

This matter came on for fact-finding hearing on January 26, 2004, at 11:00 a.m., at the Hocking-Logan Public Library, corner of Main and Walnut Streets, Logan, Ohio. Both parties were afforded a full and fair opportunity to present to the fact-finder a settlement offer, along with supporting evidence and arguments, as each unresolved issue that was subject to collective bargaining as provided by Ohio Revised Code section 4117.08, and upon which the parties have reached impasse.

This fact-finding process proceeds under the authority of Ohio Revised Code section 4117.14(C)(3) . The fact-finding hearing and the fact-finding procedures followed in this process were governed by Ohio Administrative Code rule 4117-9-05.

BACKGROUND

The parties to this fact-finding process, Hocking County Emergency Medical Services, the Employer, and AFSCME, Ohio Council 8, Local 2691, the Union, are now engaged in the formulation of their initial collective bargaining agreement for a bargaining unit comprised of forty employees. The bargaining unit contains twenty-five part-time employees and fifteen full-time employees. The bargaining unit contains three separate classifications: EMT-paramedic, EMT-advanced, and EMT-basic. The bargaining unit contains full-time and part-time employees in each of these classifications.

The parties bargained from May 28, 2003 through January 24, 2004 on eight separate occasions, and participated in mediation with the assistance of Ohio State Employment Relations Board mediators on November 3 and November 21, 2003. The Union was certified as the exclusive representative of the bargaining unit effective December 5, 2002. The Union filed a notice to negotiate on April 17, 2003.

The unresolved issues separating the parties are:
fair share fee, holidays, health insurance, wages, and duration and waiver.

Both parties have satisfied the requirements of Ohio Revised Code section 4117.14 and Ohio Administrative Code section 4117-9-05 in moving this matter to fact-finding and in presenting this matter to the fact-finder.

FACT-FINDING CRITERIA-OHIO ADMINISTRATIVE CODE RULE 4117-9-05(K)(1)-(6)

Ohio Administrative Code rule 4117-9-05(K) provides that the fact-finder shall take into consideration, in making recommendations to the parties, the criteria expressed in paragraphs (K)(1)-(6) of this rule. Ohio Administrative Code section 4117-9-05(K)(1) refers to past collectively bargained agreements between the parties, if any. Ohio Administrative Code section 4117-9-05(K)(2) refers to a 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 classifications involved. Ohio Administrative Code section 4117-9-05(K)(3) refers to the interests 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. Ohio Administrative Code section 4117-9-05(K)(4) refers to the lawful authority of the public employer; Ohio Administrative Code section 4117-9-05(K)(5) refers to stipulations by the parties; Ohio Administrative Code rule 4117-9-05(K)(6) refers to such other factors, not confined to those listed in this rule, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment. In contemplating and making recommendations intended to resolve the issues separating the parties from their initial collective bargaining agreement, the fact-finder has kept in mind and has applied the criteria expressed in Ohio Administrative Code rule 4117-9-05(K)(1)-(6).

FINDINGS OF FACT

1. The parties to this fact-finding are Hocking County Emergency Medical Services, the Employer, and the American Federation of State, County, and Municipal Employees, Ohio Council 8, Local 2691, the Union.
2. The parties have no predecessor collective bargaining agreement.

3. The bargaining unit is comprised of forty employees, twenty-five part-time employees and fifteen full-time employees, among three classifications: EMT-paramedic, EMT-Advanced, and EMT-basic.
4. The Union was certified as the exclusive representative of the bargaining unit effective December 5, 2002.
5. The Union filed a notice to negotiate on April 17, 2003.
6. The Union has proposed language for the parties' collective bargaining agreement which would require a fair share fee contribution as a condition of continuing employment among employees in the bargaining unit who do not join the Union.
7. The Employer has refused to bargain on the issue of a fair share fee because this subject is a permissible subject of bargaining and not a mandatory subject of bargaining.
8. Hocking County is a self-insured employer which contracts with a third party administrator to coordinate the health insurance coverage provided by the Employer to all employees of Hocking County, organized and non-organized.
9. The cost of single health insurance coverage has increased, since 2001, by 64.1%.
10. At projected rates, the Employer will expend \$95,297.40 to provide health insurance coverage for the bargaining unit for 2004, an increase from 2003 of \$7,234.20, about 8.2%.
11. Providing health insurance coverage to county employees under a common health insurance plan is crucial to controlling the county's health insurance costs, as is the ability to change insurance carriers and/or coverage.

12. A bargaining unit member who wishes to secure family coverage would be required to spend \$1,000 per month in addition to the coverage provided by the Employer for single coverage.
13. The cost of securing double or family coverage by a bargaining unit member, based upon the wages earned by bargaining unit members, is prohibitive.
14. The economy facing Hocking County is poor.
15. For fiscal year 2003, the Hocking County EMS experienced deficit spending in the amount of \$1,379.51.
16. Hocking County EMS is funded through a dedicated levy with an effective tax rate of 1.0 mill.
17. Hocking County EMS employees are paid about 15% less, on average, in comparison to similarly situated employees in political subdivisions in the vicinity of Hocking County.

ARTICLE 3 - Fair Share Fee - Proposed New Language

Through bargaining the parties reached a tentative agreement as to dues deduction language to be included in Article 3 of the parties' collective bargaining agreement, a proposal which originated with the Union.

The Union also proposes that language be included in the parties' collective bargaining agreement which requires, as a condition of continuing employment, that bargaining unit members who choose not to join the Union and therefore pay no Union dues, contribute a fair share fee to help in paying the costs of bargaining and administering the collective bargaining agreement,

and administering the bargaining unit. The Union notes that all bargaining unit members enjoy the guarantees of the collective bargaining agreement, Union members and non-Union members alike. The Union points out that under its proposal employees retain the right to choose whether to join the Union or not. The Union remains required, under either choice, to provide fair representation to all members of the bargaining unit. The Union points out that the fair share fee to be paid by bargaining unit members who do not join the Union helps meet the costs necessary to administering the collective bargaining agreement as it applies to all members of the bargaining unit.

