

Before Louis V. Imundo, Jr., Fact Finder

STATE EMPLOYMENT
RELATIONS BOARD

In the matter of fact finding between

2008 OCT 15 P 1:14

Richland County Commissioners

and the

American Federation of State, County, and Municipal Employees and its Local No. 3388

SERB Case No. 07-MED-12-1248

The Fact-Finder was jointly selected by the Parties.

This matter was heard before Louis V. Imundo, Jr., Fact Finder, in Mansfield, Ohio on September 30, 2008

1.0 Introduction

1.1 Appearing For The Commissioners

- Harry M. Welsh, Attorney at Law
- Kelly Cicolani, Director of Human Resources
- Cathy Mosier, Purchasing Director

1.2 Appearing For The Union

- Roberta Skok, Regional Director
- Rachel Stephens, Purchasing Coordinator

2.0 Unresolved Issues

Article 12 – Hours Of Work/Overtime

Article 21 – Sick Leave

Article 28 - Holidays

Article 29 – Personal Days

Article 32 – Wages

Article 42 – Uniforms

Article 43 - Duration

The work in progress Agreement is the first between the Parties. Through negotiations the Parties had tentatively agreed on a total of thirty-nine (39) articles.

ARTICLE 12 – HOURS OF WORK/OVERTIME

It was Management's position that they should have flexibility in scheduling employees' regular work hours. It was the Union's position that employees should have fixed regular work hours.

In the Fact Finder's opinion, unless the nature of employees' work and the work environment dictates that employees' regular work schedules be flexible, it is ill advised to allow Management to have such discretionary authority. People are creatures of habit and from psychological and social perspectives function better when they have a routine and a sense of order in their lives. In the Fact Finder's opinion, the nature of the work performed by bargaining employees is not such that flexible work schedules are necessary. In addition, their work environment does not require flexible regular work schedules. In the Fact Finder's opinion, giving Management the authority they seek would serve no useful purpose and could lead to an abuse of discretion. In conclusion, it is the Fact Finder's recommendation that the workweek be five consecutive days, Monday through Friday, eight set hours a day.

It was the Union's position that bargaining unit employees should have paid lunch time and paid break times. The Union sought a one-hour paid lunch break and two paid 15 minute break times. Management opposed the paid lunch hour and did not express objection to the paid break times.

The record shows that some County employees enjoy paid lunch time. The majority of these employees are either subject to call out/on-call or work at their consoles during lunch time. The bargaining unit employees, who currently enjoy paid lunch time, are not subject to being called out nor are they on-call during lunch time. Management pointed out that most of the County's employees do not have paid lunch time and Management is currently negotiating to eliminate paid lunch in other agreements.

In the Fact Finder's opinion, notwithstanding the Union's suggestion that Management wants to eliminate paid lunch time for the bargaining unit's members because they sought union representation, there is no sound reason to continue this benefit. In the Fact Finder's opinion, paid break times is deeply rooted in employer – employee relationships and this practice should be maintained. In conclusion, the Fact Finder recommends no paid lunch time and two paid 15 minute daily work breaks.

It was the Union's position that employees be paid overtime for all hours worked over forty (40) hours a week while they are in pay status. This means that time off for excused sick leave, vacation, holidays or any other valid reason would be counted

toward computing the forty (40) hours after which overtime would be paid. Management pointed out that under the Union's proposal an employee could be off work Monday through Thursday on vacation or sick leave, come to work on Friday, work overtime that day and be paid time and one half for all time worked in excess of the eight hours on Friday. In the Fact Finder's opinion, while the example used by Management is highly unlikely to occur the point is well made. In addition, as Management pointed out, what the Union seeks is inconsistent with the Fair Labor Standards Act. The Fact Finder agrees with Management and recommends that only the hours actually worked in a work week be counted toward computing forty (40) hours after which overtime would be paid.

The Parties were in agreement with respect to compensatory time. Management said they were willing to pay employees for hours that the Purchasing Department is closed due to inclement weather. In the Fact Finder's opinion, employees should be paid for all work time lost any time the Purchasing Department is closed by the County due to inclement weather or other acts of God during their regularly scheduled work times.

