

STATE EMPLOYMENT
RELATIONS BOARD

2003 JUN -2 A 10: 13

Factfinding Report and Recommendations

In the Matter of Factfinding Between

The Franklin County Commissioners

And

Ohio Council 8, AFSCME and AFSCME Local 2049

SERB Case No.: 02-MED-09-0869

MARCUS HART SANDVER, Ph.D.
Factfinder

Hearing Date: May 16, 2003
Report Issued: May 30, 2003

Representing the County Commissioners:

Mr. Robert D. Weisman and
Mr. Michael T. Short
Schottenstein, Zox, & Dunn, L.P.A.
Columbus, Ohio

Representing AFSCME Council 8:

Ms. Cheryl A. Keeler
Regional Director Ohio
Council 8 AFSCME
Worthington, Ohio

I. Background

This case arises out of a dispute involving a wage reopener found in Articles 37.1 and 37.2 of the collective bargaining agreement between the Franklin County Commissioners (the employer) and AFSCME Council 8 (the union), effective 1/1/02-12/31/03. The parties met on numerous occasions during December 2002, January 2003 and February 2003. The parties were assisted in their negotiations by a mediator supplied by the State Employment Relations Board (SERB) but the issue was not resolved. Pursuant to the rules found in Ohio Revised Code 4117, Marcus Hart Sandver was chosen by the parties as the factfinder to the dispute. The hearing was scheduled for May 16, 2003.

II. The Hearing

A. Attendance

The hearing was convened by the factfinder at 9:00 in meeting room A of the Franklin County Court House. In attendance at the hearing for the union were:

- | | | |
|----|---------------|---|
| 1. | Cheryl Keeler | AFSCME Ohio Council 8 District Director |
| 2. | Mark Wood | AFSCME Local 2049 President |
| 3. | Jim Good | AFSCME Local 2049 Vice President |
| 4. | Steve Wolfe | AFSCME Council 8 Bargaining Team Member |
| 5. | LeRoy Herd | AFSCME Council 8 Bargaining Team Member |
| 6. | Gary Weethee | AFSCME Council 8 Bargaining Team Member |
| 7. | Tim Gill | AFSCME Council 8 Bargaining Team Member |

In attendance at the hearing for the employer were:

- | | | |
|----|-------------------|--|
| 1. | Mike Short | Counsel |
| 2. | Robert Weisman | Counsel |
| 3. | Marianne Barnhart | Director Public Facilities Management |
| 4. | Christy Saxton | Director of Office Management and Budget |

5. Jerry Mapes Director, Human Resources

B. Exhibits

The parties were asked to present exhibits into the record. The following were marked as union exhibits:

1. Union Exhibit 1 Union PreHearing Brief. Dated 5/14/2003
2. Union Exhibit 2 Multi-Tab Notebook
3. Union Exhibit 3 AFSCME Local 2049 Employees. Dated 1/29/2003

The following was marked as the employer's exhibits:

1. Employer Exhibit 1 PreHearing Brief of Franklin County Commissioners.
Dated 5/14/2003

C. Opening Statements

1. Union Opening

In her opening statement Ms. Keeler pointed out to the factfinder that the matter at issue is the wage increase for 2003 which has been reopened pursuant to Articles 37 and 40 of the existing collective bargaining agreement. Ms. Keeler stated that last year (2002) the employees covered by the agreement received a 2 per cent wage increase. Ms. Keeler stated that based upon her calculations she had reached the conclusion that the employees covered by the agreement were seriously below the market wage rate for their positions. Ms. Keeler stated that the union was proposing a phased in market wage rate adjustment for 2003 and 2004 that would bring Franklin County employees up to the market wage rate.

2. Employer Opening

Mr. Short began his opening by pointing out to the factfinder that the economic downturn that began with the tragic events of 9/11/01 has been especially harmful to the economy of Franklin County. Mr. Short stated that in May of 2003 the county is projected to receive \$600,000 less in sales tax revenues than it did in May of 2002. Furthermore, Mr. Short

estimated that investment earnings received by the County from Treasury Bonds would be \$16 million in 2003 down from \$32 million in 2002. Furthermore, Mr. Short pointed out to the factfinder that health insurance premiums paid by the County for the employees increased from \$5400 per employee in 2001 to \$7100 in 2003. Mr. Short acknowledged that in November of 2000 the County did commission a wage adjustment study. Mr. Short stated the County was not able to fund the wage adjustment indicated by the market survey but rather paid county employees a 2% raise in 2001. Mr. Short stated that the County negotiated a 2% raise with its employees in 2002 and a wage reopener in 2003. Mr. Short stated that in his opinion the County was in a less favorable financial position in 2003 than it was in 2002.

