

2008 MAR 10 P 12:32

IN THE MATTER OF FACT-FINDING

BETWEEN

TEAMSTERS LOCAL 24

AND PORTAGE COUNTY SOLID WASTE MANAGEMENT DISTRICT

BEFORE: William C. Binning Ph.D
SERB Fact- Finder

SERB CASE: 07-MED-08-0741

PRINCIPAL ADVOCATE FOR THE UNION:

SUSAN D. JANSEN, Esq.
DAVE RICHARDS, BUSINESS AGENT, Local 24
DOLL, JANSEN & FORD
111 West First Street, Suite 1100
Dayton, Ohio 45402

and

PRINCIPAL ADVOCATE FOR THE DISTRICT:

JEFFREY C. MILLER, Esq.
JOHNSON, MILLER & SCHMITZ LLP
1001 Lakeside Avenue
1700 North Point Tower
Cleveland, Ohio 44114

INTRODUCTION

The Portage County Solid Waste Management District was established in 1989 in compliance with Ohio law, which required counties to join in or form districts to provide recycling opportunities for their waste stream. Portage County formed a single county district. The Portage County District offers recycling, with 15 drop off locations for newspapers, cardboard, glass, cans and plastics. It offers recycling to businesses in Portage County. It offers a Curbside Collecting Program. It partners with the Solid Waste Division of the Portage County Health Department to address illegal dumping and cleanup. It also offers educational programs.¹

There is one bargaining unit in the District with approximately forty employees in the unit. The employees are divided into Production, Driver, and Mechanic groups. The Production group has in the Collective Bargaining Agreement positions of Material Processors, Line Captain, Equipment Operator, and Maintenance Worker and Household Hazardous Waste Specialist. There is also a Truck Driver group. The Mechanic group currently has two employees. Portage County has approximately 15 other collective bargaining contracts. This is the third contract between the parties. The parties had eight bargaining sessions before moving to fact-finding.

The Fact finder would like to thank the Advocates, Attorneys Jansen and Miller, for their excellent Pre-hearing statements. I would also acknowledge their excellent preparation and hard work in educating this Fact-finder on the outstanding issues.

¹ <http://www.co.portage.oh.us/solidwastehtm>

ISSUES

There were nine unresolved issues:

1. Holiday Pay
2. CDL
3. Leaf Pick Up and hiring temporary work
4. Retroactivity of Pay for this contract
5. Total Agreement
6. Compensation – with a sub-issue of Mechanic pay
7. Longevity pay
8. Insurance
9. Boot Allowance

The language on the CDL, which is a new contract provision, was settled in mediation, which was conducted prior to the hearing in accordance with SERB guidelines. The remaining issues were addressed in a Fact-finding hearing held on February 25, 2008 at the Office of the Portage County Solid Waste Management District.

Present at the hearing:

Ali Aboul	Union Steward
Susan Jansen	Attorney for Local 24
Jeff Miller	Labor Counsel, Portage County
Dave Richards	Vice President Local 24

CRITERIA

OHIO REVISED CODE

In Fact-finding, the Ohio Revised code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered by the Fact-Finder. The criteria are listed below and were given weight by this Fact-Finder in this recommendation. The criteria are:

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.

CDL

The first issue was settled in mediation. The agreed upon language is provided below. The contract number for the new provision was left for the parties to determine.

All Employees in the classification of Truck Driver must retain a CDL as a condition of employment. In the event an employee's CDL is suspended, revoked or restricted, the employer shall have the right to take disciplinary action against the employee, up to and including termination, if the deficiency is not resolved within (30) days. Within that time period, the Employer has the right to assign the affected Employee to perform the duties of another job classification and the Employee shall receive the rate of that job classification. An Employee is obligated to immediately report any deficiencies against his/her CDL to the employer. The Employer will run random checks on an employee's CDL. Nothing in this article shall supersede, replace, or modify the District's current policy regarding the driving rights and responsibilities of District employees, which shall be referred to as Resolution #07-050 effective November 15, 2007.

The above was agreed to and signed off by both parties.

FACTFINDING

The remaining issues were taken up in the fact-finding hearing.

