

INTERNATIONAL BROTHERHOOD OF )  
TEAMSTERS, LOCAL UNION NO. 377 )

) Case No. 03-MED-01-0014

- and - )

THE BOARD OF MAHONING COUNTY )  
OHIO )

(EMPLOYER) )

**FACT - FINDER'S REPORT AND RECOMMENDATIONS**

STATE EMPLOYMENT  
RELATIONS BOARD  
2003 SEP -5 A 10:35

September 3, 2003

Proceedings before Jared D. Simmer, Fact-Finder

Pursuant to the provisions of Section 4117-9-05 of the Ohio Revised Code, the Fact-Finder was assigned to this case on May 30, 2003. By mutual agreement of the Parties, the period for fact-finding was first extended to July 31, 2003, and then by a second extension, to September 15, 2003.

**I. APPEARANCES**

FOR THE UNION:

Tom Piatt (attorney), Barb Holzschuh (chief steward), Toni Tablack, John Caroline and Bob Bernat.

FOR THE EMPLOYER:

Connie Pierce (H.R. Director), and Sheila Brantley (H.R. Administrator).

## **II. BACKGROUND**

This proceeding involves bargaining between seventeen employees (12 in the supervisor unit and 5 others in the legal unit) and Mahoning County. The current three-year collective bargaining expired on June 30, 2003.

Prior to hearing, the parties met a number of times and negotiated to impasse. Both chose to file pre-hearing position statements that were duly received and considered by the Fact-Finder in advance of the hearing.

On August 20, the Fact-Finder and the parties met and with the approval of the parties, the Fact-Finder engaged in mediation in an attempt to settle the remaining issues. While a proposed settlement was reached, both constituencies did not agree to its terms. As a result, after due consideration of the testimony and evidence presented by the parties in their pre-hearing submissions and opening statements, the Fact-Finder issues the following Report and Recommendation.

## **III. OPEN ISSUES**

During the course of good-faith negotiations, the parties settled all but the following contract articles; 5, 27, 34, 48 and 49. In addition the Union proposed adoption of a new article.

The provisions of the new contract that were agreed to by the parties in earlier negotiations are formally recognized and adopted by the Fact-Finder. Therefore, this Report and Recommendations will only deal with the remaining open issues.

#### **IV. FACT-FINDER'S REPORT AND RECOMMENDATIONS**

In issuing this Report and Recommendations, the Fact-Finder took notice of all the oral and written testimony presented by, and as stipulated by, the parties, as well as those six factors that the State Employment Relations Board requires, including but not limited to:

1. Prior collective bargaining agreements, if any, between the parties.
2. Comparison of the issues in the instant case with those issues involving other public and private employees doing comparable work, giving consideration to the factors peculiar to the area and classification involved.
3. The public interest and welfare, the ability of the employer to finance and administer the items involved, 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.
6. Such other factors, which are normally or traditionally considered in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

This Report sets forth recommendations which the Fact-Finder believes are reasonable and fair and which both parties can be comfortable recommending to their respective constituencies, although it is recognized that

acceptance of the same will involve a degree of mutual sacrifice on the part of both parties.

The representatives of the parties conducted themselves in a professional manner during both the mediation and the hearing. The Fact-Finder would like to commend them for a job well done.

## **V. REPORT AND RECOMMENDATIONS**

The difficult economic conditions faced by public sector employers across the country, both in terms of declining tax revenues as well as skyrocketing healthcare costs, are no secret. And, in this particular case, these economic factors have already led to layoffs in this bargaining unit. The County expressed concern that continued declining tax revenues and higher costs could require additional cost-cutting measures. The Fact-Finder took this economic reality into account in arriving at the following Findings and Recommendations.

It is my hope that the following Report balances the financial health of the County with the economic interests of the Local. Towards that end, it's my intention to recommend a solution to the current contract impasse that recognizes the economic duress of the County while allowing for a period of time for the County to stabilize its revenue and cost projections. Further, these recommendations will be loosely modeled after the parameters of the proposed mediated settlement.

### **Article 5 - Layoff and Recall**

The County proposed deleting language speaking to its current obligation to find an equivalent position in the

event an employee is laid off and is unable to satisfactorily perform the duties of his/her recently assumed position.

Lacking any evidence that the current provision has presented a problem, the Union proposed no change to the existing language.

FINDING AND RECOMMENDATION: While the existing language has not historically presented a problem, it clearly holds the potential to become unduly burdensome to both parties. One can only imagine the administrative and political difficulties that would result from employees being allowed to exercise multiple bumping rights. While the current language probably contemplated a single employee being affected, it's difficult to see how in a time of multiple layoffs the current language would benefit either party. To bring this provision into conformity with generally accepted industrial relations' practices, it's recommended that bumping rights be protected by maintaining the current contract language, with the exception that the following sentence be deleted:

*"If the employer determines after that time that the employee can not perform the duties of the position, the Employer is to provide the affected employee an equivalent position pursuant to Article 44, New Methods".*

### **Article 27 - Health Care**

The Union proposed maintaining current benefit levels, although they conceded the need to begin contributing something towards the cost of coverage.

