

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD 2003 NOV 19 A 10: 25

FACT FINDER'S REPORT

In the Matter of Fact Finding)	SERB No.
)	03-MED-05-0618
-between-)	
)	
Toledo-Lucas County)	
Port Authority)	
)	
The Employer)	Daniel L. Merritt Esq.
)	
-and-)	Fact Finder
)	
AFSCME, Ohio Council 8)	
Local 2351)	
)	17 November 2003
The Union)	
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APPEARANCES

For the Employer

Stephen J. Stanford Esq.	Attorney for Employer
Lindah Friend	Mgr., Airport Administration
Stephen L. Arnold	Director of OPS
Paul Toth	Director of Airport

For the Union

Randall J. McElfresh	Representative, AFSCME Ohio Council 8
Fed A. Bartlebaugh	Steward, Local 2351
Brian J. Bergeon	Vice President, Local 2351
Gabe Herrera	Vice President, Local 2351

Fact Finder

Daniel L. Merritt Esq.

BACKGROUND

The Toledo-Lucas County Port Authority (herein called the "Employer") and the American Federation of State County and Municipal Employees, Ohio Council 8, Local 2351, AFL-CIO (herein called the "Union") are the parties involved in the current labor dispute. The bargaining unit consists of approximately nineteen workers in the following classifications; custodians, Grounds worker, Lead Grounds worker, Airport Maintenance Worker 1, Airport Maintenance Worker 2, Group Leader, Terminal Worker, Airport Maintenance Worker 1, Airport Maintenance Worker 2, and Airport Maintenance Worker Group Leader. The parties had negotiated a previous Collective Bargaining Agreement

The parties met for negotiations on 9, 29 July, 5 August, 3, 5 and 24 September 2003. The parties also met on 7 October 2003 for mediation of the issues. The parties failed to reach agreement on all issues. Approximately eleven issues remained unresolved. On 3 July 2003 the State Employment Relations Board appointed Daniel L. Merritt Esq. As the impartial Fact Finder in compliance with Ohio Revised Code 4117.14 (c)(3).

A Fact Finding hearing was scheduled and conducted on Tuesday 4 November 2003 at the conference room at Toledo Express Airport, Lucas County, Ohio. Mediation was offered to the parties. Some issues were resolved by the parties at the onset of the fact finding proceedings. The issues included Life Insurance and Shift Premium. The following issues remained to be resolved. Basic Wage Rates, Hours, Paid Holiday, Promotions, Health Insurance, Termination Benefits, Bonus/Sick Leave Incentive Pay and Housekeeping. The parties especially the Employer presented a great deal of documentary evidence to support their respective positions on each issue. The Fact Finder met separately with the Employer representatives and the Union representatives to elicit further information to aid the mediation and fact finding process.

The Fact Finder considered all testimony given and all of the detailed documentation submitted by the parties in reaching the conclusions and recommendations listed below. The Fact Finder considered the criteria listed in rule 4117-9-05(K) of the State Employment Relations Board. The issues to be addressed in the report are the eight issues noted earlier.

ISSUES AND RECOMMENDATIONS

1. ARTICLE 14 Section 14.1 Base Wage Rates

Union Position:

The Union has proposed that the present two tier wage system be merged into one tier that would be founded upon the pre-1997 wage scale. In addition the Custodial/Terminal workers rate would be adjusted upwards by \$1.50 per hour. The employees would be paid a base rate increase of three percent (3%) each year of the Collective Bargaining Agreement. No inability to pay was presented by the Employer.

Employer Position:

The Employer proposed that the two tier system also be eliminated. Those employees pre 1997 schedule would be frozen at their current wage rate and receive a one percent (1%) lump sum increase for each year of the Collective Bargaining Agreement. Employees hired after 1 August 1997 would receive a three percent (3%) wage rate increase each year of the agreement. Additionally a seven step schedule was proposed for new hires in Maintenance Groups other than Group 1.

