

OHIO STATE EMPLOYERS RELATIONS BOARD ^{10:49} OCT -7 A
FACT-FINDING REPORT
OCTOBER 3, 2002

AFSCME, OHIO COUNCIL 8, AFL-CIO)

Union)

-and-)

CASE NO. 02-MED-06-0617

HARRISON COUNTY, OHIO)
DEPARTMENT OF JOBS AND)
FAMILY SERVICES)

Employer)

APPEARANCES FOR THE UNION:

JAMES M. ADAMS
LAURIE McAFEE
SHERIE GUTHRA

Staff Representative
President of Local Union
Executive Board Member

APPEARANCES FOR THE EMPLOYER:

EDWARD S. KIM
JOHN SNODGRASS
JOYCE HEAVLEN
PATRICK J. MOORE

Representative
Director, Harrison County DJ & FS
Human Resource Officer, DJ & FS
Harrison County Auditor

FACT-FINDER:

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INTRODUCTION

On September 6, 2002, SERB appointed the undersigned fact-finder in this matter. The parties agreed to a conference on September 19, 2002. On that date, the parties met at the location of the Employer.

Prior to commencing with mediation, the parties negotiated between themselves and several issues were resolved. The following issues were agreed upon between the parties and "taken off of the table." No evidence was taken on these issues and no recommendation will be made on the following issues in this report:

Employer's Issue No. 2 and Union's Issue A regarding Article 12, Section 12.6.
Employer's Issue No. 4 and Union's Issue C regarding Article 14.
Employer's Issue No. 7 and Union's Issue F regarding Article 22.
Employer's Issue No. 8 and Union's Issue G regarding Article 29.
Employer Issue No. 9.

After the parties resolved the above issues, extensive mediation took place with the following issues remaining unresolved:

Issue No. I: Article 3. (Dues Deduction/Fair Share Fee)
Issue No. II: Article 13. (Sick Leave)
Issue No. IIIa: Article 15, Section 15.2 (Leave Increments)
Issue No. IIIb: Article 15 Section 15.3 (Vacation Schedule)
Issue No. IV: Article 17 (Wages)

The fact-finding conference was opened and each side presented evidence, arguments, and exhibits on each issue. The fact-finding conference was closed awaiting the report.

**FINDINGS OF FACT
AND
DISCUSSION**

In submitting this report the following factors have been taken into consideration (Ohio Revised Code, Section 4117.14):

“(a) Past collective bargaining arguments, if any, between the parties;”

The parties did submit a prior agreement and there was evidence introduced that the relationship between the parties was a good relationship.

“(b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;”

Comparables have been submitted by each side. When compared with other jurisdictions of the same size, which perform similar or the same work, this unit appears to be at the middle point or below the middle point in regards to financial benefits, including, but not limited to wages.

“(c) The interests 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 standards of public service;”

The Employer has resisted any increase in financial benefits citing the defense of “inability to pay”. The burden of proof must be met by the Employer.

In past years, the central state government would “hold up” payment of some of the funds designated for this agency and other like agencies throughout the state. If the agency met a shortfall, the central state government would provide the funds to meet the budget. This year, notice was given from the central state government that no further monies would be provided. Therefore, if there exists a shortfall with the budget, no money will come from the central state government and the only other source to make up the any deficits must come from the county commissioners.

The county auditor testified for the Employer. The auditor has sixteen years tenure in a county with slightly decreasing population which is current under sixteen thousand people. The auditor testified that the “carryover” from the previous year is well below where it should have been and the county is currently in the “red” of over one hundred eighty thousand. The auditor stated that the county needs a new tax levy, but the last one was defeated by a vote of 2-1. In short, the county will be in no position to provide funds for any deficit.

There currently exists a serious deficit in the budget of this agency.

There is evidence that no one outside the bargaining unit will receive a wage raise.

If there is a deficit, the only remedy is to layoff personnel.

