

STATE EMPLOYMENT
RELATIONS BOARD

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

2003 FEB 26 A 10: 34

In the matter of	*	Case No. 02-MED-08-0715
	*	
Fact-finding between:	*	
	*	
	*	Fact-finder:
Ottawa County Commissioners	*	
	*	Martin R. Fitts
and	*	
	*	
Teamsters Local 20	*	February 24, 2003
	*	
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the Ottawa County Commissioners (the Employer):

B. Gary McBride, Labor Consultant
 Ruth Dyke, Human Resource Director
 Gino Monaco, Administrator
 Don Waggoner, Chief Building Official

For Teamsters Local 20 (the Union):

Mark Sobczak, Business Representative
 Chris Goetz, Chief Union Steward
 Charlene Fillmore, Union Steward

PRELIMINARY COMMENTS

The bargaining unit consists of all full-time and regular part-time non-supervisory, non-confidential, and non-management employees in the Building Inspection Department and the Sanitary Engineers Department. There are approximately 33 employees in the bargaining unit. The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute on November 7, 2002. Negotiations between the parties began on October 9, 2002. The parties conducted 7 sessions of negotiations prior to reaching impasse on six issues. A mediation session with SERB Mediator Craig Young resulted in a tentative agreement, which was subsequently rejected by the bargaining unit. A fact-finding hearing was conducted by the undersigned on January 10, 2003 at the Ottawa County Courthouse in Port Clinton, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. There were six major issues (with several sub-issues contained within) at impasse: Wages; Health Insurance; Life Insurance; Shift Differential; Scheduling & Overtime; and Calamity Days. While no further mediation was attempted at the hearing, the issue of Life Insurance was withdrawn, thus five issues were submitted for Fact-finding.

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 February 6, 2003 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Wages

Positions of the Parties

There are four sub-issues involved with wages. They are: hourly wage rates; wage rates for Billing Specialist II and Principal Clerk II positions; office apparel allowance; and longevity.

The Union proposed a 4.25% across-the-board wage increase in each of the three years of the agreement. It proposed a base wage adjustment for Billing Specialist II and Principal Clerk II positions to \$14.44 before the implementation of the across-the-board wage increase. It proposed a 15-cents an hour payment in lieu of an allowance for office apparel. And it proposed a 0.5% increase in longevity at each level.

The Employer proposed two options. One option was a 2.5% across-the-board wage increase, with no base wage adjustment for the Billing Specialist II and Principal Clerk II positions, no office apparel allowance, and no increase in longevity. Its second option was a 2.0% wage increase across-the-board, with no base wage adjustment for the Billing Specialist II and Principal Clerk II positions, no office apparel allowance, and a 0.5% increase in longevity at each level.

Findings and Recommendation

Regarding the issue of the office apparel allowance, the Union offered no compelling argument for its adoption. The Union's initial proposal during negotiations had been for an actual allowance. This was revised to its final proposal for a \$0.15/hour increase to base wages in lieu of an allowance. There was no evidence presented that the office employees were at risk to have their clothes unduly damaged, worn or dirtied at work. Likewise, there was no basis put forth for the \$0.15/hour figure, except that this had once been an Employer counter offer during a previous mediation session. This proposal can only be interpreted by the Fact-finder as an attempt to masquerade a portion of any recommended wage increase as something other than that.

Therefore, the Fact-finder recommends the Employer's position for the retention of current language that does not provide for any office employee apparel allowance.

Regarding the increase in the initial base wage rate for Billing Specialist II and Principal Clerk II, the Fact-finder again finds no compelling reason for such a dramatic increase for these two positions. The Union had originally proposed in negotiations that two new classifications be established. The Employer refused to bargain this, and noted that the

issue of adding classifications is not a mandatory bargaining issue. In lieu of establishing the new classifications, the Union changed its proposal to that of raising the wage rates of the existing classifications significantly. The Employer vigorously objected to this proposal change being made at the fact-finding stage. It argued further that the employees might be overqualified for the work they perform as a Billing Specialist II and Principal Clerk II, but that does not dictate a significant increase in wages. It argued that the wage rates properly are dictated by the actual work performed, not an employee's qualifications. The Fact-finder does not find any compelling evidence that the employees in these two classifications are entitled to greater wage increases than the remainder of the bargaining unit.

