

IN THE MATTER OF FACTFINDING

BEFORE

STATE EMPLOYMENT
RELATIONS BOARD

NORMAN R. HARLAN, FACTFINDER

2009 JUL 10 A 10:10

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TEAMSTERS LOCAL UNION NO. 100

CASE NO. 08-MED-01-0038

AND

HEARING: JUNE 16 , 2009

CLERMONT COUNTY COMMISSIONERS

REPORT: JULY 10, 2009

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APPEARANCES

UNION

SUSAN JANSEN, ATTORNEY, DOLL, JANSEN & FORD, PRESENTING
RON BUTTS, TEAMSTERS UNION BUSINESS AGENT, ASSISTING
KEITH HAYDEN, PRESIDENT, LOCAL NO. 100

EMPLOYER

PAUL BERNINGER, ATTORNEY, WOOD & LAMPING LLP, PRESENTING
SUKIE SCHEETZ, DIRECTOR, CLERMONT COUNTY OMB
THOMAS C. YEAGER, DIRECTOR, WATER RESOURCES DEPARTMENT
ROBERT E. SANDER, DIRECTOR, HUMAN RESOURCES

BACKGROUND

Clermont County is located in western Ohio. Its County Seat is Batavia, which is about fifteen miles east of downtown Cincinnati. It is bordered on the south by the Ohio River; on the southeast by Brown County; on the east by highland County; on the north by Warren County; of the northeast by Fayette County and on the east by Hamilton County. Its population is between 190,000 and 195,000.

The County has three (3) elected Commissioners who are the County's fiscal

officers. The Commissioners allocate funds to various County agencies or departments. There are Collective Bargaining Agreements (CBA's) in place with the Sheriff's Department and the FOP/OLC (four CBA's); with the Department of Jobs and Family Services and AFSCME and with the Clermont County Board of MRRD and the Clermont County Special Education Association. The County Board of MRRD operates independently but the Commissioners manage its funds on a pass-through basis.

Historically another Department was know as the Clermont County Sewer District. From 1985 to 1999 its employees were represented by the American Federation of State, County and Municipal Employees (AFSCME). From 2000 to 2004 the County contracted water and sewage services. "In 2004 the County resumed operations of the water supply and waste water treatment and reemployed many of its former employees." (Union Position Paper [UPP], p. 3.) The Department was renamed the Water Resources Department. "TheDepartment includes four (4) divisions: The Operations Division, Engineering Division, Storm Water Management Division, and the Office of Environmental Auality." Id., 2.

Teamsters Local Union No. 100 was certified in October, 2007 as the bargaining agent for the Department's full-time Maintenance and Operations employees which includes the following Classifications: WSD Operator 1- WR, WSD Operator 2 - WR, WSD Operator 3 - Wr, WSD Operator 1 - WW, WSD Operator 2 - WW, WSD Operator 3 - WW, WSD Lab Technician - WR, WSD Lab Technician - WW, Electrician 3, WSD Maintenance Technician and WSD Maintenance Specialist. The Salary Grades vary from Grade 9 for the Lab Technicians to Grade 16 for the Electrician and the WSD Operator 3 - WW as well as the WSD Operator 3 - WW.

A Notice to Negotiate was served on the County January 15, 2008. Bargaining began February 8, 2008 and a Tentative Agreement was reached January 8, 2008. It should be noted the Parties engaged in serious bargaining as shown by their reach-

ing agreement on forty three(43) provisions. The Tentative Agreement was not ratified and the impasse resolution procedures were initiated. (Employer's Pre-Hearing Statement, p. 1)

".....The County approved a three percent (3%) increase in the wage appropriation for all departments, with individual wage adjustments retroactive to the first pay period in January. The Union was advised that, unless it objects, the process of wage adjustments for unit members would continue under the County plan. The Union did not object and the wages of unit members were adjusted for 2008 based on 2007 performance." Id., 2. The 3% increase represents three percent of the "wage appropriation" for all departments. The increase for individual employees was based upon merit. Some employees received more than 3% and some received less.

The County and the Teamsters agree the only remaining Issue is Wages.

"The County's last proposal on wages was a wage freeze through February, 2010 with a reopener on wages January, 2010 and again in December, 2011. The Union proposal of January 8, 2008 called for wage increases from four percent (4%) to nine percent (9%) depending upon where an employee would be placed on a five step salary schedule, and for additional four percent (4%) increases in the schedule each year of the agreement." Id., 3

As noted the Parties reached Tentative Agreement on forth three (43) Articles which shows they engaged in serious bargaining. Besides the current economic situation in Clermont County, changing from the County's Pay-for-Performance Wage Schedule or Merit Pay System to a "Traditional Schdule" presents a unique problem. This problem is further complicated, in some cases, by employees within the same classification being paid as much as forty (40) percent less for performing the same duties.