The Fact Finder recommends that the Parties adopt the following language:

ARTICLE 12 – HOURS OF WORK/OVERTIME

Section 1. The standard workweek for full-time employees of the Purchasing Department bargaining groups shall be as follows:

The workweek shall be forty (40) hours consisting of five (5) consecutive days of eight (8) hours each day. The workweek shall be Monday through Friday 8:00 a.m. to 5:00 p.m. with one (1) hour unpaid lunch and two (2) fifteen (15) minute breaks.

Section 2. All overtime hours will be paid at the rate of time and one-half of the regular rate of pay for hours worked in excess of forty (40) hours in a scheduled work week. Authorization to work overtime will be solely at Management's discretion.

Overtime hours will be submitted for payment, if the employee elects overtime pay in lieu of compensatory time, by the next pay period following the pay period the overtime was earned.

Section 3. Compensatory Time. In lieu of overtime pay, an employee may request compensatory time at the rate of time and one-half for the hours of overtime actually worked; provided that no employee may accrue entitlement to compensatory time in excess one hundred twenty (120) hours. Compensatory leave time must be approved in advance and shall be granted only in increments of not less than one-half (1/2) hour unless mutually agreed to by the parties.

Section 4. If the Purchasing Department is closed during regularly scheduled work times due to inclement weather or other acts of God employees will be paid at their regular rate of pay for all of the time they would have worked had the Department not been closed. Employees who are on vacation or any kind of approved leave are not eligible to be paid on those same days that the Department is closed.

ARTICLE 21 – SICK LEAVE

The Union proposed language, which is the same as what appears in other bargaining unit agreements with respect to sick leave incentive and sick leave conversion. In their pre-Hearing submission to the Fact Finder Management expressed concerns about what the Union had argued for in Section 5. In the Fact Finder's opinion, the Union's proposed language for Section 5 does away with Management's concern.

Management disagreed with the Union's proposed language for Sections 13 and 13.1. It was Management's position that the purpose of sick leave is to protect employees from a loss of income because of illness. Management further argued that the conversion plan is even less desirable because it converts sick leave to compensatory time.

In the Fact Finder's opinion, Management's arguments were well made. Sick leave is a benefit that should only be used when needed. When the County first negotiated an agreement that provided for a bonus and/or a conversion they not only set a costly precedent they also changed the character of sick leave. Employees' perceptions of sick leave likely changed from seeing it as a form of income protection to a form of legitimate time off. The record establishes that eleven (11) other bargaining units, a number of which have a large number of people, have sick leave incentive bonus and conversion language in their agreements. In the Fact Finder's opinion, this bargaining unit with its two members is not the place to start taking this negotiated benefit away from employees.

In conclusion, the Fact Finder recommends that the Union's proposed language be adopted.

ARTICLE 21 – SICK LEAVE

Section 1. Sick Leave Accumulation.

Each employee shall earn sick leave at the rate of 4.6 hours for each eighty (80) hours in active pay status.

Section 2. Charging of Sick Leave.

Sick Leave shall be charged in minimum units of one-half (1/2) hour except for medical appointments which shall be charged for actual time used. An employee shall be charged for sick leave only for days upon which he would otherwise have been scheduled to work. Sick Leave payment shall not exceed the normal scheduled work day or work week earnings. An employee who is involuntarily sent home shall not be charged sick leave for the absence unless the employee has a documented communicable disease or condition that endangers the health of fellow employees or the public.

Section 3. Uses of Sick Leave.

A. Sick Leave shall be granted to an employee upon approval of the Employer and for the following reasons:

1. Illness or injury of the employee or a member of his immediate family.
2. Medical, dental, or optical examinations or treatment of the employee or a member of his family, which requires the employee's presence. It is understood the employees are expected to return to work after such examinations if there are two (2) or more hours of their shift left to be worked.
3. *If a member of the immediate family is afflicted with a contagious disease which requires the care and attendance of the employee or when, through exposure to a contagious disease, the presence of the employee at his job would jeopardize the health of others.*
4. Pregnancy and/or childbirth and related conditions related thereto inclusive of leave for male employees for the care of the employee's wife and family during the postnatal period of the employee's presence is necessary.