Therefore, the Fact-finder recommends the Employer's position for the retention of the existing base wage rate for the Billing Specialist II and Principal Clerk II positions prior to the implementation of the across-the-board wage increases recommended herein.

The Fact-finder agrees with the Employer that contracts bargained in the current year are experiencing lower increases than the 3-4% generally seen over the last several years. The Employer did not argue an inability to pay, and this operation has its own revenue sources. Generally, public employers reliant on income tax or sales tax receipts have been experiencing at best flat revenues, and at worst actual declines. That was not shown to be the case with this Employer for these employees. However, the Employer did note that this system charges its customers relatively high rates already, in large part due to the newness of the system. The Union proposal is excessive, while the Employer's proposal is much more reasonable, and more in line with wage increases generally seen in current public sector negotiations.

Therefore, the Fact-finder recommends an across-the-board wage increase of 2.5% in the first year of the agreement, a 2.5% increase in the second year, and a 2.5% increase in the third year.

The Union's proposal for a 0.5% increase in longevity at each level is modest, and not very costly to the Employer. While the Employer contends that the majority of its comparable counties do not have longevity, the fact is that the parties have mutually agreed on longevity in this collective bargaining agreement. The Union's proposal does not do much more than help maintain the relevance of the longevity payment.

Therefore, the Fact-finder recommends the Union's proposal for a longevity increase of 0.5% at all levels, to be effective immediately upon implementation of this agreement.

Issue: Health Insurance

Positions of the Parties

The Union offered two options. One was to convert the health insurance to the Teamsters Local 20 plan. A second option was to add a cap of 25% on the increase to employees' current contribution in 2004 and 2005. The Union also proposed an agreement to discuss possible mid-term changes in the insurance provider.

The Employer proposed the retention of current language.

Findings and Recommendation

The Employer stated that the Union's proposal for a change to the Teamster plan was presented at a late date, and there is not enough time to adequately investigate the details of it in these proceedings. It expressed concern that removing these employees from the countywide pool may have a negative impact on the rest, and argued that the best chance of capping health care costs is to keep this bargaining unit with the other county employees. These are all compelling arguments for the retention of the existing health insurance at this time. The Employer stated that it was not opposed to looking at options, including the Teamster plan in the future, however.

The Union did express considerable concern about the potential for increases to the employees in 2004 and 2005. These are valid concerns, and worthy of consideration. The current agreement calls for the Employer to provide the same health care plan for these employees as all the other county employees receive, and for the Employer to pay the same amount as paid for other Ottawa County employees.

Generally the approach of maintaining jurisdiction-wide plans incorporating all employees from all bargaining units has been helpful to employers and employees alike in providing the lowest cost premiums possible while being fair to all of the employees in the jurisdiction. In the instant case there does exist a health care committee with representation from all county employees and bargaining units, including this one. That is certainly the proper format for a discussion on changes such as a change of carriers. However, the current language calls for these bargaining unit employees to receive the same coverage as others in the county. The Employer has stated it would be open to discussing the Teamster plan or other options in the future. Without a change in the language there would be no ability to implement any change that would affect only this bargaining unit. A clause such as the Union proposed that would allow possible mid-term discussion on the health insurance provider issue would provide a mechanism for an amendment of the agreement should the parties determine they wish to do so.

In the current health insurance environment, the uncertainty of premium increases, along with reduced coverage and increase co-pays, are facing all employers and bargaining units presently negotiating contracts. The current agreement calls for the Employer to

pay the same amount for the health insurance as it does for other county employees. It is not uncommon for employers with multiple bargaining units to have a single health insurance plan, but different levels of participation in the premium costs. This occurs because there are only so many dollars available for employee wages and benefits, and bargaining units vary in interests and priorities for how their members desire to receive those wages and benefits. In the present case, the Union desires to have a cap placed on the amount of the employee's share of the health insurance premium. This change would provide a new benefit, protection against extremely high premium increases, to the employees. Such a cap, while reducing the risk for the bargaining unit employees, increases the risk for the Employer. As such, the inclusion of a cap in the agreement would represent a significant gain for the employees, and would be expected to come at some trade-off in other areas of the Fact-finder's recommendations.

