

FACT-FINDER REPORT AND RECOMMENDATIONS
SERB CASE: 03-MED-02-0156
AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL
EMPLOYEES, OHIO COUNCIL 8
-and-
HAMILTON COUNTY ENGINEER

FACT-FINDER: Lawrence I. Donnelly
FOR THE UNION: Robert Turner
Regional Director
FOR THE EMPLOYER: Brett A. Geary
Consultant

2003 SEP 18 A 10: 19

STATE EMPLOYMENT
RELATIONS BOARD

INTRODUCTION

By letter of April 25, 2003, Mr. Dale A. Zimmer, Administrator of Ohio SERB Bureau of Mediation, appointed Mr. Lawrence I. Donnelly to be Fact-Finder in the Case 03-MED-02-0156 under ORC 4117.14 (c)(3). The Union in this case is AFSCME, Ohio Council 8 (hereafter referred to as the Union) and the Employer is the County Engineer of Hamilton County, Ohio (hereafter referred to as the Employer or Agency). The Fact-Finder forthwith contacted representatives of the Parties to determine where they were under the bargaining procedures under the Law. Mr. Robert Turner, Regional Director for the Union, represents the Union; Mr. Brett A. Geary, Regional Manager with Clemans-Nelson and Associates, Inc., represents the Employer. The Parties indicated that they were in negotiations. The Fact-finder agreed with the Parties that he would remain on call while they pursued their negotiations. Concurrently, the Parties forwarded extension letters to Ohio SERB. Then, in mid-July, the Parties advised the Fact-finder of their desire to move to fact-finding. A fact-finding meeting was accordingly set up.

This fact-finding meeting was convened at the Hamilton County Administration Building at 9:00 am on August 20, 2003. As required by ORC 4117.14. (c)(3)(a), the Parties submitted pre-hearing reports to the Fact-finder on August 19, 2003. At the beginning of the hearing, the Fact-finder reviewed many preliminary matters with the Parties as derived from their reports. Of first note, this case involves an initial contract between the Parties. The Union had been certified as exclusive bargaining agent by Ohio SERB on January 16, 2003, after an election on December 11, 2002. Seventy-three (73) employees in ten classifications cast ballots in this election, with fifty-three (53) voting in favor of the Union and twenty (20) voting for no representation. At present, the bargaining unit contains some seventy-four (74) employees with some seventy-two (72) having signed membership cards (by the Union's count).

In the interval after certification the Parties have met in negotiating sessions at least twenty times; at least two of these negotiating meetings involved sessions with Mediators provided by Ohio SERB. In the course of these meetings, the Parties tentatively signed off on some twenty Articles for the new Agreement. However, at the time of the fact-finding meeting, the Parties still had unresolved issues in seventeen (17) Articles. The Fact-finder reviewed the listing of the differences with the Parties; from this "inventory of differences" the Fact-finder determined that the Parties had some forty-one (41) issues at impasse.

Both Parties had their Committees present during this review. Present for the Union were [arb. note: he must apologize for possible misspellings]: Ms. Renita Jones-Street (Union Staff Rep), Mr. Richard L. Viebrooks (President), Mr. William M. Wahoff (Recording Secretary), Mr. Graut Davis (Vice-President), Mr. Layton Stewart (Member),

Mr. Mark A. Gesture (Member), and Mr. Jack Stapleton (Member). Present for the Employer were: Mr. Mark Lucas (Consultant), Mr. Dave Sellers (Budget and Personnel Director), Mr. Steve Mary (Maintenance Engineer), Ms. Dana Turner (Personnel Officer), Mr. Greg Gilhausen (Superintendent), Ms. Kim Serra (HR Manager), Mr. Ted Hubbard (Chief Deputy Engineer), and Ms. Pat Day (Fiscal Officer who appeared later). Given the character of the public services provided by the Employer, all people present agreed to the importance of reaching a first contract. In Hamilton County, Ohio, the Employer is responsible for maintaining roads, highways, and bridges; this includes snow removal. The Employer also assumes responsibilities for widening, resurfacing, and improving this infrastructure. Support services are also included in these activities.

Both Parties responded positively to the Fact-finder's inquiry about the possible fruitfulness of meditative activities. The remainder of August 20, was devoted to meditative activities. Seventeen items (17) in eight (8) Articles were tentatively signed off; also, the Parties agreed to work on their own for tentative sign-off of thirteen items (13) in three (3) Articles before a second meeting. The first meeting was accordingly adjourned at 4:30 pm with a follow-up meeting set for 10:00 am on August 28, 2003. The Parties agreed to meet at 8:30 am on August 28, to attempt to resolve the above mentioned thirteen items in three Articles.

The Fact-finder rejoined the Parties as agreed on August 28, 2003. They informed the Fact-finder that they had made no progress on the thirteen (13) items in three (3) Articles. Accordingly the Parties mutually agreed that the hearing should move to fact-finding of the unresolved items. The Parties agreed that it was not necessary to swear in the witnesses; further they agreed that there was no need to separate witnesses.

Finally, the Parties mutually expressed the desire that the Fact-finder include in his recommendations and report the advisory to the Parties that they include all matters tentatively agreed to when they vote on the Recommendations.

BACKGROUND

The Parties agree that they have twenty-five (25) items of impasse contained in ten (10) different Articles. These can be listed as follows.