THE HEARING

The Parties sent their Position Papers a few days earlier than required by the OHIO REVISED CODE (O.R.C.) whis is appreciated. Both agreed to Mediation in an effort to resolve the remaining Issue; WAGES.

The Teamsters and Management made OPENING STATEMENTS and discussion took place for about seven (7) hours. They concluded no agreement could be reached and closing arguments were made. The issuance of the Factfinding Report was discussed. The Factfinder noted the fourteen (14) day requirement in O.R.C. 4117-9-05(L). The Parties mutually agreed to extend the fourteen days until Friday, July 10, 2009. The Factfinder was advised they would send written notification to the STATE EMPLOYMENT RELATIONS BOARD (S.E.R.B.) as required by the CODE.

POSITION OF THE PARTIES

UNION

The Teamsters examined the history of the Water Resources Department. The Union discussed the COLLECTIVE BARGAINING AGREEMENT (CBA) with the AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES (AFSCME) which expired in 1999 and was not renewed. It noted the CBA contained various classifications; a "traditional" wage structure wherin employees within the same classification received the same rate of pay; the same percent increases and step increases. "An employee reached top pay nine (9) years after being hired." It noted from 2000-2004 the County contracted the water and waste water services.

The Union addressed the Wage Structure established by the County for the Water Resources Department in 2004. (See APPENDIX A) It pointed out the Schedule

is not competitive, particularly the starting rates or Minimum as referred to in the Schedule. It stressed the Schedule shown "Minimum," "Median," and "Maximum" with no "Step increases." It noted significant differences of pay within Classification, attributing this in part to favoritism or disparate treatment.

"In negotiations, on January 8, 2009 the County proposed a wage reopener on January 1, 2010 and January 1, 2011. The County proposed a contract from March 1, 2009 through February 29, 2012.

In response, the Union proposed reinstating the former Step system with the exception that the nine (9) steps of the former system are reduced to five (5) steps such that an employee reaches top pay within five (5) years of employment. The Union also proposes employees at the top step will receive a 4% wage increase effective January 1 of each year of the collective bargaining agreement. Id., 5. The Union notes the AFSCME Contract contained a traditional pay schedule with step increases and employees reached top pay in nine (9) years. Id, 4. The Union included the AFSCME Contract (1998-99) as an Exhibit.

The Union stressed 2009 increases in CBA's for other County Departments; i.e. MRRD- 3%; Sheriff - 3.5% (for Corporals, Sergeants and Deputies); the Corrections Officers - 3.5% for 2009 and 3% for 2010. All except the Corporals and Sergeants received Step increases.

Since the Parties exchanged Exhibits it is not necessary to list each one. Exhibits deemed most relevant by the Union and Management were discussed. The Union's primary comparable is from Butler County, which borders Hamilton County (Cincinnati area) on its north. Its County Seat, Hamilton, is located about thirty (30) miles northeast of Batavia. This Exhibit shows a 3% increase for 2008 and "5 steps to Top Pay." It does not include the Classification of Electrician which is an active Classification in Clermont County but does include Job Classifications which parallel those of the Clermont County Water Resources Department. Interestingly, the rates of pay between the two Counties are not significantly higher or lower than Clermont County. The Exhibit includes a Job

Posting from Fairfield County for a Lead Operator - Class III License, rate \$20.26 - \$22.51 per hour. The range for this Classification in Clermont County is \$19.09 per hour to \$26.94 per hour which is a significantly higher rate overall. In addition, for Comparables to be meaningful the implied competitor should be within a reasonable commuting distance so it would be worthwhile to leave Clermont County for a new job. Lancaster, the County seat of Fairfield County, is located southeast of Columbus and about a hundred (100) miles one-way. Fairfield County fails as a Comparable based upon the rates as well as the commuting distance and a drive of at least three hours roundtrip. The Exhibit shows a May 27, 2009 Posting for Clermont County for a WSD-Operator 1, a WSD Operator 2 and a WSD Operator 3. The reason(s) for the vacancies is not explained. Also, the Exhibit shows a Posting for a Water Pollution Control Plant Manager for Avon Lake, Ohio. This job is not comparable to any of the Clermont County Classifications. Lorain County, immediately east of Cleveland and some 175 miles from Batavia is mentioned but cannot reasonably be considered as a comparable. The wages for a Lead Operator - Class III are not as favorable and the distance renders it as a non-competitor.

