

**STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF FACT FINDING

BETWEEN THE

**DELAWARE COUNTY COMMISSIONERS
and
AMERICAN FEDERATION OF STATE COUNTY MUNICIPAL
EMPLOYEES, Ohio Council 8, and Local 2869**

SERB Case # 08-MED-10-1109

Date of Fact Finding Hearing: October 19, 2010

E. William Lewis, Fact Finder

Fact Finder's Findings and Recommendations

Appearances:

For the Union:

William DeVore, Staff Representative
AFSCME, Ohio Council 8
6800 North High Street
Worthington, Ohio 43085

For the County:

Jonathan J. Downes, Esq.
Downes Fishel Hass Kim LLP
400 South Fifth Street, Suite 200
Columbus, Ohio 43215

STATE EMPLOYMENT
RELATIONS BOARD
2010 NOV - 8 A 11: 02

AUTHORITY

This matter was brought before Fact Finder E. William Lewis, in keeping with applicable provisions of the Ohio Revised Code 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation based on merit and fact according to the provisions of Ohio Revised Code 4117.

In attendance:

For the County:

Mr. Jonathan Downes	Labor Counsel
Ms. Tiffany A. Jenkins	Director
Ms. Lisa Iannetta	Director

For the Union:

Mr. William DeVore	Staff Representative
Mr. Robert Brode	Maintenance Mech. I
Mr. Tom Compton	Maintenance Mech.
Mr. John Darrough	Operator
Mr. Mark Hobler	ACWRF Operator
Mr. John Moss	Maintenance
Mr. David Wisner	Operator Collections

BACKGROUND:

This is a successor agreement to a CBA that expired on December 31, 2008. The parties have been bargaining off and on since November 2008, with numerous proposals and counters being exchanged. SERB was notified of impasse on May 26, 2010. This Fact Finder was selected by the parties to hear the case. The Hearing date of October 19, 2010 was mutually agreed to between the parties.

The Delaware County Division of Environmental Services, hereinafter known as the Employer/County, provides sanitary services throughout the

County. There are approximately ten large and small treatment facilities in various locations within the County. The American Federation of State County Municipal Employees Union, hereinafter known as the Union/AFSCME, represents approximately 34 bargaining unit employees. The classifications included in the unit are: Operator, Inspector, Custodian, Lab Technician, Operator-Chemist, Maintenance Mechanic, Maintenance Mechanic II, Truck Driver and Truck Driver A.

In accordance with the Ohio Revised Code, Section 4117.14(C)(4)(e), in making these recommendations, the Fact Finder takes into consideration the following factors:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

THE FACT FINDING HEARING:

The Fact Finding session commenced at 10:00am on October 19, 2010. a conference room was provided by the Division of Environmental Services. We commenced the meeting with the fact finder offering the parties the

opportunity to mediate the remaining unresolved issues, as encouraged by ORC 4117. The parties agreed to attempt mediation on the open issues as identified in their pre-submittal documents. All the unresolved issues were tentatively agreed to during the mediation discussions. Therefore, the parties mutually agreed to waive the evidentiary Hearing deferring to the mediated tentative agreements.

The following are the unresolved issues and the positions of the parties submitted to the fact finder, and my recommendations. All recommendations reflect the agreements reached between the parties in mediation.

ARTICLE 8--UNION REPRESENTATION

Union Position:

Section 8.1--Change 1st sentence to read as follows:

The Union shall select and designate in writing to the Employer a local union representative (the steward or president) and Ohio Council 8 representative.

Section 8.3--Use of County Meeting Rooms--Change 1st sentence to read as follows: The Employer agrees to allow the Union to use meeting rooms on the Employer's premises upon reasonable notice when such premises are available to conduct bargaining unit meetings.

Employer Position: Current language

Fact Finder Recommendation:

Union's proposal as per the 10/19/10 signed tentative agreement agreeing to change Sections 8.1 and 8.3.

ARTICLE 16--HOURS OF WORK/OVERTIME

Employer Position:

Section 16.3 Lunch Periods and Breaks

Change 2nd paragraph second sentence to read as follows:

Other employees may schedule meal and break periods with approval of the Employer and if meals are taken at a plant such will be at the plant with the shortest travel time.

Section 16.4--Overtime and Compensatory Time--To read as follows:

Employees shall be paid one and one-half (1 & 1/2) times their applicable rate of pay for all hours worked in excess of forty (40) hours worked in any work week including vacation and holidays, and pre-approved compensatory time, however, until the pay period that includes January 1, 2011, sick leave will be considered hour worked.

