

STATE EMPLOYMENT  
RELATIONS BOARD

2002 MAY 15 A 10: 15

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	Case No. 02-MED-01-0014
	*	
Fact-finding between:	*	
	*	
Fulton County Engineer	*	Fact-finder:
	*	
	*	Martin R. Fitts
and	*	
	*	
AFSCME Ohio Council 8	*	May 13, 2002
Local 2782	*	
	*	

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**REPORT AND RECOMMENDATIONS OF THE FACT-FINDER**

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**APPEARANCES**

For the Fulton County Engineer (the Employer):

Paul Goldberg, Attorney  
Frank Onweller, Fulton County Engineer

For AFSCME Local 2782 (the Union):

William F. Fogle  
Herb Harris, President, Local 2782  
Larry Sausser, Vice President, Local 2782

## **PRELIMINARY COMMENTS**

The bargaining unit consists of eleven highway workers, route markers and mechanics employed by the Fulton County Engineer. The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute February 6, 2002. A mediation session was held with the Fact-finder on April 23, 2002. There were eight issues at impasse: Operators License; Hours of Work/Overtime; Bereavement Leave; Hospitalization; Holidays; Vacations; Inclement Weather Gear; and Wages. During mediation, four issues were tentatively agreed upon, and thus four issues (Holidays; Vacation; Inclement Weather Gear; and Wages) were submitted for Fact-finding. The fact-finding hearing was held on April 30, 2002 at the Fulton County Engineer's offices. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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, and 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. Any stipulations of the parties; and
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.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented in writing to the Fact-finder at the April 30, 2002 hearing.

## **ISSUES AND RECOMMENDATIONS**

### **Issue: Holidays**

#### **Positions of the Parties**

The Employer proposed no change in the current agreement.

The Union proposed three changes in the current agreement. It proposes adding “Good Friday afternoon (4 hours)” as a paid holiday. It proposes adding language that states, “If the State Legislature adopts any additional holidays, they shall be added as a paid holiday.” And it proposes adding language that “accumulated vacation (subject to 5-day advance notice) may be utilized, without limit to the number of people off, on Good Friday morning.”

#### **Findings and Recommendations**

The Employer argued at the hearing that it is already generous with holidays and time off. There was no compelling argument made by the Union that would persuade the Fact-finder to add to the holidays already contained in the agreement. Additionally, there was no compelling reason offered to support the language change proposed by the Union that would eliminate any limit on the number of people who could be off on vacation on Good Friday morning. The Employer makes a compelling argument that, as a small operation, elimination of any limits on the number of employees off could seriously hinder its ability to perform work.

The county is a creature of state law, and it is reasonable to provide in the agreement for changes in state-recognized holidays. The Employer offered no real objection to this.

Therefore, the Fact-finder recommends the Employer’s position that Good Friday afternoon not be added to the list of holidays contained in Article 33, Section 1 of the agreement. The Fact-finder also recommends the Employer’s position that no language be added to the agreement allowing an unlimited number of employees to take vacation on Good Friday morning.

The Fact-finder does recommend the Union's proposal for the addition of an Article 33, Section 1. B in the agreement that would read as follows:

*Article 33. Holidays*

*Section 1*

*B) If the State Legislature adopts any additional holidays, they shall be added as a paid holiday.*

### **Issue: Vacations**

#### **Positions of the Parties**

The Employer proposed no change in the current agreement.

The Union proposed adding language so that "emergency vacations shall not be subject to advance notifications." The Union also proposes changing language to read "vacation accrued may be taken in at least four (4) hour increments."

#### **Findings and Recommendations**

The Employer stated that it saw no need to change the current agreement with regard to vacation usage, as it is not aware of any complaints in the past. It offered no objection from a managerial standpoint that the Union proposals would be difficult to administer. While the Union is seeking greater flexibility for its employees, this proposal does not seek to add to the vacation benefits currently provided for in the agreement. From the Unions' proposed language, it would appear that while advance notification for emergency vacation requests would not be required, the vacation request itself would still be subject to approval by the Employer. This appears to be adequate protection for the Employer with regard to staffing levels. Further, the change to four-hour increments versus full day increments does not seem unreasonable or objectionable, especially given that the vacation request is still subject to prior approval by the Engineer.

Therefore, the Fact-finder recommends the Union's proposal for the following changes in Article 35.

Language should be added to the end of Article 35, Section 2 as follows:

*Emergency vacations shall not be subject to advance notifications.*

Language in Article 35, Section 4 should be changed, so that it reads in its entirety:

*Section 4.*

*Vacation accrued may be taken in at least four (4) hour increments.*

### **Issue: Inclement Weather Gear**

#### **Positions of the Parties**

The Employer proposed no change in the current agreement, which does not provide for any payment for inclement weather gear.

The Union proposed adding language that would provide for an annual reimbursement of up to \$100 for each employee for inclement weather gear, provided the employee turns in a receipt.

#### **Findings and Recommendation**

As stated above, much of the Union thrust appeared to be targeted toward wages rather than the other issues. Taking the four issues at impasse in total, and considering that the Employer did not ask for nor receive concessions in any other areas of the contract, there is no compelling reason for the Fact-finder to recommend any inclusion of such a provision as this in the agreement.

Therefore, the Fact-finder recommends the Employer's proposal to retain current contract language that does not provide for reimbursement for inclement weather gear at this time.

