve. In fact, it had no response to the Union's claim that its demand could be funded by unfilled vacancies and it suggested it could manage 5% with layoffs. As the keeper of the records, the burden is on the Employer to

prove an inability to pay or an unacceptable impact on the level of public service. What is more, the Engineer has the ability to seek funding from the Commissioners, who surely anticipated (or should have anticipated) the ripple effect of their action and planned for it.

In short, I find \$1/5% for 2001 justified by the pattern set by the Commissioners and there is no evidence that the Engineer is unable to match it without adversely affecting public service. However, because of the uncertainty of the County's immediate economic future and the Engineer's history of contract sequencing, I recommend only a two-year contract. I also find the Engineer's proposals on the SEOP language for CDLs and first aid/CPR supplements reasonable and accordingly recommend them.

Fact-Finder's Recommendation

Wages:	January 1, 2001	Raise wages \$1 plus 5 percent
	January 1, 2002	Raise wages 5 percent

SEOP (currently Section 5). Add the following paragraph:

If a particular piece of equipment identified in Appendix D requires an employee to possess a Commercial Driver's License (CDL), and an employee who is receiving a supplement for being certified on that particular piece of equipment loses his CDL, the employee will no longer be eligible to receive the supplement.

First Aid/CPR (currently Section 8). Add the following sentence:

This shall count toward the maximum supplement that an employee can receive as part of the Skilled Equipment Operation Program.

Issue 2. Duration

Union Position. The Union seeks a three-year agreement commencing January 1, 2001 and ending December 31, 2003. It says a three-year term is justified for two reasons. One, three

years is the normal term under SERB and NLRB jurisdiction. Second, this unit's contract would then expire on the same date as all the other Steelworkers' contracts in the County. The Union counters the Employer's argument against election year negotiations, saying the 60-day notice means negotiations would begin on November 1, so close to the election that if the Engineer does not have the support of the electorate, negotiations will not make any difference. As for the Engineer's focus argument, the Union points out that the Engineer's staff and consultant do the actual negotiations, not the Engineer himself.

Employer Position. The Engineer wants a two-year agreement commencing upon execution and expiring December 31, 2002. The unit has a customary tradition of going one year before all the others and the Engineer wants to keep it that way. About every fourth contract is a two-year agreement so that negotiations do not take place in an election year. Negotiations deserve the attention and focus that they would not receive if they took place with the distractions of an election. Although the Engineer, himself, does not sit at the table, he does meet and confer with his staff and consultants about the negotiations. Another reason that a two-year term is justified for this contract is the difficulty of projecting economics out further than two years at the current level of spending and whatever finally becomes the economic package of this agreement.

Fact-Finder's Recommendation

For the reasons given in the discussion of wages, I recommend a two year agreement commencing on January 1, 2001, and expiring on December 31, 2002.

### Issue 3. Sick Leave/Incentive Leave

Union Position. The Union came to fact-finding with proposals to change the rate of sick leave accumulation and minimum charge increments, and to replace incentive leave with personal leave, but these proposals were withdrawn. What it does seek is an improvement in the cash-out benefit, proposing the right to cash out 500 earned and unused sick leave hours upon separation or retirement with five or more years in the Public Employment Retirement System. The Union argues that this improvement is justified for two reasons. First, two other Steelworkers units have it, the 26-employee 9-1-1 unit and the Commissioners' 35-employee unit. The Union will be meeting with the other four county appointing agencies with which it has contracts and expects them to follow the pattern because their employees are restive, too. Regarding the Engineer's objection to expanding coverage to terminated employees, the Union agrees that atrocious employees are terminable, but disagrees that they should lose accrued sick pay which they have earned in five or more years of faithful service.

Employer Position. The Employer can live with the current benefit. However, it does propose some enhancements. It would add resignation to the conditions for sick leave cash-out, but opposes cash-outs for just cause terminated employees. It would also increase the hours that could be converted, but on a sliding scale depending on years of service. It would also retain the 50% buy-out rate on these hours:

10 but less than 15 years of service	1000 hours @ 50%	to 500 maximum
15 but less than 20 years of service	1250	625
20 but less than 25 years of service	1500	750
25 or more years of service	1750	875

The Employer argues that the Union's proposal is overly generous to newer employees (24 of the 46 have less than five years of service), whereas its own proposal would provide greater benefit to those who serve the county the longest, encourage attendance, and not reward employees terminated for performance issues. The Employer further argues and submits data to show that the Union's proposal is unjustified by comparison with the other 18 Lorain County bargaining units, almost all of which provide the same benefit the Engineer presently does or graduate it to reward longer-service employees upon their retirement. Furthermore, the Engineer disputes the Union's claim that the 9-1-1 unit has been granted what the Commissioners' own employees and the County Home have. As for the Auditor, Recorder, Clerk of Courts and Treasurer, the Engineer admits that those employers have agreed to a labor-management meeting to be followed by an application to SERB to reopen their contracts, but asserts that improving this benefit for those employees is not a sure thing.