ISSUE 1

HOLIDAY PAY

Union Position The Union is the party moving for change in the Holiday pay language. The current language reads: 15.04 “Employees must work or be on active pay status on the day before and the day after the holiday to receive compensation for said holiday. Active pay status for purposes of this Article does not include paid sick leave.” The language does not state that eight hours of work each day before and after the holiday are required to receive the holiday pay.

The Union argues that past practice allowed employees to “receive their holiday pay as long as they were in active pay status at least four (4) hours on the day before and four (4) hours on the day after the holiday.”² There was a change in management at the Portage County Solid Waste Management District, the new management requiring a total of eight hours of work the day before and the day after a holiday to receive the holiday pay. Two grievances were filed on behalf of employees who were more than 15 minutes late for justifiable reasons. These grievances went to Arbitration, and Arbitrator James Mancini denied the grievance. That arbitration award was placed in the record of this hearing.

² Susan D. Jansen Esq., “Position Statement” p 8.

The Union is seeking relief in the contract from this draconian practice of penalizing employees for being tardy by not paying them the holiday pay. The Union is asking for language of a 4 or 6 hour work requirement to receive the holiday pay. The basis of their argument is that a change in past practice occurred without even notification of the Union business agent.

Employer Position: The Employer argued that the employee receives a significant holiday pay benefit. The workers receive one and one half times their regular rate plus the holiday pay for working the full day before and the full day after the holiday. Furthermore, the employer argues that the holidays, especially holidays that “fall on a Monday,” create significant operational problems for the District. The advocate for the District argues that “The accumulation of recyclable materials does not take a holiday.”³ The Employer claims that the requirement of 8 hours work the day before and day after the holiday, as the interpretation of the provision, is required for the orderly and efficient operation of the District.

Discussion: The Arbitration award granted by Arbitrator James M. Mancini on July 12, 2007 determined that the employees were properly notified in the change in practice instituted by a new management team at the Solid Waste Management District and the grievance was denied.

Management worked hard to institute this personnel policy under existing contract language. According to Arbitrator Mancini, the Employer used accepted practices and proper notification to change the past practice.

Recommendation: No change in language.

³ Jeffrey C. Miller. “Employer’s Pre-hearing statement”

ISSUE 2
LEAF COLLECTION

Employer Position: The Employer is proposing a change in existing language of

The following Article:

Article 31.03: Employees in the material processing classification will perform leaf collection work first on a voluntary basis through a posting and will be paid at the equipment operator rate of pay for all hours worked. In the event an insufficient number of employees volunteer, the Employer reserves the right to hire temporary employees to perform the necessary leaf collection work.

(The underscored language is the requested Employer change in the language.)

The Employer argues that this added language would allow the District to be more efficient in hiring needed temporary workers to rake leaves in the Fall. The Employer is often required to hire temporary workers to do the work of the material procession classification, for those employees, who did not volunteer, but were assigned to leaf raking and this existing language leads to inefficiencies. The Employer maintains that if unit members want to rake leaves, they can voluntarily do so under the proposed language. They are offered the work before any temporary workers are hired. Those employees in the material processing classification who voluntarily choose to rake leaves will continue to be replaced by temporary employees, which is a currently permitted practice.

Union Position: The Union objects to having this hiring of temporary worker language in the contract. Their material processing classification members make additional pay when they are assigned to the leaf raking work.

Discussion: The Employer made a reasonable case for the language change. There is no loss to the Union or its members by accepting this language. However, if this recommended language is adopted, it is to be interpreted very narrowly. It is to be strictly limited to the hiring of temporary employees to rake leaves or replace employees in the material processing classification, who have exercised their contractual right to voluntarily rake leaves at a higher pay rate. The language is not a Trojan horse for the hiring of temporary workers for any other purpose without the approval of the Union.

Recommendation: Accept Employer's language as stated above for Article 31.03.

ISSUE 3

RETROACTIVITY OF PAY

Employer Position: The Employer argues that if there is a wage increase, it should only be retroactive for the agreed upon period from October 31, 2007 to December 15, 2007. They argue that there was an Extension Agreement only for that period. The Employer asserts that the Union never submitted proposals for retroactivity as required by the Ground Rules that the parties agreed to. The Ground Rules were submitted into evidence at the hearing.

