

IN THE MATTER
OF
FACT FINDING

STATE EMPLOYMENT
RELATIONS BOARD

2005 NOV -9 A 11: 42

BETWEEN)	SERB CASE # 04-MED-09-0795
)	
THE COMMUNICATIONS)	FACT FINDER: E. WILLIAM LEWIS
WORKERS OF AMERICA)	
LOCAL 4310)	DATE OF HEARING:
and the)	NOVEMBER 1, 2005
)	
FRANKLIN COUNTY BOARD)	DATE OF REPORT:
OF COMMISSIONERS)	NOVEMBER 8, 2005

REPRESENTATION

By

Employer Representatives	Union Representatives
Mr. Robert Weisman, Attorney-Advocate	Mr. William Bain, Staff Rep., Advocate
SCHOTTENSTEIN ZOX & DUNN	CWA, DISTRICT 4
Ms. Carolyn Bethel, Ass't. Dir. PFM	Mr. Marion Gaines, Union Rep., CSO
Mr. Aron Granger, Attorney	Ms. Margrete Henderson, Pres. Local 4310
SCHOTTENSTEIN ZOX & DUNN	
Ms. J. Stephanie Pina, H. R. Administrator	

AUTHORITY

This matter was brought before Fact Finder E. William Lewis, in keeping with applicable provisions of ORC 4117 and related Rules and Regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation based on merit and fact according to the provisions of ORC 4117.

BACKGROUND

The Fact Finder was appointed to hear this SERB Case in accordance with ORC, Section 4117.14. The Franklin County Commissioners, hereinafter known as the Employer, and the Communications Workers of America, Local 4310, hereinafter known as the Union, are in the process of bargaining for a successor Agreement. The current Contract, which expired on December 31, 2004, has been extended by mutual agreement between the parties. The Union represents a bargaining unit composed of approximately sixty (60) Court Security Officers(CSO), who are part of the Public Facilities Management Department.

The parties commenced bargaining on their first contract renewal on December 7, 2004. Thirteen bargaining sessions were held between the parties resulting in many tentative agreements. Assistance was also provided in August 2005 by a SERB mediator, resulting in further resolutions. The aforementioned processes narrowed the issues to what is now before the Fact Finder of, compensation and Duration as it relates to compensation.

This bargaining process has been protracted for a number of reasons other than the normally expected scheduling obstacles. The County was also bargaining with other units, two new Commissioners took office, and a projected economic shortfall was a possibility.

The Fact Finding Hearing was convened at 10:00am in the Franklin County Administrative Building, Columbus, Ohio. The parties timely submitted pre-hearing briefs and presented additional testimony and documents, in the form of Exhibits, at the Hearing. Prior to initiating the hearing procedure, in accordance with ORC 4117.14 (C)(3)(f), the parties entered into mediation with the fact finder. Although no tentative agreements were signed in mediation, meaningful progress was made on a direction for possible resolution. The Fact Finding Hearing was convened at 1:25pm (11/1/05), and prior to adjournment, the parties indicated that they had nothing additional to submit on behalf of their bargaining positions. The Fact finder was asked to write a Fact Finder Report and submit it to the parties on or before November 11, 2005.

CRITERIA

In compliance with ORC 4117.14(C)(4)(e) and related Rules and Regulations of the State Employment Relations Board, the following criteria were given consideration in making this Recommendation.

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

This report is based on facts provided in documentation and testimony introduced at the Hearing and is in keeping with the statutory consideration cited above. The format of this report will be to list the unresolved Articles in ascending order followed by a brief review of the position of each party, a discussion and my recommendation. My Fact-Finder's recommendation will be accompanied by the appropriate contract language.

ISSUES AT IMPASSE

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

ARTICLE 32

WAGES

ARTICLE 38

DURATION OF AGREEMENT

PARTY POSITIONS-DISCUSSION-RECOMMENDATION

ARTICLE 32

WAGES

Union Position

There are three issues unresolved in this article, Sections 32.1, 32.2 and a pay equity issue.

Section 32.1 – The Union is seeking a general wage increase for all employees retroactive to January 1, 2005 of two percent (2%). Effective January 1, 2006—three percent (3%), and effective January 1, 2007—three percent (3%).

