

2005 APR 13 A 11: 10

IN THE MATTER OF FACT FINDING

BETWEEN

**AFSCME OHIO COUNCIL 8, AFL-CIO AND
LOCAL 1229**

AND

THE SUMMIT COUNTY AUDITOR

SERB CASE # 04-MED-⁰⁵⁻⁰⁶²²~~09-1004~~

ADVOCATE FOR THE AUDITOR:

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ADVOCATE FOR THE UNION:

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INTRODUCTION

The bargaining unit is represented by Local 1229 AFSCME Ohio Council 8, (hereinafter "Union" or "AFSCME") and the Employer is the Summit County Auditor (hereinafter "Employer" or "Auditor"). The previous contract between the parties expired August 31, 2004. The parties held several bargaining sessions and were able to resolve several all but two (2) issues. A mediation/fact-finding hearing was held on February 17, 2005 over the following unresolved issues:

Listing Of Unresolved Issue(s):

Wages

Vacancy Promotion/Transfer/Temporary Transfers, Section 3 Probationary Period (Article 17)

Both Advocates represented their respective parties well and clearly articulated the position of their clients on the issue in dispute. In order to expedite the issuance of this report, the Fact-finder shall not restate the actual text of the parties' proposals on each issue, but will instead reference the Position Statement (or modification thereof) of each party along with a summary. The Union's Position Statement shall be referred to as UPS and the Employer's Position Statement shall be referred to as EPS.

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CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

ISSUE 1. Wages (Article 48)

Union's Position

UPS

Employer's Position

EPS

Discussion

The Union proposes salary increases of 8% over three (3) years (2% retroactive to 9/1/04, 3% effective 9/1/05, and 3% effective 9/1/06). The Employer proposes no salary increase in the first year, 1% effective 9/1/05, and 1% effective 9/1/06. It is no secret that the budgets for the County of Summit has been seriously impacted by a sluggish economy and other factors that are both present and on the horizon.

These are uncertain times for Ohio public employers. While the state of Ohio struggles with a shortfall between revenue and expenses that is tallied in the billions of dollars, the governor is seriously considering reducing support to counties and cities that has been traditionally provided via local government funding. The federal government is reducing aid to the states and, in turn, the states are reducing aid to local government entities. The County of Summit has been carefully managed

and as a result it is not in the difficult position that many other local government entities are facing. Prudence is being exercised with good reason and it appears a concerted effort is being made to protect jobs and in turn employees' financial stability. Whether this will be able to be the case in the distant future is anyone's guess, yet for purposes of this analysis these factors have an impact. The interest and welfare of the public and the ability of the employer to finance a settlement is one of the six criteria the fact-finders must consider in matters of fact-finding.

However, I find that what the Employer is proposing (0%, 1%, 1%) does not match what is the "going rate" among county employees thus far in 2005. Moreover, such an offering does not give proper due to the relatively solvent, yet understandably circumspect, financial state of affairs. The Union's first year proposal is more in concert with what is occurring in the county and appears to represent a balance between the need to be fiscally wary and the importance of providing a reasonable wage increase to employees. However, I find the second and third year proposals of the Union, while not excessive (three percent (3%) increases are common in sectors that can afford them) exceed the current financial projections of the county, particularly when considering what is likely to be the situation in which funding from the state will be progressively reduced in the next biennium budget.

Discussion

The central issue in this dispute is related to an employee's ability to revert to his/her former position during the contractual probationary period that is contained in Section 3 of Article 17. The Employer, through its modified position, seeks to amend the current language that provides an employee with the unilateral right to revert to his/her former position during the probationary period that accompanies a promotion. It proposes that an employee may return to his/her former position following a promotion with the mutual agreement of the Employer. The current contract language allows an employee to make a unilateral determination to return to their former position during the 90-day probationary period.

The Employer argues that after applying for a position, going through an interview process, and accepting a position, an employee should not have the unilateral right to return to his/her former position. The Employer asserts that a probationary period exists for the purpose of the Employer making an evaluation of the promoted employee's ability to perform and is not intended for the convenience of the employee.

In response to the Employer's position, during mediation the Union agreed to amend the language of Article 17 to allow an employee to revert to his/her former position, prior to promotion, during the first thirty- (30) days of the contractual probationary period. The Union argues that given some promotional opportunities, it is not always possible for a candidate to have much information

about the work location until he/she works in a promoted position for a period of time. However, the Union conceded that 30 days is usually sufficient time to make an informed determination as to the suitability of remaining in a new position. During mediation the Employer and the Union both modified their positions regarding this issue in a good faith attempt to reach agreement.

Both parties have reasonable arguments regarding their positions. It does not make sense for an employee to remain in a promoted position that they find objectionable. However, from an operational standpoint the prospect of employees being able to return to their former positions after three (3) months for any reason does not appear workable, given the domino bumping back process that it may entail. However, the reality is that bumping back does not occur very often.

Both sides have modified their positions to change the current language, yet the issue remains as to whether an employee can unilaterally return to his/her position within the first thirty- (30) days of employment. A thirty (30) day timeframe would certainly be less disruptive and it possible that in that period of time the Employer would not have filled the promoted employees former position (or at least for not a long period of time), thereby minimizing the extent of the domino effect on bumping back. The employer wishes to make any bumping back contingent upon mutual agreement. However, the fault I find in this requirement is that the reason an employee may be unhappy may be due to conflicts with the their supervisor, thus causing the employee to desire to

return to his/her former position. It would likely be awkward and unreasonable to expect the employee to easily address this issue with the very person who may be part of the problem, and who thus must agree (under the Employer's proposed language) with the employee's request to return to his/her former position.

FACTFINDER'S DETERMINATION

ARTICLE 17

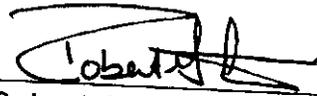
Section 3 PROMOTIONAL PROBATIONARY PERIOD

The employee shall have a promotional probationary period of ninety-(90) days. During this trial period, the employee shall have reasonable training and supervision. If the successful bidder fails thereafter to qualify during the promotional probationary period or **during the first thirty (30) days of this period, and** the employee determines that they do not want this position, **he/she** shall have the right to revert to **his/her** former job and wage rate and this right in turn **shall** apply to others who changed jobs as a result of filling the posted position. **After the first thirty- (30) days of holding the new position, an employee's reversion rights shall require the mutual agreement of the Employer.**

TENTATIVE AGREEMENTS

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the recommendations contained in this report.

The Fact-finder respectfully submits the above recommendations to the parties this 11th day of April 2005 in Portage County, Ohio.



Robert G. Stein, Fact-finder

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