

STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD (SERB)

CASE NO. 02-MED-09-0860

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AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
LOCAL NO. 3852

) HEARING: DECEMBER 19, 2002

) FACTFINDING REPORT: JANUARY 2,
2003

AND

MONROE COUNTY ENGINEER

APPEARANCES

UNION

Gary W. Arnold, Staff Representative, AFSCME Council 8, Presenting
Sherri Morton, Union Committee
Norman R. Beaver, Union Committee
Mark Coplan, Union Committee

EMPLOYER

Michael L. Seyer, Clemans-Nelson & Associates, Presenting
Lonnie Tustin, Monroe County Engineer
Janine H
Glen S. Ludwig, Superintendent

BACKGROUND

Monroe County is located in southeastern Ohio. It borders the west bank of the Ohio River. On the north it is bordered by Belmont County; on the northwest by Noble County; and on the southeast by Washington County. It covers 455.6 square miles.^{1/}

It was established January 9, 1813.^{2/}

The County shows interesting population trends. In 1820 its population was 4,645. It doubled from 1820 to 1840 and peaked in 1850 at 28,351.^{3/} The population remained relatively stable until 1900 when it began declining. From 1910 to 1970 it declined from 24,244 to 15,739.^{4/} Its population increased by 1,600 residents according to the 1990 Census,^{5/} likely reflecting the boom in the coal industry between 1970 and 1980. The 1990 Census shows 15,490 residents and the 2000 Census shows 15,180.^{6/}

Monroe is a rural County. Woodsfield, the County seat, had a population of 2,598 when the 2000 Census was taken.^{7/} Ormet Aluminum is the largest employer in the County. Ormet is located about 25 miles northeast of Woodsfield on the Ohio River. It provides a substantial tax base for the County, whose budget is managed by three (3) elected County Commissioners.

The County Engineer is an elected official who is responsible for the maintenance and repair of County roads and bridges as well as ancillary facilities. The Engineer's budget is derived from a gasoline tax and a motor vehicle license fee and a small subsidy from the Commission. The gasoline tax and the license fees historically account for about 95 per cent of its revenue.

The County Engineering Department has a COLLECTIVE BARGAINING AGREEMENT (CBA) with the American Federation of State, County and Municipal Employees, Council 8 and its Local 3852.

The last CBA covered the period December 1, 1999 - November 30, 2002. The Parties began negotiations in the fall of 2002 but had not reached agreement by the end of October. By Letter of October 31, 2002 Norman R. Harlan was appointed as Fact Finder. The Letter states in pertinent part:

"In compliance with Ohio Revised Code Section 4117.14(C)(3), the State Employment Relations Board appoints Norman R. Harlan as fact finder in this matter, effective immediately. The fact finder is to conduct a hearing and serve the parties with a written report no later than November 14, 2002, unless the parties mutually agree to extend the period of fact-finding as provided under Ohio Administrative Code Rule 4117-9-05(G)."

Upon receipt of the Letter from Administrator Zimmer the Fact Finder contacted the Parties to schedule the Hearing. He was advised they would likely extend bargaining. Subsequently a Joint Letter was sent by the Parties to Administrator Zimmer November 21, 2002 extending the fact finding period to December 19, 2002.

The Hearing was held December 19, 2002 at the Engineer's Offices near Woodsfield, Ohio. The Parties requested mediation to try to resolve the eight issues which were pending. They agreed to maintain the current language of Article 1 - Recognition. They also agreed to ten (10) hours of Holiday Pay when a recognized Holiday falls within the four (4) day/ten (10) hour work week. (Article 14) Issues related to

the following Articles were discussed at length:

Article 10 - Grievance Procedure

Article 14 - Hours of Work/Overtime

Article 21 - Sick Leave

Article 24 - Holidays

Article 27 - Wages

Article 28 - Health Insurance

New Article - Application of Civil Service

When it became apparent no progress was being made the Fact Finder suggested the Hearing be recessed and after the recess move to Fact Finding. The Parties agreed.

