



**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD

2009 AUG -3 P 4: 15

PIKE COUNTY ENGINEER,

Employer,

-and-

Case No. 09-MED-01-0014

AFSCME, OHIO COUNCIL 8, AFL-CIO
AND AFSCME LOCAL 1408

Employee Organization.

FACT-FINDING

Philip H. Sheridan, Jr., Fact-finder

Issued: July 31, 2009

Robert W. Cross, President
Cross Management Consulting
Services, Inc.
631 Seventh Street
Portsmouth, Ohio 45662

For The Employer

Gary W. Arnold
Staff Representative AFSCME Ohio Council 8
36 South Plains Road
The Plains, Ohio 45780-1348

For The Employee Organization

STATEMENT OF THE CASE

The parties, the Pike County Engineer, represented by Robert W. Cross, President, Cross Management Consulting Services, Inc., and the bargaining unit, AFSCME, Ohio Council 8, Local 1408, 20 regular classified employees of the Pike County Engineer including Crew Leader, Operator I, Mechanic I & II, and Welder, represented by Gary W. Arnold, Staff Representative for AFSCME, Ohio Council 8, AFL-CIO, have entered into negotiations for a successor contract to the contract that expired March 31, 2009.

The parties met and bargained in good faith with a number of meetings between the parties as well as mediated discussions. The parties without dispute, or through negotiation, reached tentative agreement on current language or changes in the collective bargaining agreement. Issues remain in six articles of the agreement.

Pursuant to R.C. §4117.14 and Admin. R. 4117-9-05, the State Employment Relations Board appointed Philip H. Sheridan, Jr., 915 South High Street, Columbus, Ohio, as fact-finder.

The parties agreed to a fact-finding hearing on July 27, 2009, and the meeting was convened at 10:00 a.m. at the Pike County Administration Building. In addition to his representative, Denny Salisbury, Pike County Engineer, appeared at the hearing. In addition to their representative, Todd Crabtree, Local President, Rick Elliott, Local Secretary, and Aaron Walls, Local vice president, appeared on behalf of the bargaining unit. The parties and the fact-finder discussed the procedure to be followed by the parties.

The parties agreed that the remaining issues were not amenable to additional mediation. The parties submitted the matter upon statements, documents, and arguments presented to the fact-finder.

In accordance with the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contract, the issues that have been resolved, the unresolved issues, and each party's proposal on the unresolved issues.

In issuing this fact-finding report, I have given consideration to the provisions of R.C. Chapter 4117 and, in particular, the criteria contained within Admin. R. 4117-9-05(I).

THE POSITION OF THE PARTIES AND RECOMMENDATIONS

Article 12, Probationary Periods

The Engineer's Position: The Engineer proposes current contract language. It appears to the Engineer that this is a wage issue, and there was a give and take in bargaining that allowed him to implement the current plan, which provides for a four year period of "probation" where pay at hire is 70% until completion of a 120 working day probation, then to 80% until completion of two years of service, then 90% until the end of four years service. The Engineer has offered, for this contract only, to raise the six affected employees to 90%, but I understand that offer to be part of a package offer.

The bargaining unit's Position: The bargaining unit believes that four years is too long to be in a lower pay status for the same work. These are vehicle operators, mechanics, and welders, and the actual 120 working day probation is sufficient to test the employee's competence.

Discussion and Recommendation: I recommend no change in Article 12, Probationary Periods. Any new hires affected by this policy knew when they were hired that they would be receiving less pay than the actual pay scale for the first four years of their employment. This reverse longevity clause was not imposed, but was agreed to by

the bargaining unit. This sort of change should result from bargaining between the parties, just as it did when the parties increased the period from two years to four. There does not appear to be a particular issue that requires immediate action.

Article 25, Hours of Work

The Engineer's position: is current contract language. He asserts that scheduling hours of work is a management prerogative and he believes implementation of the bargaining unit's proposal would not improve efficiency and would add costs not supported by comparables or equity.

The bargaining unit's position: The bargaining unit proposes working four ten hour days instead of five eight hour days while Daylight Savings Time is in effect. The bargaining unit argues that the ten hour days will increase productivity, cut down on overtime, and improve morale.

Discussion and recommendation: I recommend no change in Article 25, Hours of Work. The Engineer sets the hours of work and would have to give up some of his authority to implement this new policy. This sort of change should result from bargaining between the parties. There does not appear to be a particular issue that requires immediate action.

Article 33, Holidays

The Engineer's position: The Engineer proposes current contract language. He argues that the current 11.5 vacation days favorably compare with similar Engineer's Departments. This is another money issue, and the lower revenues currently being experienced prevent his agreement to incur additional costs.

The bargaining unit's position: The bargaining unit seeks two additional holidays: Good Friday and Election Day. Election Day is especially important for the Local because

it needs its members volunteering in the community to make a difference in the political process.

Discussion and recommendation: I recommend current contract language for Article 33, Holidays. This sort of change should result from bargaining between the parties. There does not appear to be a particular issue that requires immediate action. Under such conditions, I believe the parties can revisit this issue in future negotiations.