In Article 12:

- 1) Identification of a vacancy and procedure to fill the same.
- 2) Posting provisions
- 3) Selection among applicants
- 4) Involuntary reassignments

In Article 13:

- 1) Work Schedule
- 2) Overtime eligibility
- 3) Sunday/Holiday overtime
- 4) Call-out
- 5) Overtime distribution
- 6) Comp times
- 7) Reporting times

In Article 16:

- 1) Paid injury leave

In Article 17:

- 1) Conversion of accumulated sick leave

In Article 19:

- 1) ½ day on Christmas Eve and New Year's Eve.

In Article 20:

- 1) Medical/Dental Insurance
- 2) Long-term disability
- 3) Life Insurance
- 4) Flexible Spending Account
- 5) Payment for insurance coverage

In Article 21:

- 1) Uniforms

In Article 22:

- 1) Wage system (structure)
- 2) Wage adjustments

New Article:

- 1) Fair Share (Agreement Administration) fee

Duration Article:

- 1) Term of Agreement
- 2) Effective dates

At the hearing the Parties presented witnesses and exhibits in support of their respective positions on these items at impasse. At the end of the hearing, each Party acknowledged that it had the full opportunity to present whatever it judged to be appropriate in support of its case. Each Party also acknowledged that it had the opportunity to examine whatever had been presented by the other Party. The Fact-finder has analyzed the materials presented to him at the hearing and has considered the criteria listed in ORC4117.14 (G)(7)(a) through (f) in reaching his recommendations. He now proceeds to his examination of the twenty-five (25) issues at impasse within the context of ten (10) Articles, as listed above.

ISSUES BY ARTICLES

Article 12: VACANCIES/PROMOTIONS: 4 issues

- 12.1 – How shall a vacancy be determined and how defined?
- 12.2 – What system will be used for posting?
- 12.3 – How will applicants be selected?
- 12.4 – What about temporary reassignments and involuntary reassignments?

Union's Positions on Issues:

The Union seeks a definition of vacancy; and when such a vacancy occurs, the procedure to fill it would be triggered. The Union provides for a 10 day posting period with details on the notice. The Union seeks a selection system, based on choice among applicants in the classification, then choice among qualified applicants within the

bargaining unit, and then choice from outside the unit. The Union opposes involuntary reassignment, but it can accept temporary reassignments if time limits are provided.

Employer's Positions on Issues:

The Employer seeks language to specify its ability to determine a vacancy; at the time of such a vacancy, the procedure to fill the vacancy would be initiated. The Employer seeks a 10 days posting period with details on the notice. The Employer seeks to select the best qualified applicant, and only to apply seniority when qualifications of applicants are equal. The Employer seeks to specify its ability to reassign employees (based on efficiency needs) and its ability to make temporary reassignments.

Discussion/Analysis:

These four items are intertwined; so, as the Fact-finder discusses each, his analysis does bring in germane considerations of the others. First off, the Union wants a clear and complete definition of a vacancy at the head of the Article. Its thrust derives from a desire to have matters in the Agreement defined. It has not offered any compelling examples of this practice. For its part, the Employer seeks in effect to define the occurrence of a vacancy within its general management prerogatives. The Employer also claims that the Union's listing of circumstances to create a vacancy is overly restrictive. The Employer points to the practice in other Agreements within the County wherein the Employer determines the existence of a vacancy. So, the Fact-finder judges that the record favors the Employer's approach to identifying a vacancy. The Employer then proposes language in its Article 12, Section 12.1 for the posting. This is more complete than the Union's proposal. Further, the Parties acknowledge that there is not a great deal of difference in their respective posting procedures. So, the Fact-finder

recommends Article 12, Section 12.1 of the Employer's proposals in preference to the Union's Sections 12.1 and 12.2 to meet the first two Items in dispute.

In the Fact-finder's judgment, the most significant difference of position between the Parties lies in their proposals for the system which Management will use to select among applicants. Mr. Sellers clearly testified how important qualifications are to the Employer in filling positions. He emphasized how the Employer wants to select the best qualified applicants for a vacancy to better serve the citizens of Hamilton County. The Fact-finder clearly acknowledges the valid and important interest to the Employer to run an efficient, capable operation for its customers, the taxpayers. The Fact-finder notes that the Employer in its proposal identifies "criteria in selecting the most qualified applicant." But, the Employer does not provide objective bases for applying these criteria such as licensure, test results, and the like used in other jurisdictions in the County. The Fact-finder hears the concern of the Union that, without the eliminated Civil Service system, the judgments of the Employer on these criteria might be subject to favoritism or other non-performance judgments. On the other hand, the Union's proposal in its Article 12, Section 12.3 does insure that applicants to be considered do have qualifications. Ones who are successfully performing in the classification are demonstrating their qualifications. Further, the Employer is protected in making the judgment about the qualifications of out of classification applicants (as well as out of unit applicants). In the Fact-finder's judgment, the union's plan leaves a lot of judgment to management in filling a vacancy because most employees (43 of 71 according to Employer TAB-12) are in the Maintenance Worker Classification; the other 28 employees are spread over the other nine classifications. Frequently, in filling vacancies, out of classification applicants

will need to be chosen. Hence, as the Union observes, its proposal offers an effective, fair and reasonable accommodation to the Employer and the employees in the contest between seniority and qualifications in filling vacancies. So, the Fact-finder recommends Section 12.3 in the Union's proposals over Section 12.2 in the Employers.

