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IN THE MATTER OF FACT FINDING

BETWEEN

**AFSCME OHIO COUNCIL 8, AFL-CIO AND
LOCAL 2183**

AND

THE STARK COUNTY PARK DISTRICT

SERB CASE # 04-MED-09-1004

ADVOCATE FOR THE DISTRICT:

**Nicholas Codrea, Jr.
LAW FIRM OF ROBERT J. TSCHOLL, ESQ.
200 Market Avenue, South Suite 1120
Canton OH 44702**

ADVOCATE FOR THE UNION:

**Fred L. Hartsel, Staff Representative
AFSCME OHIO COUNCIL 8,
AFL-CIO
1145 Massillon Road
Akron OH 44306-4161**

INTRODUCTION

The bargaining unit is represented by Local 2183 AFSCME Ohio Council 8, (hereinafter "Union" or "AFSCME") and the Employer is the Stark County Park District (hereinafter "Employer" or "District"). The bargaining unit is comprised of approximately nineteen (19) employees who provide a wide variety of maintenance services for an extensive and growing park district throughout Stark County. The previous contract between the parties expired December 31, 2004. The parties held five (5) bargaining sessions prior to reaching impasse and were able to resolve several issues. A mediation/fact-finding hearing was held on February 21, 2005 over the following unresolved issues:

Listing Of Unresolved Issue(s):

Hours of Work/Overtime (Article 16)
Health and Life Insurance (Article 21)
Wages (Article 39)

Prior to a formal submission of evidence, the Fact-finder made a concentrated attempt to reconcile the differences between the parties over the unresolved issues listed above. Settlement possibilities were explored with the parties in an effort to find common ground upon which to build a settlement. However, sufficient compromise on the unresolved issues could not be achieved in order to bring about an agreement. The parties then reverted to their position statements. The Fact-finder, who served as the prior Fact-finder in the previous and first contract between the parties, is familiar with the history of the District, the parties' relationship, and the facts that support their unresolved issues. This prior experience provided the Fact-finder with the ability to better understand the background of the issues in dispute during attempted mediation. The parties agreed to submit additional information to the Fact-finder in support of their positions on each article in dispute.

It must be noted that although the parties considered a variety of issues in mediation in a good faith attempt to resolve their differences, they did not revise their original position statements to formally include any additional issues in the fact-finding process. Therefore, by virtue of the rules promulgated by SERB the Fact-finder is restricted to the issues submitted by the parties in fact-finding. All other tentative agreements not submitted to fact-finding are addressed at the end of this report. Such tentative agreements also include articles that neither party proposed to modify but indicated may be problematic.

During mediation, the Union cited Article 15 as needing clarification. It wanted to address situations that may involve employees being involuntarily transferred to new reporting locations throughout the county. However, neither party submitted formal language to change to Article 15, thus prohibiting the Fact-finder from recommending any modifications in the language. In addition, it would be outside of the Fact-finder's formal charge to interpret the Collective Bargaining Agreement and to "affirm" that lateral transfers are subject to the bidding procedure, as requested by the Union in its position statement. It should be noted that even though the Fact-finder cannot address the issue, it was readily apparent that involuntary transfer is an important issue for the bargaining unit.

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 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.

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. Hours of Work/Overtime (Article 16)

Union's Position

UPS

Employer's Position

EPS

Discussion

The Employer is seeking to modify Article 16, § 2 to only count paid vacation hours as hours worked if they are taken in one-week increments. The Union is seeking to maintain current language that effectively states paid vacation and holiday time shall be considered as time worked for purposes of computing overtime. However, it is recognized that Article 19 contains different wording than article 16 and defines "scheduled vacation time" as time worked. The parties are in dispute as to whether it was the intent of the parties to allow one day of vacation time to be counted as time worked (for purposes of overtime) or whether this was never intended.

It is common in the public sector for vacation time and holiday time to be counted as hours worked for purposes of computing overtime. In the experience of this neutral it is less common to define the amount of vacation that must be used in order for it to be considered "hours worked." I am fully aware of the minimum standards set forth by FSLA; however, Ohio public sector employers and their unions often exceed

these standards. Most importantly, from the evidence and facts it is impossible to discern the original intent of the parties. That is an issue that the parties or an arbitrator may have to address in the future. It is also common, given the number of Monday holidays, for employees, including many managerial or exempt employees, to add four (4) vacation days to a holiday in order to get a week off. The Employer's proposal would potentially penalize employees for combining vacation and holiday time in such a manner.

