

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

2009 FEB -9 A 10: 21

In the matter of	*	08-MED-10-1219
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Fact-finding between:	*	
	*	
Lucas County Veterans Service Commission	*	Fact-finder Martin R. Fitts
	*	
and	*	
	*	
Professionals Guild of Ohio	*	February 5, 2009
	*	
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

APPEARANCES

For the Lucas County Veterans Service Commission (the Employer):

Brenda G. Meyer, Assistant Prosecutor
 James C. Walter, Assistant Prosecutor
 John Zeitler, County OMB Director
 Barry Gordon, Senior P.O., County Personnel Department
 Robert Moeltner VSC Commissioner
 Clement C. Cybulski, Jr., retired VSC Executive Director

For the Professionals Guild of Ohio (the Union):

John Campbell-Ord, PGO Representative
 Jana Oyerbides, Union Steward
 Sonya Jenkins, Union Steward

PRELIMINARY COMMENTS

The bargaining unit consists of all employees of the Lucas County Veterans Service Commission (the Employer) serving in the following classifications: Investigator, Veteran Service Officer, Senior Veteran Service Officer, Receptionist, Chief Clerk Investigator, and Secretary. There are approximately eleven (11) employees in the bargaining unit.

Article 35 – Termination of the Agreement between the parties provides for the parties to re-open negotiations on Article 19 – Wages for a potential wage increase to be effective on January 1, 2009. In October 2008 the Union requested to negotiate the wage re-opener pursuant to the provisions of Article 35. The parties entered negotiations, but were unable to reach an agreement.

SERB appointed the undersigned as Fact-finder in this dispute on December 22, 2008. A fact-finding hearing was held on January 22, 2009 at the Employer's offices in Toledo, Ohio. Prior to the hearing the parties presented the Fact-finder with written Position Statements. Both parties attended the hearing and elaborated upon their respective positions, presenting both testimony and exhibits. There was only one issue outstanding: the wage re-opener for wages effective January 1, 2009, and thus one issue was submitted for fact-finding.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of 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, and 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; and
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.

Any and all references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their Joint Position Statement presented in writing in the to the Fact-finder prior the January 22, 2009 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Wages

Positions of the Parties

The Employer proposed a 0% wage increase for bargaining unit employees for 2009.

The Union proposed an increase in base wages of 4% across the board for bargaining unit members. It also proposed a \$300 lump sum payment to all bargaining unit members. Further, it proposed that all bargaining unit members with more than 17 years of service under Appendix A – Wage Scales be provided with a longevity payment of \$600 per year on their anniversary date.

Discussion

There was considerable evidence and testimony presented at the hearing relative to the funding mechanism for the Veterans Service Commission. It was clear that the VSC may, under the Ohio Revised Code, request up to 0.50 mil of Lucas County's 2.0 mil portion of inside millage.

The Employer has historically requested less than the maximum funding allowed under the law. In May 2008 the Employer presented an initial 2009 budget request to the Lucas County Office of Management and Budget. Among other items, it contained a request for funds that would enable the Employer to provide up to an across the board 3% wage increase to its employees. In September 2008 the Employer complied with the request of the Lucas County Commissioners, made through the County's Office of Management and Budget to all County departments, to reduce 2009 budget requests to reflect a 5% reduction from 2008 expenses.

The Union argued that the Employer cannot argue an inability to pay, as it voluntarily reduced its 2009 budget despite not being legally required to do so. It noted that the Employer's original budget proposal for 2009 included an allotment of funds sufficient to cover a 3% wage across the board wage increase. In addition, the Union argued that since the Employer has the legal ability to finance the wage increases proposed by the Union, and as the ORC 4117.14(C)(4)(e) requires the Fact-finder to consider the ability of the public employer to finance the issues proposed, the Fact-finder should favorably consider its proposal.

The facts undisputedly show that the Employer did not request the maximum amount of funds that the 0.50 mil generates, despite the fact that it can legally compel the County to provide it. The Union used this fact to argue that the Employer should grant the wage increases it (the Union) has proposed. However, the Union did not offer any evidence that it has made this argument in the past, despite the evidence showing that the Employer has consistently in the past requested funds considerably below the amount that 0.50 mil would generate.

Much was also made of the fact that the Employer's original 2009 budget request was a "legal budget." The Union noted that the original budget allowed for an across the board wage increase of 3%, and argued that as it was a "legal budget" the Employer could not subsequently amend it downward. It further argued that a 3% wage increase is presumptively reasonable, as the Employer initially provided for it.

The Employer argued that it considers a number of factors when preparing its annual budget request. It noted that it has anticipated an increase in veteran service needs due to men and women returning from Iraq, and that it has, in fact, over-estimated the veterans service needs the last few years in order to avoid running short of funds toward the end of the year. The Employer also noted that it reduced other line items in its revised budget, not just the amount to be available for wages.

The Union argued that the Employer has stated that its hands are tied due to the request of the County Commissioners to reduce their 2009 budget, and that this constitutes a self-fulfilling manipulation of the budgetary process, as the Employer could always propose a budget with a zero wage increase to the County, have it approved, and then state at the bargaining table that its hands are tied and there is no money for a wage increase.