The Employer's cases for involuntary assignments and temporary assignments carry weight, with one exception. Clearly, given the character of the work involved and the dispersion of work sites for the seventy-two or so employees, assignment needs can change. The Employer's concerns for efficient service are important. Hence, the Employer's proposal for Article 12, Section 12.3 is recommended. The Union did raise a valid concern about the language of "temporary filling a vacant position" in Section 12.5. The Union made the reasonable suggestion of defining temporary as 30 days (or the like). The Employer did not oppose this; so, the Fact-finder recommends that the Parties describe temporary as 30-days, in parentheses, in Employer Section 12.5.

Fact Finder's Recommendations:

For the above listed four items at impasse in Article 12, the Fact-finder makes the following recommendations:

1. ADOPT SECTION 12.1 IN THE EMPLOYER'S PROPOSAL FOR ARTICLE 12
2. ADOPT SECTION 12.3 IN THE UNION'S PROPOSAL FOR ARTICLE 12
3. ADOPT SECTION 12.3 IN THE EMPLOYER'S PROPOSAL FOR ARTICLE 12.
4. ADOPT SECTION 12.5 IN THE EMPLOYER'S PROPOSAL FOR ARTICLE 12 (WITH THE ADDITION OF (30 DAYS) AFTER TEMPORARILY.

Since there is no dispute about Article 12, Section 12.4, in the Employer's proposals, this should be included in Article 12.

Article 13: HOURS OF WORK AND OVERTIME

The Fact-finder notes that the Parties have seven (7) issues at impasse, included in Article 13. The Employer addresses these seven items at impasse in four Sections in its proposals; the Union addresses these seven items at impasse in seven Sections.

- 13.1 How shall the work schedule be specified?
- 13.2 When shall overtime be paid?
- 13.3 What rate of overtime applies for Sundays/Holidays?
- 13.4 What rate applies to call-in?
- 13.5 How shall overtime be distributed?
- 13.6 What is the maximum cap for comp time?
- 13.7 How will variable times be handled?

Union's Positions on Issues:

The Union seeks a standard 7:00-3:30 schedule Monday through Friday in the Agreement. Overtime (1 ½ times regular rate) will then be paid for hours in excess of forty hours in a week, eight hours in a day or for hours worked outside the regular schedule. Sundays and Holidays shall be compensated at double time. Call-out shall be compensated at a minimum of two hours at the applicable overtime rate, to be calculated as portal to portal. The Agreement shall specify the method for distributing incidental overtime. The Parties have resolved their differences on comp time caps. Finally, the Union seeks input into the flex schedule of any worker.

Employer's Positions on Issues:

The Employer proposes language allowing it to determine the work schedule. Overtime eligibility should start after forty hours of work. Sundays and Holidays should be paid at whatever rate is applicable, not at double time. The Employer proposes simple

overtime for call-out situations. The Employer attempts to rotate overtime in an equitable and evenhanded method; there is no need for a new elaborate system. The Employer agrees that the issue of caps on comp time has been resolved. Finally, the Employer proposes that it can make flex time arrangements with individual employees.

Discussion/Analysis:

As with the previous Article, the positions of the Parties on these items tend to run through each other; so, analysis of these seven will be concurrent with each other. Preliminarily, the Fact-finder notes that the Parties agree that they have resolved their differences over comp time caps. The items in this Article reflect the old dilemma in work schedules. To management, the work schedules of workers reflect the system through which workers apply their skills and productive efforts with the tools, equipment, materials and capital items for production. To workers, work schedules reflect the control over so many hours a day and a week that the worker makes available to the employer in return for wages and benefits. As the Union observes, ORC4117 requires the Parties to bargain about topics which pertain to workers' hours. Article 13 reflects this effort by the Parties in this relationship. The resultant Article will reflect their treatment of the dilemma.

Current practice obviously offers a good starting point for approaching the question of the basic work schedule. As Mr. Mary testified, the current practice has emerged through trial and error over time. But, the regular, base schedule is 7:00-3:30 for most workers. Why not say this? For some workers out of Galbraith Garage, the standard day has become 7:30-4:00; why not say this? For some workers, like the Bridge crew a 4/10 schedule works better during the Summer; why not say this? Finally, during

Winter, a night schedule is standard for some workers; why not say this? Why not add, as the Employer does on its rationale statement, these particulars parenthetically after the first sentence of the Employer's proposal? Such an approach meets the expressed preference of most of the workers while accommodating to the expressed performance interests of the Employer. The Fact-finder recommends to add the following to the end of the first sentence in 13.1 of the Employer's proposals:

from one of the following schedules:
7:00 am to 3:30 pm, 7:30 am to 4:00 pm,
6:30 am to 5:00 pm in summer type weather
for bridge crew,
10:00 pm to 6:30 am in winter type weather
for nightshift.

The rest of 13.1 is recommended to cover matters of joint understanding.

The Employer addresses overtime rates in its proposal for Section 13.2; the union does it in its proposals for Section 13.2 and Section 13.3. On basic overtime, the Union introduced the policy manual. In this (Section 8.04) overtime is paid on the basis of a 40 hour week, not an 8 hour day. Other contracts are not conclusive on the issue of 8 hour overtime. Certainly, the 8 hour criterion is common in private industry. Still, the Fact-finder was not presented with a compelling reason to move from the current practice as described in Section 8.04 of the policy manual. So, he recommends the first paragraph of Section 13.2 in the Employer's proposal over Section 13.2 in the Union's as reflecting current practice.

