

STATE EMPLOYMENT
RELATIONS BOARD

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2003 NOV 13 A 10: 24

INTEREST ARBITRATION

2003 NOV 13 A 10: 24

OF

FACT FINDING

AWARD

BETWEEN The Communications Workers of America v Ohio Secretary of State	CASE NO: SERB 03-MED-04-0478 FACT FINDER: JOHN S. WEISHEIT HEARING DATE(S): October 18, 2003 AWARD ISSUED: November 11, 2003
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REPRESENTATION

by

<u>Employer Bargaining Representatives</u>	<u>Union Bargaining Representatives</u>
Jonathan J. Downes, Esq., Kathleen C. Madden, Esq. DOWNES, HURST, & FISHEL	Michael A. Moses, Esq.

AUTHORITY

This matter was brought before Fact Finder John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matters before the Fact Finder are for consideration and recommendation based on merit and fact according to the provisions of ORC 4117, particularly those sections applicable to safety forces.

BACKGROUND

The Ohio Secretary of State , hereinafter called the “Employer”and/or the “Secretary of State”, recognizes the Communications Workers of America, hereinafter called the “Union” and/or “CWA ”, for a single bargaining unit consisting of twelve (12) classifications . The bargaining unit is composed of approximately 70 employees. The parties engaged in a number of bargaining sessions to attain a successor Agreement to the one expiring June 30, 2003. In the course of good faith bargaining, many of the issues were resolved in tentative agreement or withdrawal. Articles tentatively agreed to are identified in a later section of this Report.

The Fact Finder was called upon, as provided in ORC 4117, to render an opinion regarding the unresolved issues still on the bargaining table. The original Fact Finder assigned to this case passed away shortly after conducting a Fact Finding Hearing and the above named Fact Finder was selected to complete the assignment. The parties agreed to continue in this matter by providing the current Fact Finder with documents, tapes, and a review of such information considered necessary to make a determination regarding the outstanding matters. Such unresolved matters are addressed later in this Award. Except for the specific issues noted, the remaining terms of said Articles are resolved.

A second abbreviated Hearing was convened by this Fact Finder on October 18, 2003, at the Office of Collective Bargaining of the State of Ohio, Columbus, Ohio. It was determined that the parties timely submitted pre-hearing briefs and other documents called for under terms of ORC 4117. At the Hearing, the respective representatives presented additional testimony and documentation regarding the respective positions on matters yet to be resolved. The Hearing was adjourned after the parties had indicated they had nothing additional to submit on behalf of their bargaining position and acknowledged that they had sufficient opportunity to present such facts and documentation to support their respective positions.

In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

1. Past collectively bargained agreements between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public Employer to finance and administer the issues proposed, 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, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

This Report is based on facts provided in document and testimony submitted by the parties at the original Fact Finding Hearing, the briefing session of this Fact Finder prior to the Hearing of October 14, 2003, and in keeping with statutory considerations cited above.

ISSUES OF TENTATIVE AGREEMENT

The following Articles were resolved in negotiations and tentatively agreed to prior to the Fact Finding Hearing:

Article	Topic
Article 1	Purpose & Intent of Agreement
Article 2	Union Recognition
Article 3	Conflict, Amendment & Severability
Article 4	Union Security
Article 5	Union Rights
Article 6	Management Rights
Article 7	Nondiscrimination
Article 8	Grievance Procedure
Article 9	Personal Leave
Article 10	Sick Leave
Article 11	Bereavement Leave
Article 12	Vacation Allowance
Article 13	Court Leave
Article 14	Holidays
Article 15	Leave of Absence
Article 16	Disability Leave
Article 17	Group Health Insurance
Article 18	Life Insurance
Article 19	Retirement
Article 20	Employee Assistance Program (EAP)
Article 21	Employee Training
Article 22	Seniority
Article 23	Job Openings
Article 24	Job Audits
Article 25	Intermittent & Temporary Employees

Article	Topic
Article 26	Sub Contracting
Article 27	Layoff
Article 28	Personnel Files
Article 29	Disciplinary Actions
Article 30	Notice of Absence, Tardiness
Article 31	Hours of Work/Overtime
Article 32	Work Rules
Article 33	Work Loads
Article 34	Election Day
Article 35	Labor-Management Committee
Article 36	Weather or Other Emergencies
Article 37	Wages-----At Impasse
Article 38	No Strike/No Lockout
Article 39	Effect of Agreement -----At Impasse
Article 40	Copies of Agreement
Article 41	Duration of the Agreement
Article 42	Workforce Development Fund
Appendix A	Classifications -----At Impasse
Appendix B	Wage Scales

ISSUES AT IMPASSE

The following Articles were at impasse, in part or whole, at time of the Fact Finding Hearing:

Article	Topic
Article 37	Wages
Article 39	Effect of Agreement
Appendix A	Classifications

SUMMARY OF PARTY POSITIONS ON

ISSUES AT IMPASSE

The following unresolved issues at Fact Finding are listed with a summary position of the respective parties. Only issues at impasse are set forth. Remaining terms of the Article have been resolved, though not necessarily signed off as a tentative agreement.