Considerable statistical data was presented plus graphs and charts titled "WORKPLACE DEMOGRAPHICS - ECONOMIC DEVELOPMENT for CLERMONT COUNTY." An independent Auditors Report (Bastin & Company, LLC) and the Clermont County 2009 First Quarter Report (Auditor Linda L. Fraley) were submitted.

The Teamsters urge it is imperative for the current Merit System to be replaced by a traditional wage scale which includes step increases and longevity recognition. The Union notes large differences in pay of employees within the same Classification and with relatively the same length of service. It contends the current system permits favoritism and disparate treatment and under-

mines "the very existence of a collective bargaining agreement." Id. It urges that a "pay-for-performance" system intimidates employees and has a chilling effect upon their ability to exercise their rights under the CBA. The Teamsters stress the other CBA's in force with the County provide step systems and fairly address the classifications within the Units. Finally the Union emphasizes that the Water Resource Department is funded separately from the General Fund "and generates revenue for the County." Id., 6.

EMPLOYER

The Water Resources Department is responsible to provide water, waste water and sewage services for domestic and business customers in Clermont County. The history of the Water Resources Department appears, supra and need not be repeated. The history of negotiations with Teamsters Local No. 100 has also been reviewed but some detail is warranted. When the County terminated the contracting of services it reemployed eighteen (18) former employees. Currently the Department has fifty (50) employees. Management established Classifications, Minimum, Median and Maximum Wage Rates. It is a Merit System, also referred to as a Pay-for-Performance System. Annual evaluations are made. Performance is the primary criteria for wage increases. Traditional longevity-seniority are not part of the evaluation process. However, former employees are credited with "Prior Service Days" and these are considered as part of the merit pay evaluation.

For 2008 the Department decided to grant a three percent (3%) Departmental increase; i.e., 3% of the Departmental budget. It applied its Merit System; some employees received more than 3% and some received less. It discussed its intentions with the Union prior to enacting the increase and advised the Union it would not do so if the Union objected. Obviously the Union was not in a po-

sition to object and the increases were granted on an individual basis. It noted the three percent (3%) increase was placed in the 2008 Budget by the Commissioners when the Budget was finalized in 2007.

Management entered numerous Exhibits related to the economic situation in Clermont County and the State of Ohio as well. It shows the unemployment rate in Clermont County has increased from four and nine tenths (4.9%) to nine-and-a half (9.5%) percent within the past eighteen (18) months. It notes the closing of Batavia Transmissions (Ford) resulting in the loss of eight hundred and twenty two (822) jobs and massive layoffs, such as at Milacron, Inc. affecting six hundred and twenty (620) jobs. It makes the following points in its Position Statement

- a. The County Commissioners do not exceed the previous year's revenue.
- b. GENERAL FUND revenue in 2008 was 1.6% less than in 2007.
- c. Estimated revenue for 2009 is eight percent (8%) less than 2008.
- d. All Departments have been directed to plan for a five percent (5%) decline in the 2010 Budgets.
- e. The Water Resources Department is outside the GENERAL FUND and operates as a public utility. It operates 24/7 and cannot reduce services.
- f. In 2008 Departmental expenses exceeded revenue
- g. Historically the Department maintains a twenty five percent (25%) RESERVE.
- h. Commercial and domestic real estate is declining. Foreclosures are on the rise. Rate increases are exceeded by cost increases.
- i. "Fuel, chemicals, utilities, debt service and personnel costs continue "
- j. Money must be set aside for replacement facilities
- k. The CLEAN WATER ACT increases costs
- l. Bond market interest rates are increasing

- m. "It would be irresponsible for the County to grant wage increases when so many citizens are losing their jobs and their homes." Id.
- n. As a result of a Factfinder's Award & Conciliator's award the Sheriff's Department has been forced to layoff four (4) Corrections Officers and probably 9-10 more based upon the five percent (5%) budget cost anticipated for 2010. Also three (3) Road Patrol positions have not been filled.
- o. It would be extremely difficult to change from the merit pay system to a typical wage schedule. Currently there are 45 rates covering 50 employees. "In some classifications there is a forty percent (40%) differential between the highest and lowest paid employees."
- p. The only way to achieve the type of schedule the Union seeks is to reduce the upper range and distribute the money to all employees irrespective of their performance. Id.6
- q. "While wage rates are frozen in the County's proposal, the parties have reached an agreement on two provisions that can have the effect of generating additional income to unit members. The parties have agreed upon a call-in provision (presumably Article 18) which would allow employees, primarily maintenance employees, to earn as much as Seven Hundred Fifty Dollars (\$750.00) for responding to calls for service outside of regular working hours. The current wage schedule provides a higher pay range for operators with a higher operator's license. Operators can through study, experience and diligent application achieve a higher classification in the pay scale with the potential for a four percent (4%) to seven percent (7%) wage increase moving from an Operator 1 to an Operator 2 and a four percent (4%) to sixteen (16%) increase moving from an Operator 2 to an Operator 3. These advancement opportunities are available to all operators who have not achieved an Operator 3 license and would vary based on their position within their pay range. This process encourages all plant operators to improve their skills and value to the organization. There is no fixed complement at the Operator 3 level. The department would want all Operators to achieve the performance level of Operator 3." Id. 7.