In consideration of other recommendations contained herein, the Fact-finder agrees with the Union's position calling for a 25% cap on premium increases for employees in 2004 and in 2005, and for inclusion of language allowing for mid-term discussions on possible changes in insurance providers.

Therefore, the Fact-finder recommends that Article 34, Section 2 read as follows:

Section 2. The County shall provide the hospitalization plan, as now in effect, or a substantially similar plan, with the present or another carrier. The employees' share of the premium shall not increase by more than 25% for the year 2004, nor more than an additional 25% for the year 2005. The parties agree to discuss possible mid-term changes in insurance providers, but the right to select the carrier remains with the County.

Issue: Shift Differential

Positions of the Parties

The Employer proposed the retention of current contract language, which calls for a shift differential of \$0.30/hour for second and third shift.

The Union proposed increasing the shift differential to \$0.60/hour for second, third, and swing shift. Currently there is no shift considered a swing shift, but the Union contends that when employees work both a day shift and a night shift within a single pay period, that is a swing shift.

Findings and Recommendation

A shift differential already exists, and the Union proposal would double it. As all of the employees rotate through the schedule, they all benefit and suffer equally as relates to the

shift to which they are assigned. No compelling reason was offered by the Union for increasing the shift differential.

The Fact-finder recommends the Employer's proposal that the current language be retained.

Issue: Scheduling & Overtime

Positions of the Parties

There are two sub-issues here, both dealing with water plant employees. One deals with scheduling of vacations. The other deals with the method of scheduling overtime.

Regarding the first sub-issue, the Employer and the Union proposed similar changes to Section 21.6 regarding the scheduling of vacations, with only two differences. One difference in the two proposals was with regard to emergency call-ins, where the Union favored the retention of existing language requiring water operators to call in later than one-half (1/2) hour prior to the employee's scheduled starting time, and the Employer proposing to change that to one (1) hour prior.

The second difference was in the procedure for vacation requests. In this matter it was more a matter of what the proposed change meant and how it would be implemented. The Union concern was that an employee would not be able to schedule vacation for a week that included a holiday unless they found a replacement to work for them on the holiday. The Employer countered that the intent of its proposal was that previously authorized vacations would not be affected by this provision, only vacations requests and changes requested after the posting of the draft schedule. After considerable discussion as to the interests of both parties, the Fact-finder was asked to recommend language that might satisfy the concerns of each.

The second sub-issue here deals with the method of scheduling overtime. The Employer and the Union proposed adding new sections 8 through 13 to Article 44 of the Agreement. Both proposed the same language for Section 8, Section 10, and Section 12.

The differences in the respective proposals for Section 9, Section 11 and Section 13 center on whether overtime shall be assigned on a rotational basis or an equalization basis. The Employer proposed maintaining the current system of overtime assignment: overtime is posted on a voluntary basis and if no one signs up, it is assigned to the most senior employee qualified to perform the work on a rotating basis.

Regarding the method used to schedule overtime, the Union maintains that a recent unfairness has developed using the existing rotational system. It contends that employees can be slighted with regard to overtime due to the variation of the number of hours available when your turn is up.

The Employer expressed concern with the administration of an equalization of overtime system, noting that the current system of rotation is very easily administered and has resulted in very few grievances. It contends that an equalization method is much more complicated and has a far greater potential for error. The Union countered that the employees could keep track of the hours under an equalization method, and that the employees would work a relatively equal amount of overtime.

Findings and Recommendation

Regarding the issue of emergency call-ins, the Fact-finder sees no compelling evidence that the water operators should be under a different emergency call-in requirement than other employees in this bargaining agreement.

Regarding the procedure for vacation requests, the Fact-finder presents herein language for Sections 21.6.E and 21.6.F that clarifies the intent of the Employer as discussed at the hearing.

