

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
April 1, 2008**

In the Matter of:

Teamsters Local Union No. 957

06-MED-10-1154

and

Montgomery County Engineer

STATE EMPLOYMENT
RELATIONS BOARD
2008 APR - 3 P 12: 50

**REPORT AND RECOMMENDATIONS OF FACT-FINDER
TOBIE BRAVERMAN**

APPEARANCES

For the Employer:

Charles J. Faruki, Counsel
Mark Amos, Counsel
Joseph Litvin, Montgomery County Engineer
Arnie Stemen, Chief Deputy Engineer
Mark A. Hartung, Operations Engineer

For the Union:

John R. Doll, Counsel
Bill Mills, Business Representative
Varnry Richmond, President
Tim Maddox, Steward
Mark Moon, Steward
Walter Arnold, Steward
David Schindler, Member negotiations team
Anthony Fader, Member negotiations team

INTRODUCTION

The undersigned was selected by the parties to serve as Fact-Finder in the matter of the Montgomery County Engineer (hereinafter referred to as "Employer") and Teamsters Local 957 (hereinafter referred to as "Union") pursuant to OAC 4117-9-5(D). The parties agreed to extend the deadline for the Fact Finder's Report until April 1, 2008. Hearing was held at Dayton, Ohio on March 17, 2008. The Union was represented by John R. Doll, attorney at law, and the Employer was represented by Charles J. Faruki, attorney at law. The parties presented a joint position statement as well as stipulations of fact. In addition, the parties were permitted to present testimony and exhibits concerning the outstanding provisions of the Collective Bargaining Agreement.

This case presents itself in a somewhat unusual posture as will be discussed further below. To the extent presented and relevant, and pursuant to Ohio Revised Code §4117.14, the Fact-Finder has considered the past collectively bargained agreements between the parties, comparison of the issues submitted relative to other public employees doing comparable work, the interests and welfare of the public, the ability of the Employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service, the lawful authority of the Employer, and other factors traditionally considered in the determination of the issues submitted.

FACTUAL BACKGROUND

The office of the Montgomery County Engineer, among other functions, is responsible for the maintenance and repair of the County's 320 miles of roads, 541 bridges, culverts, snow and ice removal, and road side vegetation control. To accomplish these tasks, it employs approximately fifty employees who are represented by the Union. The majority of the Engineer's funding comes from vehicle registration fees together with income from fuel taxes and Federal Highway Funds. Although the Engineer negotiates directly with, and is the stated Employer on the Collective

Bargaining Agreement with the Union, the negotiated agreement must be approved by the Montgomery County Commissioners, who control county funds. It is the refusal of the Commissioners to approve the negotiated agreement which has resulted in this Fact-Finding.

The parties began negotiation of the successor to their Collective Bargaining Agreement which expired on December 31, 2006, in October, 2006. In May, 2007 the parties had reached tentative agreement on all issues except health care and wages. As part of the effort to reach resolution on the issue of health care, the parties heard presentations by the Montgomery County Health Care Plan (Montgomery County Plan), the plan in place under the prior Collective Bargaining Agreement, and by the Ohio Conference of Teamsters Health and Welfare Plan (OCT Plan). In exchange for concessions on wages, the parties agreed to change health coverage from the Montgomery County Plan to the OCT Plan. Specifically, the Union agreed to forego the \$1,000 signing bonus which other County bargaining units received in negotiations. Additionally, although other bargaining units received wage increases of 3% per year, the Union agreed to 2%, 2.5%, and 3% wage increases over the three year life of the Agreement.

The Montgomery County Plan, under which these employees were covered in the prior Collective Bargaining Agreement, is a self insured plan. It covers approximately slightly more than 4,000 employees of Montgomery County and other participating municipalities in the County. That plan includes an employee contribution of \$126.00 per month for family coverage and \$40.00 per month for single coverage. The OCT Plan agreed upon by the parties has no employee contribution. The premium for the Employer is set at \$226.00 per week per employee for the period from July 1, 2008 through June 30, 2009 and \$235.00 per week per week per employee for the period from July 1, 2009 through June 30, 2010. These premiums, presuming a modest 10.5% increase in the cost for the Montgomery County Plan in 2009-2010, represent a savings in the amount of \$45,921. The wage and signing bonus concessions agreed upon additionally result in a savings to the Employer in the amount of \$127,786. There will also be a savings as a result of the compounding effect of the wage concessions, but these savings were not calculated by the parties. The employees, who will

no longer be required to pay a portion of their premiums, will save \$123,996. over the course of the two years. Additionally, the OCT plan includes dental and optical coverage. The Montgomery County Plan has optional dental coverage available to employees through the County's Section 125 Cafeteria Plan at an employee cost of \$80.00 per month for family coverage and \$63.00 per month for single coverage. There is no optical coverage available under the Montgomery County Plan.