Employer	Issue	Union
<p>The Employer proposes:</p> <p>Sec. 37.3 Eff. July 1, 2003 - 0% increase Eff. July 1, 2004 - 0 %increase Eff. July 1, 2005 - 4% increase</p> <p>It proposes to freeze step increases during effective July 1, 2003 - June 30, 2005.</p> <p>Sec. 37.5 It further proposes to freeze Longevity payments effective July 1, 2003 - June 30, 2005.</p>	<p>Article 37 Wages</p>	<p>The Union proposal, at the time of October 14, 2003, Hearing was revised to the following: Eff. July 1, 2003, a \$1,000.00 lump-sum payment as a cost of working adjustment.¹ Eff. July 1, 2004, a 2% increase with a “me too” provision increase based on a formula reflective of average of any wage increase granted to management employees between July 1, 2004 - June 30, 2005. Eff. July 1, 2005, a 4% increase with the “me too” provision and the 2% ratification payment.</p>
<p>The Employer proposes the current language be retained, with the change of the 3-year period being July 1, 2003 - June 30, 2006.</p> <p>It further proposes to add 37.2 providing 2% Ratification Payment</p>	<p>Article 39 Effects of the Agreement</p>	<p>The Union proposes the current language be retained, with the change of the 3-year period being July 1, 2003 - June 30, 2006.</p> <p>The Union has not accepted this State proposal, in light of its current position on wages previously cited.</p>

¹ This a reduction from \$1500.00 introduced at the Hearing with the previously assigned Fact Finder.

Employer	Issue	Union
The Employer rejects the Union proposal and contends the language should remain status quo.	Appendix A Classifications	The Union proposes to add a new classification of Customer Service Assistant 3.

DISCUSSION & DETERMINATION

General

The economic issues at impasse are considered collectively. The economic impact is reviewed in context of the evidence and testimony introduced by the parties. While the economic recommendations are made issue by issue, the total projected cost of the recommendation(s).

The general thrust of the Employer's argument and bargaining positions reflects the pattern that has evolved in the course of bargaining between the State of Ohio and other bargaining units in this current round of negotiations.

The Union has introduced a significant different argument. While considered a valid basis of contention, it deviates significantly from union-management bargaining normal practices and the premise traditionally used by the parties in prior bargaining history. As such, per generally accepted practice applied in Fact Finding, the Union must accept a significant burden in using its argument in order to prevail in its contentions as well as the funding principles inherently associated with financial issues.

This is particularly true considering the general bargaining practices that have evolved with the State of Ohio and its other bargaining units.

Bargaining History & Pattern Bargaining

The State has a history of entering into a pattern bargaining with the unions representing the various bargaining units of State employees. The State first resolved its bargaining with the largest bargaining unit, the Ohio Civil Service Employees Association/AFSCME (OCSEA), representing about 40,000 employees of the approximately 60,000 State's unionized work force. The terms of settlement reached with this unit established the foundation for bargaining units in subsequent settlements. The pattern includes the level of resolution it seeks with the remaining smaller bargaining units including such issues as wages, insurance, leave, and other terms considered appropriate to reflect a uniform terms in the respective successor contracts. For the most part, the contract negotiations of subsequent agreements resulted in agreement of pattern issues by the remaining bargaining units. Fact Finders and Conciliators intervening in impasse situations in State/Union negotiations tend to uphold the pattern positions reached in the initial contract terms with OCSEA. Only in limited instances, where the union argument and evidence is overwhelmingly compelling, have neutrals ruled against a pattern term as proposed by the State and to side with the union position on issues at impasse.

The State, in recent rounds of bargaining, has introduced more proposed changes in the course of bargaining rather than simply respond to union initiated proposals for change. While many State initiated concerns are most often economically driven, others address operational concerns and the attainment of more uniform terms regarding work practices common to all

State employees. The weight extended to pattern bargaining can best be exemplified by Fact Finder Jonathan Dworkin in his 1997 Fact Finding Award for the State and OSTA when he said:

“ The Union must overcome the pattern by connecting the key item to the duties of the employees it represents. The burden is thus very heavy, because the key items are usually general benefits, and terms and conditions of state employment, not rationally connected to the job duties of a position....”