SUMMARY

As noted the Parties engaged in serious collective bargaining for about a year and reached Tentative Agreement on forty three (43) Articles. The Teamsters indicated its wage proposal is not set in stone. The Employer remained steadfast in its position and commented it would be irresponsible to alter its wage proposal. It referenced in specific terms the economy, its long-standing Policy of maintaining a 25% RESERVE and its Policy of not spending "more money in one year than the previous year s revenues." Id. 2

The County Financial Exhibits were explained in detail by County officials and were not challenged for their accuracy. Rather, the Teamsters contend the County is being very conservative and is reluctant to move from its performance based wage schedule to a "traditional" type schedule which is found in virtually all collective bargaining agreements.

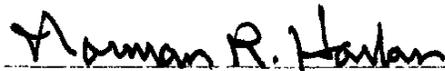
FINDINGS

Based upon the Record as a whole it is apparent the Wage Schedule proposed by the Teamsters cannot be recommended. The Union's desire to rectify what it considers inequities in the current County Merit System is understood, particularly as it relates to employees within the same classification. In a few instances there are employees within the same classification whose hourly rate varies from four to five dollars an hour. However, the evidence also shows the highest paid employees within classification are primarily former employees with considerable prior service. Besides the fact the County has established strong arguments for not agreeing to the Union s Wage proposals which would have been considered liberal even in "good times." attempting to change from the pay for

performance schedule to a "traditional" schedule in one fell swoop is quite speculative. It is also significant that the increases referred to by the Union in the FOP/Sheriff CBA's, MRRD/Special Education Association and Family Services/AFSCME were consummated before the current economic crisis. The Department policy of maintaining a 25% RESERVE can hardly be criticized. Depleting the RESERVE is not an option for a lot of reasons, to include the potential negative impact upon its Bond rating. Its Policy to limit expenses to the prior year's revenue is simply a sound financial decision. The Department operates as a separate entity within the County. It cannot simply draw from the GENERAL FUND. In short, the Water Resources Department must paddle its own boat. The term of the CBA was discussed briefly. It is the considered judgment of the Factfinder it is advantageous to both Parties to assess their positions in two years rather than three years.

RECOMMENDATIONS

1. The term of the CONTRACT will be for two years, commencing March 1, 2009 and expiring February 28, 2011, 11:59 a.m.
2. No increase is recommended for 2010.
3. A Reopener on Wages is recommended effective December 1, 2010.


Norman R. Harlan, Factfinder

Steubenville, Ohio

July 10, 2009

**CLERMONT COUNTY
2008 SCHEDULE OF RATES OF PAY**

	Minimum		Median		Maximum	
	Hourly	Annual	Hourly	Annual	Hourly	Annual
1	\$ 9.08	\$ 18,886.40	\$ 10.95	\$ 22,776.00	\$ 12.81	\$ 26,644.80
2	\$ 9.70	\$ 20,176.00	\$ 11.70	\$ 24,336.00	\$ 13.69	\$ 28,475.20
3	\$ 10.24	\$ 21,299.20	\$ 12.34	\$ 25,667.20	\$ 14.44	\$ 30,035.20
4	\$ 10.82	\$ 22,505.60	\$ 13.06	\$ 27,164.80	\$ 15.29	\$ 31,803.20
5	\$ 11.36	\$ 23,628.80	\$ 13.71	\$ 28,516.80	\$ 16.05	\$ 33,384.00
6	\$ 11.93	\$ 24,814.40	\$ 14.40	\$ 29,952.00	\$ 16.86	\$ 35,068.80
7	\$ 12.47	\$ 25,937.60	\$ 15.05	\$ 31,304.00	\$ 17.62	\$ 36,649.60
8	\$ 13.05	\$ 27,144.00	\$ 15.74	\$ 32,739.20	\$ 18.42	\$ 38,313.60
9	\$ 13.59	\$ 28,267.20	\$ 16.39	\$ 34,091.20	\$ 19.18	\$ 39,894.40
10	\$ 14.16	\$ 29,452.80	\$ 17.08	\$ 35,526.40	\$ 19.99	\$ 41,579.20
11	\$ 14.74	\$ 30,659.20	\$ 17.78	\$ 36,982.40	\$ 20.82	\$ 43,305.60
12	\$ 15.28	\$ 31,782.40	\$ 18.43	\$ 38,334.40	\$ 21.58	\$ 44,886.40
13	\$ 15.82	\$ 32,905.60	\$ 19.09	\$ 39,707.20	\$ 22.35	\$ 46,488.00
14	\$ 16.40	\$ 34,112.00	\$ 19.78	\$ 41,142.40	\$ 23.15	\$ 48,152.00
15	\$ 17.23	\$ 35,838.40	\$ 20.78	\$ 43,222.40	\$ 24.33	\$ 50,606.40
16	\$ 19.09	\$ 39,707.20	\$ 23.02	\$ 47,881.60	\$ 26.94	\$ 56,035.20