### **Issue: Wages**

#### **Positions of the Parties**

The Employer proposed a 3% across the board wage increase for all employees in year one, a 3% across the board wage increase for all employees in year two, and a 3% across the board wage increase for all employees in year three.

The union proposed a restructuring of the wage rates that would reward more senior employees with a greater wage increase in year one. It proposed breaking the employees in the bargaining unit into three categories. Category A employees would be those with less than 4 years seniority as of March 1, 2002. Category B employees would be those with 4 years or more up to 10 years seniority as of March 1, 2002. Category C employees would be those with 10 years or more seniority as of March 1, 2002. The Union's final proposal presented a complete wage scale for all job classifications. In essence, all Category A employees would receive a 3% increase in year one, Category B employees would receive a 4% increase in year one, and Category C employees would receive a 5% increase in year one. In year two there would be an across the board 4% for all employees, and in year three there would be an across the board 3.5% increase for all employees.

The Union's proposal included language that would read: "Employees are assigned as of 3-01-02, in their respective A, B, or C rate factor for the life of the agreement."

### **Findings and Recommendation**

The current agreement contains no provision for step increases or longevity. The Union claims that this has become an important issue for the bargaining unit. Its proposal does not allow for employees to progress into higher wage classifications during the life of the agreement. It does provide some reward in the first year of the agreement for more senior employees which the Union claims perform work with greater responsibility than the less senior employees.

Both sides presented comparables to bolster their respective arguments. Upon studying the comparables and reviewing the arguments made by the parties at the hearing, the Fact-finder is persuaded that the Employer's comparables are more valid, as they are for county engineer offices from counties (Ottawa, Paulding, Henry, Defiance, and Williams) in northwest Ohio with comparable populations and demographics. These are much more comparable in work performed by the bargaining unit and the ability of the Employer to pay than the Ohio Department of Transportation or the Ohio Turnpike Commission, despite the presence of those two entities within Fulton County. Likewise, the wages paid by private sector contractors in the area are of much lesser value for comparative purposes.

While the Employer opposes step progressions in the collective bargaining agreement, its own comparables include five counties that contain steps in their wage rates. The Fact-finder's conclusion is that the Union's proposal for a three-tier wage scale that does not allow any progression is not unreasonable. The Employer's own comparables show that. But a look at the lower tier of wages in those comparables, even adjusted for likely increases that were received in those counties in 2001 and 2002, would still place this bargaining unit's proposed Category A employees at a considerably higher level, especially when adding the Union's proposed 3% increase for 2002.

There are two flaws with the Union's proposal. First, as stated above, the lower tier (Category A) wage is higher than would be equitable. Looking at the Employer's comparables, it is clear that the less senior highway workers in those five counties are paid considerably lower wages than the senior employees. It would be unreasonable and extremely unfair to lower anyone's wages in this bargaining unit in order to achieve the same balance in the tiered wages; the only reasonable alternative would be to increase them at a lower rate than the others. The 3% increase proposed for the Category A employees in the first year does not hold the Category A employees' wages down significantly enough to create the same type of spread between the lower tier wages and upper tier wages paid in the comparable five counties. Secondly, the fact that the Union proposes across the board increases for all three categories of employees in the second and third year treats all three categories the same and would actually minimize the spread between them over the three years rather than increasing it.

In essence, the Union's proposal creates a three-tier wage system, which creates little spread between the tiers. It would maintain the current wages for the proposed Category A employees at rates comparable to the higher classifications in comparable counties rather than the lower tiers, while providing even higher increases for the more senior two categories.

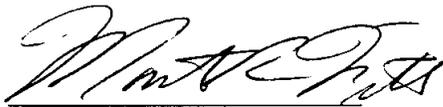
Creating a three-tier wage system for the bargaining unit should be the result of thoughtful negotiations. The Fact-finder is not convinced that this is the case here. The proposal was developed as a reaction to a rejection of a tentative agreement reached by the parties prior to fact-finding; a tentative agreement that did not include any tiered wage scale. There are too many flaws and inequities that would likely be exposed once implementation of the Union's proposal would occur. There is not a significant disparity between the Fulton County Engineer's highway worker wages and the higher classifications in those other counties. It would seem to the Fact-finder that the only fair way to implement a three-tier wage system in Fulton County would be to have lower wages applicable to new hires, rather than reducing wages or depressing increases for existing employees.

The Fact-finder is mindful that the Employer did not enter into negotiations with any proposals to reduce benefits of any kind to the employees. The Union presented no testimony or evidence that it had made any concessions of any kind during the negotiations to achieve anything that has been tentatively agreed to by the parties. Therefore, considering everything else recommended in this report, the Fact-finder does not recommend that adoption of the Union's wage rate restructuring.

In consideration of the evidence and testimony provided, and in consideration of all the recommendations contained herein, the Fact-finder recommends an across the board wage increase of 3.5% the first year, 3.5% the second year, and 3% the third year.

**Additional recommendations of the Fact-finder**

The Fact-finder has reviewed the tentative agreements reached by the parties during these negotiations, and recommends them as well.

A handwritten signature in black ink, appearing to read "Martin R. Fitts". The signature is written in a cursive style with a horizontal line underneath.

Martin R. Fitts, Fact-finder  
May 13, 2002