Section 32.2 – A differential in pay of thirty-five (\$.35) per hour over the regular hourly rate shall be paid to all employees who are regularly scheduled for second shift (beginning time between 1:30pm and 6:30pm) for all hours the employee is in active paid status, except sick leave.

A differential in pay of forty (\$.40) per hour over the regular hourly rate shall be paid to all employees who are regularly scheduled for third shift (beginning time between 6:00pm and 2:00am), for all hours the employee is in active paid status, except sick leave.

The applicable differential shall be paid for all hours worked to employees required to work at least four (4) hours of a second or third shift.

Section 32.3 – Replace with the following:

Effective upon implementation of this agreement, all bargaining unit members shall receive an equity pay increase to their base wage of one dollar (\$1.00) per hour.

Employer Position

Section 32.1 – Franklin County has proposed a one percent (1%) across the board increase (hereinafter ATB) to bargaining unit employees retroactive to January 1, 2005. Effective January 1, 2006 a one percent (1%) ATB increase, and effective January 1, 2007 a one percent (1%) ATB increase.

In addition, the Employer is proposing a one time “merit” lump sum payment of \$100.00 payable to the CSO’s in 2005.

Section 32.2 – current contract

Section 32.3—(new)--- delete and reject Union’s pay equity increase

Discussion

Evidence and testimony submitted by the Employer shows that they have had an imbalance of revenues and expenditures. Revenue verses expenditures, according to the projected budget, will not leave the County in a favorable economic position. If not corrected, according to the Employer’s testimony, a currently favorable bond rating may be impacted, causing future economic hardship. As per Employer testimony, the County has instituted departmental budget cuts of eleven percent over the past two years.

When the Fact Finder reviews the comparables, a disparity is found between the party’s comparables. The Union wants to compare this bargaining unit’s pay to the nearby Municipal Court security officers’ pay of \$14.54/ hour. On the other hand, the Employer comparables, both in area and statewide, do not show pay being out of line. It is not unusual for the parties to not agree on comparable data, however, in general these CSO’s fall within the ranges of pay for many other CSO’s.

Important to this Fact Finder regarding wage increases, is what this Employer and their other Unions have been doing at the bargaining table. Evidence demonstrates that other Unions representing County employees have negotiated

two percent increases for 2005 and 2006. Furthermore, according to Employer submitted data, a two percent (2%) increase was budgeted for 2005.

Regarding the Employer proposed “merit” lump sum payment of \$100.00, through discussions and testimony, an amount of up to \$300.00 has been suggested or offered to other County bargaining units. In the Fact Finder’s opinion, the same meaningful amount should be proposed here.

Discussions with the Fact Finder in mediation and during the Hearing convinces me that there was no interest, on either party’s part, to create a multi-tiered wage structure, such as currently exists. According to Jt. Ex.-3. There are three rates of pay for the one classification in this bargaining unit. The different hourly rates of \$12.63, \$12.88 and \$13.14 occurred as a result of the wage re-openers of 2003 and 2004. The 2004 re-opener established a starting rate of \$12.63/hour, however, those on the payroll since the beginning of the Contract (2002) would make \$13.14/ hour and those hired in 2003 would make \$12.88/ hour. In the Fact Finder’s opinion, a correction to the pay rate disparity is in order.

Shift differential in labor contracts, especially in the public sector, is inconsistent. This inconsistency is evidenced by the party’s pre-submittal arguments and comparables. Some public sector contracts do not have shift differential, some have a single differential and others have a 2nd and 3rd shift differential. The pre-submittals and Hearing evidence are not convincing enough to the Fact Finder to recommend re-writing the basic concept of shift differential in this Contract. This bargaining process represents the first renewal of this Contract, and I believe that it took hard work to establish this current language. However, a moderate increase would be in order when compared to other submitted shift differential data.

When I consider the Union proposed pay equity increase, equaling seven plus percent, I believe it is incompatible with the Employer’s economic status and other Union settlements with Employer. Furthermore, I believe, that a pay equity adjustment is best achieved by thoroughly researching all relevant data. This researching is best achieved by a joint study committee.

