

# HAND DELIVERED

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

2005 AUG 26 P 3:25

In the Matter of Fact-finding  
Between

AFSCME, Ohio Council 8,  
Local 3235,  
Employee Organization

Fact-Finder Daniel Kosanovich

Case No. 04-MED-12-1343

And

Logan County Engineer's Office  
Employer

## EMPLOYER'S FACT-FINDING STATEMENT

Now comes the Employer, Logan County Engineer's Office, and submits its fact-finding statement in accordance with OAC 4117-9-05(F).

1. The Employer's principle representative is:

Marc A. Fishel  
400 South Fifth Street  
Suite 200  
Columbus, Ohio 43215  
(614) 221-1216

2. The bargaining unit consists of employees in the classifications of Highway Worker I, II and III, Highway Worker Trainee I and II, Routemarker I and II, Head Mechanic and Mechanic I and II. In addition, there are 26 non-bargaining unit employees. The current agreement was effective until March 31, 2005. This was the initial agreement between the parties. Prior to this agreement, the Hourly Employees of the Logan County Highway Department was the representative of the employees.

The parties met to negotiate a successor agreement on March 3, 2005, March 28, 2005 and April 11, 2005. The parties met with a SERB mediator on May 13, 2005 and June 9, 2005. The outstanding issues are wages, longevity, health insurance, uniform allowance, CDL/Hazmat reimbursement, fair share fee and the memorandum of understanding concerning work schedule.

3. A copy of the current collective bargaining agreement is attached.
4. The Employer's position concerning the outstanding issue is as follows. A copy of the Employer's proposals are attached.

A. Dues Deduction/Fair Share Fee

This proposal from the Union seeks to include new language requiring all employees to pay a fair share fee if they do not join the Union. The Employer opposes this proposal for several reasons.

First, the decision to financially support the Union is a personal one. The Employer is opposed to a system that requires any employee to contribute to the Union against their will. If the Union can demonstrate to the employees that it is worth paying dues to support, then employees have a mechanism to pay dues through payroll deduction. In fact, the current agreement has a strict maintenance of membership provision that gives the Union financial protection.

Second, no agreement between the Employer and any employee organization has included a fair share fee. This bargaining history is relevant because it evidences a consistent agreement that a fair share fee is not appropriate in Logan County.

Third, a fair share fee is a significant benefit to the Union and places a corresponding burden on some employees and the Employer. Such a significant

change should not be mandated by a Fact-finder. Rather, it should be included in the agreement as part of the give and take process of negotiations.

Fourth, a fair share fee is an infringement on some employees' first amendment rights because it forces an association with the Union. As such, the courts have recognized that unions must comply with strict legal requirements to ensure that the fee is not used for inappropriate reasons. The Union has never provided any information to establish that these legal requirements have been met. Because a fair share fee is automatically deducted by the Employer against the employee's will, it is the Employer that is potentially liable for any constitutional violations. Moreover, indemnification language will not be enforceable in these situations. Jordan v. City of Bucyrus, 754 F.Supp 554 (N.D. Ohio, 1991); Weaver v. University of Cincinnati, 970 F.2d 1523 (6th Cir. 1992). Based on this standard, fair share fee should not be awarded without proof of legal compliance.

The Employer proposes one minor change to this Article, deleting a redundant provision concerning dues deductions.

B. Uniform Allowance

The Union proposes a uniform allowance of \$200 per year. Although the current agreement does contain a one-time uniform allowance of \$200, that provision is misleading. In an effort to reach an agreement in the negotiations for the current agreement, the Union sought a signing bonus. The Employer was opposed to such a provision. The parties compromised on a \$200 uniform allowance payable upon execution of the agreement. The payment was not conditioned on any purchase of

uniform items. The Union seeks to significantly expand this provision without any safeguards that it would be used for uniform items.

The cost of this proposal is prohibitive and not justified. Based on current staffing, the Union's proposal would cost \$13,200 during the term of the Agreement. This cost is equivalent to approximately a 1.5% across the board wage increase.