OUTSTANDING ISSUES

ARTICLE 10 - GRIEVANCE PROCEDURE

Section 2 - STEP 3 - Arbitration states in part:

"The decision of the arbitrator shall be final and binding upon the Union, the employee, and the Employer. Any cost involved in obtaining the list of arbitrators shall be borne by the moving party. All costs directly related to the services of the arbitrator shall be shared by the parties." (underlining added)

The Employer made the following proposal:

"All costs directly related to the services of the arbitrator shall be borne by the losing party."

The Union proposed maintaining the current language.

ARTICLE 14 - HOURS OF WORK/OVERTIME

SECTION 3 of the current AGREEMENT states:

"When an employee is required by the Employer to work more than forty (40) hours in a work week, he shall either be paid overtime pay for all time worked in excess of the forty (40) hours in the work week or compensatory time. Compensatory time may be accrued up to a one-time maximum of forty (40) hours per calendar year. Compensatory time must be used in the calendar year it was earned. Upon reaching the maximum of eighty (80) hours during this period, an employee shall be paid at one and one-half (1½) times his normal straight time hourly rate for overtime worked. An employee shall provide the Superintendent with a written request for the use of compensatory time at least twenty-four (24) hours prior to the date/start of such leave. The Employer reserves the right to limit the number of employees who may be granted compensatory time at any given time. The Employer reserves the right to deny the use of compensatory time based on staffing levels and/or work load requirements. Approved paid sick leave, vacation leave, and holiday pay shall be counted as time worked for overtime computation purposes. An employee may cash-in unused compensatory time prior to reaching the eight (80) hour limit."

AFSCME proposes:

1. An increase in the amount of compensatory time from the current eighty (80) hours to two hundred and forty (240) hours; and
2. Including compensatory time as time worked for the purpose of computing eligibility for overtime pay.

Management proposes reducing the current language from eighty (80) hours to a maximum of forty (40) hours.

ARTICLE 21 - SICK LEAVE/FUNERAL LEAVE

SECTION 5. EVIDENCE REQUIRED FOR SICK LEAVE USAGE
states:

"The Employer shall require an employee to furnish a standard written signed statement explaining the nature of the illness to justify the use of sick leave. Falsification of either a written, signed statement or a physician's certificate shall be grounds for disciplinary action."

The Engineer proposes:

"After an employee has used more than forty (40) hours of unexcused/non/documented sick leave in a calendar year, all incidents thereafter will require medical attention.

An employee may use up to two (2) days of sick leave as personal leave with pay.

AFSCME opposes this proposal. It proposes new language, to appear as SECTION 10, shown below.

"Any employee who does not use more than two days of sick leave shall receive a one hundred and fifty dollar (\$150.00) Bonus by December 20 of each year."

ARTICLE 24 - HOLIDAYS

SECTION 1 of the current AGREEMENT provides:

"All full-time employees covered under this Agreement shall be entitled to the following paid holidays:

New Year's Day	Martin Luther King Day
Presidents' Day	Memorial Day
Independence Day	Labor Day
Columbus Day	Veterans' Day
Thanksgiving Day	Day After Thanksgiving
Christmas Day	

ARTICLE 27 - WAGES

The Union proposes general wage increases of five (5) per cent for each of the three (3) years of the AGREEMENT.

Management offers a general wage increase of one (1) per cent for each year of the three (3) years of the CONTRACT.

ARTICLE 28 - HEALTH INSURANCE

SECTION 1 of the current AGREEMENT states:

"The Employer shall, for the term of the Agreement, contribute the following amounts towards a full-time employee's monthly health care premium(s):

Single Plan	90%
Group Plan	85%
Family Plan	85%

It is understood and agreed that an employee(s) shall pay the difference between the above-referenced amounts and the total amount of the monthly premium for the type of coverage the employee selects (i.e., single, group, family). If more than one (1) health care plan is made available through the County Commissioners, the above percentages shall be based on the least expensive of the plans offered."

The Union proposes that the Employer pay one hundred (100) per cent of the cost of health insurance.

