

STATE EMPLOYMENT
RELATIONS BOARD
IN THE MATTER OF THE FACTFINDING

2003 JAN -6 A 10: 38

BETWEEN

MAHONING COUNTY, OHIO

AND

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL UNION NO. 377**

SERB NO. 02-MED-02-0142

CHRISTOPHER E. MILES, ESQUIRE
Fact Finder

Joseph J. Maxim
Assistant Prosecuting Attorney
Representing the County

Robert E. Bernat
Business Agent
Representing the Union

BACKGROUND

This case involves the fact finding proceedings between Mahoning County, Ohio (hereinafter referred to as the "County") and Teamsters Local Union No. 377 (hereinafter referred to as the "Union"). The undersigned, Christopher E. Miles, Esquire, was appointed as the Fact Finder in this matter through the offices of the State Employment Relations Board (SERB).

The fact finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law and the rules and regulations of SERB, as amended. The County and the Union engaged in the collective bargaining process for a period of time prior to the appointment of a Fact Finder and additional negotiations were conducted by the parties subsequent to the appointment of the Fact Finder. During their negotiations, the parties were able to resolve several provisions for the new collective bargaining agreement. In addition, prior to the fact finding proceedings, the Fact Finder offered to attempt mediation of any of the unresolved issues and the parties agreed. On October 31, 2002, the parties, along with the Fact Finder engaged in mediation at the Mahoning County Engineers Office in Youngstown, Ohio. During mediation, the parties were able to resolve or withdraw several of the outstanding issues. After mediation, the following issues remained unresolved:

- Article I - Effective and termination date.
- Article V - Section 1. 1st paragraph, Section 2. sub-section 1, sub-section 2, sub-section 4, sub-section 5, sub-section 10, sub-section 11, sub-section 12.
- Article VIII - Grievance and Arbitration Procedure, Step 3
- Article XIV - Termination
- Article XVI - Substance Abuse Policy
- Article XVII - Compensation of Employees, Section G

- New Sections to Article XVII - Add Section L, Cost for Medicare, Section M, Operator V Trainer, Section N, Shotgun rider while plowing.

The Union has also requested a provision for guaranteed staffing.

The items which were resolved by the parties during negotiations and mediation prior to the fact finding hearing are hereby incorporated in this fact finding report.

On December 2, 2002, the fact finding hearing was conducted at the Mahoning County Engineers Office with regard to the remaining unresolved issues set forth above. The County was represented by Joseph J. Maxin, Esquire, and the Union was represented by Robert E. Bernat, Business Agent.

FINDINGS AND RECOMMENDATIONS

After consideration and a thorough review of the financial information and documentation supplied by the parties, as well as their presentations and positions, the Fact Finder makes the following recommendations for the issues which remained at impasse:

ISSUE 1: **ARTICLE I - EFFECTIVE AND TERMINATION DATE**

In Section 2 of Article 1 the effective date of the Agreement is currently May 1, 1999 and the termination date is April 30, 2002. In addition, in Article XIV, Section 1 provides that the Terms and Conditions of the current Agreement will remain in full force and effect between the period of 12:01am, May 1, 1999 and 1:59pm, April 30, 2002 inclusive. The Union has proposed that the effective date for the new Agreement be May 1, 2002 and the termination date be December 31, 2005. The County counters and requests that the termination date remain as the last day in April, 2005. The Union contends that its bargaining position would be greatly enhanced if the termination date was the last day in December. The County maintains that the end date of April 30 has been traditional in the Agreement between the parties and it relies upon other comparable bargaining units which have a similar ending date for their Agreement.

RECOMMENDATION

Based upon the record developed in this case, the Fact Finder recommends that the effective date of the Agreement be May 1, 2002 and that the termination date be April 30, 2005. Both parties submitted documentation from other bargaining units concerning starting and ending dates in support of their position. However, the record reveals that for this particular Agreement the parties have traditionally and historically utilized the same beginning and termination dates of May 1 and April 30. The Fact Finder therefore finds no compelling reason to recommend a change at this time.