The uniform allowance also is unnecessary. Normally, a uniform allowance is paid because employees are required to wear certain items they can only use for work. It is to reimburse the employees for these expenses. The Employer does not mandate a specific uniform. Employees are given latitude to decide what they will wear at work. Steel toed shoes are not required. The Employer provides all safety equipment, such as safety glasses. The "work-related" items that employees may purchase include carharts and boots for the winter. The employees are permitted to use these items for personal use. No other employees within the Engineer's Office receive a uniform allowance.

The Union cannot justify its proposal under the statutory criteria. The cost is significant and unrelated to the claimed need. In fact, the Union cannot remotely substantiate the need for this payment to the employees. Therefore, the proposal should be rejected.

C. Work Schedule

The Employer proposes to delete the memorandum of understanding concerning the current work schedule. The memorandum requires the Employer to maintain a straight 8 or 10 hour per day schedule with no lunch and two 20 minute paid breaks.

It is the Employer's position that it should have the management right to schedule employees as it determines may be necessary.

The parties agreed to use a different schedule upon the belief that it could increase productivity and allow the employees to be at work fewer hours in a day. The supervisors work the same schedule. There has been no additional productivity as a result of this schedule. Moreover, requiring a specific schedule is inconsistent with the management rights provisions in the agreement. In addition, Article 21, section 21.1 currently allows the Employer to change work schedules with ten days advance notice. The current memorandum of understanding is inconsistent with this provision.

It should be noted that the Employer's proposal will not have any negative economic impact on the employees. They will still be required to work eight or ten hours per day. The only difference is that they would be entitled to two fifteen minute paid breaks and a one-half hour unpaid lunch period.

D. Hazmat Certification

The Union proposes a new provision concerning the hazardous materials endorsement required by the State in conjunction with commercial driver's licenses. After the events of 9/11, the State of Ohio promulgated regulations concerning the transportation of hazardous material. As a part of this change, employees with a CDL who drive vehicles with loads that are considered as hazardous material must have a special certification on their driver's license. The Union seeks to require the Employer to pay for the cost of this license.

Currently, all bargaining unit employees are required to have a CDL. The Employer permits all employees to apply for the CDL and take the test on paid time. The employee is responsible for paying the cost of the license. This standard applies to bargaining unit and management employees. The Employer intends to pay employees their regular hourly rate for time spent obtaining the hazmat endorsement. As with the CDL license, the Employer should not be obligated to pay for the cost of the license.

The Union's proposal is an added cost for the Employer. The Union claims that the Employer should pay this cost because it is a condition of employment. This argument is misplaced because it is a condition that the State has imposed on employees. The Employer has no control over this issue.

E. Wages

The Employer proposes a wage freeze in the first year of the agreement, a 1% increase in the second year and a 2% increase in the third year. The Employer also proposes an increase in the entry level wages for Highway worker trainees. The current rate does not reflect market realities and impacts recruitment. The Union proposes a 3.5% increase in each year of the agreement. The statutory criteria support the Employer's position.

As with many jurisdictions in Ohio, Logan County has been hit hard from an economic standpoint. Revenues are down and demands for government services are increasing. Like other entities, the Logan County Engineer's Office has had to do more with less. The local economy has been substantially impacted. The City of Bellefontaine has experienced a significant reduction in revenue and has been forced

to layoff numerous employees. Efforts by the City to seek voter approval for additional taxes were soundly rejected. This scenario has carried over to the County. Positions have not been filled and general fund employees have not received a wage increase for 2005. More significantly, management employees within the Engineer's Office have not received an increase since April 1, 2004.

The Logan County Engineer's Office has several major revenue sources. These include a .5% voter approved sales tax, auto registration, gas tax, the County general fund and solid waste funds. The sales tax comprises more than one-third of the revenue. It is important to note, however, that these funds are not available for a wage increase. Upon approving this tax increase, the voters determined that this amount is limited for materials and contract services for roads and bridges. It cannot be used for wages, equipment or maintenance. This sales tax expires in 2007 and must be renewed by the voters. In the current economic climate, voter approval may be difficult. The Employer must demonstrate to the public that it has been a proper steward of their money. The outcome of negotiations could impact the renewal vote in 2007. Similarly, a portion of the gas tax cannot be used for wages and equipment.