Despite the agreement of the parties and the significant cost savings engendered by the change in health coverage, the Montgomery County Commissioners informed the Employer that it would reject any collective bargaining agreement which did not require the employees to remain in the Montgomery County Plan. In May, 2007, the County Commissioners additionally advised the Employer that if the parties chose to change to the OCT Plan, the members of the bargaining unit would not be permitted to participate in the County's Section 125 Cafeteria Plan as they had in the past and as was incorporated into both the parties' prior and tentative agreements. Among the members of the bargaining unit, 22 currently participate in the Section 125 Plan Dental Plan, 15 participate in the Supplemental Life Insurance Plan, 4 participate in the Choice Spending Account Program, and 32 participate in the Deferred Compensation Program. No rationale for the exclusion of these employees from the Section 125 Plan has been articulated by the County Commissioners, and it is presumed that the threatened exclusion is to serve as negative incentive to remain in the Montgomery County Plan, or alternately, as punishment for withdrawal from that Plan. On September 18, 2008. the County Commissioners formally rejected the parties' tentative agreement. Since that time the parties have been operating under successive extensions of the Collective Bargaining Agreement which expired on December 31, 2006.

The County Commissioners have indicated in conversations with the Employer that they believe that the withdrawal of this group from the Montgomery County Plan will result in increased costs for the Plan. They have also indicated that they believe that the withdrawal of the Union will make it difficult to negotiate collective bargaining agreements which require that other County bargaining units remain in Plan. Although the Commissioners were advised of the date for Fact-

Finding in this matter and were invited to attend and participate in the hearing, they chose not to do so. There was therefore no evidence presented to support these assertions. The parties, however, did present a letter from Thomas J. Ritchie, Sr., Director of Field Service and Organizing for AFSCME Ohio Council 8, indicating that AFSCME has no healthcare plan and the two AFSCME bargaining units within Montgomery County, which include 1,045 employees, have no intention to attempt to leave the Montgomery County Plan.

It is in this rather unique posture that the parties present the issues of health insurance coverage and participation in the Montgomery County Section 125 Cafeteria Plan to the Fact-Finder for recommendation.

ISSUES

ARTICLE XIX- GROUP INSURANCE Section 2 - Medical Insurance

Position of the parties: As noted above, the parties here are in agreement that in exchange for concessions in wages and signing bonus, the health insurance coverage should be converted to the OCT Plan. This Plan results in a substantial cost savings for both the Employer and the members of the Union. The Montgomery County Commissioners have rejected the parties' agreement upon the basis that the withdrawal of this bargaining unit may result in increased costs for the plan and upon the basis that other groups may also desire to leave the plan, ultimately affecting the plan's ability to remain financially sound. There is, however no evidence to support these fears.

Discussion: The evidence presented at hearing in this matter demonstrated clearly that the change to the OCT Plan will result in better coverage for the employees. It includes both optical and dental coverage, neither of which is included in the Montgomery County Plan, although dental coverage is available at an additional employee cost through the Section 125 Cafeteria Plan. Beyond this important factor, however, the change comes at a substantial savings

to both the employees and the Employer. The Employer will save approximately \$45,921 over the remaining two years of the Collective Bargaining Agreement in health care premiums alone. An additional savings in the amount of \$127,786 will be realized as a result of the Union concessions on the signing bonus and wage increases already granted to other County employees.

Against these substantial savings, the County Commissioners have stated that they fear the withdrawal of these fifty employees from the Montgomery County Plan, which includes over 4,000 enrollees, will raise premiums, and further will create a floodgate effect with others seeking to withdraw from the Plan. These fears, however, are not supported by any evidence. There was simply no evidence to suggest that the withdrawal of a mere 50 participants in a plan of over 4,000 would have any negative ramifications on the Plan's ability to operate economically. Further, the largest bargaining unit in the County, AFSCME, Ohio Council 8, has indicated in writing that it has no intention to withdraw and does not maintain a health plan as does the Ohio Conference of Teamsters. The County's fears, while legitimate considerations, are simply not supported by any evidence and appear to be unfounded.

