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IN THE MATTER OF FACT FINDING

BETWEEN

AFSCME OHIO COUNCIL 8

AND

TUSCARAWAS COUNTY ENGINEER

Case # 06-MED-12-1401

ADVOCATE FOR THE UNION:

**Fred L. Hartsel, Staff Representative
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ADVOCATE FOR THE EMPLOYER:

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INTRODUCTION

The issues brought before the fact-finder involved **recognition** (Article 2), **grievance procedure** (Article 8), **hours of work** (Article 11), **vacancy and promotions** (Article 15), **probationary periods** (Article 18), **holidays** (Article 24), **sick leave** (Article 25), **sick leave conversion** (Article 26), **hospitalization** (Article 27), **wages** (Article 29), and **protective clothing** (Article 31). The Employer is the Tuscarawas County Engineer ("Employer" or "Engineer"). The fact finder is familiar with this Employer having held fact-finding hearings with this same Employer and Union in the past. The Engineer's office has earned a reputation of running an efficient and responsive operation. The bargaining unit, represented by AFSCME Local 2308, consists of approximately twenty-two (22) employees who are employed in ten (10) classifications. The employees, many of whom are dedicated long-term employees, comprise a local union that vigorously represents its members. AFSCME, the Local's parent organization, enjoys a national reputation of competence and strength. The Collective Bargaining Agreement expired March 2, 2007.

A mediation/fact-finding hearing was held on June 18, 2007. The prior experience of the fact-finder with the parties aided the fact finder in readily understanding the background of the issues in dispute. Moreover, mediation helped the fact finder to narrow the scope of the dispute.

The demeanor and conduct of the advocates from both bargaining teams exemplify the responsibility with which the parties view their roles. The individuals present during the fact-finding process on both sides of the bargaining table demonstrated a keen interest in providing quality service to the citizens of Tuscarawas County while at the same time addressing the problems related to the issues in dispute.

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.

OVERALL RATIONALE FOR DETERMINATIONS (Recommendations)

Although perceptively better than in the earlier part of the current decade, Ohio's economy remains uncertain, as does the financial outlook for many Ohio public employers. The state of Ohio continues to struggle to find ways to fund the many obligations it shoulders such as Medicaid costs, education, job growth, and a myriad of other pressing economic demands. Although somewhat improved in the last several months, the state's economy is far from uniformly improved and continues to experience shortfalls between revenue and expenses fueled by substantial and likely permanent losses of relatively high paying manufacturing jobs in particular sectors of the state. Recently announcements by Delphi and the Ford Motor Company promise to add to the loss of high paying jobs in the state. These losses will directly impact other businesses and the overall revenue stream to the state and in turn to local governments.

In much of Ohio local government employers and employees alike share the uncertainty that the state is experiencing. There is a bottom line to watch in all organizations and government is no exception. The income stream provided to the Engineer is understandably narrow, primarily consisting of gasoline and license plate taxes. However, it is also true that the delivery of quality service depends on recruiting and retaining quality employees in both the line and

managerial levels. The competitive wages and benefits provided to those employees are key to maintaining a quality workforce.

Issues

Through the mediation process the parties reexamined their positions and indicated their willingness to withdraw their proposed changes regarding Articles 2, 8, 15, and 18. They concluded that in the context of these negotiations current language still serves them well. It is well understood that proposed changes in current longstanding language require reasons that must be supported by evidence/facts that fall within the statutory criteria stated above. The data does not support the Employer's proposed change in Article 11, Hours of Work/Overtime to eliminate certain paid time from the calculation of hours worked. Nor does the evidence support the Union's proposed change to grant compensatory time in lieu of cash payments.

The amount of holiday time, when factoring in holidays that fall within the weeks when employees are on ten hour days and receive ten hours of holiday pay (e.g. July 4th), is equal to what other employees in the County are receiving. That amount is the equivalent of 11.5 holidays (Article 24). I find no compelling data to support an increase in holiday time. Changes being proposed by both parties in Articles 25, Sick Leave, and Articles 26, Conversion of Sick Leave, are also not supported by the data. Again, to depart from language that has served the parties for years requires facts that compel a change based upon the statutory criteria. This is not to say that sick leave usage is not a problem

facing employers. Although no change is being recommended in this report, this does not suggest that the Employer has no legitimate concern regarding employees being off work with excessive frequency or duration. Sick leave is a "safety net," a form of insurance that should be carefully preserved for the proverbial "rainy day" and used when necessary to maintain income. Its purpose is seriously undermined, and an employer's operation can be significantly impaired when it becomes apparent that some employees are using it as additional benefit time.

The Union provided a compelling argument to insure that any wage increases are retroactive to the beginning of the contract. The bargaining history of the parties supports a continuation of this practice. The Union is seeking a-cents per hour wage settlement while the Employer proposes a percentage increase in wages. Bargaining history favors the Employer's position. It is also noted that the Job and Family Services bargaining unit settled a wage increase of 9% over three years. And, in the last two years of the current contract the bargaining unit received 3% increases each year. With some exceptions, this fact finder has made note that the "going rate" for wage increases in the state has hovered around 3% in recent years. Under this Article, the Union is also seeking a redefinition of steps, increased pay for specific equipment, an increase in longevity, and increased pay for snow and ice control. Internal comparables do not support an increase in longevity at this time. When examined closely, the facts indicate that the amount of time spent

by the few HMW-2 employees on the additional equipment (being proposed to be added by the Union in new Section 29.5), which normally is operated by HMW-3 employees, is minimal. Given the need to preserve limited resources in order to provide a competitive wage increase for all employees, the facts do not support any changes to current language in these areas. Moreover, the facts do not support an increase in pay for snow and ice removal.