The concept introduced by this Union in this instant case, is found very similar to that addressed by Fact Finder Dworkin.

Economic Trends

The current general economic trends are recognized as having adversely affected the State's financial conditions and projections for the near future. This is clearly recognized in the resulting bargaining pattern commencing with the OCSEA Agreement and reflected in subsequent State-Union labor agreements. While obviously reluctant, there has been a trend by other Unions to accept a benefit freeze in wage and other economic terms in the course of settlements in this round of bargaining.

All projected issues are assessed for the possibility of requiring additional cost. If such cost is determined to be a factor, all economic factors are considered collectively. As a generally accepted practice in interest arbitration matters (i.e. Fact Finding), such matters are then considered as a new or additional increase in the bargaining units' cost for the duration of the Agreement.

General

Any terms tentatively agreed to in Articles identified at impasse are to be included in the Agreement as agreed to by the parties as well as any subsequent recommendation of the Fact Finder.

Fact Finder's Determination

Issue by Issue

Issue	Discussion/Determination
<p>Article 37 Wages</p>	<p>The Union contends the Employer has significantly increased the number of non-bargaining unit employees in management positions. These employees, it argues, have been granted greater wage increases. The Union further argues that economic conditions are significantly different within this Department of the State operations and as such should be considered in a different light than that applied in the bargaining of other employee units with the State of Ohio.</p> <p>The Employer seeks language that reflects the wage freeze pattern agreed to in all prior labor agreements in this current round of bargaining.</p> <p>The CWA's expressed concern about the relation between bargaining unit members and Secretary of State management staff, regarding wages and benefits, staffing levels, and workload are determined legitimate. However, the unit standing as State employees is not found substantially unique or different from other agencies and bargaining unit employees within the umbrella of State employment. The general economic condition, at this time, is determined. The evidence, testimony and facts introduced by the Union are not found persuasive in attaining a wage recommendation significantly different from the pattern reflected in prior State-Bargaining Unit settlements. It is further determined such a recommendation would not only be inappropriate considering the current State financial situation, but would be unfair and not equitable considering the prior action of the State's unionized workforce.</p>

<p>Article 39</p> <p>Effect of Agreement Recommendation</p>	<p>Based on the foregoing findings, the recommendation is set forth for inclusion in the Agreement.</p> <p>It is determined that Article 39 should be included in the Agreement as found in the expiring Contract, with the following added provision:</p> <p>Section 39.2 Ratification Payment</p> <p>In consideration of ratification of this Agreement, employees who are covered by this collective bargaining agreement and are on the active payroll as of March 6, 2003, and November 14, 2004, shall receive a one-time two percent (2%) lump sum ratification payment in the pay period that includes December 1, 2004. This two percent (2%) payment shall be based on the annualization of the top step rate of the pay range in which the employee is in on November 14, 2004, and is not to be included in the wage base. Less than full-time employees shall receive a pro-rated amount based on the number of hours worked in the twenty-six (26) pay periods preceding November 14, 2004. This payment shall not be subject to PERS withholding.</p>
<p>Appendix A Classifications</p> <p>Recommendation</p>	<p>The State has objected to the inclusion of this issue being put before the Fact Finder at this time on procedural grounds. This is an objection considered more appropriately to be addressed by the State Employment Relations Board than a Fact Finder.</p> <p>However the Fact Finder has determined that the Union proposed addition is inappropriate to include in this Award based on facts put before him. In particular, certain issues raised in this issue are set forth in a Grievance that, at the time of the this deliberation, are pending in a rights arbitration proceeding. It is a standard rule that when two or more forums are available to seek redress of a dispute in regarding a term of a labor contract it is appropriate to complete one forum before introducing it in another. It is therefore considered inappropriate for this Fact Finder to address this issue on merit at this time.</p> <p>It is determined that Appendix A should be included in the Agreement as found in the expiring Contract:</p>

FACT-FINDER RECOMMENDATION

The following are the recommendations regarding issues at impasse in the negotiations between the parties in this case:

Article 37 Wages

It is determined that Article 37 should be included in the Agreement as found in the expiring Contract, except as set forth in the following:

Section 37.2 Effective with the pay period which includes July 1, 2005, the schedules shall be increased by four percent (4%). The Appendix reflects the terms of the wage agreement for the life of the contract, including percent increases and the dates they will be effective.