Union Position: The Union wants complete retroactivity. They argued that there was no intentional delay in the contract negotiations by either party so there is no reason to limit the retroactive pay.

Discussion: The delay in reaching a settlement of this contract cannot be blamed on either party. It did take considerable time to reach the fact-finding stage and to schedule a hearing date agreeable to all of the parties. One side should not be penalized for a delay in reaching a settlement of the Collective Bargaining Agreement.

Recommendation: The request for the retroactivity time limitation is denied. Any wage increase will be retroactive from November 1, 2007 to the date a new contract goes into effect.

ISSUE 4

ARTICLE 41: TOTAL AGREEMENT

Union Position: The Union requests a change in language of Article 41 as follows:

This Agreement represents the entire Agreement between the County and the Union and unless specifically and expressly set forth in the express written provisions of this Agreement, all rules, regulations, benefits and practices previously and presently in effect may **not** be modified or discontinued **without the agreement of the parties.** (bold underscored language proposed change)

current language reads: “may be modified or discontinued at the sole discretion of the County, without any such modifications or discontinuances being subject to any grievance or appeal procedure herein contained

One reason the Union wants to change this language is because they believe Arbitrator

Mancini relied on this language to rule against them on the Holiday pay issue. The Union is also very concerned about the approach taken by the new management at the Solid Waste Management District, which is working to improve efficiency and productivity. The Union suspects the new manager will rely on this language to continue to change existing past practices and ignore existing written agreements between the parties, without notifying or negotiating with the Union. Therefore they are asking for the above language.

Employer's Position: The Employer argues that to accept the Union proposal obliterates the Total Agreement language and is a significant erosion of Management rights.

Discussion: At the hearing it did appear that there was some lack of clarity about the standing of previously negotiated side agreements signed by the parties.

Recommendation: The following language is recommended for Article 41.01 Total Agreement.

- 41.01 (a) This Agreement represents the entire Agreement between the County and the Union and unless specifically and expressly set forth in the express written provisions of this Agreement, all rules, regulations, benefits and practices previously and presently in effect may be modified or discontinued at the sole discretion of the County, without any such modifications or discontinuances being subject to any grievance or appeal procedure herein contained.
- (b) Any and all written agreements (existing and future) that have been signed by the parties cannot be altered without the agreement of the parties. Written and signed agreements between the parties are subject to the Grievance and Arbitration Procedures provided by this Agreement.

ISSUE 5

WAGES

Included in the issue of wages is the issue of the pay rate for the Mechanic 1 and Mechanic II positions.

Union Position: The Union requests that the Mechanic 1 and Mechanic II job classification wage be the same as the wage paid by the Portage County Engineer to its Mechanic 1 and II positions. In addition to the pattern bargaining argument, the Union cited a supplemental report issued by Fact-Finder Robert G. Stein on August 14, 2006 to an earlier Fact-finding report for this bargaining unit and the Solid Waste Management District. In his supplemental report Stein wrote “However, it is also recommended that as the positions of Mechanic 1 and Mechanic II evolve, the parties continually benchmark other positions in similar jurisdictions in order to assure a competitive wage is being paid.” The Union argues that they do the same work as the Engineer and this proposed wage rate is equitable.

Employer Position: The Employer opposes raising the pay of this classification to the rate paid by the County Engineer’s office.

Recommendation: The rate of pay for Mechanic 1 will be raised to \$16.78 and Mechanic II will be raised to \$18.01. Those rates will be increased at the recommended percentage rate offered below, commencing November 1, 2007 and receive the recommended pay increases for November 1, 2008 and November 1, 2009.

Percentage Wage Increase for all unit members:

Union Position: The Union is requesting a pay raise of 6%, 6%, 6%.

The Union offered both internal and external comparables to support its wage increase proposal. The Union offered data to support their argument that the Portage County Solid Waste Management Workers and Truck Drivers were paid less than comparable workers in the region both at the starting wage rate and after five years and then at the top of the scales. Wage data for Sanitation Refuse workers was offered from the cities of Akron, Canton, Cuyahoga Falls, Massillon, Warren, and Youngstown. The union argued that the District workers are falling significantly behind comparable employees in the region.