III. The Issue. Article 37. Wages.

A. Union Position

The union position on this issue is found in the union's exhibit 1 which states:

Article 37.

Section 37.1. Effective January 1, 2003, all bargaining unit employees will be placed on the 2003 wage chart, already approved by the County Commissioners for non-bargaining unit employees (attached hereto as Appendix 1). Placement on the wage chart shall be based on classification held and number of years in classification, with the mid-point representing ten (10) years of service and the maximum level representing twenty (20) years or more of service.

Assignment of pay ranges by classification is listed on Appendix 1.

In order to fully implement the appropriate wage levels in accordance with the 2003 wage chart, the following steps shall be implemented:

1. Effective January 1, 2003, all bargaining unit employees shall receive the first installment of their total wage increase for 2003 and 2004, which shall be at least a two percent (2%) wage adjustment or an installment on their equity increase of up to \$.50 per hour, if their equity increase is greater than two percent of their current rate of pay.

2. Effective January 1, 2004, all bargaining unit employees shall receive at least a two percent (2%) wage adjustment or an equity increase up to \$.50 per hour.
3. Effective July 1, 2004, all bargaining unit employees owed an equity adjustment above the \$1.00 per hour paid on January 1, 2003 and January 1, 2004, shall receive an additional adjustment of up to \$.75 per hour.
4. Effective October 1, 2004, all bargaining unit employees owed an equity adjustment above the \$1.75 per hour equity increases paid on January 1, 2003; January 1, 2004, shall receive the remainder of their equity adjustment in accordance with their proper placement on the 2003 wage chart.

Section 37.2. Any employee promoted after the ratification of this Agreement by the Board of Franklin County Commissioners will be placed at the minimum level of the appropriate pay range, or will receive a four percent (4%) promotional increase, whichever is greater.

Section 37.3. Effective January 1, 2002, new employees will serve a one hundred and twenty (120) day probationary period and will receive a probationary evaluation after being employed for sixty (60) days. New employees will be paid at the minimum rate of the range for their classification and will not receive a wage increase at the end of the probationary period.

In order to implement the above wage adjustments, the parties agree to extend all other terms and conditions of the current collective bargaining agreement to December 31, 2004.

Article 40, Duration of Agreement will read as follows:

Article 40 – Duration of Agreement

Section 40.1. This Agreement shall be effective at 12:01 a.m. on January 1, 2002 and shall remain in full force and effect for three (3) years.

Section 40.2. If either party desires to modify or amend this Agreement upon its termination, it shall give written notice of such intent to a representative of the other party no earlier than one hundred and twenty (120) calendar days prior to nor later than ninety (90)

calendar days prior to the expiration date of this Agreement. Such notice shall be by certified mail with return receipt requested.

In defense of its position the union makes the following observations:

1. In 2003 the County Commissioners approved a wage chart for non-bargaining unit employees. The union asks that its employees be paid using the same wage chart and methodology the County utilized when determining the rates of pay for non-bargaining unit employees.
2. The wage chart for AFSCME bargaining unit employees has not been adjusted in accordance with the market since 1999 for all but the lowest two pay grades.
3. One hundred and eleven (111) of the employees in a unit of 197 are paid below the self-sufficiency rate of pay for a single person in Franklin County (\$12.79) as established by the Franklin County Workforce Policy Board on July 31, 2002.
4. Some members of the AFSCME bargaining unit, who work full time, would still qualify for federal assistance through the County Department of Jobs and Family Services.
5. Bargaining unit employees are paid \$3.00, \$4.00 and \$5.00 an hour less than employees are paid that hold the same classification doing similar work with other public sector employers.
6. Some job classifications are found in the AFSCME bargaining unit and the County and non-bargaining unit. The non-bargaining unit employees are paid more for doing the same work.
7. The AFSCME proposal calls for a phase-in in the market adjustments through 2004. By the end of 2004 the AFSCME bargaining unit employees would be paid in accordance with the approved 2003 wage chart.
8. Franklin County Children Services negotiated a \$.34 per hour adjustment on anniversary of employment if a satisfactory evaluation is received.
9. Franklin County Coroners Office negotiated a 2 percent wage raise for 2003.