Section 37.3 - Step Movements

During the period from July 1, 2003 - June 30, 2005, there shall be no non-probationary step movements, including any step movement provided for in other probationary step movements, including any step movement provided for in other provisions of this Agreement. In periods other than July 1, 2003 - June 30, 2005, movement from one step to another after either initial or promotional probation shall occur after one (1) year of service following the completion of probation in the classification, if performance has been satisfactory.

Section 37.5 - Longevity

Employees that have completed five (5) years of total service shall receive the longevity pay supplement which shall be one-half percent (½%) for each year of service excluding any service time earned between July 1, 2003 - June 30, 2005. The amount of longevity pay an employee receives will remain unchanged during the period of July 1, 2003 - June 30, 2005. A maximum of ten percent (10%) shall be applicable after twenty (20) years of total service.

Section 37.7 Delete

Article 39
Effects of the
Agreement

It is determined that Article 39 should be included in the Agreement as found in the expiring Contract, with the following added provision:

Section 39.2 Ratification Payment

In consideration of ratification of this Agreement, employees who are covered by this collective bargaining agreement and are on the active payroll as of March 6, 2003, and November 14, 2004, shall receive a one-time two percent (2%) lump sum ratification payment in the pay period that includes December 1, 2004. This two percent (2%) payment shall be based on the annualization of the top step rate of the pay range in which the employee is in on November 14, 2004, and is not to be included in the wage base. Less than full-time employees shall receive a pro-rated amount based on the number of hours worked in the twenty-six (26) pay periods preceding November 14, 2004. This payment shall not be subject to PERS withholding.

Appendix A
Classifications

It is determined that Appendix A should be included in the Agreement as found in the expiring Contract.

TOTALITY OF AGREEMENT

- It is recommended that all items of tentative agreement prior to Fact Finding be included in the Agreement. If not otherwise agreed to by the parties, it is recommended all provisions of the expiring agreement be included in the Agreement as stated in the expiring agreement, unless recommended otherwise by the Fact Finder in the Award.
- This will affirm the foregoing report, consisting of **15 pages**, includes the findings and recommendations set forth in this Award by the below signed Fact Finder.
- * Any matter presented before the Fact Finder and not specifically addressed in this Determination and Award were given consideration but are not recommended for inclusion in the Agreement.
- If there is found conflict in the Report between the Fact Finder's Discussion and Recommendations, the language in the Recommendation shall prevail.

To the best of my knowledge, said Report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I therefore affix my signature at the City of Galion, in the County of Crawford, in the State of Ohio, this date of **November 11, 2003**.


John S. Weisheit, Fact Finder

CERTIFICATE OF SERVICE

This will affirm that the Fact finding Report in the Matter of Fact finding between

BETWEEN
COMMUNICATIONS WORKERS OF
AMERICA

CASE NO: SERB 03-MED-04-0478

V
SECRETARY OF STATE,
STATE OF OHIO

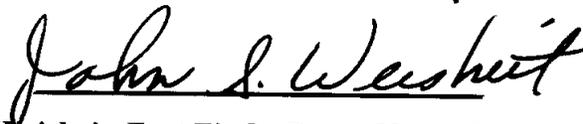
was served to the below named parties at the stated addresses

Michael A. Moses Attorney at Law 330 S. High St. Columbus, OH 43215-4510	Jonathan J. Downes DOWNES, HURST & FISHEL 400 S. Fifth ST. Suite 200 Columbus, OH 43215-5492
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by U.S. Postal Service mailed, overnight express, on **November 11, 2003.**

Copy of this Award was submitted U. S. Postal Service by First Class Mail to
Director, Bureau of Mediation, SERB, 65 E. State St., Columbus, OH 43215-4213, on
November 11, 2003.

I affirm, to the best of my knowledge that the foregoing is true and accurate and in keeping
with ORC 4117 and related SERB Rules and Regulations.



John S. Weisheit, Fact Finder Date : **November 11, 2003**

JOHN S. WEISHEIT

Arbitrator

440 Portland Way S.
Galion, OH 44833
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STATE EMPLOYMENT
RELATIONS BOARD

2003 NOV 13 A 10: 24

June 23, 2003

Dale Zimmer, Director
Bureau of Mediation
State Employment Relations Board
65 East State Street
Columbus, OH 43215-4213

RE: Fact Finding Report

Case No(s).	Parties
SERB 03-MED-04-0478	CWA v Secretary of State

Mr. Zimmer:

Enclosed is the signed copy of the Determination and Report for the above cited case
As always, if there are any questions, contact me.

Sincerely,



John S. Weisheit, Fact Finder

JSW:jw

enc.