The internal comparisons show that the average percentage contract increase was slightly below or at 3% for the other Portage County bargaining units.

The Union does not dispute the need for capital improvement which is central to the Employer's argument (see below) but these improvements are not to be made on the backs of the Union employees.

Employer Position: The Employer is offering raises of 2%, 2%, 2%. The Employer presented data that showed the amount of recyclable waste collected by the District has been declining in recent years. This is a source of revenue for the District. The increase in the price paid for recycled materials has kept the District from suffering

from greater financial losses. The Director cited that a Canadian firm was in the County collecting newspaper for recycling. He argued that the District needs to be more competitive and in order to do that, it needs to purchase a lot of new equipment. The list and estimated cost of the equipment was entered in the record of this hearing. The District is self-funded and does not have access to other funds other than its existing fee on residents and monies made by selling recycled material. The new management is committed to create new services, modernize the organization and make it more efficient.

The Employer offered its comparables from a Recycling Center in southern Ohio and a land fill in western Ohio. They also offered wage data from Department of Labor Statistics.

Discussion: All of the parties recognized that because of the unique character of the work in the Solid Waste Management District that it is difficult to find comparables that make a compelling case for either party.

There are a number of fiscal challenges facing this District. The decline in the number of tons of recyclables collected in recent years should be a concern to all of the parties, since that has an impact on the District's revenue. The Employer did not make an inability to pay argument. However, the economic downturn in the national economy and especially in this region's economy indicates that the next few years will be difficult for the private and public sector in northeast Ohio.

Recommendation: 1st year 2.5%; 2nd year 3%; 3rd year 3%

To be retroactive back to November 1, 2007.

ISSUE 6

LONGEVITY PAY

Union Position: The Union proposes a Longevity pay scale. They request the same longevity pay that the County Sheriff's Department employees receive. The Sheriff's longevity pay scale was offered into evidence. It was a lump sum supplement based on years of service divided over the number of pays in a year. Some of the same comparables offered into evidence for the Union's wage increase proposal were offered in support of this language. (See Issue 5 above).

Employer Position: The Employer argued that the only longevity scale in the non-conciliation contracts in Portage County was for Jobs and Family Services. It is much more modest than the Sheriff Department's longevity pay and was necessary to implement because Jobs and Family Services was losing employees. The Employer also argued that the employees on the District do not require any special education or training, and that the few that do need training receive a wage premium. The Employer also argued that the District is not losing employees so there is no need for longevity pay.

Recommendation: Proposed language for Longevity pay is not recommended.

ISSUE 7

HEALTH INSURANCE

Employer Position: The Employer is offering entirely new language for this contract which reads as follows:

32.01 The Employer will provide to employees the same medical insurance coverage, and upon the same terms and employee conditions, if any, as that provided by the Portage County Commissioners for their other county employees.

According to the Employer, the above language exists in every other non-conciliation contract in the County. The Employer maintains that adoption of this language in this contract will allow for greater flexibility for the County to design and purchase health insurance at a lower cost for all county employees. The County is self-insured and argues it needs the flexibility in the event of a catastrophic claim.

In 2008, the employee pays a health insurance premium share of \$33/month for a single health plan and \$86/month for a family health plan. These employee premium sharing costs amount to 8.7% of the total cost of the premium.

The District/County take pride in the fact that they have kept health insurance costs down. They point out that the statewide averages for health insurance are much higher than the current county health plans. The Employer maintains that to successfully continue to maintain their control over health insurance costs, they need this language change in this contract.

Union Position: The Union is opposed to the Employer's proposed language change on health insurance. They support the existing language and ask for additional language to freeze the premium share at the current rate. The Union believes that the

current language or the proposed Employer language offers them no protection from excessive premium increases that will make it impossible for their members to continue to have health insurance.

The Union also has special interest in retaining 32.01 (b.):

The County expressly reserves the right to change coverage or carriers so long as the new coverage is substantially equal to or better than the existing coverage.

The Union believes that this language protects them from a substantial change in benefits and requires the Employer to negotiate any significant change in health insurance benefits with them.