AFSCME proposes that the Engineer pay sixty dollars and fifty cents (\$60.50) per employee per month for the AFSCME Care Plan II.

The Engineer proposes that the current language be maintained.

APPLICATION OF CIVIL SERVICE (New Article)

The Engineer proposes the following new Article.

Section 1. "Except as provided in Ohio Revised Code (ORC) section 124.57, no section of the Civil Service laws contained in Revised Code Chapter 124 shall apply to employees in the bargaining unit, and it is expressly understood that the Ohio Department of Administrative Services and the State Personnel Board of Review shall have no authority or jurisdiction as it relates to employees in the bargaining unit, except that complete lists of persons having passed civil service examinations must be provided to the employee, when requested, for selection of original appointments.

Section 2. In accordance with the provisions of Ohio Revised Code section 4117.10 (A), the following articles and/or sections thereof, as provided under the terms and conditions of this agreement, specifically supercede and/or prevail over those subjects described in the Ohio Revised Code and/or prevail over those subjects described in the Ohio Revised Code and/or the Ohio Administrative Code:

<u>Contract Article</u>	<u>Statute Regulation Preempted</u>
Article 9, Disciplinary Procedures	ORC 124.34
Article 11, Seniority	ORC 124.321 - 124.328
Article 12, Vacancy, Promotions & Transfers	ORC 124.27 - 124.32

Article 13, Temporary Transfers	OAC 123: 1-19-03
Article 14, Hours of Work/Overtime	ORC 4111.03
Article 15, Overtime Distribution	
Article 16, Layoff and Recall	ORC 124.321 - 124.328
Article 17, Leaves With Pay	ORC 5923, ORC 119, OAC 123: 1-32-01-04, 05 OAC 124, 135
Article 19, Leaves of Absence	ORC 5923, ORC 119, ORC 124.382, ORC 124.386, ORC 5923 OAC 123: 123-33-01 - 05
Article 21, Sick Leave/Funeral Leave	ORC 124.38 - 124.39 OAC 123: 1-32-03-06
Article 22, Conversion of Unused Sick Leave	ORC 124.39
Article 23, Vacations	ORC 9.44, ORC 325.19
Article 24, Holidays	ORC 325.19

DISCUSSION

ARTICLE 10 - GRIEVANCE PROCEDURE

The Employer's "loser pay" proposal appears supra, p. 4. It contends there are distinct advantages to both Parties. It stated:

- a "A 'loser' pay provision would deter either party from proceeding to a hearing in those instances where the strength of the position may be questionable.
- b. A loser pay provision may cause either party to reassess its position and attempt to resolve the issue in dispute without third party intervention."

The Union noted there has been only one arbitration case between the Parties. As such, there is no record of frivolous grievances being filed. It proposed Mediation be inserted as a Step in the Grievance Procedure prior to Arbitration. Management cited the additional cost of mediation in the event the issue was not settled and was referred to arbitration.

The Fact Finder discussed his experience with "Med./Arb." (Mediation/Arbitration). It was explained under this procedure the same individual conducts the Mediation Hearing and if is unsuccessful he conducts the Arbitration Hearing. During Mediation the Parties are advised of the strength or weakness of their positions. As such, the Union and Management almost always know prior to arbitration what the Decision will be. The Parties were not intimately familiar with the procedure.

RECOMMENDATION(S)

Maintain current language.

Reason(s)

There is no history of frivolous grievances being filed. The Record does not show the Union is using the Grievance Procedure/Arbitration to hold the Employer hostage.

ARTICLE 14 - HOURS OF WORK/OVERTIME

RECOMMENDATION(S)

Maintain current Language related to the total number of hours which may be used as Compensatory time.

Reasons

Neither Party presented a compelling reason or reasons for changing the hours from eighty (80) to forty (40) [Employer] or to two hundred and forty (24) [AFSCME].

Section 3 of Article 14 states in part:

".....The Employer reserves the right to limit the number of employees who may be granted compensatory time at any given time..."