Again the Fact-finder goes with the Policy Manual as the compelling reason for approaching double time. The Employer ignores Sunday/Holiday premium pay. The Union in its Section 13.3 proposes double time for all such hours worked. The manual distinguishes between overtime on Sunday/Holiday and regular scheduled time. Without

any contradiction of this approach at the hearing, paragraphs 4 and 5 in the Policy Manual offer a balanced position which the Fact-finder recommends. This can be added as two separate paragraphs in the Employer's proposal for Section 13.2 after the first paragraph. The remainder of Section 13.2 treats comp time, which the Parties agree to; these can be carried forward into the new Agreement.

Both Parties approach call in pay in Section 13.4 of their proposals. This issue was not extensively discussed at the hearing. But, as the Fact-finder understands the proposals and as he reads Call Back Pay in Section 8.04, Policy Manual, the Union's proposal seems to be closer to the current practice under the Manual. So, he recommends the Union's Section 13.4 over the Employer's Section 13.4.

On the flex time provisions (Section 13.3 in the Employer's proposals and Section 13.7 in the Union's), the Parties both accept the idea of individual flex-time schedules which would not be precedent setting. The Union proposes that such arrangements be made "by mutual agreement between the Union and the Employer," the Employer proposes that they be made by mutual agreement between the employee and his/her supervisor. The Union expresses its concern about being bypassed as bargaining agent in the Employer's proposal. The Fact-finder cannot agree within the context of his earlier recommendation on schedules. The flex-time arrangement would be made within the context of agreed to work schedules and would not be precedent-setting. Obviously, if such an arrangement would run contrary to any other bargained agreement it would be grievable. Rather, under the Employer's proposal, the Parties would simply respect some matter of convenience to an employee without disturbing any bargained arrangement.

So, the Fact-finder recommends Section 13.3 of the Employer's proposal in preference to the Union's Section 13.7

The last item of dispute involves overtime distribution. The Union expressed a concern about the current practice of overtime distribution. In its stead, the union offers a new system, which the employer contends is unnecessary and overly restrictive. Further, the Employer acknowledges its desire to spread overtime in "an equitable and evenhanded fashion." Here again, the Fact-finder says – Why not say it? He recommends they add one sentence to the end of Section 13.1 of the Employer's proposal: namely, overtime will be distributed in an equitable fashion among qualified, available workers. In this way, if a worker feels harmed, he/she now has a grievable grounds.

Fact-finder's Recommendations:

So, for the above seven items of dispute in Article 13, the Fact-finder makes the following recommendations:

1. ADD TO THE FIRST SENTENCE OF EMPLOYER 13.1 THE FOLLOWING SENTENCE: "FROM ONE OF THE FOLLOWING SCHEDULES: 7:00 AM TO 3:30 PM, 7:30 AM TO 4:00 PM, 6:30 AM TO 5:00 PM IN SUMMER-TYPE WEATHER FOR THE BRIDGE CREW AND 10:00 PM TO 6:30 AM IN WINTER-TYPE WEATHER FOR NIGHT SHIFT." ADOPT THE REST OF EMPLOYER 13.1.
2. ADOPT THE FIRST PARAGRAPH OF EMPLOYER SECTION 13.2 TO DETERMINE WHEN TO PAY OVERTIME.
3. ADOPT PARAGRAPHS 4 AND 5 IN THE POLICY MANUAL TO COVER SUNDAY/ HOLIDAY OVERTIME AS PARAGRAPHS TWO AND THREE IN EMPLOYER 13.2. ADOPT THE REST OF EMPLOYER 13.2

- ON COMP TIME, ALREADY AGREED.
4. ADOPT THE UNION'S SECTION 13.4 TO COVER CALL-IN PAY.
 5. ADOPT THE EMPLOYER'S LANGUAGE IN SECTION 13.2 TO COVER THEIR AGREEMENT ON COMP TIME.
 6. ADOPT SECTION 13.3 OF THE EMPLOYER'S PROPOSALS ON COMP TIME, WICH THE PARTIES AGREE TO.
 7. IN LIEU OF A SPECIFIC SYSEM FOR OVERTIME DISTRIBUTION, ADD TO THE EMPLOYER'S PROPOSAL IN SECTION 13.1. THE SENTENCE: OVERTIME WILL BE DISTRIBUTED IN AN EQUITABLE FASHION AMONG QUALIFIED, AVAILABLE WORKERS.

Article 16: LEAVES OF ABSENCE

The one issue at impasse in Article 16 involves a paid injury leave plan if injury is sustained on the job. The Fact-finder notes that the Parties had settled during mediation three other items in Article 16.

Parties Positions on the Issue:

The Employer opposes any such plan. The Union proposes a paid injury leave for time to recover from an injury on the job if the employee is unable to work for longer than a regular work week. Such leave would not exceed six (6) consecutive months and would not be taken out of an employee's sick leave balance.

Discussion/Analysis:

The Union pointed out that this type of plan is found in seven of the ten relationships in the County which are often referred to by the Employer. Such a leave tries to protect an employee from losses to himself, herself and dependents in the event of a work-connected injury. Mr. Gary Berger, Director of Personnel for the County Commissioners questioned the need for such a benefit. The County is planning to go to

self-insurance under Ohio Worker's Comp. This move can occur because of recent enabling legislation by the legislature. In the meantime, group insurance covers workers who are so afflicted. So, the plan would not be needed.

