

STATE EMPLOYMENT
RELATIONS BOARD

In the Matter of Factfinding

2009 DEC -2 A 11: 33

Between

SERB Case No. 08-MED-09-1047

AFSCME Ohio Council 8, Local 2798

Before: Harry Graham

and

Northeast Ohio Regional
Sewer District

APPEARANCES: For AFSCME Ohio Council 8, Local 2798:

James A. Ciocia
Staff Representative
AFSCME Ohio Council 8
1603 East 27th St.
Cleveland, OH 44114-4217

For Northeast Ohio Regional Sewer District:

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Bonezzi, Switzer et al
1300 East Ninth St., #1950
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INTRODUCTION: Prior to arriving at Factfinding the parties had been negotiating for many months. A Federal Mediator had been involved. Agreements were few. Factfinding was scheduled for October 5 and 6, 2009. Extensive materials were prepared and provided to this Factfinder. At my suggestion we spent both days in negotiations/mediation. The parties were able to resolve most of the issues in dispute between them. At the end of October 6, 2009 there remained the following unresolved issues:

- 1 Vacancy and promotion
- 2 Holidays
- 3 Uniform and tools
- 4 Subcontracting
- 5 Substance abuse testing

It developed that additional issues remained between the parties. Thus a meeting was held on November 20, 2009 at my behest to clarify the status of this dispute and identify additional open issues. At that meeting the additional open issues were:

- 6 Appendices
- 7 Transportation
- 8 Payment to the AFSCME Care Plan
- 9 Health Care
- 10 Grievance procedure

ISSUE 1, VACANCY AND PROMOTION

POSITION OF THE UNION: The Union has extensive proposals on this issue. In Section 13.1 it proposes that there be a fourteen day notice given of vacancies. This is up from the current seven day posting period. In also proposes that the posting specify the facility where the vacancy is located and reposting is not required for 180 days as long as names remain on the initial posting.

In Section 13.2 the Union proposes that a committee review applicants and that the committee have on it at least one representative of the Union. The committee should interview applicants within 15 days of the close of the posting, that such interviews occur in work time and that interviewees do not lose pay. The Union also proposes that applicants must verify documents submitted in support of their bid and that if applicants are equal, seniority should govern in the selection of bidders.

As the Union relates history senior applicants have been denied a bid while junior colleagues have prevailed if they can show a journeyman's card. Similarly, new hires with a journeyman's card have been awarded vacancies over incumbent employees. The Union proposes that such cards be verified.

POSITION OF THE EMPLOYER: The Employer too has wide-ranging proposals on this issue. In its opinion were the proposals of the Union to be adopted the hiring process would be slowed. The District seeks a minimum seven day posting period. As does the Union, the Employer proposes that if applicants are equal seniority will determine a successful applicant. Further, successful bidders will be paid at the applicable rate on their first day in the new position. Employees in a new position should not be permitted to bid out for nine months and should serve a 90 calendar day probationary period. The Employer contends adoption of its proposals would streamline the bidding process while protecting seniority rights of employees.

DISCUSSION: The proposal of the Union for a fourteen day posting period is unremarkable. It is recommended to the parties. Article 13, Section 2 currently provides that "If the skill, ability and experience of two or more applicants are substantially equal, District seniority shall govern." That language should continue unchanged. No other changes in this Article are recommended.

ISSUE 2, HOLIDAYS

POSITION OF THE UNION: In the past the parties agreed upon establishment of 12 hour shifts. It developed that when computing personal day time off what the Union regards as an inequity occurred. Eight hour shift employees receive two

personal days off. Twelve hour shift employees receive 18 hours personal time that must be taken in one 12 hour block and one 6 hour block. Thus, they do not receive the same personal time off as their counterparts who work 8 hours. The Union proposes expansion of the personal time off for 12 hour employees to 24 so that their personal time off will be proportionate to that of their 8 hour colleagues who have 16 hours off.

POSITION OF THE EMPLOYER: The Employer proposes no change in personal time off for 12 hour shift employees. When the parties negotiated this issue and were at Factfinding for the current Agreement the understanding was that the concept of cost neutrality would be preserved. Were the proposal of the Union to be recommended on this issue that concept would be undermined in the opinion of the District. Thus, no change should occur it asserts.