The Union points out that the dues structure within the bargaining unit is graduated to distinguish between part-time and full-time employment. The Union notes that 90% of the members of the bargaining unit are Union members. Four bargaining unit members have declined to join the Union and therefore contribute nothing to the representation and administration of the bargaining unit, or the creation and administration of the collective bargaining agreement. These four noncontributing bargaining unit members will nonetheless enjoy the protections and guarantees made available through the parties' collective bargaining agreement, and remain entitled to fair representation by the exclusive representative of the bargaining unit, as a matter of law.

While the Union has emphasized the fairness and sound reasoning underlying its fair share fee proposal, the Employer contends that this issue is a permissive subject of bargaining, not

a mandatory subject of bargaining, and therefore comprises a subject about which the Employer may decline to negotiate. The Employer has refused to bargain about a fair share fee based on the Employer's understanding of its obligations and rights under Ohio Revised Code section 4117.08.

The Employer contends that a fair share fee is neither a term nor a condition of employment within the Hocking EMS and therefore does not comprise a mandatory subject of bargaining. The Employer therefore contends that the issue of a fair share fee, under these circumstances, is not an appropriate subject for submittal to the fact-finder.

DISCUSSION

Ohio Revised Code section 4117.08 provides that a public employer and an exclusive representative of a public employee bargaining unit are to bargain upon all issues affecting wages, hours, terms, or other conditions of employment. Issues affecting wages, hours, terms or conditions of employment are mandatory subjects of bargaining and a party may not decline to negotiate on a mandatory subject of bargaining when raised by the other party.

Ohio Revised Code section 4117.08 refers to subjects which may not be required to be bargained by either parties, so called prohibited subjects of bargaining.

Ohio Revised Code section 4117.08 also refers to subjects of bargaining which are neither mandatory nor prohibited, but are

subjects which may be bargained by agreement of both parties. Subjects of bargaining which are neither mandatory nor prohibited are referred to as permitted. Permitted subjects of bargaining are negotiated when both parties agree to bargain upon them, but neither party is required, as a matter of law, to bargain about a permitted subject of bargaining if a party chooses not to.

The Employer argues that a fair share fee is a permitted subject of bargaining and therefore a subject about which the Employer was within its statutory rights to refuse to bargain about. The Employer points to its consistency in refusing to bargain on this subject and therefore contends that this subject is not properly presented to the fact-finder.

The Union argues that a fair share fee is a term or other condition of employment and therefore comprises a mandatory subject of bargaining properly presented to the fact-finder for a recommendation. The Union argues that a proposal in fact-finding may not be thwarted by the refusal of the Employer to participate as to the issue.

Neither party was able to submit to the fact-finder any legal authority, legislative or judicial, which addresses whether a fair share fee proposal comprises a mandatory or permissive subject of bargaining, and if it is a permissive subject of bargaining, whether such a permissive subject may be presented to fact-finding in the absence of agreement by both parties to bargain on the subject.

Ohio Administrative Code rule 4117-9-05(F) provides that pursuant to Ohio Revised Code section 4117.14(C)(3)(a), upon notice of appointment of the fact-finding panel and prior to the hearing, each party shall submit to the fact-finding panel and serve on the other party a written statement. This regulation provides that a failure to submit such a written statement to the fact-finder and the other party prior to the day of the fact-finding hearing shall cause the fact-finding panel to take evidence only in support of matters raised in the written statement submitted prior to the hearing.

Ohio Administrative Code section 4117-9-05(F)(1)-(4) provides that a written statement to be provided by each party to the fact-finder prior to the fact-finding hearing is to include the name of the party and the name, address, and telephone number of the principal representative of the party; a description of the bargaining unit, including the approximate number of employees; a copy of the current collective bargaining agreement, if any; and a statement defining all unresolved issues and summarizing the position of the party with regard to each unresolved issue.

The written statement submitted to the fact-finder by the Union prior to the day of fact-finding hearing, in accordance with Ohio Administrative Code section 4117-9-05(F), presents as an unresolved issue the proposal by the Union that a fair share fee be included in the parties' collective bargaining agreement.

The Employer in its pre-hearing written statement referred to its lack of agreement upon the Union's proposal for a fair share fee, and reiterated its past refusal to bargain on this subject.

If Ohio Administrative Code section 4117-9-05(F)(4), in referring to "all unresolved issues," is not limited to those issues bargained by the parties but includes all issues remaining unresolved between the parties, the Employer's exercise of its right to refuse to bargain what it considers a permissive subject of bargaining would place the Employer at a disadvantage. The Employer could not otherwise defend its position on not including a fair share fee in the parties' collective bargaining agreement so as to maintain consistency in the Employer's refusal to bargain on this subject. The failure to submit a written statement on this issue to the fact-finder prior to the day of hearing would require the fact-finder to take evidence only in support of matters raised in the written statements submitted prior to the hearing. In this case the Employer's refusal to bargain on this subject is expressed in the prehearing written statement from the Employer, but no other position is stated or supported.

The payment of a fair share fee by a bargaining unit member who chooses not to join the Union would be, if included within a collective bargaining agreement between the parties, a term or other condition of employment. The language of the collective bargaining agreement between the parties would impose this term or condition of employment, and under such a circumstance this subject

would be a mandatory subject of bargaining as expressed in Ohio Revised Code section 4117.08.

The circumstances of the parties to this fact-finding, however, do not reflect a fair share fee having been imposed as a term or other condition of employment within the Hocking County EMS. The Employer has never required that a fair share fee be paid as a condition of continuing employment with the Employer, and in the absence of such a requirement it is difficult to find that the proposed language of the Union comprises, at the time the parties were attempting to bargain or refusing to bargain this issue, a term or other condition of employment. When this issue has been raised by the Union, no fair share fee has existed as a term or other condition of employment with the Hocking County EMS. At a time when a fair share fee is not a term or other condition of employment with the Employer, the fact-finder is unable to find that the subject comprises a mandatory subject of bargaining pursuant to Ohio Revised Code section 4117.08.

