

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

JULY 12 A 10:30

In the matter of	*	Case No. 03-MED-10-1221
	*	
Fact-finding between:	*	
	*	
Lucas County Commissioners	*	Fact-finder:
Emergency Services	*	
	*	Martin R. Fitts
and	*	
	*	
United Auto Workers	*	May 10, 2004
	*	
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the Lucas County Commissioners (the Employer):

Steven Spirn, Labor Relations Consultant
Dennis Cole, Director, Emergency Services
Mike Bayes, 911 Manager

For UAW (the Union):

Joe Rioux, International Representative
Greg Bonfiglio, Geographic Data Technician
Robert Boyd, Computer Technician

PRELIMINARY COMMENTS

The bargaining unit consists of all Computer Technicians and Geographic Data Technicians directly employed by the Lucas County Board of Commissioners, Emergency Services. There are approximately 4 employees in the bargaining unit. The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute on March 16, 2004. The fact-finding hearing was held on April 16, 2004 at the Lucas County 911 Building in Toledo, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. The parties reached tentative agreement on one issue at the hearing, and had reached numerous tentative agreements on issues prior to the hearing. There were eight issues at impasse: Classifications; Technical Certification Bonus; Wages; Vacation; Pager Pay; VPN Minimum Pay; VPN Connection Allowance; and Sick Leave Payout. Thus, these eight issues were submitted for fact-finding.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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, and 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; and
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 the public service or in private employment.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented at the hearing on April 16, 2004.

ISSUES AND RECOMMENDATIONS

Issue: Classifications

Positions of the Parties

The Union proposed the creation of two new job classifications: Systems Administrator, and Geographic Information Systems Analysis. Additionally, the Union proposes that the current employees in the classifications of Computer Technician and Geographical Data Technician be placed in these new classifications.

The Employer proposed that the parties work through the existing labor-management process to discuss possible reclassification, with a deadline of June 30, 2004 set.

Findings and Recommendation

The Union presented considerable evidence and testimony that the job duties of the employees have evolved considerably from the duties outlined in the job descriptions. The Employer did not dispute this.

The Fact-finder believes that the job duties of these positions may well continue to evolve throughout the life of this agreement, and most certainly will evolve throughout the conceivable future. For the Fact-finder to attempt to craft meaningful and appropriate classifications would be to ignore the fact that the Employer and the Union collectively have considerably more knowledge surrounding this technical issue.

The Employer acknowledged at the hearing that a change in or additional classifications may result in an adjustment in pay for some individuals that are moved into a higher classifications. However, the Employer convincingly argued that not all employees would necessarily need to move into a higher classification, as there would still be a need for someone to fulfill the computer technician functions.

Considering all elements of this issue, the Employer's argument that this issue would be best addressed through the labor-management committee is compelling. In the labor-management forum information and opinions can be shared and thoughtfully considered, which is much more likely to result in revised or additional classifications that make sense to both the Employer and the Union. Additionally, it was apparent at the hearing that the parties have worked collaboratively in the past on issues such as this, and there is no reason to believe that this cannot be the case on this issue. Further, the Employer's

position includes a June 30, 2004 deadline to accomplish this. This provides a protection to the Union that this issue will not simply be put on the shelf once the fact-finding process is complete.

Therefore, the Fact-finder recommends the Employer's position that the issue be dealt with in the parties' labor-management committee with a deadline of June 30, 2004 for the issue to be disposed of. Further, the Fact-finder recommends that the parties consider the utilization of an outside mediator for their discussions on this issue if necessary to meet the June 30th deadline.

Issue: Technical Certification Bonus

Positions of the Parties

The Union proposes that each employee receive a Technical Certification Bonus of \$0.25/hour applied to their hourly wage for successfully completing certain certifications.

The Employer's position was that current language be retained, which does not provide for such bonus pay.

Findings and Recommendation

The Union offered a list of specific certifications that it maintains bargaining unit members should receive additional pay for attaining. However, the agreement already provides for technical proficiency pay, an issue that the parties reached agreement on at the hearing. It would seem to the Fact-finder that to list specific certifications in the agreement that entitle the achiever to receive greater pay could well codify in this agreement a provision that may not be relevant in the future. The changing and ever-evolving nature of the necessary technical expertise these bargaining unit members must maintain is adequately covered in both the commitment to review classifications recommended above and the technical proficiency pay provision that the parties have agreed upon.