In any case, there would be a six month limitation in the Union's proposal. In the Fact-finder's opinion, this plan seems to be a reasonable protection for a worker injured on the job. To carry such a worker for a maximum of six months is hardly a burden to the Employer; it is at minimum a sign of the value employees are held by the public administrator. Quite frankly, the Fact-finder sees no valid basis for the Employer to oppose this in terms of administrative efficacy, of economic prudence, of practice in the County, or in terms of serving the public interest. So, he recommends it be adopted.

Fact-finder's Recommendation:

1. THE PARTIES ADOPT THE UNION'S PROPOSAL FOR PAID SICK LEAVE, SECTION 16.9 AND ADD THIS TO OTHER PROVISIONS AGREED TO IN ARTICLE 16.

Article 17: SICK LEAVE

The one issue at impasse occurs in Article 17, Section 17.9. The Employer proposes a cap on conversion at 1440 hours of accumulated sick leave; the Union proposes to continue the conversion privilege beyond 1440 hours but at a reduced rate.

Parties Positions on the Issues

The Parties agree to most of the provisions in their language for the sick leave conversion. However, the Employer proposes for Section 17.9 that they cap the conversion at retirement to 720 hours (i.e. one half of an accumulated 1440 hours of sick leave). The Union accepts this cap in its proposal for Section 17.5; but for accumulated hours of sick leave beyond 1440 hours, the Union proposes a 1 to 4 conversion (i.e., for

twenty accumulated hours above 1440, an employee could cash this out at retirement for five hours).

Discussion/Analysis:

The thrust of the Employer's argument involves the practice at other relationships in the County and other groups of employees (as illustrated in five sample Agreements). In this first Agreement between the Engineers and its workers, the Employer does not see any need to have a better benefit in sick leave conversion than what exists among other agreements, including AFSCME agreements.

The Union relies entirely upon current practice among the Engineer's employees. As shown in the Policy Manual at Section 11.08, the County Engineer has been following the practice which the Union proposes. The Union claims it would be inequitable to cut this benefit out now. Long-service employees have accumulated these hours (Fact-finder note: no numbers were given.) It serves as an incentive to good attendance; the Union illustrated this with a long-service member of its Committee who had only used one day of sick leave in the last year.

In the Fact-finder's judgment, the practice under the Policy Manual bears strong weight. The Employer offers no reason on its merits to change this existing practice. The Fact-finder accepts that the Hamilton County Engineer must have had a reason for this practice; there is no indication that the practice would be discontinued for non-unit employees of the Engineers. Certainly, the mere presence of the Union does not warrant discontinuation of a practice on a particular benefit. So, it makes sense to continue an established practice in the first Agreement.

Recommendation:

1. THE PARTIES ADOPT THE LANGUAGE IN THE UNION'S PROPOSAL FOR SECTION 17.5 IN LIEU OF THE EMPLOYER'S LANGUAGE FOR SECTION 17.9 TO BE ADDED TO THE REST OF ARTICLE 17, TENTATIVELY AGRFEED TO.

Article 19: HOLIDAY

Only one issue at impasse exists in the Holiday Article. The Union proposes language in Section 19.4 to provide a one half day paid holiday for Christmas Eve or New Year's Eve.

Parties' Positions on the Issue:

As noted, the Union advances this proposal; the Employer opposes this proposal. They have no other differences in Article 19, Holidays.

Discussion/Analysis:

As in the previous issue at impasse, the Parties' arguments contrast a practice throughout the County (Employer) with a practice at the County Engineer (Union). The Employer does not dispute that this has been a long-standing practice at the County Engineer. The Union estimates it has been in place over twenty-years although the Union does not claim it exists under the Policy Manual. It is clear that this has been a long-standing informal practice for the County Engineer's staff. Here again, the Fact-finder must assume that the Engineer has followed this practice for its employees for good reasons even though all the Agreements in the County provide for ten holidays (plus a possible election benefit) and for four personal days. Further, the Engineer did it although the practice is not listed within ORC325.19. Interestingly to the Fact-finder, the Employer did not disclaim that the practice would likely continue; rather, the Employer

does not want it to be covered in the Agreement. The Employer wishes to keep this discretionary. The Fact-finder can hardly favor this situation for a first Agreement. So, he recommends that the Parties adopt the Union's proposal for Section 19.4 which reflects practice under the County Engineer.

Recommendation:

1. THE PARTIES ADOPT THE UNION'S PROPOSAL FOR SECTION 19.4 TO BE ADDED TO THE REST OF ARTICLE 19, TENTATIVELY AGREED TO.

Article 20: INSURANCE

In the matter of insurance, the Parties have at least five identifiable issues at impasse. These may be listed as follows:

- 20.A – Details of Plans in the Agreement and payment for the plans.
- 20.B – Medical/Dental Insurance
- 20.C – Long-Term Disability
- 20.D – Life Insurance
- 20.E – Flexible Spending Accounts

Positions of the Union:

The Union seeks full payment by the Employer for specified benefits which must remain in effect for the life of the Agreement. The Union proposes language of benefits for medical dental coverage. The Union proposes that the Employer offer life insurance benefits and long term disability benefits. Finally, the Union seeks coverage with flexible spending accounts.

Positions of the Employer:

The Employer proposes that coverage for Medical, Dental and Life Insurance coverage continues on the same basis as available to other employees in the County. The

Employer does not oppose life insurance and long term disability insurance as long as it is offered to other non-bargaining unit employees at the same cost. The Employer claims that the possibility of flexible spending already exists in the medical/dental plan in place.