Moreover, It is recognized that the Employer maintains control over the scheduling of vacation time (See Article 19, § 3), "*Vacation time off must be scheduled consistent with department needs and advance management approval.*" It is recognized that overtime scheduling is solely determined by management. Given this amount of control I do not find there is a compelling reason to depart from current language.

FACTFINDER'S DETERMINATION

MAINTAIN CURRENT LANGAUGE

ISSUE 2 Health and Life Insurance (Article 21)

Union's Position

UPS

Employer's Position

EPS

Discussion

As of January 1, 2005, employees in Stark County who are not governed by collective bargaining agreements are required to pay \$12.50 per month for family medical coverage and \$5.00 per month for single medical coverage. This was an historic change by the Stark County Commissioners, who prior to this change, managed to provide fully paid health care coverage for county employees. The County Commissioners should be recognized for maintaining fully paid health care for as long as they have, given the extreme cost increases in health care experienced by most of the public and private sector in Ohio and in the United States in recent years. However, in the face of ever increasing cost, it is understandable and common for employers to seek some assistance from their employees. Employer Exhibit 3 supports this conclusion. Yet, as with most changes of this magnitude a gradual and not a sudden change is

most effective. It is also likely that the employee premium costs imposed by the county for 2005 will be revisited and revised in the coming years.

I find the Employer's approach to new health care premiums to be unique and forward thinking. It provides an initial cushion to the imposition of large increase in health care costs to employee groups who heretofore have not budgeted for such costs. It is not uncommon for employees in Ohio's public sector to pay at least ten percent (10%) of the premium toward their health care coverage. Some pay as much as twenty percent (20%). However, in many of the examples that this Fact-finder is familiar with, the increases in premium costs were incremental. They began with lower percentages and were increased over a period of years to their current levels. Yet, the wage offset the Employer is proposing allows for an accelerated adjustment in premium payments with minimal impact upon bargaining unit employees. Given the mandate of the County passed in December of 2004 for county employees to pay a flat dollar amount toward their health care premium in 2005, it is recommended that the county model be followed for 2005. Beginning in January of 2006, graduated increases in employee premiums over the next two (2) years coupled with wage offsets are recommended. Of course, in waiting a year, the offset amounts proposed by the Employer will have to be adjusted for inflation.

FACTFINDER'S DETERMINATION

ARTICLE 21

HEALTH AND LIFE INSURANCE BENEFITS

Section 1 Group Health Insurance

The Employer shall provide all employees covered by this Agreement with a group medical plan. **This Stark County Medical Plan is incorporated by reference into this Agreement as if fully written herein. Commencing April 1, 2005 employees shall contribute \$12.50 for family coverage and \$5.00 for single coverage toward their group health insurance premiums. Effective January 1, 2006 employees shall contribute five percent (5%) of the cost of the group health insurance plan for single or family coverage based on the individual employee's status. Effective January 1, 2007 employees shall contribute ten percent (10%) of the cost of the group health insurance plan for single or family coverage based on the individual employee's status. Over the life of the Agreement monthly health care premiums for employees shall be capped at no more than \$95.00 for family coverage and \$45.00 for single coverage.**

Section 2

MAINTAIN CURRENT LANGUAGE

ISSUE 3 Wages (Article 39)

Union's Position

UPS

Employer's Position

EPS

Discussion

The parties are generally in agreement over the amount of an across-the-board increase in wages each year of the collective bargaining agreement. There is also substantial agreement that wages are to be retroactive to January 1, 2005.

As previously stated, the offset proposed by the Employer is a unique and innovative way to initially lessen the effect of suddenly imposing a substantial health care employee premium on employees. However, It is important for an adjustment of this nature to be equitable. A wage system that creates a built-in disparity among employees will eventually lead to further problems and demands for equity adjustments that were never contemplated. Causing a disparity in wages between

employees of the same classification based upon marriage status will lead to undue conflict. Furthermore, marital status for some employees may change over the life of the Collective Bargaining agreement, which is not contemplated in the Employer's proposal. There are only a small number of employees who have single health care coverage. Furthermore, single coverage costs much less than family coverage. The cost savings an employer realizes from having to pay 90% of single coverage versus family coverage provides the Employer with a greater ability to provide a consistent offset wage increase to all employees.