Before the undersigned makes a decision on the defense of inability to pay, the following criteria must be taken into account:

“(d) The lawful authority the public Employer;”

The primary funding source, the central state government, has a severe funding problem. It is common knowledge that all state agencies are having problems with funding. It is not known if this state deficit is a symptom of bad financial times of the nation and of the state or a result of mismanagement. Although there was testimony that this county as other countries are contemplating a “mandamus action”, forcing the central state government to fund the agencies, no action has been filed. No evidence has been presented that the action of the central state government is unlawful.

The Union has challenged several of the expenditures of the local director:

This local agency has entered into a lease with the county commissioners. The Union stated that the space would be for agency vehicles to be parked inside instead of outside. There was no evidence of vehicle damage or vandalism by being parked outside. The rent is a rate of \$23/000 per year for a period of five years.

The Employer responded that the lease would also cover storage costs for agency records and snow removal equipment. The Employer further states that the cost of such an expenditure is \$1800/month. He states that that amount would not even cover the cost of one new Employer.

The undersigned is required to protect the interest of the tax payer as well as the parties. In doing so, the wisdom of such an expenditure is questionable. Financial well being of personnel should come before items of storage and snow removal equipment, absent a compelling need. However, wisdom is not the criteria. Lawful authority of the Employer is the criteria. Although the expenditure may not be wise, it is lawful.

The county is currently a member of a over consortium. The consortium received a grant of \$112,000 for a job monitoring plan. The Union complains that this unit has members who perform the same job monitoring duties. The Union members ask why their Employer is obtaining funds for another entity, ie, the consortium, when employees

in this agency perform the same duties.

The Employer responds that the \$112,000 was grant money from the federal government and was not able to be retained by the agency. Again, this expenditure appears lawful.

This expenditure, without understanding of same by the employees, leaves those employees wondering why others are given grant money to do work that they are now doing. There exists a lack of communication.

The Union also introduced evidence that the agency would pick up the cost of county phone system costing \$15,000 to \$18,000. The Union also stated that vehicles have been transferred from their agency to the sheriff's department requiring the agency to purchase new vehicles from their budget.

The Employer responded that the phone system was a "one stop" item and that the sheriff's department reimbursed the agency for the market value of the vehicles. These expenditures were lawful.

When responding to the above expenditures, the Employer asserted that the above funds were already spent. As being already spent, these funds are not now available for employee wages or benefits.

This reasoning of the Employer is not correct. Expenditures by the Employer are subject to the "lawful authority of the public Employer".

However, in this situation, the above expenditures may not have been wise but were lawful. The undersigned finds that the Employer has met its burden in establishing the Employer's inability to pay.

“(e) The stipulations of the parties;”

“(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures the public service or in private employment;”

There are other matters that were introduced into evidence that are significant to this fact finding.

The income levels in this agency are so low that several employees of the agency are eligible for and are obtaining agency benefits. Approximately 15% of the population of Harrison County are below the poverty level.

The services provided by this agency are vital to a substantial portion of the existing population of Harrison County.

When taking evidence regarding use of vacation time, the Employer introduced evidence that flex time is routinely utilized when employees are required to attend to personal or family needs. The Union witnesses responded that they were unaware of any flex time procedures.

This above situation further demonstrates that there is a basic back of essential communication between labor and management. This situation is not unusual, but left unchecked it will lead to desertion. The creation of a joint committee to address these problems has been an answer in other jurisdictions. The success of such a committee depends upon the dedication and the good faith co-operation of the members of the committee.

RECOMMENDATIONS

ISSUE NO. I: ARTICLE 3 Dues Deduction/Fair Share Fee

The Employer requests that the exact dollar amount to be taken out of the pay of all "fair share" employees be given to the Employer. As it stands, the Union tells the Employer the percentage and the Employer makes the calculation. There exists no evidence supporting a change in this situation.

RECOMMENDATION

The current language in the contract shall remain the same.

ISSUE NO. II: ARTICLE 13 Sick Leave

The Union proposes new language that upon retirement under PERS, employees may convert 30%, instead of its current 25% after 15 years. The Employer, during negotiations, offered 30% at 20 years. The Employer has introduced evidence that several at the bargaining units have the exact same language as what is presently in the current contract language of this unit.

RECOMMENDATION

The contract shall be amended to permit a 30% cash out at 20 years.