The protective clothing proposal submitted by the Union is an enhancement to a benefit established in negotiations during the previous round of bargaining. The amount established was \$75.00 per annum. In the experience of this fact finder, boots vary greatly in terms of quality and cost, and this amount may pay for all or as little as half the cost of a good pair of work boots. Without additional data it is difficult to determine the specific value of this benefit to the twenty-two individual members of the bargaining unit. However, inflation over the last three year should be considered to at least maintain the relative worth of this benefit.

The Employer provided compelling data to support its contention that health care costs are rising significantly for family coverage. For single coverage, the rates have gone from \$341.00 per month in 1997 to \$350.00 in 2007, a very modest increase. However, in the same ten-year time period, the monthly insurance premiums for family coverage have gone from \$381.00 to \$865.00 in 2007, a 127% increase. During half of this ten-year period (2002 to 2007) premium costs for employees went from \$7.64 to \$25.06 for family

coverage, a 328% increase. Affordable health care is the bane of both unions and employers. It continues to be a conundrum that needs to be seriously addressed at a level that will provide real economic relief to employers and employees alike. A significant internal comparable placed into evidence is the settlement recently reached with another and much larger bargaining unit in the County: The Department of Job and Family Services. This unit, which is also represented by Local 2308 of AFSCME, settled its contract and accepted employee contributions toward health care capped at \$60.00 per month. The Employer is seeking in its proposal to establish a flat rate employee contribution rate without a cap. The Employer cites SERB data to support its contention that what it is proposing is consistent with other like jurisdictions in the state. Based upon current rates, a 10% flat rate would result in an employee monthly premium of \$86.50 or approximately 44% higher than employees would pay in the Jobs and Family Services bargaining unit. It is noted that that the Employer used the same internal comparable (Jobs and Family Services) to in part support its position that there should be no increase in longevity and no additional holiday time. With this same Local Union the County agreed to raise employee premium payments up to a cap of \$60.00 per month. However, it is also clear that the Employer, and to a broader extent the County, is attempting in good faith to do whatever it can to provide this essential benefit in an affordable manner to all of its employees. The Employer's proposal of a 10% employee premium payment is not inconsistent with other like jurisdictions, except that

many of those entities most likely reached a level of 10% incrementally over time. It is also clear that the bargaining history between the parties, as illustrated in the current language of Article 27, indicates the Union's acceptance of *"...the same health benefits plan at the same cost as provided by the Board of County Commissioners to non-bargaining unit employees of the Employer."* In summary, the most compelling evidence regarding the issue of health care, as mentioned above, is the fact that the County and a much larger bargaining unit (Jobs and Family Services) represented by the same Local Union settled a three year contract with an increase in employee premium capped for three years at \$60.00. This cap represents a substantial increase over what bargaining unit members are currently paying, but the inclusion of the cap during this contract period will hopefully provide a more affordable interim step toward the establishment of a reasonable fixed percentage for both the Employer and employees in the County.

After carefully considering the facts and evidence presented in this case and utilizing the salary structure recommended by the consultant, the following determinations are made:

Articles 2, 8, 11, 15, 18, 24, 25, 26

Determination:

Maintain current language

Article 31 Protective Clothing

Determination:

Modify Article 31, Section 5, as follows:

Sections 31.1 - 31.4 current language.

Section 31.5

On an annual basis, the Engineer shall establish an account for each employee, limited to no more than **eighty dollars (\$80.00)** per employee for the purchase of work boots. Employees shall submit receipts to the Engineer/designee verifying the purchase of such items within five (5) workdays of the purchase.

Article 27 Hospitalization

Determination:

Modify Article 27, Section 1, as follows:

Article 27.1 For the duration of this Agreement, the Employer shall provide to employees the same health benefits plan as is provided to all Tuscarawas County employees. Employees in the bargaining unit shall contribute toward their health care insurance premium at a rate of 10% of the premium, except during the entire length of this contract period said employee premium shall not exceed \$60.00 per month. The remainder

of the cost for the monthly health insurance premium(s) shall be fully funded by the Employer.

All other sections of Article 27 are to remain current language.

Article 29 Wages

Determination:

The current salary schedules contained in Section 29.1 shall be increased as follows:

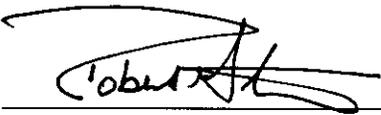
1. An increase of 3% retroactive to March 3, 2007
2. An increase of 3% effective March 3, 2008
3. An increase of 3% effective March 3, 2009

All other sections of Article 29 are to remain current language.

TENTATIVE AGREEMENT

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 July 2007 in Portage County, Ohio.



Robert G. Stein, Fact-finder