The Engineer's Office cannot continue on its current pace of revenues and expenditures. Since 2000, revenues have increased by approximately \$240,000, representing a 4% increase. During the same period, expenditures increased by more than \$1,000,000, an 18.8% increase. Recently, the County cut by \$126,000, the appropriation from the general fund to the Engineer's Office.

There are two major reasons for the significant increases in expenditures. The costs associated with personnel have grown substantially. Much of this is due to

wage increases. The cost of health insurance has also grown dramatically. It should be noted that the number of management employees has been reduced while bargaining unit employees have increased by two in the past several years.

The second major factor contributing to the increased expenditures is the cost of material. In 2001, the cost for road work was \$48 per square foot. In 2005, the cost is \$75 per square foot.

The bargaining unit employees are not in need of a catch-up as compared to other county engineers' offices. When compared to comparable jurisdictions, mechanics are paid more than \$2,900 above the average at the top level. Highway workers are paid more than \$5,000 above the average. Moreover, bargaining unit employees received wage increases of 4%, 3% and 3% during the term of the prior agreement. These increases outpaced Statewide averages and the increases for non-bargaining unit employees during this period. As stated above, the 219 general fund employees in the County did not receive any increase for 2005 and the management employees in the Engineer's Office have not receive an increase in more than one year. There is no justification to treat bargaining unit employees any differently.

The cost of the Union's proposal must also be considered. The total cost during the three year agreement would be \$214,330. This cost represents the compounding impact of the increases and the increase in the Employer's pension contribution mandated by PERS. Moreover, this amount does not take into consideration the inevitable increases for non-bargaining unit employees. The Union must present evidence that the Employer can fund this increase. It cannot meet this burden.

F. Longevity Pay

The Union proposes to double longevity pay and add a new category of \$1.00 per hour at thirty years of service. The Employer proposes to maintain current language.

For the reasons stated above, the Employer requests the Fact-finder to reject the Union's proposal. The cost of this proposal is approximately \$11,137 in each year of the agreement. The total cost is in excess of \$33,000 and does not take into consideration the compounding effect over the term of the agreement. This amount is equivalent to an approximately 3.9% across the board increase.

It should also be noted that no other employee of the Engineer's Office receives longevity pay. Under these circumstances, an increase cannot be justified.

G. Health Insurance

The Employer proposes to potentially increase the employees' monthly premium contributions in the second and third years of the agreement. Currently, the premium contribution must be the same as the amount paid by non-bargaining unit employees of the Engineer's Office, but it cannot exceed 16.5%. The Employer proposes to increase this cap to 20% in the second year of the agreement and 25% in the third year. The Union proposes to add benefits through the AFSCME care plan.

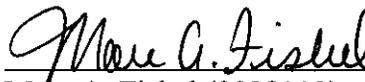
The Employer's proposal is based on the realities of health insurance costs. As these costs continue to rise, the Employer cannot be an unlimited funding source. Since 2000, health insurance premiums for family coverage have increased from \$498 per month to \$902 per month. This represents an 81.1% increase during this period.

The Employer has made efforts to maintain significant benefits for the employees. Moreover, these benefits are identical to those received by other County employees.

The Employer proposal also protects the employees because it ties the premiums to those paid for by other employees. This insures that bargaining unit employees are treated the same as other employees of the Engineer's Office.

The Union proposes to add the AFSCME care plan for dental and vision care. This proposal would require the Employer to pay 100% of the premium. This would cost the Employer \$40.75 per month for each employee. The total cost of this proposal is in excess of \$10,000 per year. The cost is equivalent to a 3.6% across the board wage increase. The Employer is not in a position where it can add benefits, especially at this significant cost.