The fact-finder is convinced that a fair share fee is not a prohibited subject of bargaining as it contravenes no express statutory language or public policy. A fair share fee is viewed by the fact-finder as a legitimate, reasonable, and efficient way to pay for the administration of the bargaining unit, the negotiation of a collective bargaining agreement, and the enforcement of that agreement for the protection of every member of the bargaining unit regardless of Union affiliation. These reasons, however, support the merits of a fair share fee; they do not show a fair share fee,

under the facts of this case, to be a mandatory subject of bargaining.

Under the circumstances presented herein the fact-finder finds that the Union's fair share fee proposal comprises a permissive subject of bargaining as enunciated by Ohio Revised Code section 4117.08. Under this view the Employer is within its right to refuse to bargain on this subject and has exercised this right consistently during negotiations between the parties.

If the fair share fee issue is a permissive subject of bargaining, and the Employer has refused to bargain on this subject on this basis, there remains the question of whether such a permissive subject which has been refused bargaining by one party, may nonetheless be presented to a fact-finder within a fact-finding process. This issue brings us back to the "unresolved issues" to be presented within the written statement from each of the parties to the fact-finder prior to the fact-finding hearing pursuant to Ohio Administrative Code section 4117-9-05(F)(4).

The fact-finder notes that as a process, fact-finding differs significantly from a process of conciliation. The conciliation process imposes upon the parties the final settlement offer of one party or the other on a particular issue. In contrast to conciliation, fact-finding does not impose on either party particular language for inclusion within the parties' collective bargaining agreement; fact-finding recommends language in the hope that the parties may reach agreement based on the recommendations of a third party. The fact-finder is not limited to one offer or

the other, but is free to present to the parties the fact-finder's conclusions as to a balanced agreement such that the parties may resolve their impasse.

The fact-finder makes no comment upon whether a permissible subject of bargaining which has been refused bargaining by one of the parties may be submitted in a conciliation process. That issue is not before the fact-finder in this fact-finding process. What is before the fact-finder in this case is whether a permissible subject of bargaining which has been refused bargaining by one of the parties may nonetheless be presented to the fact-finder as an "unresolved issue" pursuant to Ohio Administrative Code section 4117-9-05(F)(4).

The fact-finder has been presented no legal authority, statutory or decisional, on this legal issue and therefore relies on the only language available which appears to bear on this issue, Ohio Administrative Code section 4117-9-05(F)(4) which calls for the presentation to the fact-finder of "...all unresolved issues..." The fact-finder is also persuaded that the nature of the fact-finding process permits greater flexibility in considering all issues unresolved between the parties in an attempt to fashion an overall package for inclusion in the parties' collective bargaining agreement that will be agreeable to both parties. Exercising the broad powers of the fact-finder granted through Ohio Revised Code section 4117.14 and Ohio Administrative Code section 4117-9-05(F),(J), and (K)(1)-(6), the fact-finder finds that he may

address the issue of fair share fee as proposed by the Union, a subject which remains an issue unresolved between the parties.

As stated above, the fact-finder views a fair share fee as a fair and equitable way to spread the costs of administering the bargaining unit, creating a collective bargaining agreement, and enforcing the collective bargaining agreement on behalf of all bargaining unit members, whether members of the Union or not. The Union is required as a matter of law to provide fair representation to all bargaining unit members, and this duty of fair representation extends to each and every bargaining unit member, whether a member of the Union or not. Considering that each bargaining unit member receives the benefits and guarantees of the bargaining unit's collective bargaining agreement in equal measure and is entitled to equal representation by the exclusive representation of the bargaining unit, those bargaining unit members who choose not to join the Union still receive the benefits flowing from inclusion in the bargaining unit, and therefore should be held accountable for the costs of administering the bargaining unit, creating the collective bargaining agreement, and enforcing the collective bargaining agreement. A fair share fee costs the Employer nothing beyond the administrative work necessary to deducting the appropriate amounts.

The fact-finder recommends the fair share fee language as proposed by the Union.

Recommended Language - Article 3, Section 3.4 - Fair Share Fee

All bargaining unit employees who are not members in good standing of the Union are required to pay a fair share fee to the Union as a condition of continued employment.

All bargaining unit employees who do not become members in good standing of the Union are required to pay a fair share fee to the Union, as a condition of employment. This condition is effective sixty-one (61) days from the employee's date of hire, or the date this agreement is signed by the parties, whichever is later.

The fair share fee amount will be certified to the Employer by the Union. The deduction of the fair share fee from any earning of the employee is automatic and does not require a written authorization for payroll deduction.

The deduction of fair share fees will not be made until the Employer receives written notice to begin deductions from the Controller of Ohio Council 8.

Payment to the Union of fair share fees deducted will be made according to the same provisions of the Agreement that govern the payment to the Union of the regular dues deductions.

The payment will be accompanied by an alphabetical list of the names, social security number and current address of those employees for whom a deduction was made and the amount of the deduction. This list must be separate from the list of employees who had Union dues deducted.

Article 18 - Holidays

The parties are in agreement as to the ten holidays to be observed among full-time employees of the bargaining unit, with each holiday comprised of twenty-four hours. These holidays are New Year's Day (January 1), Martin Luther King, Jr. Day (3rd Monday in January), Presidents' Day (3rd Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (1st Monday in September), Columbus Day (2nd Monday in October), Veterans' Day (November 11), Thanksgiving Day (4th Thursday in November), and Christmas Day (December 25).

One of the issues separating the parties concerning holidays is a past practice between the parties, proposed continued by the Union and proposed discontinued by the Employer, which allows an employee to elect to take a prescheduled day off with pay, including but not limited to, the actual holiday. In the alternative, an employee may cash in holiday time for cash pay out during any pay period. The Union's proposal provides that the maximum number of hours for pay out is forty-eight hours during any one pay period.