It must always be born in mind that governmental entities are stewards of taxpayer dollars. The savings to the Employer engendered by the change in health insurance plans is estimated to be almost \$174,000 in the remaining two years of this Collective Bargaining Agreement. The public interest demands that when a sum this substantial can be saved, unsupported fears cannot override the clear public interest in the delivery of governmental services in the most economical way possible without sacrificing quality service. There was simply no evidence that the movement of this bargaining unit from the Montgomery County Plan to the OCT Plan would have a negative impact upon either the Employer's service to the public or the solvency of the Montgomery County Plan. In view of this lack of such evidence, the interest of the public in good stewardship of taxpayer dollars dictates that the parties should be permitted to change to the OCT Plan as agreed during negotiations.

Recommendation: Article XIX Section 2 - Medical Insurance shall be changed to read as

follows:

A. Effective July 1, 2008, the Employer shall contribute to the Ohio Conference of Teamsters & Industry Health and Welfare Fund (the "Fund") the sum of \$226.00 per week for each employee covered by this Agreement who has been on the payroll for thirty (30) calendar days. Effective June 30, 2009, the weekly contribution shall be increased to \$235.00 per week for each employee. Employees have chosen the Fund's modified Plan5B/PPO.

B. Contributions shall be made each calendar month for each union employee regardless of whether the employee works less than the full calendar month. Any hour or day for which any employee receives compensation in accordance with the provisions of this Agreement shall be considered a full month worked, and full monthly contribution shall be due. Contributions shall be made in accordance with Section 4 of this Agreement.

C. Contributions shall be due and payable no later than the tenth (10th) day of the month following the month in which coverage is due under this Agreement and shall be delinquent if not received at the Fund office by the twentieth (20th) day of the month following the month in which coverage has been furnished. The Employer agrees that the Fund may, from time to time, perform payroll audits of the Employer's contributions and reports.

D. Notwithstanding anything to the contrary in this Agreement, The Employer agrees that in the event it is delinquent in the payment of its contributions to the Fund in accordance with the rules and regulations of the Fund, the Trustees, after having given appropriate notice of such delinquency, shall have the right to take action deemed necessary to enforce payment.

E. The Employer will not object to action taken by the Trustees of the Fund so long as the action does not change the contribution rate specified in Section 1 during the term of the Collective Bargaining Agreement.

ARTICLE XIX- GROUP INSURANCE Section 5 - Other Benefits

Position of the parties: The parties are, as with medical insurance, in agreement on the issue of participation in the Montgomery County IRS Section 125 Cafeteria Plan. The employees in this bargaining unit were eligible to participate in the Section 125 Cafeteria Plan under the terms of the prior Agreement, and did not negotiate any change in that language. The County Commissioners, however, have stated that this bargaining unit will no longer be permitted to participate in the Section 125 Cafeteria Plan in the event that medical insurance is changed to the OCT Plan. The rationale for this exclusion from participation has not been articulated, and is presumed to be punitive.

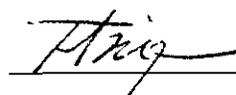
Discussion: The County Commissioners, although invited by the Employer, did not participate in the Fact-Finding hearing in this matter. As a result, the only evidence regarding the Section 125 Cafeteria Plan relates to the amount of participation in the Section 125 Plan by this bargaining unit, which is substantial, as well as the evidence presented by the parties indicating that the County Commissioners have advised the parties that in the event they move to the OCT Plan, they will be excluded from participation in the Section 125 Cafeteria Plan. As noted above, this threatened exclusion has not been explained by the Commissioners, and appears to be in the nature of a threat to prevent withdrawal from the Montgomery County Plan or punishment for doing so.

If in fact there is some provision in the Section 125 Cafeteria Plan which dictates exclusion from the Plan in the event that parties here opt out of the Montgomery County Plan, it is incumbent upon the County to explain that to the parties so that they can make an informed choice about their decision. The County has not, however, expressed the threatened exclusion as anything more than a disincentive to leaving the Montgomery County Plan or a punishment for doing so. In these circumstances, there does not appear to be any basis for deviating from the current language of the Collective Bargaining Agreement which the parties have no interest in altering.

Recommendation: Current Language.

All other provisions of the tentative agreement of the parties are adopted as recommendations, as if fully re-written herein.

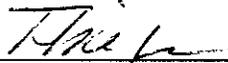
Dated: April 1, 2008



Tobie Braverman, Fact-Finder

CERTIFICATE OF SERVICE

The foregoing Report and Recommendations was served upon Mr. John R. Doll, Doll, Jansen & Ford, 111 West First Street, Suite 1100 Dayton, OH 45402-1156, Counsel for Teamsters Local 957 and Mr. Charles J. Faruki, Faruki, Ireland & Cox, 500 Courthouse Plaza, S.W. 10 North Ludlow Street Dayton, OH 45402-1818, Counsel for Montgomery County Engineer via ordinary U.S. Mail this 1st day of April, 2008.



Tobie Brayerman