B. Definitions of Immediate Family:

Grandparents, brother, step-brother, sister, step-sister, brother-in-law, sister-in-law, daughter-in-law, son-in-law, father, step-father, father-in-law, mother, step-mother, mother-in-law, spouse, child, step-child, grandchild, a legal guardian or other person who stands in place of a parent (*loco parentis*).

Section 4. Evidence Required for Sick Leave Usage.

The employee shall furnish the Employer a standard written signed statement stating that the employee wishes to use sick leave. Falsification of either a written signed statement or physician's certificate shall be grounds for disciplinary action, including dismissal. The employee shall present satisfactory evidence to justify use of sick leave. The Employer may require proof of illness from: (1) employees who have been absent three (3) or more consecutive workdays and, (2) from employees who have been disciplined within the preceding six (6) months for excessive absenteeism. The

employee shall furnish the Employer a doctor's statement or other verification, that is acceptable by the employer, when an employee goes to a doctor's appointment or has any testing done during working hours and the employee uses sick leave.

Section 5. Notification by Employee.

When an employee is unable to report to work, he/she shall call off as follows:

All requests for time off shall be made on approval request forms. Requests shall be submitted to the Director of Purchasing. Requests for time off shall not be approved unless signed and returned by Employer.

Employees shall call the office number to call off prior to beginning of the work day stating the reason, and if the Supervisor is not present or does not answer the employee may leave a message on the answering machine.

Section 6. Abuse of Sick Leave.

Employees failing to comply with sick leave rules and regulations shall not be paid and shall be subject to Employer's progressive disciplinary procedure. Application of sick leave with intent to defraud will result in dismissal and refund of salary or wage paid.

Section 7. Physician Statement.

If medical attention is required, the employee may be required to furnish a statement from a licensed physician notifying the Employer that the employee was unable to perform his duties. Where sick leave is required to care for a member of the immediate family, the Employer may require a physician's certificate to the effect that the presence of the employee is necessary to care for the ill person or in the case of childbirth and other conditions related thereto during the post-natal period that the presence of the employee is necessary to care for the employee's wife and family.

Section 8. Physician Examination.

The Employer may require an employee to take an examination, conducted by a licensed physician, to determine the employee's physical or mental capability to perform the duties of the employee's position. If found not qualified, the employee may be placed on sick leave, leave without pay, or disability separation. The cost of such examination shall be paid by the Employer.

Section 9. Expiration Sick Leave.

If illness or disability continues beyond the time covered by accumulated sick leave, the employee may be granted a leave of absence without pay or a disability separation in accordance with the provisions set forth in this Agreement.

Section 10. Work Less Than a Normal Day.

If a licensed physician approves an employee to return to work for less than their normal work day, the Employer may permit the employee to work less than their normal work day for up to one (1) calendar month. The Employer may, upon recommendation from the employee's physician and at the Employer's discretion, extend the period of time the employee may work shortened days an additional calendar month. In no event, unless mutually agreed between the Employer and the employee, shall an employee be permitted to work shortened days for more than three (3) consecutive calendar months.

Section 11. Transfer Credit.

Upon transfer from one division or department of the County, to another, unused sick leave days shall continue to be available for the transferred employee's use.

Section 12. Reinstatement Credit.

An employee covered by this Agreement who leaves public employment and who is reinstated to County services, not paid as severance, shall have any unused sick leave accrued existing at the time of his/her prior separation from County service applied to his/her credit.

Section 13. Sick Leave Incentive Bonus

An employee who uses no sick leave each calendar month shall receive two (2) hours of personal leave for each month an employee uses no sick leave. Personal Leave shall be scheduled at a time mutually agreeable to the employee and his/her supervisor.

Section 13.1 Partial Annual Sick Leave Conversion

An employee who has five hundred (500) hours of accumulated sick leave "banked" may be the end of the first pay period in January of each year convert up to thirty-two (32) hours of unused accumulated sick time from the preceding year into compensatory time. Once said sick time has been converted into compensatory time, it shall not be converted back into accumulated sick time.

Section 14 Sick Leave Donation.

This policy, pursuant to Ohio Revised Code Section 124.391, has been adopted by the *Richland County Board of Commissioners, for all agencies and Appointing Authorities* not otherwise covered by collective bargaining agreements.