Therefore, regarding the issue of vacation scheduling, the Fact-finder recommends that Article 21, Section 6 be modified to read in its entirety as follows:

Section 6. The following procedures shall apply to those employees scheduling vacations after March 1, or wishing to change their scheduled vacation.

- A. *For all employees except for water plant personnel, for one (1) day to four (4) days vacation, an employee shall make a request to his Department Head at least twenty-four (24) hours in advance. The provision that a minimum of one (1) employee may be on vacation at any one time contained in Section 5 above shall not apply to this subsection (1).*
- B. *For all employees except for water plant personnel, for more than four (4) consecutive vacation days, an employee shall make a request to his Department head at least one (1) week in advance; and*
- C. *If any emergency arises and such advance notice cannot be given, for all employees including water plant personnel, employees shall contact their Department Head or Supervisor with the request as soon as possible, however, in no event later than one-half (1/2) hour prior to the employee's scheduled starting time. No vacation shall be taken until it has been approved by the Department Head or their designee.*

- D. *The County shall approve or deny all vacation request(s) within seven (7) days of said vacation request(s), and they shall not be further denied unless an emergency causing the threat to public health, welfare, and safety would occur.*
- E. *For water treatment plant employees, all vacation requests must be submitted one week prior to the posting of the final schedule.*
- F. *Vacations authorized prior to the posting of the schedule under Section 21.6.E above are not subject to the following provisions. After the deadline for vacation requests outlined in Section 21.6.E above, no additional vacation requests or changes will be approved for water treatment plant employees for the following holidays unless another employee agrees to work that day for the employee requesting vacation. It is the responsibility of the scheduled employee to secure the replacement employee and to provide to their supervisor a written agreement signed by both employees. The holidays affected by this are: New Years Day, Memorial Day, Independence Day (July 4th), Labor Day, Thanksgiving Day, Christmas Eve, Christmas Day, and New Years Eve.*

The Fact-finder does not see a compelling reason to recommend the Union's position on this issue. While it may be true that an employee may be slighted on occasion due to a lower number of overtime hours available when it is their turn in the rotation, over a period of time the variances of the rotational system would equal out. Further, as overtime is first offered on a voluntary basis, an employee desiring overtime has the opportunity to sign up for it before it hits the rotational overtime system, effectively eliminating any slight that might occur under the mandatory assignment. The Employer's argument for the simpler administration of the rotational basis is compelling, especially in light of the Union's counter that the employees themselves could keep track of the hours under an equalization system. This would be a considerable abdication of management responsibility and would have the potential to inject considerable chaos into the scheduling of overtime, with difficulty assigning responsibility should a grievance arise.

Regarding the issue of overtime scheduling, the Fact-finder recommends that Article 44, Section 8, Section 10 and Section 12 as proposed identically by the parties at the hearing be included in the agreement.

Further, the Fact-finder recommends the Employer's proposal for Article 44, Section 9 and Section 13 be included in the agreement.

In addition, the Fact-finder recommends that Article 44, Section 11 read as follows:

Section 11. Water Treatment Plant employees, upon three days (72 hours) advance notice and approval by the supervisor, will be permitted to trade days off provided it does not cause the payment of overtime. The "trade" must be reduced to writing, signed by both employees and submitted to the supervisor for approval. Subject to the provisions of this Agreement, such approval shall not be unreasonably denied.

Issue: Calamity Days

Positions of the Parties

The Employer objected to the inclusion of this issue. It argued that the parties had reached a pre-impasse tentative agreement on this issue, and that precluded the Union presenting it as an open issue to the Fact-finder.

The Union noted its inability to counter the Employer's objection.

Findings and Recommendation

The Fact-finder notes that this issue was effectively withdrawn at the hearing and thus issues no recommendation in this regard. The issue is included in this report only for the sake of accurately representing the record of the hearing.

Additional recommendations

The Fact-finder also recommends all of the tentative agreements reached by the parties during their negotiations, mediation, and fact-finding.

The above completely represents all the opinions and recommendations of the undersigned in this matter



Martin R. Fitts
Fact-finder
February 24, 2003