DISCUSSION: Clearly 12 hour employees are at a disadvantage versus their 8 hour counterparts. There is an inequity. To rectify it the proposal of the Union for a six hour expansion in personal time to 24 hours per year is recommended. No other changes in this article are recommended.

ISSUE 3, UNIFORM AND TOOLS

POSITION OF THE UNION: The Union points out that some employees work outside during the winter. In its view the present winter clothing is inadequate. It is seeking better quality insulated coveralls. The current Agreement provides for uniform replacement every two years. In exchange for the better quality winter garb the Union will agree to extend the two-year replacement schedule to three years.

POSITION OF THE EMPLOYER: The Sewer District proposes to provide not less than eleven uniforms over a three year period. The Agreement presently provides that uniforms are provided over a two year period. It indicates that there are a number of firms that supply uniforms. They prefer a three year cycle of business in order to amortize up-front costs over a longer period. This proposal has minimal impact upon employees and should be adopted the Employer urges.

DISCUSSION: Little attention was given to this issue during mediation.

Resolution appears obvious: the uniform replacement schedule should be extended to three years from the present two as proposed by the Employer. Upgraded winter coveralls should be issued to those employees who work outside.

ISSUE FOUR, SUBCONTRACTING

POSITION OF THE UNION: A comprehensive proposal on subcontracting was placed on the table by the Union. In essence, it bolsters the claim of Sewer District employees to perform work. It requires the Employer to meet with the Union at least 60 days prior to subcontracting. There would be created a joint committee to plan for return of work being performed by contractors in-house. In the final analysis, the ability of the Employer to subcontract is not restricted under its proposal in the opinion of the Union. Thus, it urges its adoption.

POSITION OF THE EMPLOYER: The Employer proposes no change be made in the existing subcontracting language. In its opinion no difficulties have arisen with it. No bargaining unit jobs have been lost to subcontractors. There is no reason to change the current agreement it asserts.

DISCUSSION: It was not shown that any grave difficulties existed with the present language on subcontracting. It is recommended the current language continue unchanged in the forthcoming Agreement.

ISSUE 5, SUBSTANCE ABUSE TESTING

POSITION OF THE UNION: Both parties have extensive proposals on this issue. There have historically been two policies dealing with substance abuse. One dealt with alcohol, the other drugs. In this round of negotiations the Employer has proposed that the policies be incorporated into the Agreement and merged. It is also seeking that the substance abuse policy applicable to non-bargaining unit employees be extended to members of the bargaining unit. No reason for that exists in the opinion of the Union. In fact, there is no evidence of a substance abuse (including alcohol) problem with bargaining unit employees. The Union has proposed a comprehensive substance abuse article dealing with substance abuse. (Un. Ex 20).

The Union is concerned over the potential for an employee having a beer or other alcoholic beverage prior to reporting to work. It may be the case that the employee tests positive for alcohol but at the level of .04 or below. Under its proposal there would not be no further testing nor would any discipline be administered. In the opinion of the Union as .04 is not considered intoxication by law enforcement authorities, it should not be considered as such by the Employer.

POSITION OF THE EMPLOYER: As noted above, the Employer also has an extensive proposal on this issue. Examination shows that much of it tracks the

proposal of the Union. The most significant point of difference is alluded to above: the notion that if an employee tests below the legal limit for alcohol such a test result should be disregarded. That concept is not included in the proposal made by the Employer.

DISCUSSION: The point of the Union concerning the employee who has a beer prior to reporting to work and then tests positively is well taken. If the positive test is below the threshold considered as intoxication by the State of Ohio, that person should not be subject to discipline. The employee would be cleared to drive by the State. Thus, he or she should not be considered under the influence by the Employer. It is recommended the language of the Union proposal at Section 51.7 be included in the Substance Abuse article with the deletion of the words "no further testing will be conducted...." It may occur that another random test calls the employee for testing and such a situation should not be precluded by the words "no further testing will be conducted." With the addition of the Union proposal as modified the proposal of the Employer on this issue is recommended.

ISSUE 6, APPENDICES

POSITION OF THE UNION: Presently there are various appendices included in the printed and bound version of the Agreement. The Union proposes that continue. No reason exists to alter the longstanding practice of including appendices in the Agreement in its view.