ARTICLE 28 – HOLIDAYS

Management was willing to agree to the Union's proposed language with two exceptions. The first exception was the two additional one half day holidays, the day before Christmas, the day before New Year's and the employee's birthday. The second exception was the holiday rotation language in Section 8.

In the Fact Finder's opinion, County employees in various bargaining units have very competitive paid holidays when compared to similarly situated employees in other counties in this geographic area of the State. In the Fact Finder's opinion, in today's economic climate employers have to get more done with less and optimize utilization of their human and non human resources. In the Fact Finder's opinion, considering all the kinds of paid time off employees currently enjoy it would be counter intuitive and fiscally irresponsible to give employees more paid time off.

The Fact Finder agrees with Management's argument that in view of the fact that the bargaining unit consists of two employees who work in one department the Union's proposed Section 8 language is wholly unnecessary.

The Fact Finder recommends that the Parties adopt the following language:

ARTICLE 28 – HOLIDAYS

Section 1. Employees are entitled to the following paid holidays:

NEW YEAR'S DAY	1 st day of January
MARTIN LUTHER KING DAY	3 rd Monday of January
PRESIDENTS' DAY	3 rd Monday of February
MEMORIAL DAY	Last Monday in May
INDEPENDENCE DAY	4 th day of July
LABOR DAY	1 st Monday in September
VETERANS DAY	11 th day of November
THANKSGIVING DAY	4 th Thursday of November
DAY AFTER THANKSGIVING	4 th Friday of November
CHRISTMAS DAY	25 th day of December

*Vacation time that is used in conjunction to a holiday will be rotated among the employees wishing to have those days off.

Section 2. To be entitled to holiday pay, an employee must be on the active payroll (i.e. actually receive pay) during the week in which the holiday falls, and must have worked his last scheduled working day prior to the holiday and his first scheduled working day after the holiday within the employee's regularly scheduled work week, unless such absence has been approved by the Employer.

Section 3. In the event that an aforementioned holiday falls on Saturday, the Friday immediately preceding shall be observed as the holiday. In the event that any of the aforementioned holidays fall on Sunday, the Monday immediately succeeding shall be observed as the holiday.

Section 4. If an employee's work schedule is other than Monday through Friday he is entitled to holiday pay for holidays observed on his day off, regardless of the day of the week on which they are observed.

Section 5. Any work performed by an employee on any of these days listed in Section 1 shall be paid at the rate of two (2) times the employee's straight time hourly earnings.

Section 6. Full-time employees shall be paid for eight (8) hours at their straight time hourly rate for each of the holidays listed in Section 1 above when no work is performed on such holidays. Part-time employees shall be granted straight time hourly rate for the hours they normally would have worked for the holiday.

Section 7. If a holiday occurs during a period of paid leave, the employee will draw normal pay and will not be charged for such leave.

ARTICLE 29 – PERSONAL DAY

The Union proposed language that is the same for other bargaining units of the County. Management rejected the Union's proposed language and argued that employees have enough paid time off and do not need the three personal days that the Union seeks.

In the Fact Finder's opinion, the Union's proposed three days is excessive and Management's proposed no days is unrealistic. Considering that comparables show that many other County employees enjoy this benefit the Fact Finder believes that the two employees in this unit should have this benefit as part of their total compensation package. The Fact Finder recommends two days.

The Fact Finder recommends that the Parties adopt the following language.

ARTICLE 29 – PERSONAL DAY

Each employee in the bargaining unit, except newly hired probationary employees may take up to two (2) personal days off with pay per year (year defined as calendar year), at a time mutually agreeable to the employee and his supervisor. Newly hired probationary employees shall become eligible for usage of personal days upon completion of their probationary period to be taken at a time mutually agreeable to the employee and his supervisor.

ARTICLE 32 – WAGES

The Union proposed a four and one half (4.5) percent wage increase for each year of the Agreement retroactive to October 1, 2007. The Union proposed longevity pay in the amount of fifteen cents (\$.15) per hour for each full year of service. The Union also proposed an equity adjustment of three dollars and fifty cents (\$3.50) per hour for Ms. Thompson, the current Purchasing Analyst. Management proposed a fifteen cents (\$.15) per hour wage increase for each year of the Agreement, no longevity pay and no equity adjustment.