Section 1 of Article 2 - MANAGEMENT RIGHTS
states in part:

"The Union recognizes and accepts the right and authority of the Employer to determine matters of inherent managerial policy which include but are not limited to areas not modified by this

Agreement of discretion or policy such as:

A. To determine the functions and programs of the Employer;

F. To direct, supervise, evaluate employees;

I. To suspend, discipline, demote, discharge for just cause, layoff, transfer, assign, schedule, promote, or retain employees;

L. To effectively manage the work force...."

It is apparent Management has the Contractual right to direct the workforce, to include scheduling. It also has the authority to require employees to establish a good reason for missing work. Absenteeism causes overtime and other problems, such as displacing regular workers. However, the Employer can enforce the terms and conditions of the LABOR AGREEMENT and improve attendance.

The Fact Finder recognizes the Union may have proposed two hundred and forty (24) hours as a bargaining chip. On the other hand this may not be the case. The seniority of the current workforce entitles them to an average of some three (3) weeks or 120 hours of Vacation under Article 23. Article 24 provides eleven (11) paid Holidays, amounting to eighty eight (88) hours of paid

Holiday hours. The average of Vacation Hours and the Holiday Hours total two hundred and eight (208) hours, which is ten (10) per cent of two thousand and eighty hours, which is the amount of hours generated by multiplying 8 hours by fifty two (52) weeks.

Amend the last sentence of SECTION 3 of Article 14 to Read:

An employee may cash-in unused compensatory time prior to reaching the eighty (80) hour limit; however all accrued but unused compensatory time must be cashed-In prior to November 30th of each year.

Reasons:

Winter weather normally starts in the area where Monroe County is located in December. Sleet, ice and snow require more attention and more labor hours, while at the same time it is in part a Holiday season and frequently absenteeism is higher.

ARTICLE 21 - SICK LEAVE/FUNERAL LEAVE

RECOMMENDATION(S)

Section 5. Evidence required for sick leave usage

Accept proposal made by the Employer as it appears below.

"The Employer shall require an employee to furnish a standard written signed statement explaining the nature of the illness to justify the use of sick leave. Falsification of either a written, signed statement or a physician's certificate shall be grounds for disciplinary action. It is understood that in the event an Employee uses more than forty (40) hours of unexcused And/or non-documented sick leave, any or all additional

sick leave, any or all additional unexcused or non-documented sick leave will result in loss of pay. Such absence(s) shall be considered as unauthorized absences. This practice will become effective January 1, 2003. The computation will be based on the calendar year January 1 through December 31. For purposes of this section/article, examples of documentation will be doctor's slips, other medical evidence, proof of death in family, etc.

Reason(s)

The current language of Article 21, Section 5 is as follows.

SECTION 5. EVIDENCE REQUIRED FOR SICK LEAVE USAGE.

"The Employer shall require an employee to furnish a standard written signed statement explaining the nature of the illness to justify the use of sick leave. Falsification of either a written, signed statement or a physician's certificate shall be grounds for disciplinary action."

The Engineer argues strongly that Section 5 needs to be amended to discourage the use of Sick Leave which arises primarily due to the permissive language. Specifically it refers to employees giving written certification that they have been absent due to illness or injury without certification from a certified medical authority; i.e., a doctor, dentist. Management Witnesses testified under this language the abuse of Sick Leave is a serious and a continuing problem which impacts upon providing required public services. It entered two Exhibits to support its testimony, identified by the Fact Finder as EMPLOYER EXHIBIT (EX) C-1 [from Tab C) and C-2.

The Engineer's EX. C-1 is an alphabetical listing of

employees which shows Sick Leave usage by each for 2000, 2001 and 2002 (as of Dec. 7, 02). The Data is quite revealing. It shows the totals of usage for the twenty six (26) bargaining unit members by year. Dividing the total number of hours by the 26 unit members shows the average usage each year.