Discussion/Analysis:

It is no secret that the Parties face the same types of challenges for insurance coverage which show up throughout the United States in public and private relationships and in organized or unorganized settings. The Employer presented several exhibits to support its claim that the employees of the County Engineer already have “good” insurance coverage at reasonable costs to the employees. The Union does not challenge the statistics nor the spreadsheets in Exhibits 6-O, 6-P, 6-Q, 6-R and the supplemental report. The Union rather challenges their interpretation. Like most statistics and reports, many interpretations might be drawn. So, the Fact-finder settles upon an overwhelming reality for his starting point in viewing these.

This relationship contains some seventy-four (74) employees. For the Parties to go out into the insurance markets with such a miniscule group would expose the group to very weak bargaining with potential carriers. On the other hand, the County goes out with some 4700 employees (and 14,000 covered insurers). So, it makes pre-eminent administrative and economic sense to go with the Employer’s proposal to stay with the County wide system, as occurs in the Employer’s proposal in Section 20.1. The Fact-finder hears the Union’s concern about input by the employees through the union. Hence, he recommends their already-tentatively agreed to labor-management committee to have semi-annual sessions devoted to the insurance plans. It makes no administrative sense to have the Union and Employer jointly negotiate with the carriers about the

detailed schedule of benefits. Basically, the carrier structures proposed benefits and, also, provides proposed cost schedules. These are subject to review based on usage. Other relationships (represented in the Employer's Exhibit 6-N) do provide for some type of committee input for workers. So, to the Employer's proposal in Section 20.1, the Fact-finder recommends an addition such as:

At least twice a year, a topic for the
Committee for Labor-Management
Cooperation under Article 10 will be
insurance programs.

The Employer expressed a willingness to consider long-term disability and life insurance as long as such plans would be available on the same basis as for other employees. The Employer already mentions this in its proposal in Section 20.3 for life insurance. So, the Parties can simply add consideration of long-term disability insurance to the clause after "a life insurance benefit"; appropriate changes of language would then be needed in the last part of the sentence. The Fact-finder notes that the Union does not dispute the Employer's claim that flexible spending accounts are already provided for. So he makes no separate recommendations.

The Union proposes that the Employer should pay for the entire cost of the insurance plans. At present, the average cost of annual premiums to employees runs about \$5,711 for Medical/Dental coverage (according to Employer Exhibit Y-Z.) The Employer did not raise the topic of inability to pay for a switch over to the Union's proposal. Rather, the Employer expressed concerns as a prudent administrator. In the other Agreements around the County, the Employer (as the County) pays the same share of premiums as proposed her. In a couple of corrections' Agreements, any increases in payment would be restricted, but, the Employer emphasized that those Agreements are in

place through conciliation. The Employer did express concern about the administrative and financial impact throughout the County if the Engineer went to full payment of benefits. Clearly, the tendency today is not in the direction of the Employer's increased payment of percentages of premiums.

Comparisons of statistics for this unit with other units do require a measure of caution. For instance, what time periods are used? As the Employer indicated, the statistics provided by SERB (Exhibit 6-R) are at least two years behind the statistics in Exhibit 6-Y-Z). Even taking this into account, the Fact-finder does see merit in the Employer's claim that its plans in Exhibits 6-O and 6-P do provide "good" benefits to the members of the unit. Obviously these could always be improved, but certainly there is no merit to throw out the current plan and to start over again for just this unit. The current average of \$5,711 to employees is not the best in the State (using Exhibit 6-R and the Supplemental Exhibit), but it puts the unit clearly below average in employee costs throughout the State. The Fact-finder cannot assess the Employer's claim (uncontested by the Union) that the insurance plan stands as a strong attraction for working for the Engineer. Overall, he does have the basis for recommending that the Parties include the basic County plan into their first Agreement (as proposed by the Employer) with a few tweaks (noted above) in response to proposals by the Union to cover all five issues at impasse.

Recommendations:

1. ADOPT THE LANGUAGE OF THE EMPLOYER IN ITS PROPOSAL FOR SECTION 20.1.
2. ADD TO SECTION 20.1 THE PROVISION THAT: AT LEAST TWICE A YEAR A TOPIC FOR THE COMMITTEE FOR LABOR-

MANAGEMENT COOPERATION UNDER
ARTICLE 10 WILL BE INSURANCE
PROGRAMS.
3. ADD TO SECTION 20.3 APPROPRIATE
LANGUAGE TO COVER DISABILITY
INSURANCE.

Article 21: UNIFORMS

The Parties dispute the ability of and procedure for the Employer to require and provide uniforms for its employees.

Parties' Positions on this Issue:

Both Parties agree to an annual allowance of up to \$140.00 for work shoes. The Employer also seeks the provision to be able to require work uniforms which the Employer would provide. The Union judges that this issue should be negotiated if and when the occasion arises.

Discussion/Analysis:

The Employer argues that its proposal parallels a similar proposal found in nine other local Agreements. If deemed necessary, such uniforms would be issued by the Employer; the worker would be expected to maintain them. Part of the Employer's proposal involves an annual allowance of \$140.00 for shoes; as meets the Union's proposal. Before deciding on the uniform requirement, the Employer would take input from the Labor-Management Committee, referred to above. From its part, the Union does not object to the idea of mandated uniforms. It rather views such as a condition of employment which should be bargained. Mr. Sellers pointed out that the Engineer has been gradually moving in the direction of uniforms but feels that they all should be similar. Such a practice is common around the State and Townships; the practice would enable citizens to recognize Engineer staff people.