The Employer urges that the options of being paid holiday pay or securing a paid shift off work at a later date present difficulties in scheduling part-time employees for those days on which full-time employees take days off. The Employer proposes that the language of the parties' collective bargaining agreement allow only those full-time employees who actually work a holiday to

receive a day off in the future in lieu of holiday pay. The Employer is unaware of any other jurisdiction where full-time employees possess the option of taking a day off in the future as opposed to being paid holiday pay for a holiday the employee was not scheduled to work and did not work.

The Employer also proposes that the parties' collective bargaining agreement provide that part-time employees who work a holiday shall be paid at a rate of one and one-half times their regular rate of pay for hours worked during the holiday. The Employer notes that this is consistent with current practice and the Union has provided no contrary proposal on this matter.

The Employer also proposes that a full-time employee who takes sick leave on the day of a holiday shall be barred from receiving holiday pay. The Employer considers this to be a serious sick leave abuse problem and contends that the Union has acknowledged as much. The Employer contends that this will help reduce further sick leave abuse by not allowing an employee to take sick leave on the day of a holiday and, in effect, obtain five days off from work.

The Union emphasizes that holiday compensatory time has been used traditionally by the unit and is not related to issues of calling off sick. The Union notes that holidays must be rescheduled through a regular process and contends that the proposals of the Employer will diminish the opportunities for part-time workers to work on holidays.

DISCUSSION

The fact-finder is persuaded that the proposals from the Employer as to holiday language within the parties' collective bargaining agreement are reasonable, will facilitate more reliable and efficient scheduling, and will not negatively impact the benefit bestowed upon bargaining unit members by this Article.

The Employer's proposal provides that if a full-time employee works a holiday the employee is to be paid his regular rate of pay for working that day, and in addition, may either be paid holiday pay or may schedule a paid day off at a later date. The option of pay or a subsequent paid day off is left to the discretion of the employee who worked the holiday. This choice, under the Employer's proposal, is reserved to those full-time employees who actually work a holiday.

Those bargaining unit members who are not scheduled to work a holiday and who do not work the holiday, under the Employer's proposal, will receive holiday pay. These employees would not receive regular pay for the holiday because these employees did not work the holiday. The fact-finder is not persuaded that an employee who takes a holiday off, and is paid for that holiday, should also have the same option available to an employee who actually worked the holiday, that is, the option of taking holiday pay or a subsequent paid shift off. The fact-finder agrees with the Employer that an employee who takes a holiday off is compensated through

holiday pay and is not otherwise entitled to the option of compensatory time off.

The Employer's proposal as to paying part-time employees who work a holiday at a rate of one and one-half times their regular rate for hours worked on a holiday provides for premium pay but is a benefit different from that paid to full-time employees working the holiday. This distinction is based on full-time versus part-time status, and clears up any ambiguities as to how a part-time employee is to be paid for holiday work.

As to the final proposal made by the Employer on holidays, whether to prohibit a full-time employee who takes sick leave on the day of a holiday from receiving holiday pay, this also appears to the fact-finder to be reasonable. A bargaining unit employee who is scheduled to work a holiday who then calls off sick receives pay for that day through sick leave as a day of incapacity for work, a day upon which the bargaining unit member is physically unable to report for duty. The absence of a scheduled bargaining unit member from a holiday requires a bargaining unit member who was not scheduled for the holiday to be required to come in to cover the vacated shift of the sick employee. An employee who calls off sick on a holiday is compensated for his physical inability to report to work; the fact-finder can think of no basis to further reward an employee under this circumstance by requiring holiday pay as well.

The fact-finder recommends the ten holidays agreed by the parties for inclusion in their collective bargaining agreement, and also recommends the three provisions suggested by the Employer as

to how holidays are to be handled for full-time employees who work a holiday; part-time employees who work a holiday; full-time employees who do not work a holiday; and full-time employees who call off sick for a holiday for which the employees were scheduled to work.

Recommended Language - Article 18 - Holidays

Section 32.1 Paid Holidays The following are designated as paid holidays for full-time employees:

1. NEW YEAR'S DAY (January 1st)
2. MARTIN LUTHER KING DAY (third Monday in January)
3. WASHINGTON-LINCOLN DAY (third Monday in February)
4. MEMORIAL DAY (last Monday in May)
5. INDEPENDENCE DAY (July 4th)
6. LABOR DAY (first Monday in September)
7. COLUMBUS DAY (second Monday in October)
8. VETERANS' DAY (November 11th)
9. THANKSGIVING DAY (fourth Thursday in November)
10. CHRISTMAS DAY (December 25th)

Section 32.2 Holidays Observed/Paid Full-time employees assigned to commence their shift on a holiday shall be paid straight time for all hours worked on the holiday, in addition to either receiving their twenty-four (24) hours of holiday pay or a twenty-four (24) hour paid shift off from work at a later date. The twenty-four (24) hour paid shift off from work must be taken in the same calendar year as the holiday. Full-time employees who use sick leave when scheduled to work a holiday shall not be entitled to holiday pay.

Full-time employees not assigned to commence their shift on a holiday shall receive twenty-four (24) hours holiday pay at the employee's appropriate straight pay rate.

Part-time employees who work a holiday shall be paid at a rate of one and a half (1 1/2) times their regular rate for hours worked during the holiday.

ARTICLE 36 - HEALTH INSURANCE

The Employer proposes that full-time employees within the bargaining unit receive the same health insurance coverage being provided to other Hocking County employees. All Hocking County employees are under the same plan and the Employer recommends that the health insurance coverage system now in place be retained. Under this system the Employer pays 100% of the premium for single coverage for full-time employees. For a double or family plan under this coverage, for full-time employees, the Employer pays the equivalent of single coverage costs. This is the system used for other employees paid through Hocking County's general revenue fund and for employees of the Hocking County Sheriff's Office. The Employer notes that this is the structure that has been historically used in providing health insurance coverage to employees of the Hocking County EMS.

