

STATE OF OHIO

2009 AUG -3 P 2: 22

STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	08-MED-12-1418
	*	
Fact-finding between:	*	
	*	Fact-finder
Cuyahoga County Commissioners	*	Martin R. Fitts
	*	
and	*	
	*	
Ohio Patrolmen's Benevolent Association	*	July 31, 2009
(CECOMS Dispatchers)	*	
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**REPORT AND RECOMMENDATIONS OF THE FACT-FINDER**

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**APPEARANCES**

For the Cuyahoga County Commissioners (the Employer):

- Egdilio Morales, Labor Relations Administrator
- Maggie Keenan, Senior Budget Analyst
- Alan Zmija, Labor Relations Specialist
- Rodney Harris, labor Relations Specialist
- Murray Withrow, CECOMS Manager
- Shawn Smith, CECOMS Supervisor
- Eve Bonvissuto, Program Officer

For the OPBA (the Union):

- Daniel Leffler, OPBA Attorney
- Anderson Pope, 911 Dispatcher

## **PRELIMINARY COMMENTS**

The bargaining unit consists of full and part-time CECOMS Dispatchers working in the Emergency Medical Services Communications Operator classification. There are approximately 19 employees in the bargaining unit. The State Employment Relations Board (SERB) appointed the undersigned as Fact-finder in this dispute on March 31, 2009. The fact-finding hearing was held on July 9, 2009 at the Cuyahoga County Labor Relations offices in Cleveland, Ohio. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. At issue was a wage re-opener for 2009 wage rates provided for in Article 37 of the current agreement. Thus this 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.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented orally to the Fact-finder at the July 9, 2009 hearing.

## **ISSUE AND RECOMMENDATION**

### **Issue: Article 37: Wages**

#### **Positions of the Parties**

The Union proposed a wage increase of three percent (3.0%) for 2009 for employees at each of the four steps of the wage scale and for the employees whose pay rate is outside of the current scale.

The Employer proposed a zero (0.0%) wage increase for 2009. Further, it proposed that step advancement would be deferred effective January 1, 2010 and that re-initiation of step advancement would be subject to negotiations for a successor contract.

#### **Discussion**

The Employer proposed the deferral of the step advancements effective January 1, 2010 in anticipation of the next round of negotiations, as the current agreement expires on March 31, 2010. Its logic is that parties may then negotiate possible changes to the step advancement, or any other related issue, at that time and the impact on the bargaining unit for the calendar year would be equitable. It argued that if no change were made now, those employees with anniversary dates in the first three months of 2010 could advance a step, while others later in the year would not, creating a disparity for the employees during calendar year 2010.

This argument is not persuasive. In the first place, if the parties do make changes to this provision in the next round of negotiations, there is nothing magic about the calendar year as the starting point for the change. The impact on the employees ultimately would be the same if such a change were to begin on January 1<sup>st</sup> or April 1<sup>st</sup>, it would roll through the bargaining unit during the course of the following twelve months. Additionally, the deferment of this provision in anticipation of negotiating some changes in the next round of bargaining is acceptable for the parties to mutually agree upon outside of these proceedings, but for the Fact-finder to recommend such changes in the current agreement in anticipation of one party's desire to modify the current language in future negotiations is a stretch.

But most importantly, the language in Section 4 of Article 37: Wages is exceedingly clear: "Wages rates for 2009 shall be determined through wage re-opener negotiations to be initiated no later than February 15, 2009." Key here is that the language states that the determination of "wage rates for 2009" are to be subject to the re-opener, the language does not include any other provisions of Article 37. It is this Fact-finder's view that 2009

wage rates only are subject to the re-opener, and thus the determination of 2009 wage rates begins and ends the Fact-finder's authority in this matter. The Employer's proposal would become effective January 1, 2010 and thus cannot reasonably be construed as being part of the determination of wage rates for calendar year 2009.

As to the determination of the wage rates for 2009, the County presented considerable economic data in support of its proposal for a zero percent wage increase. Most importantly, it cited that four primary sources of County revenue (sales tax, real estate transfer tax, property tax, and investment income) are falling below the projections made in 2008 for the 2009 budget. It noted that the County is facing a \$27 million deficit for 2009. The County has already implemented a number of cost saving measures to address the deficit. These measures include the following:

- Non-bargaining unit employees received no wage increase for 2009, the third year in a row with no wage increase.
- Non-bargaining unit employees are being directed to take three furlough days in 2009.
- Lay-offs are being considered, with the County approaching all bargaining units to discuss delaying any wage increases already in contracts for 2009 and 2010.
- A hiring freeze has been implemented.
- An early retirement incentive program has been implemented to reduce the number of employees through attrition.
- Programs providing services to the public have been terminated or reduced. For example: termination of the Ohio State Extension program, reduction of parenting contracts, reduction of the Ohio Works First contract, elimination of the soil and water subsidy, reduction of adult mental health services, reduction of the Help Me Grow Core Services, elimination of the Positive Education Program for Severely Emotionally Disturbed Children, reduction or elimination of Supportive Services Child and Family Focus contracts, eliminated or reduced Services under the Neighborhood Collaborative.

It is clear that the County has taken a number of serious steps to deal with the financial crisis facing it. It is also clear that its fund balance will be significantly reduced due to the 2009 deficit.

There was no evidence offered by the Union that disputed the County's picture of its financial condition, except the argument that it has a healthy fund balance and that a 2009 wage increase could easily be paid for out of that fund balance. It is true that the fund balance is large enough to cover this expense, as this bargaining unit is not large and a modest wage increase would not significantly impact it. However, the future financial picture for the County is one of continued decline. It is not anticipated that the general fund revenue sources discussed above will improve over the next year or two, in fact they may well continue to decline. The general fund balance could well shrink even more significantly in 2010 and 2011.

Additionally, the County has negotiated zero percent increases for 2009 with several of its other bargaining units, and is in discussions with several others to forego 2009 increases already provided for in existing agreements. In light of this, it is clear that the internal comparables of other County bargaining agreements do not support recommending a wage increase for this unit at this time.

Lastly, the retention of step advancement throughout 2009 does effectively provide many employees with an increase in pay during this year.

### **Findings and Recommendation**

First, as to the Employer's proposal that step advancement would be deferred effective January 1, 2010, for the reasons discussed above, the Fact-finder does not recommend the Employer's proposal but rather recommends the retention of current contract language.

As to the issue of wages for 2009, for the reasons discussed above, the Fact-finder recommends the Employer's proposal for a zero percent (0.0%) wage increase for 2009.

This represents in total the Fact-finder's findings and recommendations in this matter.



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Martin R. Fitts  
Fact-finder  
July 31, 2009

## Martin R. Fitts

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July 31, 2009

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Labor Relations Administrator  
Cuyahoga County  
1255 Euclid Avenue, Suite 310  
Cleveland, OH 44115

Daniel J. Leffler  
Ohio Patrolman's Benevolent Association  
10147 Royalton Road, Suite J  
North Royalton, OH 44113

Re: SERB Case No. 08- MED-12-1418  
Cuyahoga County Board of County Commissioners  
- and -  
Ohio Patrolman's Benevolent Association,  
CECOMS Dispatch Unit

Gentlemen:

With this letter I am sending overnight to each of you my Fact-finding Report in the above-referenced matter. By copy of this letter a copy is being sent via regular U.S. mail to SERB.

An invoice for my services will be sent to you under separate cover.

Sincerely,



Martin R. Fitts  
Fact-finder  
Direct Phone: 419-530-3542

Encls.

Cc w/Encls: SERB

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