In the Fact-finder's judgment, the issue of uniforms seems to fall near the realm of management discretion. Yet, many parts of the decision (style, texture, color, and weight) do affect the workers who wear them. So he considers that the Employer's proposal in Article 21 is an effective compromise. The workers do get input through the Labor-Management Committee; contestable practices are grievable by virtue of language like "reasonable number" and "reasonably care." Yet, the Employer makes final decisions about details which can be grieved. So, he recommends the adoption of Article 21.

Recommendation:

1. ADOPT THE ENTIRE LANGUAGE OF THE EMPLOYER'S PROPOSAL FOR ARTICLE 21.

Article 22: WAGES

The Parties have quite fundamental differences on two issues pertaining to wages

1. What structure will be used for pay rates?
2. What levels of pay will be agreed to?

Within each of these, there are several sub-questions which will be treated in the positions, discussion, and recommendations sections.

Positions of the Union:

The Union proposes a step system, like that in current use, with several modifications to the current one. The Employer proposes that the Parties adopt a merit/bonus system, not unlike that in use in some other units in the County. The Union seeks an adjustment of wages of 5%, 5%, and 5% with the addition of a longevity clause. The Employer proposes average merit/bonus adjustments of 3% the first year and a % as

approved by the Commissioners in successive years. Both Parties have extended treatment of Article 22, WAGES in their respective proposals; these can be referred to.

Discussion/Analysis:

The Fact-finder starts with an exhibit which both Parties submitted, namely, Section 8.02 of the Engineer's Policy Manual. He looks at this together with the 2002 Pay Range Scale and 2003 Pay Range Scale, entered by the Parties as unnumbered Exhibits. Then, he looks at the breakdown of classifications on the 2002 Scale. He notes how the demographics of the Engineer staff seem to be quite specific. That is, forty-seven of the seventy-three employees with the Engineer are in level seven; then, in level twelve there are twelve employees and in level ten there are nine employees. Given these three clusterings, he questions the feasibility of constructing a pay scale, based on merit/bonuses, with such concentration in an apparently semi-skilled classification and then some clustering of fewer than thirty percent of the workers in two higher skilled classifications. In other words, he would be skeptical of the ability to cleanly differentiate performances for pay purposes under such personnel conditions. The Fact-finder hears the Employer's veneration of "pay for performance," and he respects this as is well-known. But, without an extended presentation of such a plan (as was not provided here), he is hesitant to favor "pay for performance" in this setting as not being able to clearly differentiate compensable performances. So, the Fact-finder favors going with the Union's proposal on structure to keep a step plan.

That, after all, is what is spelled out in Policy 8.02 of the Engineers Policy Manual. All along the Fact-finder has suggested to the Parties to bring their current practices into their first Agreement where this is feasible. Article 22, Section 22.1 could

replicate the first paragraph of the Policy Manual with its insert. The last two sentences of this insert would have to be dropped. Then the next five paragraphs could become Section 22.2 through Section 22.6 of the new Article 22. The last paragraph would be dropped because the new scale is bargained. In this way, the Parties address the union's proposals of Section 22.3, 22.4, and 22.5. The current plan does not contain a longevity provision; such has not been in effect for years (sometime after 1964); so, the Fact-finder recommends against the Union's 22.6.

Both Parties use an Appendix A to describe the Pay Scales. The Union truncates the ranges to six ranges and explains why under the scales. So, the Fact-finder recommends that the Parties use the format of the Union's Appendix A. (He returns soon to the amounts in each block). Before moving to the issue of amounts, the Fact-finder does note that in Section 22.1 of the Employer's proposal, the Employer advocates the use of a Committee in the operation of its proposed merit/bonus plan. This is certainly favorable but it does not offset the apparent deficiency in using a merit/bonus plan for the Engineers' staff because of the limitations in the work situation. Finally, the Fact-finder hears the Employer's predilection for "pay for performance" plans. But, certainly, its personnel officers can advise the Employer of the pitfalls in using a plan where conditions are not suitable.

How much should the adjustment be? As the Employer noted with Exhibit 6U, inflation has been held under check in recent years. The Employer considers that its staff is well compensated, compared to staff of Engineers around the State, as shown with Exhibit 6V. On the other hand, the Union contends its people are behind two groups of comparable workers in the County, i.e., those in Building Trades and those in IUOE.

But, as noted above, the Fact-finder sees the modal classification at the Engineers as the Highway Workers (45 of 73). He questions their comparability with the classifications cited by the union, although the work of Highway Workers is obviously crucial to the work of the Engineer.

Ms. Day portrayed the financial position for the Engineer. She acknowledged under questions from Mr. Lucas that the Employer does not face financial hardship (Exhibit 6-W and 6-X). True, revenues from ordinary sources are currently a bit behind expenditures and revenues are flat; but the Engineer can look to the possibility of some backups such as cash balances. Still, the Employer seeks to function as a prudent administrator and the Employer's proposal obviously falls within these limits of prudent administration.