The Employer emphasizes that paying for single coverage for full-time employees is a significant benefit, noting that since 2001 the premium for single coverage has increased 64.1%. For 2004 the Employer will pay \$95,297.40 in health insurance costs for full-time employees in the bargaining unit, an increase of \$7,234.20 from the previous year. The Employer believes that the increase in insurance costs, coupled with the Employer's wage proposal, offers a generous wage and insurance package to the bargaining unit.

The Employer contends that maintaining county employees under the same health insurance plan is crucial to controlling the county's health insurance costs, as is having the ability to change insurance carriers and/or coverage. The Employer possesses the ability to make such changes at this time as it relates to non-county employees, as to organized employees within the Sheriff's office, and among organized employees within the Hocking County Department of Job and Family Services.

The Union does not dispute the increases in health care coverage costs, noting that it comprises an increased burden for both employers and employees. The Union believes, however, that to require an employee to bear the remaining total cost for coverage for one additional family member or for the family plan is unfair and out of line with other organized units in Hocking County. The Union points out that other agencies within the county contribute toward those plans in various amounts.

The Union notes that Hocking County is a self-insured employer which contracts with a third party administrator, having the ability to utilize Anthem's discounts and networks. The county is part of a consortium administered by the County Commissioners Association. The Union understands there is no requirement to fund the plan with reserved funds. The premium, as established by the county or the consortium, is \$1500.00 per month for family coverage. An employee making \$10.60 per hour who desires insurance coverage would have to pay approximately \$1,000.00 per month for this coverage. Such a cost is clearly out of the reach of a full-

time employee. The Union contends this is a significant problem for employees of the Hocking County EMS. The Union notes that employees of the Hocking County Department of Job and Family Services, covered under the same plan, pay ten percent (10%) for their health insurance coverage, including family coverage. The Union contends that its proposal, although expensive, provides a reasonable alternative.

The Union proposes that under the parties' collective bargaining agreement, the Employer would continue to pay the total premium cost for a single plan for full-time employees. The Employer would pay fifty percent (50%) of the total premium of the double plan and/or family plan for full-time employees, and the Employer would pay fifty percent (50%) of the total premium for the single plan for those employees who hold a Kelly day position.

The Employer contends that to fund the health insurance coverage proposed by the Union would require an additional \$77,000 per year, beyond the \$95,297.40 in health insurance costs for full-time employees in the bargaining unit anticipated in 2004.

The Union states that it is simply looking for fairness on the issue of health insurance coverage and is attempting through its proposal, to "split the difference."

DISCUSSION

There are a variety of ways to provide and fund health insurance coverage. Some plans provide for a percentage to be paid

by the employer and the remaining percentage to be paid by the employee. In the case of Hocking County, the Employer has historically paid for single coverage, leaving the cost of coverage beyond single coverage, that is, for a double plan or a family plan, to the employee who seeks such coverage.

Beyond the health insurance coverage historically extended by the Employer to its organized and non-organized employees, this type of coverage appears to be uniform throughout the pool of Hocking County employees to whom this coverage is provided. The changes proposed by the Union as to health insurance coverage would therefore not only increase the already substantial costs for health insurance coverage to be borne by the Employer, costs which are increasing at substantial annual rates, but would also change for this particular bargaining unit, among the larger pool covered by the health insurance plan provided by Hocking County, the employee contributions for additional coverage.

The fact-finder is sensitive to the increasing costs imposed upon the city, now and over the next three years for the provision of single coverage at no cost to a full-time employee. The fact-finder acknowledges the validity of the argument put forward by the Union as to the extreme difficulties in securing family coverage or double coverage upon the wages available to employees within the bargaining unit. This circumstance, however, does not diminish the substantial amount of funds which the Employer is already obligated to encumber for health insurance costs, and does not diminish the very substantial increase which would result to these financial

obligations if the Union's proposal were to be put into practice. The fact-finder acknowledges that greater health care coverage is a desirable benefit. The fact-finder is not persuaded that the increased costs proposed by the Union can be afforded by the Employer at this time and over the next three years.

The fact-finder is also mindful of the fact that if a substantial increase in health insurance costs were to be recommended for the parties' collective bargaining agreement, there would be substantially less money available for wage increases. The fact-finder recommends the Employer's proposal on health insurance and keeps in mind, when turning to the issue of wages, that while the health care coverage costs are substantial, they have not been increased by a recommendation of the fact-finder on this issue.

Recommended Language - Article 36 - Health Insurance

Section 36.1 Medical Insurance The Employer shall provide group medical insurance coverage to the full-time employees of the Hocking County EMS as is currently provided by Hocking County to other county employees under the jurisdiction of the County Commissioners who are not governed by a collective bargaining agreement or by a board independent of the County Commissioners. It is agreed and understood that the schedule of benefits for employees shall be as set forth for the other County employees on the Hocking County Health Plan, including all conditions and payments specified or required by individual carriers/providers of the health insurance plan.

It is further agreed and understood that during the term of this Agreement, that individual carriers/providers may, through no fault of the County, Employer, Union, or employees, cease coverage. The Union further recognizes the right of the Employer to secure alternate insurance carriers and to modify insurance coverage of benefits, which measures may be used to maintain or lessen premium costs.

Section 36.2 Premiums

The Employer shall pay 100% of the single coverage for full-time employees and shall pay the equivalent of the single premium amount for family and double coverage for full-time employees.

WAGES

On the issue of wages the Employer proposes a \$.40 per hour increase for full-time and part-time employees for the first year of the collective bargaining agreement; entry level increases of \$.26 per hour in the second and third years of the collective bargaining agreement for full-time and part-time employees; and for all existing employees, a \$.40 per hour increase in the first year of the contract and a \$.26 per hour increase in the second and third years of the contract. The Employer also proposes a wage adjustment for seven employees who the Chief determines are not being paid at an appropriate rate.

The above wage proposal, according to the Employer, comprises a 5.72% average wage increase for full-time employees in the first year of the contract and an average wage increase of 2.37% in the second year, and 2.31% in the third year. Part-time employees would receive an average increase of 5.33%, 3.08%, and 2.99% for the first, second, and third years of the collective bargaining agreement, respectively.