	2000	2001	2002
<u>HOURS</u>	2,810	2748.7	2545.5
<u>AVE.</u> <u>USAGE</u>	108.8 - hours	105.72	97.9

EXHIBIT C-2 lists each employee and the number of accrued Sick Leave hours, upon which there is no limit, per Section 1 of Article 21. It shows the following amounts of unused Sick Leave hours from the highest number of accrued hours to the lowest.

2,910.3	284.0	74.4
1,081.6	198.6	58.9
830.7	185.2	43.2
749.0	184.0	31.2
531.61	164.6	22.96
489.8	154.3	16.13
390.9	151.92	2.99
350.8	100.88	
333.8	82.3	

Management also proposed permitting employees to use two days of Sick Leave if the other proposal is accepted.

Recomendation - Below (Employer Proposal)

Two (2) days of Sick Leave may be used as Personal leave with pay. Twenty four (24) hours' notice must be given. The Employer may waive the notice if it determines circumstances beyond the control of the employee prevent such notice.

Reason:

It grants employees two days to use for any reason they choose. The Employer made the proposal as an off-sett to its other proposal and apparently it believes it can manage these absences.

Recmmendation - Below (Union Proposal)

Any employee who does not use more than two (2) days of Sick Time shall receive a One Hundred and Fifty Dollar (\$150.00) Bonus by December 20 of each year.

Reason(s)

This also serves as an incentive for employees to use Sick Leave discretely and for the purpose it was intended.

ARTICLE 24 - HOLIDAYS

Recommendation

Maintain current language.

Reason

The Union did not present a compelling or strong reason for adding three (3) more Hoolidys. The LABOR AGREEMENTS entered by the Union which it has with Jackson, Morgan and Athens Counties are not true comparables. Each is at least two hours by vehicle from Monroe County and the counties do not compete for labor.

ARTICLE 27 - WAGES

Recommendation

General increases of three(3) per cent will be granted each year of the AGREEMENT ON December 1, 2002; December 1, 2003 and December 1, 2004.

Reasons

The primary question is Monroe's ability to pay. It entered as EXHIBITS the following Documents contained in Tab E of its submission.

1. REVENUE WORKSHEET, Due May 31, 2002 (Work Copy for 12/19/02), p. 19.
2. APPROPRIATION WORKSHEET, pp. 22&25, undated.
3. REVENUE HISTORY, p. 21, undated.
4. APPROPRIATION WORKSHEET, 12-02-02, pp. 50 & 51.

Explanations were made by Office Manager Janine Hendershot and County Engineer Lonnie Tustin. Both responded to questions.

Based upon the testimony and Exhibits it is apparent Management faces cost increases for parts, repairs, fuel and utilities as well as an estimated increase of \$27,000 in insurance costs. Over the life of the CONTRACT the Union's five per cent proposal would cost about one hundred and six thousand dollars (\$106,000) in straight-time wages. The higher wages paid in Jackson, Morgan and Athens Counties are not true comparables.

ARTICLE 28 - HEALTH INSURANCE

Recommendation

Maintain current language.

Reason(s)

1. The current AGREEMENT contains a comprehensive Health Insurance Plan with Co-Pay by employees limited to ten or 15 per cent, which is a reasonable Co-Pay.
2. The AFSCME CARE PLAN II would cost an additional \$18,876 per year.
3. The Monroe County Sheriff's CONTRACT with the FOP contains the same 90-85-85 Co-Pay language.
4. The Employer's costs have risen dramatically the past ten years, more than doubling.

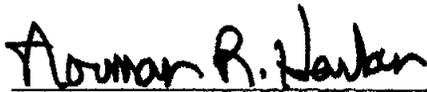
NEW ARTICLE - APPLICATION OF CIVIL SERVICE (quoted pp. 8 7 9, supra)

Recommendations

Recommend approval.

Reason(s)

The Fact Finder studied Batavia and analyzed the potential impact of the DECISION. It is in the best interests of the Parties to protect the integrity of their CONTRACT and resolve their differences through the Grievance procedure.



Norman R. Harlan, Fact Finder

Steubenville, Ohio

January 2, 2003