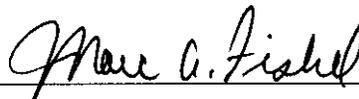
Respectfully submitted,



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(614) 221-8769 – FACSIMILE  
[mfishel@dhflaw.com](mailto:mfishel@dhflaw.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **EMPLOYER'S FACT-FINDING STATEMENT** has been served upon Scott Thomasson, Staff Rep, AFSCME, Ohio Council 8, 15 Gates Street, Dayton, OH 45402 via Federal Express, Overnight Next Business Day on this 26<sup>th</sup> day of August, 2005.



Marc A. Fishel (0039110)  
DOWNES, HURST & FISHEL

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ARTICLE 5 DUES DEDUCTION

Section 5.1 During the term of this Agreement, the Employer shall deduct initiation fees and dues levied by the Union from employees who voluntarily signed dues deduction authorization forms permitting said deductions.

Section 5.2 The initiation fees and dues so deducted shall be in the amounts established by the Union from time to time in accordance with its Constitution and Bylaws. The Union shall certify, in advance of when amounts are due, to the Employer, the amounts due and owing from the employees involved. The Union shall provide written notification to the Engineer and the County Auditor at least two weeks in advance of the time for requested change.

Section 5.3 The Employer shall deduct dues, initiation fees or assessments from each biweekly pay period. ~~If an employee has not paid dues on that pay date such amounts shall be deducted from the next or subsequent pay.~~

Section 5.4 A check in the amount of the total dues withheld from these employees authorizing a dues deduction shall, barring unusual circumstances, be tendered to the Comptroller of AFSCME, Ohio Council 8, 6800 North High Street, Worthington, Ohio 43085, within fifteen (15) days, barring unusual circumstances, from the date of making said deductions.

Section 5.5 The Union hereby agrees to hold the Employer harmless from any and all liabilities or damages which may arise from the performance of its obligations under this Article and the Union shall indemnify the Employer for any such liabilities or damages that may arise. Once the funds are remitted to the Union, their disposition shall be the sole and exclusive obligation and responsibility of the Union.

Section 5.6 Limitation of Dues Deductions The Employer shall not be obligated to make dues deductions from any employee who, during any dues payment period, shall fail to receive sufficient wages to make all legally required deductions in addition to the deduction of union dues.

Section 5.7 Errors in Dues Deductions It is agreed that neither the employees nor the Union shall have a claim against the Employer for errors in the processing of deductions unless a claim of error is made to the Employer in writing within sixty (60) days after the date such an error is claimed to have occurred. If it is found an error is made, it will be corrected at the next pay period that the Union dues will normally be made. Payroll collection of dues shall be authorized for the exclusive bargaining agent only and no other organization attempting to represent the employees within the bargaining unit as herein determined.

Section 5.8 Correction of Deduction Deductions provided for in this Article shall be made during one (1) pay period each month. In the event a deduction is not made for any Union member during any particular month, the Employer, upon written

verification of the Union, will make the appropriate deduction from the following pay period in which union dues are regularly deducted if the total deduction does not exceed the total of two (2) month's regular dues from the pay of any Union member, nor will the Employer deduct more than one (1) month's regular dues for more than one (1) consecutive month.

Section 5.9 Any employee who joins the Union and becomes subject to dues deduction shall remain a member of the Union during the term of this Agreement. Any employee who desires to revoke his membership in the Union may do so during the thirty (30) day period prior to the expiration of the Agreement by giving written notice to the Union.

FOR THE UNION:

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FOR THE EMPLOYER:

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Date Tentatively Agreed: \_\_\_\_\_

ARTICLE 22

WAGES

Section 22.1 Bargaining unit employees shall be entitled to the following wage increases:

~~9/1/01—Four percent (4%) increase.  
Twelve months after execution of the Agreement—Three percent (3%) increase.  
Twenty-four months after execution of the Agreement—Three percent (3%) increase.~~

**There shall be a wage freeze for all bargaining unit employees in the first year of the agreement. Effective April 1, 2006, employees shall receive a 1% wage increase. Effective April 1, 2007, employees shall receive a 2% wage increase.**

Base wage rates are set forth in Appendix A of the Agreement.