In the Fact Finder's opinion, the Union's proposed wage increase is too high considering the current economic climate and what is likely to exist for the next couple of years. In the Fact Finder's opinion, Management's proposed increase is too low and considering inflation would amount to a de facto wage cut. The Fact Finder understands and appreciates why Management wants to get away from percentage wage increases and go to cents per hour wage increases. In the Fact Finder's opinion, considering that the bargaining unit consists of two individuals the cents per hour approach is unnecessary. After considering the Parties' oral arguments and after reviewing the supporting documentation the Fact Finder recommends a three (3.0) percent hourly wage increase for each year of the new Agreement.

The Fact Finder understands how the idea of longevity pay, which is virtually unknown in the private sector, came into existence. In the Fact Finder's opinion, when employees' total compensation package, i.e. wages and benefits, is competitive there is no need to either create, or if such already exists continue to maintain the notion of longevity pay. In the Fact Finder's opinion, a provision for longevity pay is unwise and not justified.

Based on the Parties' oral arguments and the written information the Union relied on to support their position it is the Fact Finder's opinion that the Purchasing Analyst position is underpaid and a one time equity adjustment is warranted. The recommended equity adjustment is two dollars (\$2.00) an hour.

The Fact Finder recommends that the three (3.0) percent hourly wage increase for both individuals be retroactive to January 1, 2008 and that the two dollars (\$2.00) equity adjustment for the Purchasing Analyst be retroactive to the same date.

The Fact Finder recommends that the Parties adopt the following language:

ARTICLE 32 – WAGES

Section 1. Wage Scale.

January 1, 2008 - Three (3.0) percent hourly wage increase for all full time bargaining unit employees.

January 1, 2009 - Three (3.0) percent hourly wage increase for all full time bargaining unit employees.

January 1, 2010 - Three (3.0) percent hourly wage increase for all full time bargaining unit employees.

Section 2. New Position.

In the event the Employer creates a new position in the bargaining unit and it would be staffed by a person with a certificate/license or journeyman status, the parties will negotiate the rate of pay.

Section 3. The starting rate for new hires will be \$11.00 an hour.

Section 4. Retroactive to January 1, 2008 the Purchasing Analyst position will receive a one time two dollar (\$2.00) per hour equity adjustment.

ARTICLE 42 – UNIFORM

The Union proposed that the County provide five (5) polo shirts that can be worn in the office or when employees are conducting the Richland County Auction. Management was totally opposed to the idea.

For reasons discussed the County cannot afford to spend monies on things that could be perceived as being lavish or frivolous. While, at present, the County appears to be in sound financial condition, the costs associated with the new jail may prove to be far greater than what had been projected. More significant is the fact that the country is in dire financial straits. What has happened in the financial markets has and will continue to adversely affect local economics. In the Fact Finder's opinion, while the cost of the polo shirts is small the negative message this visible expenditure might send to other

County employees and the public at large could be very large. In the Fact Finder's opinion, polo shirts should not be provided to employees.

ARTICLE 43 – DURATION OF AGREEMENT

The Parties tentatively agreed to a three (3) year Agreement. The Fact Finder recommends that the Agreement be for three (3) years and that it goes into effect when the Union and the Commissioners ratify it.

The Fact Finder recommends that the Parties adopt the following language.

ARTICLE 43 – DURATION OF AGREEMENT

Section 1. This Agreement shall be effective as of _____ and shall remain in full force and effect until _____.

Section 2. If either party desires to modify or amend this Agreement, it shall give written notice of such intent no earlier than one hundred and fifty (150) calendar days prior to the date, nor later than one hundred and twenty (120) calendar days prior to the expiration date of this Agreement. The parties shall commence negotiations within two (2) calendar weeks upon receiving notice of intent unless mutually agreed otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Collective Bargaining Agreement and Memorandum, this _____ day of _____ 2008.

The Fact Finder recommends that all tentatively agreed on articles be memorialized in this Agreement.

October 14, 2008

Date



Louis V. Imundo, Jr.
Fact Finder