ISSUE NO. IIIa: ARTICLE 15, SECTION 15.2
Leave Increments

In this situation, the Union requests that they be permitted to take vacation time in ½ hour increments instead of a minimum of one hour increments. In those situations such as family matters that take only a short time, a full hour will not be wasted. The Employer opposes this stating it will cause bookkeeping problems. The Employer further states that they use “flex” time and that many times employees are excused of the time is short. A witness from the Union stated that she was unaware of the use of “flex time”.

If not abused by the employees, the use of the ½ hour increments and flex time will work to benefit the parties, the clients of the agency and the taxpayer. If abused, all of those parties would be hurt. In these times, trust that the employees will act responsibly is the right choice.

RECOMMENDATION

“Scheduling of vacations shall be subject to the approval of the director. When time away from work is needed for personal or family situations, “flex time” may be utilized so long as written permission is given by the director or the immediate supervisor of the employee requesting the “flex time”. When employees request vacation leave, it shall be in increments of one half (½) of an hour . . . (insert existing language).”

ISSUE NO. IIIb: ARTICLE 15, SECTION 15.3
Vacation Schedule

The Union has proposed a reduction in the amount of tenure necessary to obtain vacation time. The Employer has opposed the change in the contract stating that the Ohio Revised Code has the same language, nine (9) other jurisdictions have the same language, and the Harrison County Sheriff’s Office has the same language. Because this is a financial matter, “inability to pay” comes into play.

RECOMMENDATION

It is recommended that the contract language remain the same.

ISSUE NO. IV: ARTICLE 17
(Wages)

The Employer has established the defense of inability to pay. With the current financial climate in Washington and Columbus, the undersigned cannot recommend a pay increase. Simply waiting for a wage reopener in a year may or may not work. Government and state funds are there for groups who decide to find those funds. A

committee may solve funding problems. The committee will work if those on the committee work. The seeking of grants and grant writing is one excellent alternative way to obtain funds.

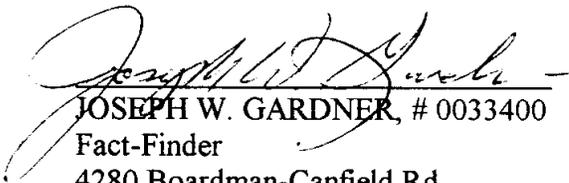
RECOMMENDATION

The following language shall be added to section 17.1 of the contract.

“A joint committee is created to facilitate communications between the Employer and the Union and to explore funding sources for the payment of wages and benefits to the bargaining unit members. This committee shall consist of the director and one person designated by the director; and the local Union president and one person designated by the local president. Attendance at these committee meetings is limited to the above persons and legal counsel or a Union/management representative. Meetings shall be at least monthly. The time and date of the meetings shall be that time and date agreed upon by the director and the local Union president. If there is no agreement as to the date and time of the monthly meetings, the director shall designate the date and time of the meetings for the “odd” months and the local Union president shall designate the date and time of the meetings in the “even” months. Unless agreed, the meetings shall take place at the agency.

Both parties shall act in good faith and make full disclosure regarding possible funding sources, including, but not limited to, state and government grants. Furthermore, all proposed agency expenditures shall be fully disclosed and discussed.

There is a wage freeze (0%) on wages until October 1, 2003. With respect to wages for October 1, 2003 through September 31, 2005, there is a wage re-opener on September 1, 2003 to negotiate wages for these years . . .”


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CERTIFICATION

A copy of the foregoing Conciliation Report was forwarded to **EDWARD S. KIM, Employer Representative**, at Downes, Hurst, & Fishel, 400 South Fifth Street, Suite 200, Columbus, OH 43215; and **JAMES M. ADAMS, Employee Representative**, AFSCME, Ohio Council 8, Local 3722, 150 South Four Mile Run Road, Youngstown, OH 44515, via Overnight, Certified Mail on the 3rd day of October, 2002.

A copy of the foregoing Conciliation Report was forwarded to: **DALE A. ZIMMER, ADMINISTRATOR**, Bureau of Mediation, SERB, 65 East State Street, 12th Floor, Columbus, OH 43215-4213 via regular U.S. mail on the 3rd day of October, 2002.


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