Union Position: current Language (sick leave counted as hours worked)

Fact Finder Recommendation:

As per mediated settlement package covering Article 16 and 17: change Sections 16.3 and 16.4 per Employer Position.

ARTICLE 17--LEAVES OF ABSENCE

Employer Position:

Section 17.1--Sick Leave #10, Change to read as follows:

An employee covered under this Agreement who is eligible to retire shall be entitled to payment for accumulated sick leave on the basis of one hour of pay at the employee's straight-time rate on date of retirement for every four hours of accumulated sick leave. However, the total value of sick leave paid in this manner shall not exceed the value of 60 days/480 hours paid leave.

New: Section 17.5--Personal Leave

Effective January 1, 2011, each bargaining unit member shall be entitled to up to and including twenty four (24) hours per calendar year, with pay, for personal reasons. Such leave shall be deducted from sick leave and shall not accumulate from year to year. In order to be eligible to use personal leave, and employee must have at least a 48-hour sick leave balance and have completed their probationary period with the Employer. Employees are required to obtain approval from their supervisor to use personal leave in advance. Personal leave must be used in at least four (4) hour increments.

For the period of January 1, 2011 through December 31, 2012, personal leave will be included as "hours worked" for calculation of overtime in Section 16.4. It is understood that the inclusion of personal leave as hours worked will expire, or sunset, on December 31, 2012.

Union Position: Mediated package between Articles 16 & 17.

Fact Finder Recommendation:

As part of a packaged mediated settlement of Article 16.4 and Article 17-Section 1, # 10, and New Section 17.5, the fact finder recommends the Employer Position.

ARTICLE 21--WAGES

Union Position:

Section 21.1 Wage Schedule The wage schedule for the classifications in the bargaining unit shall be determined in accordance with the County's Compensation Management System. The County will continue to review the wage schedule every eighteen (18) months, or as determined by the County, and may adjust the wage schedule. In no case shall the schedule be reduced.

Section 21.2 Wage Rate Increases Wage rate increases for employees shall be for the period of this Agreement 2010-2012 determined as follows:

2010 - Par with the County Compensation Management System

January 1, 2011 - 2% Increase

January 1, 2012 - 2% Increase

If during calendar years 2011 or 2012 the Board of County Commissioners provide an increase to wage rates for other County employees above the two percent (2%) increase, then the increases for 2011 and/or 2012 will be adjusted to include the amount of increase granted which exceed the two percent (2%) and employees will receive the additional increase. For example, if the Board of Commissioners provide an annual merit wage increase of three percent (3%) for non-bargaining unit, general fund employees, then bargaining unit employees will receive an additional one percent (1%) increase for that calendar year for a total of three percent (3%).

Section 21.3 Current Language

Section 21.4 Certification The County agrees to pay employees who earn certifications a 5% (five percent) increase for each treatment plan operator certification classes (1, 2, 3, and 4) wastewater, collection system (collections 1 and 2) and/or chemistry (lab analyst 1, 2, 3, and 4) certifications obtained (while employed by the County) and maintained by employees. The certification supplement will only be made once at the time the employee earns the certification and provides documentation. It is the employee's responsibility to provide documentation of their certification(s).

Section 21.5 Current language

Employer Position:

Section 21.1 Wage Schedule The wage schedule for the classifications in the bargaining unit shall be determined in accordance with the County's Compensation Management System. The County may adjust the wage schedule. In no case shall the schedule be reduced.

Section 21.2 Wage Rate Increases Wage rate increases for employees shall be for the period of this Agreement 2010 through 2012

2010 - Par with the County Compensation Management System

January 1, 2011 - 2% increase in the employee's rate of pay

January 1, 2012 - 2% increase in the employee's rate of pay

If during the calendar years of 2011 or 2012 the Board of County Commissioners provide an increase to wage rates for the other non-bargaining unit County employees (General Fund positions), above the two percent (2%) increase, then the increases for 2011 and/or 2012 will be adjusted to include the amount of increase granted which exceed the two percent (2%) and employees will receive the additional increase. Employees will be eligible based on their performance appraisal for the amount of the wage rate increase in 2011 and 2012 over 2%. The total amount distributed to employees in the bargaining unit shall equal the amount of the increase over 2% based on the current payroll of the bargaining unit employees at the time the increase is granted. For example, if the Board of Commissioners provide an annual merit wage increase of three percent (3%) for non-bargaining unit employees (General Fund employees), then bargaining unit employees will receive an additional one percent (1%) increase for that calendar year for a total of three percent (3%).