There is simply no compelling reason to add a provision for a technical certification bonus to this agreement.

Therefore, the Fact-finder recommends the Employer's position that the current contract language be retained.

Issue: Wages

Positions of the Parties

The Union proposed wage increases of 3% across-the board in each of the contract years.

The Employer proposed wage increases of 2% across-the-board in each of the contract years.

Findings and Recommendation

The Employer's argument for a 2% wage increase in 2004 was based upon a strong trend within the county for 2% wage increases in their numerous bargaining agreements. However, the Union countered with the internal comparable of the Union's other bargaining agreement with the Employer within the Emergency Services Agency. That agreement, which expires at the end of this year, provided for a 3% wage increase in 2004.

The Fact-finder is mindful of the economic gains recommended elsewhere in this Report for the employees, and also mindful of the recommendation above for a review and change in the job classification structure which may result in additional pay for some of these employees. Balancing that is the fact that health care costs will continue to be an issue facing the Employer and this bargaining unit. The Union's wage proposal for the second and third years provides some relief to the employees to offset probable benefit or cost changes they will face in the future.

Therefore, the Fact-finder recommends that the pay scales in Article 37 be amended to reflect an across-the-board wage increase of 2% effective January 1, 2004, an additional across-the-board wage increase of 3% effective January 1, 2005, and an additional 3% across-the-board wage increase effective January 1, 2006.

Issue: Vacation

Positions of the Parties

The Union proposed a revision in the vacation accrual schedule reducing the years of service necessary to earn vacation leave.

The Employer proposed the retention of the current contract language.

Findings and Recommendation

From the evidence and testimony presented at the hearing, it appears that the vacation schedule proposed by the Union has been incorporated in two bargaining agreements within the county – the Clerk of Courts and the Sheriff. The Employer cited a number of bargaining agreements under the purview of the County Commissioners, as well as the Coroner and two agreements under the Auditor that have the same vacation accrual schedule as this agreement. There is no question that the vast majority of internal comparables cited support the Employer's position. No compelling reason was found to support the notion that this bargaining unit should enjoy an enhanced benefit that the majority of employees in the Lucas County's various bargaining units do not enjoy.

The Fact-finder recommends the Employer's position for the retention of current contract language.

Issue: Pager Pay

Positions of the Parties

The Union proposed that the amount paid to employees for being on call with a pager be increased from the current \$50.00 per week to \$25 per 12-hour period.

The Employer proposed increasing the current amount to \$75 per week.

Findings and Recommendation

Obviously both parties find the current language inadequate, as both proposed increases. The Union presented evidence that an internal county comparable, the Auditor's contract, provides for pager pay at the level reflected in the Union's position. The Employer offered no comparables to counter this.

The Union's proposal works out to approximately a payment of \$267 per week when on call. The Employer noted that some things can be fixed at home and do not require the employee to report to work. However, the collective bargaining agreement contains provisions to pay employees for actually reporting to work, or for working at home. Pager pay is compensation for the inconvenience the employee faces by curtailing their personal activities in order to be available if needed.

Moving from the current pager pay level to that proposed by the Union would represent quite a large jump in compensation. In addition, later in this Fact-finding Report are recommendations for increases in the VPN minimum pay and also the establishment of an allowance for an in-home high-speed internet connection. However, the Fact-finder believes that the Union's position that the pager pay should be increased has considerable merit, and that the Employer's proposal does not satisfy the need for a reasonable increase. A payment of \$100 per week does not achieve parity with the Auditor's office, but it does more adequately compensate these employees for the inconvenience of being on call.

Therefore, the Fact-finder recommends that the pager pay be increased to \$100 per week, and that Article 34, Section 5 read in its entirety as follows:

Section 5 – Pager Pay

Computer Technicians shall receive one hundred dollars (\$100.00) per week, which shall be considered pager pay. The Geographic Data Technician shall receive the same weekly amount for pager pay, when such pager usage is required.