The Union is also leery of the Employer's proposed language changes on this issue because of the way the premium sharing was arrived at. Originally, premium sharing by this unit was contingent on the County Sheriff's labor contract adopting premium sharing. The Employer took a different approach to reach premium sharing for the non-conciliation unions. This Union did agree to premium sharing for the last year of the existing contract but some distrust remains. The Union's concern over the proposed language change not only is about benefit changes, it is also about the fact that the language allows the employer to set premium sharing rates without negotiating them with the Union.

The Union argues that the County has successfully been able to keep health insurance premiums low up to this point, and that existing language was not a deterrent to that success.

Discussion: Health insurance has become the central issue in many Collective Bargaining Agreements. In this instance, the Employer is asking the Union to give up language that the Union believes protects its health insurance benefits. The Employer's strongest argument is one of pattern bargaining. However, that pattern exists only in the non-conciliation contracts. The pattern bargaining argument is compelling on this issue, however as long as the conciliation units do not have this language in their contracts, the weight of the argument is weakened. The Union does recognize that the word "substantial" in 32.01 (b) already gives the county flexibility.

Recommendation: The following language is recommended:

Article 32 Insurance

32.01 The County will provide hospitalization and major medical coverage under the current Portage County Health Benefit Plan.

- a. If an employee and spouse are both employed by Portage County, one shall be designated the employee and the other the dependent under the family plan.
- b. The County expressly reserves the right to change coverage or carriers, so long as the new coverage is substantially equal to or better than the existing coverage.
- c. The premium share paid by the employee for health insurance is not to exceed the current 8.7% in the first year of the contract. It is not to exceed 9% in the 2nd year of the contract; and it is not to exceed 10% in the 3rd year of the contract.

ISSUE 9
BOOT ALLOWANCE

This final issue surfaced during the pre-hearing. This is new contract language which was tentatively agreed to. When the parties were reviewing the Tentatively Agreed language during the pre-hearing, an issue arose over the month in which the first boot allowance will be made available for the employees, since this contract has not been settled and months have passed. The language is offered below:

ARTICLE 26.02 (new)

All employees shall be required to wear boots having sufficient protective qualities as determined and directed by the Employer. In _____ of each year, the Employer will provide Employees with a boot allowance of up to One Hundred and Twenty-five (\$125) dollars through an annual purchase order.

Employees reporting to work without the required boots will not be permitted to begin work. The Employee will be considered absent without leave until he returns to work with the proper footwear.

Union position: The Union wants the language which they maintain was tentatively agreed to: “In November of each year, the Employer will provide Employees with a boot allowance...”

They interpret that to mean that the employee will receive three pairs of boots over the life of this contract when it is settled.

Employer position: The employer wants the following language, “Upon execution and on the anniversary in each year.” They interpret this language to mean that the employee will receive two pairs of boots during the life of the contract.

Discussion: The Employer makes a valid point. There might be some unnecessary cost and inconvenience to the Employer because of the delay in settling this contract. However, this Boot allowance will likely be long standing language in this contract, and as this contract matures, the November date seems to make sense in the long term.

Recommendation: The language which was tentatively agreed to:

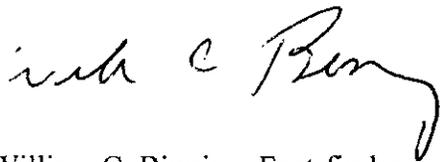
Article 26.02 (New)

All employees shall be required to wear boots having sufficient protective qualities as determined and directed by the Employer. In November of each year, the Employer will provide employees with a boot allowance of up to One Hundred and Twenty-five (\$125.00) dollars through an annual purchase order.

Employees reporting to work without the required boots will not be permitted to begin work. The Employee will be considered absent without leave until he returns to work with the proper footwear.

The tentative agreements reached by the parties are part of the recommendations offered in this fact-finding report.

The Fact-Finder respectfully submits the above recommendations to the parties on this 8th day of March 2008 in Mahoning County Ohio.

A handwritten signature in cursive script, appearing to read "William C. Binning". The signature is written in black ink and is positioned above the printed name.

William C. Binning, Fact-finder