Any pay increases provided by resolution of the Board of Commissioners for 2010 for non-bargaining unit County employees shall be provided to the bargaining unit members on the earliest effective date the increase is applied.

Employees shall not be paid at a rate above Grade A. Employees at Grade A shall receive, in lieu of a base rate increase, a lump sum amount equivalent to the value of the increase for the County Compensation Management System. That is, for example, if the increase the employee would be eligible for under the Compensation System is 1% the employee will receive a lump sum amount equivalent to 1% of their base wage rate in lieu of an increase in their base wage rate.

Those employees who, as of March 18, 2010, are paid at a rate that exceeds Grade A shall retain their rate of pay. However, should the compensation plan be modified, the employee's rate of pay is equal to or below Grade A, the employee shall not exceed Grade A in the future.

Section 21.3 New Employees - Current language

Section 21.4 Certifications The County agrees to pay employees who earn certifications a 5% (five percent) increase for each treatment plant operator certification classes (1, 2, 3, and 4) wastewater, collection system (collections 1 and 2) and/or chemistry (lab analyst 1, 2, 3, and 4) certifications obtained (while employed by the County) and maintained by employees. The certification supplement will only be made once at the time the employee earns the certification and provides documentation. After July 1, 2010, certification supplements shall be added until the employee reaches Grade A of the County Compensation Management System. It is the employee's responsibility to provide documentation of their certification(s) and to maintain current all certifications. If the certification expires, the certification supplement(s) will be removed.

If a supplement for a certification places the employee above the rate of pay for Grade A, the employee shall only receive a one time supplement based upon the employee's annualized rate of pay for the amount which exceeds Grade A in the year the employee earns the certification. If the wage scales are increased to exceed the employee's rate of pay and lump sum supplement, then the employee's rate of pay will be increased to include the value (or portion) of the supplement, provided at least one year (12 months) has passed since the employee received the lump sum payment.

Section 21.5 Promotions Employees who are selected for a position in a classification which has a higher pay grade (at Grade G) shall be placed at the step in the new pay range which provides an increase of 5% (five percent), whichever is greater, but in no event greater than Grade A.

Fact Finder Recommendation:

In accordance with our mediation discussions, the County's position on this Article 21, is to be incorporated into the Agreement, except with the following change:

Section 21.2 Wage Rate Increases

January 1, 2012 - 2.5% increase in the employee's rate of pay

ARTICLE 25 - DURATION

Union and Employer Position: the same as fact finders recommendation

Fact Finder Recommendation: Current language except change Section 25 (C) to read as follows:

This Agreement shall become effective upon execution and shall remain in full force and effect after execution of the Agreement until December 31, 2012.

CONCLUSION

The Fact Finding recommendations contained herein were arrived at giving consideration to the positions of and arguments of the parties, our mediation discussions, and the Criteria enumerated in ORC 4117.15(C)(4)(e). In addition, I also incorporate by reference into this Report, the tentative agreements of the parties reached through negotiations, and the language of the expired Agreement which remains unchanged by the parties.

This concludes the Fact Finding Report.

Respectfully submitted and issued at Columbus, Ohio, this 5th day of November 2010.



E. William Lewis
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this Fact Finder's Report was served by regular U. S. Mail upon Mr. William DeVore, for AFSCME Local 2869, 6800 North High Street, Worthington, Ohio 43085; and Jonathan Downes, Esq., For the County, 400 South Fifth Street, Suite 200, Columbus, Ohio 43215; and J. Russell Keith, Assistant Executive Director, State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215, this 5th day of November, 2010.



E. William Lewis
Fact Finder

113

S.L.



Columbus, Ohio 43235

FCM



U.S. POSTAGE
\$1.22
FCM LG ENV 43235
Date of sale 11/05/10
02 1P00 APC
06896218 FCM006900 10489 1

USPS® FIRST-CLASS MAIL®

0 lb. 2.60 oz.

SHIP TO:

COLUMBUS OH 43215



ZIP



(420) 43215

J. Russell Keith, General Council and Assistant Executive Director
State Employment Relations Board
65 East State Street, 12th floor
Columbus, Ohio 43215