10. Franklin County Commissioners Court Security negotiated a 2 percent raise in 2002 and a reopener in 2003.
11. Franklin County Child Support Enforcement Agency negotiated a 3.25 percent increase for 2002 with a possible .75 percent increase if agency goals are met and a .25 percent increase based on satisfactory merit.
12. The Franklin County Sheriff was mandated by a conciliation award to pay its deputies a 4 percent increase in 2003 and a 4 percent increase in 2004.
13. The Franklin County Sheriff negotiated a 3.5 percent increase for its Communications Technicians in 2002 and a 3.5 percent increase in 2003.
14. The Franklin County Engineer negotiated a merit system increase of 2 percent minimum and 3.5 percent maximum for 2001, 2002 and 2003.

B. Employers Position

The employer's position on this issue is to be found in its exhibit #1 which states:

Article 37 – Wages

Section 37.1. Upon agreement of this Article by both parties, each bargaining unit employee may receive an increase which will be governed by the pay for performance plan. Each employee will be reviewed, using the Employee Performance Review Form, no later than _____, 2003. Employees receiving a rating score of 70% or above will receive a one and one-half percent (1.5%) pay for performance increase; and employees receiving a rating score of 69% or below will not receive a pay for performance increase.

Approved Family Medical Leave Absence (FMLA) leave or death of a member of the employee's family leave as defined in Article 19, Section 19.3, of this Agreement, will not be considered for purposes of evaluating attendance pursuant to the rating scale as identified in Appendix 3.

If an employee receives a ranking of 60-69% on his/her Employee Performance Review, the employee will be re-evaluated six months later. If the employee then receives an Employee Performance Review ranking of 70% or higher, the employee will receive a one and one-half percent (1.5%) performance wage adjustment for the period from the date of the six month evaluation to December 31, 2003 (not retroactive to January 1, 2003). If after the subsequent Employee Performance Review, the employee receives a rating of 69% or lower, the employee will no longer be eligible for any subsequent six month Employee Performance Review nor will the employee be entitled to a six month performance wage adjustment.

If an employee receives a rating score of 69% or below, he/she may appeal the rating score to the Head of his/her Department or Agency.

Section 37.2. Any employee promoted after the ratification of this Agreement by the Board of Franklin County Commissioners will be placed at the minimum level of the appropriate pay range, or will receive a four percent (4%) promotional increase, whichever is greater.

Section 37.3. New employees will serve a one hundred and twenty (120) day probationary period and will receive a probationary evaluation after being employed for sixty (60) days. New employees will be paid at the minimum rate of the range for their classification and will not receive a wage increase at the end of the probationary period. Current probationary employees will be paid at the minimum rate of the range for their classification and will not receive a wage increase at the end of the probationary period.

The employer's rationale for this position is as follows:

1. The sustained economic slowdown prevents Franklin County from offering more than a 1.5 percent wage increase in the second year of the agreement.
2. A 1.5 percent wage increase is consistent with the current market wage rate for several Franklin County agencies and more is favorable than the State of Ohio agreement with AFSCME.

3. Franklin County cannot afford the market adjustments requested by the union.
4. Franklin County's General Fund contingency account and economic stabilization fund are not to be utilized for employee wage increases.

C. Discussion

Every factfinder, conciliator, public sector labor advocate, public sector management advocate, employee of SERB, and employee of O.C.B. should be required to read factfinder Harry Graham's report dated February 17, 2003. Professor Graham had the unique opportunity to write the statewide AFSCME factfinding report in 2000, when the state had a budget surplus, and also in 2003 when the state's financial situation was described as "dreadful" and "at best precariously in balance." (Graham. 2003. p. 16-17.)

I don't think Franklin County is down to its last penny, as Graham believes the State to be, neither do I harbor the belief that the county is sitting on a big pot of gold and is spitefully starving the union in wanton disregard of the economic situation of its employees. The County is facing a financial challenge – as it has on many occasions in the past and it will face again. Public finance is tight all over Ohio in education, human services, corrections and so forth. Even at that, the economic situation is no more dire in Ohio than it is in Oregon, California, Iowa, New York and others east to west. Likewise, Franklin County is in better shape financially than many other counties in Ohio, and undoubtedly things will improve. Thankfully, the fiscal managers of the County have been conservative and frugal in the good years of the past and have even accumulated contingency funds and economic growth funds that can be tapped in times of true economic catastrophe.