Recommendation:

The Fact Finder has reviewed the salary comparables submitted by the Employer, and the position statement submitted by the Union. The data showed that pre 1997 employees, which is almost all of the unit, are paid more than the comparables presented. The Employer wanted to freeze the wage increase of this group and provide a lump sum payment. The Employer also wished to move a single tier post 1997 salary system. The Union wanted to move to the higher pay pre 1997 single tier and have each employee paid three percent for each year of the Collective Bargaining Agreement. The Fact Finder recommends a base salary be increased two percent (2%) for the first year of the agreement, an increase of 2 and one quarter percent (2.25%) for the second year, and two and one half percent for the third year (2.50%) for the third year of the agreement be provided for all pre 1997 employees. Employees hired after the 1 August 1997 should be given a two and one half percent (2.5%) for the first year of the agreement, and a three percent (3%) increase for the second year of the agreement and a three and one half percent (3.5%) for the third year of the agreement.

2. ARTICLE 10 Section 10.9 REST BREAKS AND LUNCH HOURS

The Union Position:

The Union proposed to retain current language.

The Employer Position:

The Employer cited comparables from a survey conducted which showed that eighty (80%) of those surveyed (8) did not have paid lunch hours. The Employer also claimed that the elimination of the paid lunch hour would allow for overlapping schedules so that employees could brief on-coming employees about work conditions.

Recommendation:

The Fact Finder believes that more effective and efficient ways could be provided for employees to brief each other. Technological support might include computer based briefing screens for shift change personnel to view. The Fact Finder recommends that the "paid lunch hour" be retained

3. ARTICLE 13 SECTION 13.2 PAID HOLIDAYS

4. ARTICLE 14 SECTION 14.3 HOLIDAY PAY

Union Position:

The Union is against attempts to change holiday pay and opposes the Employer's attempt to eliminate the "Day Before Christmas" as a paid holiday. Further the Union opposes the attempt by the Employer to eliminate the use of a sick day which might occur on the day after or before any holiday. The Union Proposed to retain current language.

Employer Position:

The Employer proposed that the “Day Before Christmas” be eliminated as holiday and that employees be given an additional paid personal day. The Employer also proposed that sick leave used before and after a paid holiday cease and not be paid. In addition the Employer proposed that the triple overtime provision be eliminated for economic reasons.

Recommendation:

The Fact Finder believes that the current list of holidays is not extraordinary in days or number of days. The use of sick leave should not be restricted for convenience sake. Problems with the issue of sick leave should be addressed by other means such as requiring a valid statement from a physician validating the occurrence of illness before or after a holiday. The Fact Finder recommends the current language of ARTICLE 13 Section 13.2 PAID HOLIDAYS be retained. The Employer also proposed that the triple time rate for working overtime on a holiday be changed to double-time rate. The Fact Finder supports this change for economic reasons and recommends the following language:

SECTION 14.3 HOLIDAY PAY: The Divisions of Aviation shall determine the number of employees scheduled to work on each of the major holidays defined in SECTION 13.2 of this Agreement. Holiday pay for all employees shall consist of eight (8) hours pay at their straight time rate. Employees scheduled to work a

regular shift on the holiday shall receive holiday pay plus eight (8) hours pay at the time and one-half (1 ½) rate. Employees required to work overtime on holidays shall receive holiday pay plus double time (2X). A minimum of four (4) hours pay or work shall be guaranteed for holiday overtime call-ins.

5. Promotions: McHenry and Bergeon

Union Position:

The Union has proposed that the promotions should be granted to the employees within their present tiers.

Employer Position:

The Employer has proposed the David McHenry be promoted to Group 4 with 0 years of service level on the post 1997 hire list. Brian Bergeon would be promoted to the 17 year rate for Group 4 post 1997 hires.

Recommendation:

The Fact Finder has made no structured changes in the wage tiers. The employees should receive promotions based upon the wage rate tiers they are presently within.