The County, on the other hand, proposed that the Union begin contributing 10% of the premium costs

believing that this would not only help cover escalating costs, but begin a move to bring all County employees into conformity (i.e., to have all employees, both bargaining unit and non-bargaining unit, contribute 10% of the premium costs).

**FINDING AND RECOMMENDATION:** Given that County employees currently receive excellent health care coverage, that premium costs are skyrocketing with no end in sight, and that employees have not previously had to contribute towards monthly costs, it is not unreasonable for County employees to begin contributing toward a portion of the premiums. As long as our current system of healthcare continues, cost shifting to employees will remain an inexorable trend, in both the public and private sector.

Accordingly, it is recommended that beginning in year one of the contract, this unit begin contributing 5% of the monthly premium costs, and 10% of the costs in year two and thereafter. While painful, this will permit the County not only to begin moving all of its employees towards a standardized contribution schedule, but perhaps will help stabilize costs enough to allow it to continue good coverage.

#### **Article 34 – Corrective Action Procedure**

The Union initially proposed no change to existing language but during the course of mediation expressed a willingness to amend the same to address some of the employer's concerns, i.e., to permit the immediate removal of employees dangerous to themselves or others and to place employees on paid administrative leave after step 3 of the grievance process with expedited arbitration to follow.

The County proposed that discipline be upheld at step 3 of the grievance procedure instead of waiting for the issuance of an arbitrator's award.

FINDING AND RECOMMENDATION: Language that prohibits an Employer from implementing discipline before an arbitrator ruling is not only contrary to established industrial relations practices but nonsensical given that the contract provides neither time frames for either selecting the arbitrator nor for receiving a ruling. As a result, an employee could commit a clearly dischargeable offense (say theft) yet have to remain at work, or off work but on the payroll, for untold months afterward until an arbitrator ruling is received. Accordingly, it's recommended that the language be modified to allow for the immediate implementation of disciplinary penalties, with expedited arbitration in discharge cases within 30 days of the completion of the third step should the employee grieve the matter. In the event the arbitrator rules in the Union's favor, the possibility of a backpay award remains in the arbitrator's discretion.

#### **Article 48 - Pay Incentives**

The County proposed a one year wage freeze, followed by a wage re-opener on July 1, 2004.

The Union proposed significant wage enhancements, including moving all unit positions classified as Pay Range E to Pay Range F.

FINDING AND RECOMMENDATION: Given the County's current financial duress and budgetary uncertainties, the Fact-Finder recommends a 1% wage increase in the first year of the contract to approximately cover the cost of living, such

increase retroactive to July 1, 2003, with a side letter of agreement that no other group of County employees, bargaining unit/non-bargaining unit, would receive a general wage or salary increase of greater than 1% during that time.

It is then recommended that there be a wage reopener thirty days prior to the commencement of the second year of the contract, with the express purpose of negotiating wages for the final two years of the agreement. While both parties would, I'm sure, would prefer finality, it's believed that a re-opener would be prudent for the following reasons:

1. It would allow the parties to more systematically compare the respective responsibilities of the bargaining unit Pay Range E positions with the non-bargaining unit Pay Range F positions to see if any equity pay adjustments would be warranted.
2. Given current economic uncertainties, it would allow an additional eight months for the County to have a better grasp of their expenses and revenues to permit a better estimation of their ability to pay further wage and benefits improvements, if any, in the last two years of the contract.

#### **Article 48 - Longevity Pay**

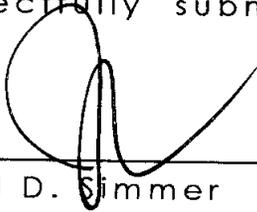
The County proposed no change to the longevity pay language. The Union, however, proposed some enhancements during mediation.

FINDING AND RECOMMENDATION: In light of the limited wage increases and healthcare co-pay recommended, the Fact-Finder recommends no change in the longevity pay schedule in the first year of the contract but beginning in the second year moving the schedule to 1/2% of an eligible employee's hourly wage, and 1% of their hourly wage in the third year. It is the Fact-Finder's understanding that this adjustment will bring this unit's longevity schedule into conformity with the current schedule of the AFSCME staff that reports to these employees.

There's an old saying that the sign of a "good agreement" is both parties being equally dissatisfied with the results. I believe that to be the case in this matter.

Issued: September 3, 2003

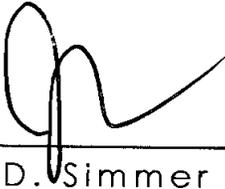
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jared D. Simmer", written over a horizontal line.

Jared D. Simmer  
Fact-Finder  
Attach.

## CERTIFICATE OF SERVICE

I hereby certify that the above Fact-Finder's Report and Recommendations were served upon the following parties, to wit, the Board of Mahoning County, Ohio (via Ms. Pierce) and International Brotherhood of Teamsters, Local 377 (via Mr. Piatt) by United States Post Office overnight mail service, and upon the Ohio State Employment Relations Board (via Mr. Dale Zimmer) by first class mail, this 3d day of September, 2003.



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Jared D. Simmer  
Fact-Finder