The Union's proposal for a PERS Pick-up comes at a time during which the parties are contemplating a significant regular across-the-board wage increase with a substantial wage increase to lessen the effect of first-time health care premium costs. Improving wages with across-the-board increases and offset increases is likely to be more beneficial to the average employee in the long run. Moreover, the average employee salary level will be far higher for purposes of pension calculation. A new benefit of this nature is not justified at this time.

FACTFINDER'S DETERMINATION

Section 1

Prior to fact-finding the parties agree to a \$1000.00 per year supplemental payment for Rich Schallenberger.

Using the current wage rates and wage levels See APPENDIX C FOR WAGE SCHEDULE for duration of the Agreement (through December 31, 2007).

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 8th day of March, 2005 in Portage County, Ohio.



Robert G. Stein, Fact-finder

Park Proposed Salary Increase

APPENDIX C

	Current Rate	01/01/2005 \$ change	2005	01/01/2006 \$ change w/offset	2006	01/01/2007 \$ change w/offset	2007	Total Cost
S. Wyszynski	15,441.1	0.3500	15,791.1	0.6000	16,391.1	0.6000	16,991.1	\$1,550.00
Al Grinnell	14,565.0	0.3500	14,915.0	0.6000	15,515.0	0.6000	16,115.0	\$1,550.00
Chad Shockey	13,894.6	0.3500	14,244.6	0.6000	14,844.6	0.6000	15,444.6	\$1,550.00
Steve Adams	12,365.8	0.3500	12,715.8	0.6000	13,315.8	0.6000	13,915.8	\$1,550.00
Darrin Petko	13,894.6	0.3500	14,244.6	0.6000	14,844.6	0.6000	15,444.6	\$1,550.00
Glenn Castro	13,323.1	0.3500	13,673.1	0.6000	14,273.1	0.6000	14,873.1	\$1,550.00
Jamie Barrick	12,424.3	0.3500	12,774.3	0.6000	13,374.3	0.6000	13,974.3	\$1,550.00
Jason Yost	10,057.5	0.3500	10,407.5	0.6000	11,007.5	0.6000	11,607.5	\$1,550.00
DeWayne Duffield	12,044.5	0.3500	12,394.5	0.6000	12,994.5	0.6000	13,594.5	\$1,550.00
Wilford Mayle	11,906.8	0.3500	12,256.8	0.6000	12,856.8	0.6000	13,456.8	\$1,550.00
Larry Bell	10,823.6	0.3500	11,173.6	0.6000	11,773.6	0.6000	12,373.6	\$1,550.00
Thomas Fry	10,598.5	0.3500	10,948.5	0.6000	11,548.5	0.6000	12,148.5	\$1,550.00
Mike Domer	10,394.7	0.3500	10,744.7	0.6000	11,344.7	0.6000	11,944.7	\$1,550.00
Rich Schallenberger	11,240.6	-	11,240.6	0.2500	11,490.6	0.2500	11,740.6	\$0,500.00
Kenny Bachtel	11,368.7	0.3500	11,718.7	0.6000	12,318.7	0.6000	12,918.7	\$1,550.00
John Brooks	10,599.7	0.3500	10,949.7	0.6000	11,549.7	0.6000	12,149.7	\$1,550.00
Greg Tortola	10,543.6	0.3500	10,893.6	0.6000	11,493.6	0.6000	12,093.6	\$1,550.00
John Stutter	10,057.5	0.3500	10,407.5	0.6000	11,007.5	0.6000	11,607.5	\$1,550.00
John Heistman	10,057.5	0.3500	10,407.5	0.6000	11,007.5	0.6000	11,607.5	\$1,550.00
Vacant Position	10,057.5	-	10,057.5	0.6000	10,657.5	0.6000	11,257.5	\$1,200.00
New Position	10,057.5	-	10,057.5	0.6000	10,657.5	0.6000	11,257.5	\$1,200.00
Total	\$245,7167	\$6,3000	\$252,0167	\$12,2500	\$264,2667	\$12,2500	\$276,5167	\$30,8000
Annualized Cost	511,090.74	13,104.00	524,194.74	25,480.00	549,674.74	25,480.00	575,154.74	64,064.00
Lump Sum Payment	0.00	1,000.00	1,000.00	1,000.00	2,000.00	1,000.00	3,000.00	3,000.00
Total Annualized	511,090.74	14,104.00	525,194.74	26,480.00	551,674.74	26,480.00	578,154.74	67,064.00

Entry level vacancies start at \$10.0575/hour regardless of in which year they occur.