ISSUE 2: **ARTICLE V - CLASSIFICATION - VACANCY AND PROMOTION**

The Union has requested several changes (with deletions and additions) to Article V of the current language of the Agreement. The County has also proposed new language for Article V in response to the Union's position.

RECOMMENDATION

After review of the parties' proposals the Fact Finder recommends only the following changes to the last sentence in the last paragraph in Section 2 of Article V. It is recommended that the sentence be changed as follows:

Delete the sentence "The Union has the right to discuss and be heard in the posting and filling of classifications."

Replace with the sentence "The Union and the County will meet and discuss any postings and filling of classifications, and in the event that no mutual agreement is reached then either party may utilize the grievance and arbitration procedure to resolve the dispute."

This recommended change will afford either party the opportunity to resolve any remaining disputes in this regard through the grievance and arbitration process. The prior language provided no recourse or resolution for the parties if the meet and discuss session(s) does not result in a mutual understanding or agreement with respect to the posting and filling of classifications.

It is evident that the parties have given much attention and consideration to the provision contained in Article V during prior negotiations and it is found that there is no compelling reasons to recommend any further changes to this language at this time.

ISSUE 3: **ARTICLE VIII - GRIEVANCE AND ARBITRATION PROCEDURE- STEP 3**

The Union has proposed a change in the last sentence of Step 3 of the grievance and arbitration procedure. Currently, the language provides that "the cost of arbitration shall be divided equally between the County and the Union." The Union requests that this language be replaced so that "the loser shall pay the cost of the arbitration." The County maintains that the current language should be retained in the new Agreement.

RECOMMENDATION

The Fact Finder recommends that the Union's proposed change to Step 3 of the Grievance and Arbitration procedure be included in the new Agreement with the following addition:

"The party not prevailing at the arbitration hearing shall pay the cost of the arbitration; however, if the requested remedy is modified in any way the Arbitrator shall decide if the cost of arbitration shall be divided equally or assessed in a different manner."

This recommended change will address the Union's concern that it is forced to incur the expenses of preparation for arbitration and the cases are often settled just prior to or at the time of arbitration while the County has a paid representative on staff.

ISSUE 4: **ARTICLE XIV - SUBSTANCE ABUSE POLICY**

The parties currently have in place an extensive Substance Abuse Policy in Article XVI of the Agreement. This language has been in effect for the last two agreements, with a change made only with respect to the discipline provision. The Union has requested a new Substance Abuse Policy basically calling for random testing for CDL license holders and also testing where is reasonable suspicion or reasonable cause. The County has proposed some changes or additions primarily dealing with testing for persons considered to be in safety sensitive positions.

RECOMMENDATION

After review of the record including the testimony presented at the fact finding hearing the Fact Finder recommends no change at this time concerning the Substance Abuse Policy found in Article XVI of the current Agreement. The record reveals that the current provision was placed in the Agreement primarily based upon language proposed by the union two agreements prior. The testimony reveals that the current policy has been implemented fairly and equitably.

ISSUE 5: **ARTICLE XVII - COMPENSATION OF EMPLOYEES, Section G**

The current language in Section G of Article XVII provides that "When four or more trucks throughout the county are called out for snow and ice, the Master Mechanic will be called out." The Union has proposed that this sentence be replaced as follows:

"When eight (8) or more trucks are called out for snow and ice, all mechanics shall be called out; however, only fabricators shall put plows and blades on the trucks."

The County has requested that the current language remain as is.

RECOMMENDATION

The Fact Finder recommends that no change be made to the current language of Section G, Article XVII after review of the record in this case. It is the Fact Finder's opinion

that this decision basically involves a matter of discretion for management as to who shall be called out under these circumstances. The testimony indicates that when additional mechanics are needed they are called out and a Standby Fabricator is called out when plowing is being performed.

**ISSUE 6: **New Sections Proposed for
ARTICLE XVII, COMPENSATION OF EMPLOYEES****

(A) The Union has requested an addition to Article XVII as Section L; Cost for Medicare. The County has opposed this addition.