The Employer points out that other jurisdictions have frozen wages due to a poor economy and notes that other employees of Hocking County received less in the way of wage increases for 2004

than what is proposed for the bargaining unit at issue herein. Based on the poor economic climate and deficit spending experienced by the Hocking County EMS, the Employer believes its wage proposal to be reasonable.

In reaction to the Union's wage proposal, \$1.00 per hour for all employees in the first year of the contract, and a \$.50 per hour raise in the second year of the contract (the Union is proposing a two-year contract), the Employer points out that the average wage increases as proposed by the Union are 9.72% for full-time employees and 12.7% for part-time employees for the first year. The Employer notes that the Union's wage proposal results in average wage increases in the second year of 4.43% for full-time employees and 5.5% for part-time employees. The Employer contends that the Union's wage proposal for two years would cost the Employer an additional \$182,701.25. The Employer contends that the Union's wage proposal would cripple Hocking County EMS operations.

The Employer points out that for fiscal year 2003, the Hocking County EMS experienced deficit spending of \$1,379.51. The Employer expects the Hocking County EMS to experience deficit spending through 2006.

The Employer notes that the Hocking County EMS is funded through a dedicated levy which is augmented by revenues generated through EMS runs. Four continuous one mill levies have been dedicated solely to raising revenue for the Hocking County EMS, and the revenue generated by these levies has remained constant, with a variance of less than one percent from the prior year. The

Employer notes that EMS run revenues comprise only a small part of the EMS budget, and in the absence of levies being renewed or new levies being passed, the Hocking County EMS will not experience any significant increase in revenues to pay for large wage increases. The Employer refuses to accept wage proposals in anticipation of additional revenues that have not been approved by the voters of Hocking County.

The Employer presented the testimony of Ken Wilson who was referred to tab six of the Employer's pre-hearing written statement. Tab six presents revenue sources and millage for Hocking County Emergency Medical Services. The millage for the levies for Hocking County Emergency Medical Services has remained at an authorized tax rate of 1.0. Mr. Wilson explained that levies have been passed since 1976, with the last levy approved in 1997. Revenue from these levies is tied to real estate valuations, and when real estate valuations rise, a reduction factor is applied so the effective tax rate is maintained. Mr. Wilson acknowledged that these levies generate monies for the operation of Hocking County Emergency Medical Services but noted that these sources of revenue have not increased. Mr. Wilson stated that the present levy is a continuous levy not requiring reauthorization.

Mr. Wilson confirmed that revenues are increased through new construction, primarily through commercial development, but noted that the county has been flat in this area for some time.

Mr. Wilson testified that the economic climate now facing Hocking County is poor.

Mr. Wilson was referred to tab eight of the Employer's pre-hearing written statement which compares benefits and wages between Hocking County EMS employees and employees of the Southeast Ohio Emergency Medical Service. This comparison shows Hocking County EMS employees receiving seventeen Kelly days; the SEOEMS employees receive no Kelly days; the Hocking County employees receive ten 24-hour holidays; the SEOEMS employees receive ten 8-hour holidays; sick leave accumulation and PERS contributions are the same.

The wages for part-time basic, advanced, and medic classifications show that the SEOEMS part-time basic wage is about 14% higher, the part-time advanced wages are about equal, and the Hocking County EMS medic wages for part-time employees is about 11% higher. Among full-time basic, advanced, and medic classifications, the SEOEMS basic wage is higher by about 14%; the advanced wages are roughly equal, with the SEOEMS wage being slightly higher; and the medic full-time wage of SEOEMS is about 6% higher. Health insurance is paid 75% by the Employer for SEOEMS employees; Hocking County EMS employees are credited with \$529.43 per month for single, double, or family coverage. Vacation hours are roughly equivalent, with Hocking County EMS employees receiving slightly more.

Mr. Wilson noted that the Ohio Bureau of Workers' Compensation penalty rating for Hocking County in 2005 had gone up, based on more claims and more injuries. This has increased costs for Workers' Compensation coverage by the County. The Employer noted that last year the County paid between 1% and 1.5% as the rate for

coverage; it is expected that next year the rate will be between 2% and 2.5%.

The Employer notes that over the three years of the parties' collective bargaining agreement, the wage increases proposed by the Employer will amount to \$120,000.

The Employer noted that because of the state of the county's budget, all county agencies receiving funds through the general fund were required to take a 5% across the board budget cut.

The Employer urges that its wage proposal is reasonable, affordable, and is a wage proposal that should be recommended by the fact-finder.

The Union's wage proposal calls for a \$1.00 per hour wage increase effective January 1, 2004; a \$.50 per hour wage increase effective January 1, 2005; and a \$.50 per hour wage increase effective January 1, 2006 (this presumes a three-year contract).

The Union points out that Hocking County EMS employees provide a vital service to the citizens of Hocking County, providing greater safety and well-being to all citizens of the county. The Union has provided a listing of all employees' rates of pay, but for ease of argument, refers to average rates of pay.

The Union notes that the current rate of pay for a newly hired medic is \$8.54 per hour, with the highest rate of pay paid to an employee of the bargaining unit being \$14.25 per hour. The Union notes that, on average, a full-time employee earns \$10.60 per hour, a rate below the average wages for other EMS departments and below the average wages for other agencies in Hocking County.

The Union notes that the Employer has claimed that the Employer's proposal of a \$.40 per hour wage increase for full-time and part-time employees comprises an increase of 5.72% and 5.33%, respectively. The Union points out that for this to be the case, the average wage for a full-time employee would have to be \$7.00 per hour and would have to be \$7.41 per hour for a part-time employee. At an average full-time rate of \$10.60 per hour, the \$.40 per hour wage increase comprises a 3.8% increase, and the subsequent two years, at increases of \$.26 per hour, comprise increases of 2.4% and 2.3%, respectively.