The comparability data supplied by the union (union exhibit 2 Tab 3D) shows pretty clearly that the wages paid to employees of Franklin County lag their counterparts in Cuyahoga County, Montgomery County, the Columbus Port Authority and the City of Columbus. For custodial workers the gap is about 10% between Franklin County and Montgomery County, the

gap is more than 20% between Franklin County and Cuyahoga County. Tellingly, the County did not include any comparability data in its exhibits. In Tab 3(H) of union exhibit 2, the union has calculated average wage rates for similar jobs in four counties and six cities in Ohio. The Franklin County wage rate for custodial workers was about 9½ percent less than the average wage calculated for this larger group of comparable public employers in Ohio. The prevalence of this wage gap is found in the starting wage and the highest wage rate for this job category. Similar disparities in wage rates are to be found for maintenance workers, mechanics and painters. The evidence to me is clear that Franklin County employees are paid substantially less than their counterparts in comparable public service agencies around the state.

The County bases most of its argument on the budget shortfall, which is of great concern, but not yet to the level of crisis. We can thank the frugal and conservative spending pattern of the County Commissioners for the fact that the budget problem is not worse.

The County has agreed, in its brief, to raise all employees to at least the \$10.00 per hour wage rate. For the employees in the lowest salary grade (\$9.67 per hour) this would represent about a 3.3 percent wage raise. This raise effects 32 of the 192 employees in the bargaining unit. For the rest of the employees in the unit, I think a 2 percent raise, retroactive to January 1, 2003 is justified. The union and the employer agree that the difference between their proposals is about \$100,000. Testimony at the hearing indicated that the County was operating with 192 people in the unit, down from the 197 that would represent full staffing. The savings from operating with 5 fewer employees even at \$10.00 per hour would fund the difference between the 1½ percent raise proposed by the County and the 2 percent raise proposed by the union. I believe the ½ percent is money well spent and certainly justified for the dedicated employees of the County.

IV. Recommendation

That Article 37.1 be amended to read:

Article 37 – Wages

Section 37.1. Each bargaining unit employee will receive an increase which will be governed by the pay for performance plan. Each employee will be reviewed, using the Employee Performance Review Form, as soon as practicable. Employees receiving a rating score of 70% or above will receive a two percent (2%) pay for performance increase; and employees receiving a rating score of 69% or below will not receive a pay for performance increase. The 2% raise is to be retroactive to January 1, 2003. The minimum wage rate shall be \$10.00 per hour retroactive to January 1, 2003.

Approved Family Medical Leave Absence (FMLA) leave or death of a member of the employee's family leave as defined in Article 19, Section 19.3, of this Agreement, will not be considered for purposes of evaluating attendance pursuant to the rating scale as identified in Appendix 3.

If an employee receives a ranking of 60-69% on his/her Employee Performance Review, the employee will be re-evaluated six months later. If the employee then receives an Employee Performance Review ranking of 70% or higher, the employee will receive a two percent (2%) performance wage adjustment for the period from the date of the six month evaluation to December 31, 2003 (not retroactive to January 1, 2003). If after the subsequent Employee Performance Review, the employee receives a rating of 69% or lower, the employee will no longer be eligible for any subsequent six month Employee Performance Review nor will the employee be entitled to a six month performance wage adjustment.

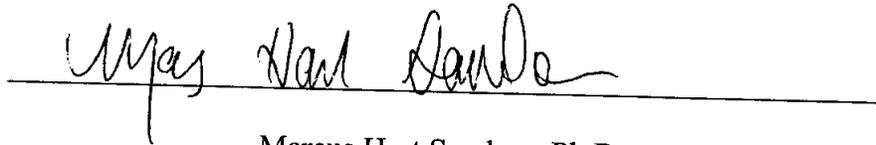
If an employee receives a rating score of 69% or below, he/she may appeal the rating score to the Head of his/her Department or Agency.

Article 40 – Duration

The extension of the duration of the current agreement proposed by the union is not recommended. The contract shall expire on December 31, 2003.

V. Certification

This report and recommendation have been prepared based on evidence and testimony presented to me at a factfinding hearing conducted on May 16, 2003. This report and recommendation is based upon the criteria for factfinding found in O.R.C. 4117 and associated administrative rules promulgated by the State of Ohio Employment Relations Board. It is the intent of this report that all matters tentatively agreed to by the parties in negotiations shall be incorporated into this recommendation.

A handwritten signature in cursive script, reading "Marcus Hart Sandver", is written over a solid horizontal line.

Marcus Hart Sandver, Ph.D.

Factfinder

Columbus, OHIO

May 30, 2003

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