### Discussion

The internal pattern of the sick leave cash-out benefit is unlike that of the wage increase pattern discussed above. Here, the improved benefit sought by the Union matches only that for the County Home and the Commissioners' employees. Every other unit, including the Sheriff's, does not become eligible until at least ten years of service and only upon retirement (not separation). Moreover, the cash-out rate is 50% of 960 hours except for those Sheriff's units with a 20-year eligibility. The Union's demand cannot, therefore, be justified on the basis of parity with other units. I consequently recommend the Employer's offer as a reasonable improvement to encourage attendance, performance and longevity.

Recommendation for Sick Leave Conversion (Article 23, Section 13)

A bargaining unit employee upon retirement or resignation with ten (10) but less than fifteen (15) years of service shall be paid at fifty percent (50%) rate for earned and unused sick leave hours, up to a maximum of one thousand (1,000) earned and accrued hours, not to exceed a maximum of five hundred (500) hours paid.

A bargaining unit employee upon retirement or resignation with fifteen (15) but less than twenty (20) years of service shall be paid at a fifty percent (50%) rate for earned and unused sick leave hours, up to a maximum of one thousand two hundred fifty (1,250) earned and accrued hours, not to exceed a maximum of six hundred twenty-five (625) hours paid.

A bargaining unit employee upon retirement or resignation with twenty (20) but less than twenty-five (25) years of service shall be paid at a fifty percent (50%) rate for earned and unused sick leave hours, up to a maximum of one thousand five hundred (1,500) earned and accrued hours, not to exceed a maximum of seven hundred fifty (750) hours paid.

A bargaining unit employee upon retirement or resignation with twenty-five (25) years of service or more shall be paid at a fifty percent (50%) rate for earned and unused sick leave hours, up to a maximum of one thousand seven hundred fifty (1,750) earned and accrued hours, not to exceed a maximum of eight hundred seventy-five (875) hours paid.

Respectfully submitted,



Anna DuVal Smith, Ph.D.  
Fact-Finder

Cuyahoga County, Ohio  
February 23, 2001

ADS:rp  
serb676

Appendix A

**SIDE LETTER OF AGREEMENT #**  
**PREEMPTION OF STATUTORY RIGHTS**

The Lorain County Engineer, hereinafter "Employer," and the United Steelworkers of America, on behalf of Local #8845-1, hereinafter referred to as the "Union," do hereby agree to enter into this side letter of agreement for the purpose of explicitly demonstrating the intent of the parties to preempt statutory rights, as required by the Ohio Supreme Court in its decision of State ex rel. OAPSE v. Batavia Local School Dist. Bd. of Educ., 89 Ohio St. 3d 191 (2000). The parties agree that should the Ohio Supreme Court overrule the Batavia decision, this side letter shall not be needed to indicate the intent of the parties and shall dissolve, with no impact on the agreement or the rights of the parties.

In accordance with the provisions of Ohio Revised Code section 4117.10 (A), this agreement governs the wages, hours, and terms and conditions of employment to the extent provided herein. It is therefore the intent of the parties that the terms and conditions of this agreement specifically preempt and/or prevail over the statutory rights of public employees as set forth below:

<b><u>Contract Article</u></b>	<b><u>Statute/Regulation Preempted</u></b>
Article 8, Disciplinary Procedures	ORC 124.34
Article 9, Seniority	ORC 124.321 - 124.328
Article 10, Job Posting	ORC 124.27; 124.31
Article 12, Layoff & Recall	ORC 124.321 - 124.328
Article 15, Hours of Work/Overtime	ORC 4111.03
Article 17, Vacation	ORC 9.44; 325.19
Article 18, Holidays	ORC 325.19
Article 20, Court Leave	OAC 123: 1-34-03
Article 21, Leave of Absence	OAC 123: 1-34-01
Article 22, Disability Leave	OAC 123: 1-33-03; OAC 123: 1-34-01
Article 23, Sick Leave/Incentive Leave	ORC 124.38; 124.39
Article 25, Probationary Periods/ Performance Evaluations	ORC 124.27; OAC 123: 1-3-01

Appendix B

**SIDE LETTER OF AGREEMENT # \_\_\_\_\_**  
**PART-TIME EMPLOYEES**

The Lorain County Engineer, hereinafter "Employer," and the United Steelworkers of America, on behalf of Local #8845-1, hereinafter referred to as the "Union," do hereby agree to the following:

Should the number of part-time employees who are in bargaining unit classifications equal or exceed three (3), the parties agree that such employees will become members of the bargaining unit as soon as the parties agree to any changes necessary to the collective bargaining agreement in order to accommodate the inclusion of part-time employees.

Any benefits the parties agree that part-time employees are entitled to receive will be made effective retroactive to the date that the number of part-time employees in bargaining unit classifications equaled or exceeded three (3).

This side letter of agreement shall become effective upon execution of the agreement and shall terminate effective \_\_\_\_\_.

## CERTIFICATE OF SERVICE

I certify that on the 24th day of February, I served the foregoing Report of Fact-Finder upon each of the parties to this matter by express mailing a copy to them at their respective addresses as shown below:

Martin Bramlett  
Clemans Nelson & Associates  
2656 South Arlington Road  
Akron, Ohio 44319-2050

William T. Mitchell  
United Steelworkers of America, District 1  
42881 Russia Road  
Elyria, Ohio 44035

I further certify that on the 24th day of February, I submitted this Report by express mailing it to the State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-5213.



Anna DuVal Smith, Ph.D.  
Fact-Finder