The Union presented the starting wages for paramedic, intermediate, and basic workers at Meigs County EMS, Southeast Ohio EMS, Vinton County EMS, Gallia County EMS, and Healthpro Ambulance Service. In every case the starting wages for paramedic, intermediate, and basic workers employed by the Hocking County EMS are lower than the starting wages for these three classifications at the aforementioned agencies. Gallia County, for example, pays starting paramedics at \$10.90 per hour, while the Hocking County EMS started paramedics in 2003 at \$8.54 per hour. Meigs County pays substantially more at all three levels, as does SEOEMS. The Vinton County EMS agency pays more for starting paramedics and basic workers; only intermediate workers for Vinton County are paid a wage less than that paid to Hocking County EMS workers, Vinton County-\$6.69, Hocking County EMS-\$7.15. On average, the agencies presented by the Union in its exhibit on wage and insurance comparisons show that the agencies presented offer a paramedic, on

average, a starting wage of \$9.80 per hour, while Hocking County EMS, in 2003, on average, offered a starting paramedic \$8.54 per hour, a difference of 15%.

As to Hocking County's ability to fund the wage proposal of the Union, the Union presented a letter from Rene Nance, Labor Economist, Department of Research and Collective Bargaining Services, AFSCME. Within her letter of October 8, 2003, Ms. Nance notes that she is able to analyze data for fiscal years 2001-2002, but the 2003 data is incomplete and does not permit a comparison to the earlier data.

Ms. Nance noted that the Hocking County EMS is a subordinate unit of Hocking County and therefore the focus of her analysis is on the county's ability to pay. Ms. Nance's analysis examines both general fund and special revenue funds, with the general fund the primary operating fund for the county, covering operations that are not accounted for through other funds. Ms. Nance states that the general fund is the key to understanding a jurisdiction's overall fiscal health. Ms. Nance's audit revealed that the Hocking County EMS is part of the special revenue funds which carry with them operational and fiscal restrictions.

In her letter of October 8, 2003, Ms. Nance stated that the 2001 audit shows an excess of revenues over expenditures in the amount of \$405,035, an operating surplus based on \$5,290,901 in revenues and \$4,885,866 in expenditures. Ms. Nance notes that after transfers, the general fund posted a \$30,055 deficit for the year.

The county ended the year with \$1,851,522 in unreserved funds, 35% of all operating revenues.

Ms. Nance notes that in 2002, Hocking County's general fund posted a smaller operating surplus of \$113,746 on revenues of \$5,535,693 and expenditures of \$5,421,947. After transfers, the general fund posted a \$267,982 short-fall for the year. Despite increased growth in revenues and expenditures over last year's figures, expenditures grew faster (11%) than revenues (4.6%), contributing to the larger deficit. The county nonetheless ended the year with a \$1,572,071 unreserved fund balance, 28.4% of operating revenues.

Ms. Nance points out in her letter of October 8, 2003 that jurisdictions typically try to maintain an unreserved fund balance of 5% to 15% of operating revenues as a cushion, as recommended by the Government Finance Officers Association. Ms. Nance describes the 2001 and 2002 unreserved fund balances as sizable, meaning the county is well positioned to meet fiscal emergencies. Ms. Nance questions the reasons for such large balances.

As to special revenue funds, Ms. Nance notes that Hocking County Emergency Medical Services is one of twenty-seven funds among special revenue funds, with these funds restricted to specified purposes. Ms. Nance noted that for 2001, special revenue funds generated \$14,641,897 in revenues for expenditures of \$15,180,671, producing a \$538,774 operating deficit. After transfers, the special revenue funds posted a \$148,232 surplus and a \$4,828,440 unreserved fund balance for the year.

Ms. Nance noted an improvement among special revenue funds in 2002, with revenues increasing faster than expenditures, 9.5% versus 0.8%, leading to an operating surplus of \$735,253. After transfers, the special revenue funds generated a \$1,126,344 surplus and a \$5,831,670 unreserved fund balance for the year. Ms. Nance suggests an inquiry as to whether the unreserved fund balance is accessible for improving wages and benefits of the Hocking County EMS.

Ms. Nance finds that Hocking County ended 2001 and 2002 in a strong fiscal position, with the general fund's unreserved balance providing the county with financial flexibility. Ms. Nance finds that the special revenue funds also indicated great financial flexibility and believes the county ended 2003 in a sound fiscal position, making reasonable wage increases affordable.

The Union notes that the carry-over from 2003 to 2004 in Hocking County is \$866,043.78. The Union notes that its wage proposal intends to "bump up" lower end wages and that the wage increases proposed by the Union are intended to bring the Hocking County EMS workers more closely in line with similarly situated workers in comparable settings, performing comparable work.

DISCUSSION

The fact-finder is persuaded that Hocking County EMS employees are paid at a lower level than similarly situated employees working for other political subdivisions in counties in the vicinity of

Hocking County. Hocking County EMS workers, on average, are about 15% behind the average wages for workers performing similar work. The fact-finder therefore is persuaded that the Union's claim of wages in the bargaining unit lagging behind similarly situated workers is valid and merits consideration in making a recommendation as to wage increases.

The interest of the bargaining unit members in raising their wage levels is counterbalanced by the ability of Hocking County to fund these increases without reducing the number of positions in the bargaining unit. Any wage increase recommended by the fact-finder could be funded by the Employer, but wage increases that are too high require the abolishment of positions, leaving fewer bargaining unit members to perform necessary work. The legitimate interests of the bargaining unit to achieve increased wage levels in comparison to inflation and to similarly situated political subdivisions is therefore restrained by the nature of the economy faced by Hocking County and the general and special revenues available to the county to meet the financial obligations required by the parties' collective bargaining agreement.

The fact-finder is persuaded that a recommendation as to a wage increase for the bargaining unit lies somewhere between the wage increase proposed by the Employer and the wage increase proposed by the Union. Not surprisingly, the Employer's proposal concentrates on containing costs; the Union's proposal concentrates on catching up. The fact-finder is impressed by both competing concerns and therefore finds himself between the two proposals.