Recommendation

ARTICLE 32.1

WAGES

Section 32.1---Upon ratification and upon approval of the Franklin County Board of Commissioners, to read as follows:

All employees, as of the approval date of this contract, will receive a two percent (2%) wage increase retroactive to January 1, 2005. Effective January 1, 2006, all employees not at the top rate, hereinafter known as the Job Rate, will receive an increase equal to one-half (1/2) of the difference between the Job Rate and their hourly rate of pay as of December 31, 2005. Employees hired during the year of 2006 will receive a rate of pay equal to the January 1, 2006 upgraded employee rate.

Upon ratification and approval of this Agreement, all eligible employees are to receive a one-time "merit" lump sum payment of \$300.00. To be eligible for the "merit" lump sum payment and the retroactive pay the employee must be employed on the date the Franklin County Commissioners' approve this Contract. The "merit" lump sum payment is to be paid within five weeks of Union ratification and County Contract approval.

Effective January 1, 2006, all employees will receive a two percent (2%) hourly wage increase.

Effective January 1, 2007, all employees will receive a two percent (2%) hourly wage increase. Effective January 1, 2007, those employees not at the Job Rate (Top Rate) will have their hourly rate increased to the Job Rate.

Section 32.2 To read as follows:

Effective January 1, 2006, a differential pay of thirty cents (\$.30) per hour over the regular hourly rate shall be paid to all employees whose normal shift begins between 4:30pm and 12:30am for all hours the employee is in active paid status, except sick leave.

A differential pay of thirty cents (\$.30) per hour over the regular hourly rate shall be paid to all employees required to work by the Employer a full eight (8) hour shift that begins between 4:30pm and 12:30am for all hours actually worked.

The shift differential referred to in this Section 32.2, shall be increased to thirty-five cents (\$.35) per hour over the regular hourly rate, effective January 1, 2007.

ARTICLE 38

DURATION OF AGREEMENT

Union Position

Three year Contract

Employer Position

Three year Contract

Recommendation

ARTICLE 38

DURATION OF CONTRACT

Article 38, to read as follows:

The Contract is effective on the date the Franklin County Board of Commissioners formally approve the Agreement. The Agreement will terminate on midnight December 31, 2007.

If either party desires to modify or amend this Agreement upon its termination, it shall give written notice of such intent to a representative of the other party no earlier than one hundred and twenty (120) calendar days prior to the expiration of the Agreement and no later than ninety (90) calendar days prior to the expiration date of this Agreement. Such notice shall be sent certified mail with return receipt requested.

NEW

Union Position

Equity pay adjustment of one dollar (\$1.00) per hour for all bargaining unit employees.

Employer Position

Reject Union Position

Recommendation

MEMORANDUM OF UNDERSTANDING

The parties hereby agree to establish a joint labor-management Market Study Committee. The committee is to focus on researching, reviewing and analyzing relevant market data to the wage structures of other Court Security Officers. The joint committee is to commence its work by March 31, 2006 and conclude its work with its findings by March 31, 2007. These findings should be submitted to their respective 2007 bargaining committees.

SUMMARY

The Fact Finder enjoyed meeting and working with the parties in mediation and at the Hearing. I would like to commend the parties in their efforts to resolve the unresolved issues. I hope the recommendations contained in this Report will allow the parties to continue their positive labor-management relationship.

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

During negotiations, mediation, and fact-finding the parties reached tentative agreements on many issues. These tentative agreements along with sections of the current agreement not negotiated and/or changed are hereby part of the recommendations contained in this Report.

Respectfully submitted and issued in Columbus, Ohio this 8th day of November, 2005.



E. William Lewis
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Fact Finders Report was delivered by me to Mr. Robert D. Weisman, Schottenstein, Zox & Dunn, at 250 West Street, Columbus, Ohio 43215, Attorney for the Employer, and Ms. Margrete Henderson, President, Communications Workers of America, Local 4310, 2991 Sullivant Avenue, Columbus, Ohio 43204, and by regular mail to Mr. Dale Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215-4213 this 8th day of November 2005.



E. William Lewis
Fact Finder