The Employer has expressed concerns about the annual increases in the step plan. The Employer did provide the Fact-finder with the estimate of such adjustments at about \$13,000 a year between 2003 and 2005. Clearly, they are wage costs included within the Engineer's Policy Proposals in Section 8.02. The Fact-finder also notes that these steps are contingent upon favorable reviews of the workers under Section 8.02, Paragraph 7.

As to amount, the Fact-finder proposes that the Parties adjust the rates from the 2002 Scales by 3% a year for each of the year's. Note, the Union proposes 5%; so, substitute 3, 3, 3 in Union Section 22.2. The 3-3-3 seems to reflect a balance of all the economic variables and comparables noted above. It also reflects patterns within Hamilton County, as shown in Employer Exhibit 6-YZ. As noted at the hearing, the 2003 Pay Scale does reflect 3% across the Board increase for all classification ranges; so, the Parties can pull the numbers for the six classification ranges in Union Appendix A.

Recommendations:

1. ADOPT THE LANGUAGE IN POLICY SECTION 8.02 TO REFLECT THE BASIC PAY STRUCTURE. (OMIT THE LAST PARAGRAPH AND THE LAST TWO SENTENCES IN THE INSERT IN THE FIRST PARAGRAPH.) N.B. NO LONGEVITY PAY CLAUSE.
2. USE THE PAGE AND STRUCTURE OF APPENDIX A IN THE UNION'S PROPOSALS. (P.10)
3. USE THE UNION LANGUAGE IN SECTION 22.2 AND INSERT 3-3-3% FOR 5-5-5%.

New Article: AGREEMENT ADMINISTRATIVE FEE

The sole issue at impasse is the Union's proposal for an agreement administrative fee, sometimes called a fair share fee.

Positions of the Parties:

The Union is advocating a recommendation of its proposal for such a fee. The Employer opposes the inclusion of such a provision in this first Agreement.

Discussion/Analysis:

The Union presented some rather commonly known rationales for its proposal. The Union judges it is fair for those employees who receive the benefits of administration or service of the Union in bargaining to pay their fair share of expenses of the Union. The Union finds it interesting that a public employer who relies for revenues upon taxes will oppose such a fee. For, the Employer knows that all citizens are subject to taxes. The Union asks for the same logic here.

In Ohio, this fee is very commonly accepted in the public sector. The Union submitted a list of 320 AFSCME Ohio Council 8 agreements with a fair share. The provision is also found in AFT, FOP, & OEA units around the State; OCSEA/AFSCME Local 11 has a fair share agreement with the State of Ohio for some 35,000 employees. The Union claims such a provision is also widespread in Hamilton County; the Employer disputes its presences in many units of the County itself.

The Union points out that in its recent representation election, it received 53 of 73 votes. The Union now claims to have seventy-two members from this unit. So, it thinks such a clause is in order.

The Employer opposes this. The Employer has a philosophic concern about agreeing to such a clause. The County does not want to force its employees to pay fees to a union which they do not join. No non-conciliation units have a true fair share arrangement with the County. Especially in a first Agreement, it seems inappropriate to have such a clause, as noted by William Heekin in a conciliation case. The Employer simply does not think that a Union should receive such a clause until it has first proven itself.

As the Parties are well aware, this issue is widely discussed around Ohio. The Fact-finder in this case judges that the Union has made a strong case. It was voted in as bargaining agent by a landslide (53 of 73); it clearly has expanded its support since then; it certainly has bargained hard and professionally for all the workers in the unit to get a “good” first Agreement. He knows that at Hamilton County there is some “philosophical” opposition to such a clause. But, he surmises that some time soon the County will come around to the thinking throughout the State.

Recommendation:

1. ADOPT AN AGREEMENT
ADMINISTRATION FEE AS
PROPOSED BY THE UNION.

Final Article: DURATION

The Parties had previously agreed to all parts of this, except for two issues:

1. Expiration date
2. Effective date

The Fact-finder notes explicitly that the Parties had earlier agreed to retroactivity of wages.

Positions of the Parties and Discussion/Analysis:

Through discussions at the hearing, the Parties jointly expressed the wish for this first Agreement to expire on December 31, 2005 at 11:59 pm. They also agreed that the first Agreement should become effective on the date when both Parties ratify.

Adjustments in wages are to be effective at the start of the pay period in which January 1 of a given year occurs.

Recommendation:

1. USE THE DATES AGREED
TO BY THE PARTIES.

CLOSING

This concludes the report and recommendations by this Fact-finder in SERB Case 03-MED-02-0156 between AFSCME Ohio Council 8 and the Hamilton County Engineer. After the meditative activities, twenty-five issues within ten Articles for a first Agreement remained at impasse. These are noted above under BACKGROUND. A hearing was heard on all these issues at impasse. The Fact-finder addresses these above

under the contested Articles. He lists his recommendations under these ten Articles in CAPS, as dispositive of the issues in dispute. As appropriate to the evidence, testimony and exhibits brought forward by the Parties at the hearings, the Fact-finder discusses and make recommendations in line with the criteria in ORC4117.14 (G)(7)(a) through (f). To these recommendations he adds the recommendation that the Parties also vote favorably on the provisions which they have tentatively agreed to during their negotiations. He sends out his report and recommendations to the Parties on September 17, 2003, as agreed to at the hearing; he uses overnight delivery for this mail service. He wishes the Parties well as they live out their first Agreement.

Dated September 17, 2003 Signed Lawrence I. Donnelly
September 17, 2003 Lawrence I. Donnelly

cc: Mr. Dale Zimmer