RECOMMENDATION

The Fact Finder does not recommend the addition of a provision concerning the cost of medicare. No reasonable basis was established by the Union for the inclusion of this provision in the new Agreement.

(B) The Union has proposed a new provision in Section M for the classification of an Operator V Trainer. The County is in agreement that a classification of an Operator V Trainer should be added; however, there is a dispute as to the compensation for the employee holding the position. The Union proposes that the Operator V Trainer be compensated at the same rate as that of a Master Mechanic, the top rate in the Agreement. The County has offered to pay the employee in the position of Operator V Trainer \$1.00 more per hour than the rate of Operator IV.

RECOMMENDATION

The Fact Finder recommends that the Operator V Trainer be included as a new classification in the Agreement. The Fact Finder also recommends that the employee holding the position be compensated at the same rate as a Master Mechanic only for the period of time performing the position as an Operator V Trainer. This position is clearly an important one and is deserving of payment at the top rate for the time the employee is serving in the position.

(C) The Union has proposed a new Section N in Article XVII for a Shotgun Rider with each Operator while plowing. The County opposes the inclusion of this Section.

RECOMMENDATION

The Fact Finder does not recommend the addition of a provision for a Shotgun Rider at this time. While there appears to be a safety concern involved, the record does not reveal that there have been any adverse consequences experienced over many years of Operators riding alone while plowing. The only time another employee is needed to be present is when the Operator has to back up his vehicle.

(D) The Union has also requested, with regard to staffing that the County shall for the life of the Contract guarantee the following jobs:

District 4

1 Operator IV
5 Operator II
1 Foreman

District 2

1 Construction Foreman
1 Construction Catch Basin Foreman
1 Operator IV
5 Operator II
Catch Basin Laborer
1 Foreman

District 1

Survey Dept.

1 Survey Foreman
4 Inspectors
3 Engineering Aides

Traffic

1 Traffic Foreman
1 Route Maker IV
1 Route Marker III
1 Route Marker II
3 Route Marker I
1 Sign Painter

Bridge Dept.

1 Bridge Foreman
3 Laborers

Brush Dept.

1 Foreman
3 Laborers
1 Mow Trim Operator
1 Operator II

Mechanics Dept.

1 Master Mechanic
1 Mechanic IV
2 Mechanic I
1 Lube Tech
2 Fabricators

Highway Dept.

2 Foreman
3 Operator IV
10 Operator II
1 Vac All Operator
1 Fuel Man (Laborer)

Buildings & Grounds

5 Laborers

The Union has expressed a great concern for the number of positions which have been lost over the last several years. The number of positions have been reduced from about 175 to the current level of about 115. The County has opposed the addition of any provision which would establish a mandatory staffing level.

RECOMMENDATION

The Fact Finder does not recommend the addition of the provision which would guarantee the jobs set forth above. The record reveals that the County has been able to function adequately and has been able to accomplish the required function of the department with its current staffing level. The Fact Finder also notes that the County has asserted that there is no intention to reduce the current staffing level and the Union's proposal would require the addition of certain positions which the County feels is not necessary. More importantly, however, is Section 4117.08 of the Public Employees Collective Bargaining Statute which provides in Section C that:

- (C) Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117. of the Revised Code impairs the right and responsibility of each public employer to:
 - (1) Determine matter of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, and organizational structure;
 - (2) Direct, supervise, evaluate, or hire employees;
 - (3) Maintain and improve the efficiency and effectiveness of governmental operations;
 - (4) Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;
 - (5) Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;
 - (6) Determine the adequacy of the work force;
 - (7) Determine the overall mission of the employer as a unit of government;
 - (8) Effectively manage the work force;
 - (9) Take actions to carry out the mission of the public employer as a governmental unit.

Since the County has not agreed to the provision proposed by the union, the Fact Finder is without power to recommend that such provision be included in the new Agreement.

CONCLUSION

In conclusion, the Fact Finder submits the Findings and Recommendations as set forth herein.



Christopher E. Miles, Esquire
Fact Finder

January 2, 2003