	Minimum		Median		Maximum	
	Hourly	Annual	Hourly	Annual	Hourly	Annual
A	\$ 20.94	\$ 43,555.20	\$ 25.57	\$ 53,185.60	\$ 30.20	\$ 62,816.00
B	\$ 22.73	\$ 47,278.40	\$ 27.75	\$ 57,720.00	\$ 32.77	\$ 68,161.60
C	\$ 24.66	\$ 51,292.80	\$ 30.12	\$ 62,649.60	\$ 35.57	\$ 73,985.60
D	\$ 26.75	\$ 55,640.00	\$ 32.66	\$ 67,932.80	\$ 38.56	\$ 80,204.80
E	\$ 29.02	\$ 60,361.60	\$ 35.44	\$ 73,715.20	\$ 41.85	\$ 87,048.00
F	\$ 32.65	\$ 67,912.00	\$ 39.87	\$ 82,929.60	\$ 47.09	\$ 97,947.20
G	\$ 36.73	\$ 76,398.40	\$ 44.85	\$ 93,288.00	\$ 52.97	\$ 110,177.60
H	\$ 41.33	\$ 85,966.40	\$ 50.47	\$ 104,977.60	\$ 59.60	\$ 123,968.00
I	\$ 46.49	\$ 96,699.20	\$ 56.77	\$ 118,081.60	\$ 67.04	\$ 139,443.20
J	\$ 52.31	\$ 108,804.80	\$ 63.88	\$ 132,870.40	\$ 75.44	\$ 156,915.20

Key: Optional Hiring Range

NOTE: New Hire Rates Above Minimum Require Justification

NOTE: Annual salaries depicted are based on 2,080 hour work year.

Arbitrator's Note; The Bargaining Unit Wage Rates are encompassed within the sixteen (16) Pay Grades from 1-16; the Wage Schedule from A through J is applicable to employees who are not in the Unit.

APPENDIX B

Clermont County Water & Sewer
Wage Proposal

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
Electrician	\$23.07	\$23.99	\$24.95	\$25.95	\$26.99
WSD Laboratory Technician	\$14.13	\$15.26	\$16.48	\$17.80	\$19.22
WSD Maintenance Specialist	\$15.35	\$16.81	\$18.52	\$20.28	\$22.21
WSD Maintenance Technician	\$14.73	\$15.87	\$17.10	\$18.43	\$19.85
WSD Operator 1	\$15.89	\$17.16	\$18.53	\$20.01	\$21.61
WSD Operator 2	\$17.67	\$18.69	\$19.76	\$20.90	\$22.10
WSD Operator 3	\$19.46	\$20.24	\$21.04	\$21.88	\$22.76

Each employee at the top step shall receive a 4% wage increase effective January 1st of each year of the collective bargaining agreement.

APPENDIX C

OHIO REVISED CODE

Conciliation Guidelines; Factors for Consideration by Conciliator

- 4117 14(G)(7) After hearing, the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the parties' final settlement offers, taking into consideration the following
- 4117 14(G)(7)(a) Past collectively bargained agreements, if any, between the parties;
- 4117 14(G)(7)(b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification;
- 4117 14(G)(7)(c) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service.
- 4117 14(G)(7)(d) The lawful authority of the public employer;
- 4117 14(G)(7)(e) The stipulations of the parties;
- 4117 14(G)(7)(f) Such other factors, not confined to those listed in this section which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, factfinding, or other impasse resolution procedures in the public service or in private employment.