

FACTFINDING
REPORT AND RECOMMENDATION

STATE EMPLOYMENT
RELATIONS BOARD

2003 MAR 10 A 10:23

Case#: 02-MED-09-0770
Union: AFSCME, Ohio Council 8, Local 101
Employer: Montgomery County Public Defender
Fact-Finder: Lawrence I. Donnelly

BACKGROUND

By letter of November 29, 2002, Mr. Lawrence I. Donnelly was appointed as fact-finder to this case by Mr. Dale A. Zimmer, Administrator of the Bureau of Mediation, under ORC 4117.14. This case involves as the Union AFSCME Ohio Council 8, Local 101. This Union represents some twenty-six professional and non-professional employees within nine job categories in the Montgomery County Public Defenders Office. The case involves as the Employer the Law Office of the Public Defender of Montgomery County, Ohio. In addition to the twenty-six or so employees within the bargaining unit, some fifty other employees are employed by the Public Defenders Office. All the employees in the Office direct their talents and efforts in different ways towards the works of public defenders within Montgomery County, Ohio.

The Employer and the Union have been involved in a bargaining relationship under ORC 4117. Most recently they had entered into an Agreement about wages, hours and other conditions of employment, effective from January 1, 2000 through December 31, 2002 (a copy of which was entered at the hearing). In their effort to renegotiate this Agreement, the Parties had met some eleven times between October 24, 2002 and January 21, 2003. Through these negotiating sessions they had reached tentative

agreement on thirty-eight (38) of thirty-nine (39) Articles. No mediator was present at any of these meetings.

In the course of the SERB calendar for renegotiating their Agreement, Mr. Zimmer, Administrator of the Ohio Bureau of Mediation, appointed Mr. Lawrence I. Donnelly to serve as Fact-Finder in this case on November 29, 2002. Very shortly thereafter the Fact-Finder contacted representatives of the Parties to determine their progress towards settlement and to inquire about a fact-finding hearing with the Parties. They both agreed that they had negotiations in progress; so, the Fact-Finder advised them of the possibility of extension letters to Ohio SERB and his availability if the need arose. Late in January, 2003 the Parties advised the Fact-Finder of their desire for a Fact-Finding hearing. Accordingly, a hearing was set for February 27, 2003 at the Public Defenders Office in Dayton, Ohio.

HEARING

As described, a hearing for this matter was convened by Mr. Donnelly at 10:00 a.m. in a conference room of the Public Defenders Office. Representing the Union was Ms. Marcia Knox, Staff Representative; also present as Committee Members and witnesses for the Union were Ms. Gina Reser and Ms. Debbie Mann. Representing the Employer was Mr. Tim Young, Deputy Public Defender; also present for the Employer were Mr. Glenn Dewar, Public Defender, Mr. Marcell Dezarn, Assistant Prosecuting Attorney, and Mr. Tim Black, Montgomery County Budget Office, as observers and witnesses for the Employer. The Fact-Finder advised all present that the hearing was a private proceeding. No recorder was present but the Fact-Finder notified the Parties that

he would be taking notes. The Parties then waived the administration of an oath or affirmation for witnesses. The Parties also waived any request to separate the witnesses.

The Fact-Finder first reported that he had received a prior report from the Union (pursuant to Rule 4117-9-05). He indicated he had not earlier received a similar report from the Employer; rather, the Employer brought such a report to the hearing. The Fact-Finder verified that this would create no problems with either Party for continuing the proceedings. The Fact-Finder also noted that he had not earlier received a copy of their prior Agreement. The Union did provide a copy of this Agreement in its packet at the hearing. Both Parties agreed that we would use this for reference as needed.

The Fact-Finder then proceeded through the Union's pre-hearing report in order to verify his understanding about the composition and size of the unit, about the history of negotiations, and about the Parties' tentative agreement on thirty-eight (38) of the thirty-nine (39) Articles in their prior Agreement. The Parties agreed that their unresolved differences existed in Article 10, Wages, and that there were two differences or issues at impasse.

First they differed about adjustments in the second and third years of the new Agreement. The Union requested increases of 3% and 3%. The Employer proposed no stated increase but instead proposed a reopener in each of the second and third years over base wage rates.

Second, they differed about a new provision proposed by the Union. Under this employees would receive a 5-year and 10-year incentive adjustment of \$500.00 in their base pay. The Employer opposed any such adjustment as being unnecessary.

At this juncture in the hearing the Fact-Finder advised the Parties of the possibility of mediation under ORC 4117.14, (C), (4), (f). The Fact-Finder notes that a mediator had not been earlier involved in their negotiations. Both Parties responded favorably to the suggestion of mediation as a possible path for them to reach a tentative agreement on issues at impasse. Accordingly, the Fact-Finding hearing was converted to a mediation session. (The Fact-Finder stated above and underlined the two issues at impasse and the respective positions of the Parties on these issues.)

RESULTS OF MEDIATION

The Parties spent some two and one half hours in mediated activities. These included both meetings in common for both Parties as well as separate or caucus meetings for the Parties separately. As a result of these sessions, the Parties tentatively agreed to a three-part resolution of the Issues at Impasse and signed off on this. The Fact-Finder recommends that the constituents of both representatives accept the terms of this tentative agreement as part of their favorable vote on all the other tentatively adopted agreements reached by the representatives during their negotiations. The Fact-Finder also commends the representatives for their professional behavior in representing the interests of their constituents. Finally, the Fact-Finder notes that the tentative sign-off of the Parties reflects criteria specified in ORC 4117, (G), (7.) In particular, the sign-off reflects stipulations by the Parties (c). It further is based upon their prior agreements (a); it is compatible with conditions within other units in the Office and other bargaining units (b); it reflects the welfare of the public and is financially and administratively feasible (c), and it meshes with the lawful authority of the Defenders Office (d). The Fact-Finder

emphasizes that this sign-off evolved from proceedings wherein the committees of each Party were present and active participants.

FACT-FINDER RECOMMENDATIONS

In view of the above, the Fact-Finder submits his recommendations on the two issues, to be included with all the tentative Agreements of the Parties in their negotiations and to become their new Agreement. Of special note among these other provisions is the agreement that all bargaining unit members will receive a 3% pay increase, effective January 1, 2003,

Issue 1: Add to Article X, Wages, the provision to reopen the wage article of the Agreement at least 60 days prior to December 31, 2003 and December 31, 2004 to negotiate wages for the calendar years 2004 and 2005 respectively.

Issue 2: As tentatively signed off, the Parties allow the Employer to address through a written office policy consideration effective January 1, 2003 for bargaining unit members who will achieve 5 years of continuous service during the life of the contract.

The Fact-Finder notes that these tentative agreements avail the Parties the opportunity to continue their harmonious working relationship for the interests of their constituents and the citizens of Montgomery County who are served by the Defenders Office. The Fact-Finder is sending a copy of his report to each of the representatives by overnight mail.

Dated:

March 6, 2003
March 6, 2003

Signed

Lawrence I. Donnelly
Lawrence I. Donnelly

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