Issues: VPN Minimum Pay & VPN Connection Allowance

Positions of the Parties

The Union proposed two changes. First it proposed that employees who perform work at home through the virtual private network (VPN) be paid a minimum of two hours pay, which represents an increase for the current language calling for pay in 15-minute increments. Additionally, the Union proposed that employees be paid a \$50/month allowance to be used to maintain a high-speed internet connection at their homes to enable them to connect to the County's VPN system.

The Employer proposed increasing the current provisions for 15-minute increments to 30-minute increments. In addition, the Employer proposed that employees be paid a \$25/month allowance for high-speed internet connection at their homes.

Findings and Recommendation

Both parties recognize that an improvement in the VPN minimum pay is desirable. Both also recognize that some allowance for the cost of maintaining a high-speed internet

connection at the homes of employees required to work on the VPN is proper. The disagreement on both issues is simply the amount.

The Union argument for a minimum of two hours pay for performing work at home through the VPN appears to be a little excessive. That being said, there is no question that the Employer benefits from the employees working at home and not having to be called in to work at a minimum of four hours pay. The Employer's proposal of increasing the minimum VPN pay from increments of 15 minutes to increments of 30 minutes simply does not provide enough compensation to the employee for the benefit the Employer receives. A one hour minimum, with pay beyond that to be paid in 30 minute increments, achieves a more reasonable balance between the Employer's interests and those of the employees.

The Employer's argument that the affected employees would already have a high-speed internet access in their homes has some merit. There is no Union request for an allowance for having a computer in the homes of these employees, so there is at least a tacit acknowledgement by the Union that these employees will have the hardware necessary to access the VPN regardless of the allowance. That being said, the Employer obviously recognizes that some compensation for the high-speed connection is appropriate. The Employer's argument that the high-speed internet connection would also be used for personal use is compelling. While the Employer definitely benefits from having employees utilize the VPN from home, the employees and their families certainly benefit from having a high-speed internet connection in their homes as well.

Regarding the VPN Minimum Pay, the Fact-finder recommends that Article 34, Miscellaneous Provisions Section 6 read in its entirety:

Section 6 – VPN Minimum Pay

Employees required to utilize the VPN to perform work at home shall receive a minimum of one (1) hour of pay for work performed at home. If the work lasts beyond that one-hour period, additional time shall be paid in 30-minute increments.

Regarding the allowance for a VPN Connection Allowance, the Fact-finder recommends the Employer's position for a monthly allowance of \$25 for those employees required to utilize the VPN, and that Article 34, Miscellaneous Provisions Section 7 read in its entirety as follows:

Section 7 – VPN Connection Monthly Allowance

Those employees required to utilize the VPN shall be given a monthly allowance of twenty-five dollars (\$25.00) per month to be used to maintain a high speed connection to the county's VPN.

Issue: Sick Leave Payout

Positions of the Parties

The Union proposed to change the amount of sick leave payout from the current 33 1/3% of 120 days to 50% of the total accrued sick leave.

The Employer proposed that current contract language be maintained.

Findings and Recommendation

To support its position the Union cited comparables found in two bargaining agreements within Lucas Count, both in the Sheriff's Office. Additionally, the Union cited reduction of health care benefits as a rationale for the increase. The Employer countered with testimony that the vast majority of the county's collective bargaining agreements do not contain the levels of sick leave pay-out sought by the Union, but rather are identical to this agreement's provisions.

The Employer's argument is compelling. While the Sheriff, an independently elected official, has the statutory power to spend his budget allocation as he fit, the other county bargaining agreements offer sufficient evidence that the sick-leave payout provisions in the current agreement are adequate and reasonable. Certainly health care cost increases and the resulting benefit reductions are a concern for both parties. However, off-setting the pain of these reductions with benefits that stand to cost the Employer considerably higher dollars in the future when employees take advantage of the proposed enhanced sick leave payout is not a prudent approach for this Fact-finder to take.

There is no compelling reason to amend this provision of the agreement.

Therefore, the Fact-finder recommends the Employer's position that the current language in Article 13, Section 4 regarding cash payment for unused sick leave upon retirement be retained.

Additional recommendations of the Fact-finder

The Fact-finder recommends all the tentative agreements on all other issues reached at the hearing or previously by the parties during their negotiations.



Martin R. Fitts
Fact-finder
May 10, 2004