6. ARTICLE 12: SECTION 12.6 HEALTH INSURANCE

Union Position:

The Union proposed that the current plan be retained except that the AFSCME Care Plan for Vision, Life, Hearing, Legal Services and Prescription Drugs be added.

Employer Position:

The Employer proposed that the Health Insurance be the same for all employees of Port Authority Division of Aviation and that the Employer have the right to change carriers, self insurance, institute cost containment programs and modify its insurance programs. Reasonable notice to changes in health insurance would be provided to the Union.

Recommendation:

The Fact Finder agrees with the Union position that retains the current health insurance language with a minor but important deletion. The phrase “a \$5.00 name brand/\$2.00 generic” should be eliminated and replaced by the phrase “ a \$25.00 name brand/\$15.00 generic.” Such cost increases would be closer to prescription drug deductibles in current and comparables that the Employer has noted.

7. ARTICLE 12: SECTION 12.9 TERMINATION AND DEATH BENEFITS

Union Position:

The Union had proposed that the current contract language be retained.

Employer Position:

The Employer proposed that any employee who voluntarily resigns his or her position should only be able to receive earned vacation and holiday benefits.

Recommendation:

The Fact Finder did not comprehend the logic that this provision was an economic benefit and incentive for employees to quit employment. The Fact Finder recommends that current language be retained

8. ARTICLE 12: SECTION 12.1 BONUS DAYS

Union Position:

The Union is opposed to the Employer proposal to change the Bonus Days to a monetary incentive plan.

Employer Position:

The changes proposed by the Employer would provide a cash option instead of additional leave days. The number of bonus days would be reduced under the Employer proposal. In addition the Employer proposed that incentive days used under this provision must receive prior approval of the Director of Port Authority Operations and Facilities Maintenance.

Recommendation:

The employee is rewarded with additional sick days (5) in his account for NOT using sick leave days. The Employer would change this provision to conform to agreements negotiated with police and fire employees. The Fact Finder is not persuaded that this provision has caused a severe financial problem for the Employer. The Fact Finder recommends that the current contract language be retained.

9. **Housekeeping:**

Union Position:

The Union presented no position to the “housekeeping contract language changes.”

Employer Position:

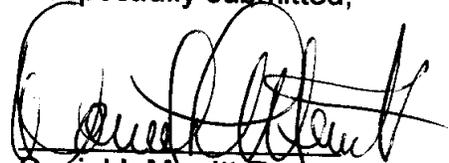
The Employer reviewed the entire agreement in order to correct typographical errors, eliminate inconsistencies and outdated language. The Fact Finder should recommend that they become incorporated in the new Collective Bargaining Agreement.

Recommendation:

The language of the contract provisions reflects the minds and positions of the parties who signify agreement on words, phrases, sentences, provisions and the total Collective Bargaining Agreement. The Fact Finder will not impose his understanding of the changes on the parties. Current contract language should be retained until mutually changed by the parties.

17 November 2003
Sylvania, Ohio

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel L. Merritt", written over a circular stamp or seal.

Daniel L. Merritt Esq.
Fact Finder

CERTIFICATE OF SERVICE

This is to certify that a true copy of the Fact Finding Report for the Toledo Lucas County Port Authority and the American Federation of State, County and Municipal Employees, Ohio Council 8, Local 2351 was sent to Mr. Dale Zimmer, SERB by Regular Mail and to the parties representatives by Express Mail on this day 17 November 2003. The report was served upon:

Stephen J. Stanford Esq.
Fuller and Henry
One Seagate, Suite 1700
Post Office Box 2088
Toledo, Ohio 43603-2088

Randall J. McElfresh
Staff Representative
AFSCME Ohio Council 8
420 South Reynolds Rd. Suite 108
Toledo, Ohio 43615-5980

Dale Zimmer
Administrator Bureau of Mediation
State Employment Relations Board
65 East State Street
Columbus, Ohio 436215-4213



Daniel L. Merritt Esq.
Fact Finder