The Fact-finder notes that there is a difference between “inability to pay” and “unwillingness to pay.” In the instant matter, the Employer has shown that it historically has requested budgets less than the maximum it was legally able to request. In that regard, the final 2009 budget request is no different than those in the past. Reason dictates that this Employer does maintain discretion over how much money it requests in its budget proposal, even if it is less than the maximum level of funds that it can compel from the County.

The Union’s argument that the Fact-finder should recommend the Union’s proposed wage increase simply because the Employer could have compelled the County to provide enough funds to pay for it fails for lack of reasonableness. Following the Union’s argument, any wage increase it proposed, even if it were a doubling or tripling of wages, should be recommended in Fact-finding due to the fact that the Employer could legally demand more of the inside millage than it has chosen to request.

The Union argued that by reducing its budget proposal at the request of the Lucas County Commissioners, the Employer was unfairly requesting fewer dollars to the benefit of other county services which would continue to enjoy some of the 0.50 inside millage that the VSC could command. Ohio Revised Code, in Section 4117.14 (G) (7), requires the Fact-finder to consider other public and private employees doing comparable work, and the interest and welfare of the public, when determining appropriate wages. It is therefore reasonable to assume that public employers also can consider these factors when determining their budgets and what they believe are appropriate wage increases. In the instant matter, there was no evidence or testimony offered by either party with regard to comparable wages. As such, the Fact-finder is left to conclude that the wage scale of the bargaining unit employees is generally appropriate.

The evidence and testimony showed that the Employer did legitimately and appropriately consider the interest and welfare of the public, as expressed by its former executive director, Mr. Cybulski. He testified that he did consider the County’s budget and revenue situation when formulating the revised 2009 budget. He noted that veterans are among the County residents suffering job losses and reduced levels of income, and that if the County had to reduce other services, or was forced to raise taxes to make up for any funds re-allocated to the Veterans Service Commission, it would be harmful to veterans as well as to all taxpayers within Lucas County.

The Fact-finder agrees with the Employer’s logic and reason in complying with the County’s budget revision request. The public has a stake in all county services, including those provided by the instant Employer, and their overall ability to finance the county operations in their entirety, or absorb across the board reductions in county services, are legitimate factors for this Employer

to consider when formulating its budget. While the pool of funds legally available to the Veterans Service Commission may be greater than requested, it is undeniable that the inside millage lost to the County's general fund would either have to be made up for in increased tax revenue or by comparable reductions in other County services. In addition, the Veterans Service Commission itself is charged with determining what service levels are appropriately needed, and with determining what staff is needed to deliver those services. In the instant matter, the Fact-finder is satisfied that the Employer was properly exercising this discretion and authority.

Given the above, while the Employer does, in fact, have access to greater funding than it has historically requested, those funds are not accessible without a cost to the County budget, and thus the taxpayers of Lucas County. And that is what makes the Employer's argument on this matter compelling.

The Fact-finder recognizes the Employer's sensitivity to the general economic downturn and specifically to its effect on Lucas County's revenues and budget difficulties. In addition, the Fact-finder recognizes that the employees in this bargaining unit deliver important services to veterans, services deemed vital enough that the State of Ohio has, by law, made a pool of funds available for the Veterans Service Commissions throughout the state. The Fact-finder notes, however, that the source of revenue is not limitless, and not without political and economic realities.

The Fact-finder also notes that, due to the possibility that the Employer has once again over-estimated the amount of funding necessary to provide veterans services again in the 2009 fiscal year, a modest wage increase can be supported within the existing 2009 budget and is therefore warranted. That being said, the Union's proposal for a lump sum payment of \$300 and longevity payments of \$600 per year of service for those with more than 17 years of service are simply not supported by any compelling argument.

Findings and Recommendation

In consideration of the testimony and evidence presented at the hearing, and the discussion above Fact-finder believes that the following recommendation appropriately balances the economic realities facing Lucas County and its taxpayers, the Employer's source of funds and historical expenditures of same, and the bargaining unit's desire to be justly compensated.

Therefore, the Fact-finder recommends that the collective bargaining agreement be amended to reflect an across the board wage increase of 1.5% to be effective as of January 1, 2009.

The above represents all of the recommendations of the Fact-finder in this matter



Martin R. Fitts
Fact-finder
February 5, 2009

Martin R. Fitts

Labor Arbitrator
P.O. Box 2945
Toledo, Ohio 43606-0945

phone: 419-530-3546
fax: 419-530-3548
e-mail: mfitts@utnet.utoledo.edu

February 5, 2009

Ms. Brenda G. Meyer
Assistant Prosecuting Attorney
Lucas County Prosecutor's Office
700 Adams Street
Toledo, OH 43604

Mr. John Campbell-Orde
Professionals Guild of Ohio
PO Box 7139
Columbus, OH 43205

Re: SERB Case No. 08-MED-10-1219
Lucas County Veterans Service Commission
- & -
Professionals Guild of Ohio

Dear Ms. Meyer & Mr. Campbell-Orde:

With this letter I am sending to each of you via USPS Express Mail my Fact-finding Report in the above-referenced matter. A copy of this Report is being sent to the State Employment Relations Board via regular US Mail.

An invoice for my services as Fact-finder will be sent to each of you under separate cover.

Sincerely,



Martin R. Fitts
Fact-finder

Encls.
CC w/encls.: SERB ✓

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