In an effort to balance the aims of the parties in their respective wage proposals, the fact-finder recommends a 5% across the board wage increase effective January 1, 2004; a 4% wage increase effective January 1, 2005; and a 4% wage increase effective January 1, 2006. The fact-finder believes these wage increases to be affordable within the special revenue and general revenue funds available for the operation of the Hocking County EMS, and to provide slightly more in approaching average wage levels among similarly situated workers among political subdivisions in the vicinity of Hocking County.

Recommended Language - Article 38 - Wages

Section 38.1 Entry-Level Wages for Full-Time and Part-Time Employees.

Effective the first full pay period after the effective date of this Agreement, the following pay rates will be paid to newly hired full-time and part-time employees:

	<u>2004</u>	<u>2005</u>	<u>2006</u>
1. EMT-Basic	\$6.25	\$6.51	\$6.77
2. EMT-Intermission	\$7.34	\$7.60	\$7.86
3. EMT-Paramedic	\$8.94	\$9.20	\$9.46

Section 38.2 Wages for All Other Employees For full-time employees employed with the Hocking County EMS as of the effective date of this Agreement, such full-time employees shall receive the following pay increases effective January 1, 2004, 2005, and 2006.

	<u>2004</u>	<u>2005</u>	<u>2006</u>
1. EMT-Basic	5%	4%	4%
2. EMT-Intermission	5%	4%	4%
3. EMT-Paramedic	5%	4%	4%

In order to receive the respective pay increase for each year of the Agreement, all part-time employees must submit a monthly availability sheet in accordance with Article 35 indicating availability to work at least 48 hours for each month of the year.

ARTICLE 29 - DURATION AND WAIVER

The Employer proposes a three-year collective bargaining agreement between the parties and the Union states in its pre-hearing written statement that a three-year agreement would be acceptable in connection with other Union proposals. The Union states that should the county feel the need to reassess its economic condition, the Union would propose a two-year agreement so as to allow this review.

The fact-finder recommends a three-year agreement between the parties, believing it to be in the interests of both parties to have the additional year to operate under their agreement.

The parties have disagreed about language to be included within a waiver section, section 29.4, with the Employer recommending the addition of the following language: "...or with respect to any subject or matter not specifically referred to or covered in this agreement, even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this Agreement." This language is

proposed by the Employer to be added to language agreed by both parties for section 29.4 which reads: "Both parties for the life of this Agreement, voluntarily and unequivocally waive the right and each agrees that the other shall not be obligated, to bargaining collectively or individually with respect to any subject or matter referred to or covered in this Agreement..."

For purposes of continuity during the course of the parties' collective bargaining agreement, the fact-finder recommends the inclusion of the language proposed by the Employer for section 29.4.

The fact-finder also recommends that the parties' collective bargaining agreement become effective upon execution by the parties and remain in effect until 11:59 p.m. three years after its effective date.

Recommended Language - Article 29 - DURATION, ENTIRE AGREEMENT, SUBSEQUENT NEGOTIATIONS, AND WAIVER

Section 29.1 Duration The provisions of this Agreement unless otherwise provided for herein, shall become effective upon execution by the parties, and shall remain in full force and effect until 11:59 p.m., three years after the effective date of this Agreement.

Section 29.2 Subsequent Negotiations If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than one hundred twenty (120) calendar days prior to the expiration date, and no 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.

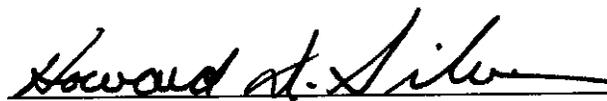
Section 29.3 Entire Agreement The parties acknowledge that during the negotiations which resulted in this Agreement, each had the right and opportunity to make demands and proposals with respect to any subject matter not removed by law from the area of collective bargaining and that the understandings and Agreements arrived at by

the parties hereto after the exercise of those rights and opportunities set forth in this Agreement. The provisions of this Agreement constitute the entire Agreement between the Employer and the Union, and all prior Agreements, practices, and policies concerning the subject matter provided for herein, either oral or written, are hereby canceled.

Section 29.4 Waiver Both parties, for the life of this Agreement, voluntarily and unequivocally waive the right, and each agrees that the other shall not be obligated, to bargain collectively or individually with respect to any subject or matter not specifically referred to or covered in this Agreement or with respect to any subject or matter not specifically referred to or covered in this Agreement even though such subjects or matters may not have been within the knowledge of either or both parties at the time they negotiated or signed this Agreement.

In addition to the recommended language proposed through this report, the fact-finder adopts by reference, as if fully rewritten herein, all other Articles agreed by the parties.

In making the fact-finding recommendations presented in this report, the fact-finder has considered the criteria required by Ohio Revised Code Chapter 4117. and section 4117-9-05(K)(1)-(6) of the Ohio Administrative Code.


Howard D. Silver
Fact-Finder

February 25, 2004
Columbus, Ohio

CERTIFICATE OF SERVICE

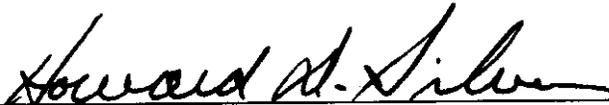
I hereby certify that the foregoing Report and Recommendation of Fact-Finder in the Matter of Fact-Finding Between the Hocking County Emergency Medical Service and AFSCME, Ohio Council 8, Local 2691, was filed with the State Employment Relations Board, via hand-delivery, and mailed this 25th day of February, 2004, to the following:

Darrell A. Hughes, Esquire
DOWNES, HURST & FISHEL
400 South Fifth Street, Suite 200
Columbus, Ohio 43215

Council for the Hocking County EMS

and

Stephen E. Wolfe
Staff Representative
Ohio Council 8
AFCSME, AFL-CIO
6800 North High Street
Worthington, Ohio 43085-2512


Howard D. Silver
Fact-Finder

February 25, 2004
Columbus, Ohio