FOR THE UNION:

FOR THE EMPLOYER:

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Date Tentatively Agreed: \_\_\_\_\_

<b>CLASSIFICATION</b>	<b>APRIL 1, 2005</b>	<b>APRIL 1, 2006</b>	<b>APRIL 1, 2007</b>
Highway Worker Trainee I	\$13.18	\$13.31	\$13.58
Highway Worker Trainee II	\$14.18	\$14.32	\$14.61
Highway Worker I	\$15.18	\$15.33	\$15.64
Highway Worker II	\$16.94	\$17.11	\$17.45
Highway Worker III	\$17.29	\$17.46	\$17.81
Mechanic I	\$15.18	\$15.33	\$15.64
Mechanic II	\$17.29	\$17.46	\$17.81
Head Mechanic	\$17.79	\$17.97	\$18.33
Routemarker I	\$16.94	\$17.11	\$17.45
Routemarker II	\$17.29	\$17.46	\$17.81

8-05 CLASSIFICATION WAGE TABLE

ARTICLE 23

LONGEVITY

Section 23.1 Effective January 1, 2002, in addition to be base pay rate, each employee shall be eligible for longevity payments in accordance to the following schedule:

<u>Length of Continuous Service With Logan County Engineer</u>	<u>Longevity Pay</u>
Beginning of the 5 <sup>th</sup> year through The end of the 9 <sup>th</sup> year	\$.20 per hour added to appropriate base pay of above schedule
Beginning of the 10 <sup>th</sup> year through The end of the 14 <sup>th</sup> year	\$.25 per hour added to appropriate base pay of above schedule
Beginning of the 15 <sup>th</sup> year through End of the 19 <sup>th</sup> year	\$.30 per hour added to appropriate base pay of above schedule
Beginning of the 20 <sup>th</sup> year through The end of the 24 <sup>th</sup> year	\$.35 per hour added to appropriate base pay of above schedule
Beginning of the 25 <sup>th</sup> year through rest of employment	\$.40 per hour added to appropriate base pay of above schedule

Any employee who resigns his/her position, retires or is discharged for cause shall immediately cease to be entitled to any such longevity payments. If any employee is re-employed by the Employer, he/she shall receive no longevity payments until he/she again meets the time requirements of the above schedule. Determination of the addition of each year of service shall be calculated as of the employee's anniversary date of employment.

FOR THE UNION:

FOR THE EMPLOYER:

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Date Tentatively Agreed: \_\_\_\_\_

ARTICLE 24

HEALTH INSURANCE

Section 24.1 Bargaining unit employees shall be entitled to health insurance coverage on the same basis that such coverage is offered to non-bargaining unit employees of the Engineer.

Section 24.2 Bargaining unit employees shall be required to contribute to the health insurance premiums on the same basis as non-bargaining unit employees of the Engineer provided., however, that bargaining unit employees' premium contribution shall not exceed 16.5%. **The Employee's premium contribution cap is increased to 20% effective April 1, 2006 and 25% effective April 1, 2007.**

FOR THE UNION:

FOR THE EMPLOYER:

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Date Tentatively Agreed: \_\_\_\_\_

ARTICLE 25

MISCELLANEOUS

Section 25.1 The Employer agrees to provide uniforms for mechanics.

~~Section 25.2 Upon execution of the Agreement, employees shall receive a one-time payment of two hundred dollars (\$200) clothing allowance. The mechanics are not entitled to this payment.~~

FOR THE UNION:

FOR THE EMPLOYER:

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Date Tentatively Agreed: \_\_\_\_\_

MEMORANDUM OF UNDERSTANDING

~~Bargaining unit employees' work hours shall be a straight 8 or 10 hours per day. During these workdays, employees shall not be entitled to a lunch period and shall be entitled to two, twenty (20) minute breaks. One break may be taken during the first half of the workday and the other break may be taken during the second half of the workday.~~

~~This schedule shall remain in effect for six months. Upon conclusion of this trial period, the Engineer may revert to the current schedule after discussions with the Union within the labor management committee.~~

~~The parties may return to the prior schedule before expiration of the six month period upon mutual agreement.~~