Included in the Agreement as well are various Letters of Agreement. Among them is that styled number 6. The Union proposes that number 6

continue to be included in the Agreement, suitably modified to reflect changed dates and wage rates. In the view of the Union, Letter number 6 is of such significance it should continue to be included in the Agreement.

POSITION OF THE EMPLOYER: The Sewer District contends that the various appendices are out of date. They do not reflect current conditions. Some of them are several years old. As they are not relevant, they should be stricken from the Contract the Employer urges.

There is a training committee working on issues found in the current appendices. Its recommendations should be included in the Agreement in lieu of the existing appendices as they more accurately reflect current working conditions the Employer urges.

DISCUSSION: It is indeed the case that various appendices are several years old. I am persuaded that there is an element of staleness about them. They should be removed from the Agreement and replaced with current job descriptions plus the recommendations of the training committee as proposed by the Employer.

Letter number six should remain in the Contract, subject to appropriate revision to reflect current dates and wage rates.

ISSUE 7, TRANSPORTATION

DISCUSSION: A great deal of time was spent on this issue. The proposal of the Employer as reflected in Article 27 of the draft Agreement provided to me on November 20, 2009 captioned "NEORSN Negotiations Agreed Upon Items" (p.24) is recommended.

ISSUE 8, PAYMENT TO AFSCME CARE PLAN

POSITION OF THE UNION: The Union provides a mechanism for payment for various forms of health expenditure, e.g. dental and vision expenses. This is done via payments from the Employer to the AFSCME Care Plan. Presently the Agreement specifies a lump sum per employee per month be paid to the Care Plan. The Union proposes that the lump sum be itemized to show payments being made to such items as life insurance, vision care, prescription drugs etc. In its view, such itemization will enable its members to better track expenditures made on their behalf.

POSITION OF THE EMPLOYER: The District points out that the current Agreement does not break down the use to which funds paid to the Care Plan are put. No difficulties have developed with the present arrangement. No change is warranted in its view.

DISCUSSION: In Factfinding the bias is to no change unless difficulties are shown with existing Contract language. No difficulties were shown by the Union. No problems were demonstrated with the present language in Article 33 relating to the Care Plan. No change is recommended.

ISSUE 9, HEALTH CARE

POSITION OF THE UNION: During the meetings on October 5 and 6, 2009 agreement was reached on the issue of health care. Relevant to this issue, the parties agreed to increase payments by employees by \$10.00 per year starting in January, 2010. Thus, a single employee would see his or her payment go to \$80.00 per month in 2010 and \$90.00 per month in 2011. There is an exception

at the Family coverage level of employee contribution. Such payments would be \$130.00 per month in 2010 and \$145.00 per month in 2011. The \$145.00 per month figure is erroneous in the opinion of the Union. The correct number should be \$140.00 to reflect the agreement on the \$10.00 increase according to the Union.

POSITION OF THE EMPLOYER: At the meeting on November 20, 2009 the District provided a record of events captioned "Communications Between NEORSD and AFSCME-Ohio Council 8." Included within it is a page showing agreements of the parties as of October 5, 2009. It shows the employee payment for health insurance to be \$145.00 in 2011. The Employer contends the parties had reached agreement on this issue and no reason exists to change it.

DISCUSSION: It is the case the parties reached agreement on this issue. That agreement is reflected on the summary sheet indicating the settlement on various issues, e.g. equity adjustments, longevity pay, wage increase, and hours of work among others. Included on the summary sheet is the agreement on health insurance. It shows that family payments will be \$145.00 in 2011. That is the amount agreed upon and it cannot be changed. The payment by employees towards family health insurance in 2011 should be \$145.00 per month.

ISSUE 10, GRIEVANCE PROCEDURE:

DISCUSSION: At the November 20, 2009 meeting discussion was had over time limits in the grievance procedure. I indicated all time limits should be fourteen (14) days. That is recommended to the parties.

All tentative agreements are incorporated into this report by reference and recommended to the parties.

Jurisdiction is retained for 60 calendar days from the date of this report.

Signed and dated this 30th day of November, 2009 at Solon, OH.



Harry Graham
Factfinder