Article 38: Hospitalization

The Engineer's Position: The Engineer has proposed potential enforcement of the existing language in the collective bargaining agreement that caps the amount the Engineer will pay for health insurance. He argues that with the reduction in revenues his office is experiencing in gasoline taxes and license tax revenues and the increased costs involved in the operation of the department, he can no longer guarantee that he will pick up the excess premium costs that he has picked up in the past. The County Commissioners control the health insurance contract and he has no way to reduce costs. The premium amount has increased most years. Lower interest rates on investments and the need for capital improvements have also contributed to the financial situation. The Engineer proposes language that increases the cap amounts by about 10% in each of the four categories. Other language makes clear that the group life insurance provider reduces coverage for those employees age 64 and older. In Article 38, section B, the Engineer seeks to add the following: "Benefits mean only the coverage in the policies, not premiums, County share of premiums, or cost containment measures." Finally, the Engineer proposes language that makes clear when employees who are not covered by the County Insurance Plan may apply to become insured.

The bargaining unit's Position: The bargaining unit does not oppose the changes proposed by the Engineer with respect to life insurance and opportunities to apply for insurance coverage. The bargaining unit does not oppose an increase in the stated cap on premium payment by the Engineer, except that they complain that the Engineer is going against a past practice in which he has matched the actions taken by the County Commissioners with respect to all of the other employees covered by the Commissioners' Health Insurance Plan. Up until this time no employee of the Engineer's office has been required to pay the difference between the Engineer's cap and the actual premium cost because the Commissioners paid the excess premiums for their employees and the Engineer did the same. The bargaining unit does not want to be treated differently than any other county employee with respect to the cost of health insurance. The bargaining unit has even less control over the Health Insurance Plan than the Engineer does, and they are not able individually to respond to some unknown additional cost for health insurance coverage.

Discussion and recommendation: Initially, it appears to me that the parties are in agreement about the Engineer's proposed language additions with respect to life insurance coverage and opportunities to apply for health insurance. The main issue in dispute is the Engineer's expressed intention to require the bargaining unit members covered by the County's Health Insurance Plan to pay the amount of their insurance premium that exceeds the limits set by the Engineer on the amounts he will pay.

It is clear that under the expired contract the Engineer picked up the excess premiums to the same extent that the County Commissioners did for the employees under their control. All County employees received the same four health insurance options at the same cost to them.

I recommend that the parties adopt the language proposed by the Engineer in Article 38, section A,1; concerning the caps and the life insurance plan. I do not recommend the additional language proposed for section B. Instead, I recommend addition of the following: "The Pike County Engineer will pay the same amount in premium that the County Commissioners pay on behalf of the General Fund employees by the Pike County Commissioners." I recommend the additional language proposed by the Engineer in section G.

Article 44, Wages

The Engineer's Position: The Engineer proposes a 25 cent across-the-board increase in each of the three years of the contract, beginning with the signing of the contract. Many of the same arguments made in support of the Engineer's position on Health Insurance apply as well to the issue of wages. There are substantial increases in costs related to the operation of the Engineer's office, including asphalt, road salt, equipment, and health insurance. Interest income on received gasoline tax and vehicle license revenue is down, and the Engineer offered evidence that the half year receipts of both sources of revenue decreased from 2007 and 2008 half year totals.

The bargaining unit's Position: The bargaining unit proposes a 50 cent across-the-board increase effective April 1, 2009, a 50 cent across-the-board increase effective April 1, 2010, and a 50 cent across-the-board increase effective April 1 2011. The bargaining unit argues that it received 50 cent increases in each of the years of the expired contract and a \$700 signing bonus. The Engineer increased exempt employees' wages by 50 cents in December 2008.

Discussion and recommendation: It is difficult to decide what to recommend given the limited information provided by the parties. The Engineer has demonstrated to my satisfaction that annual revenues from gasoline tax and motor vehicle licensing fees for both 2007 and 2008 amounted to about 3.6 million dollars.

However, the half year figures for each of those years were not exactly half of the annual total. 2009's June figures are about \$23,000 less than the June figures for 2007, and about \$76,000 less than the June figures for 2008. But I am not certain what that shows me. The annual totals for 2007 and 2008 were virtually equal at 3.6 million, but in June the 2007 figures were \$53,000 less than the June totals for 2008. Even assuming that 2009 is going to continue to lag behind the previous two years is difficult. Put another way, I am not sure whether a 1.2% decrease or a 4% decrease in revenue is significant at the half year point.

The parties agreed to 50 cent raises in each of the three years covered by the expired agreement, and they agreed to a starting date for the increase after the signing of the contract, with a \$700 signing bonus.

I did not see any evidence that indicates that the Engineer would be unable to finance any of the proposed increases in wages or other cost issues. In fact, I have no information from the Engineer or the bargaining unit that indicates the Engineer's annual budget for 2007, 2008, or 2009, or demonstrates the actual expenditures for either 2007 or 2008, or the unencumbered balance carried into 2009.

The national and state economies are of some concern, but a 50 cent increase for a bargaining unit member earning around \$8 per hour is a 6% raise, but the same 50 cents to a bargaining unit member earning \$18 per hour is only 2.7%. An average increase of between

3% and 3.5% is reasonable and supported by the increases received in the last agreement. Such an increase is not out of the norm in the geographic area or within the State of Ohio.

I recommend an across-the-board increase of 50 cents per hour beginning in the first pay period after the contract is ratified or placed into effect, an across-the-board increase of 50 cents per hour beginning April 1, 2010, and an across-the-board increase of 50 cents per hour beginning April 1, 2011. I do not recommend a signing bonus or retroactive increases.

Article 47, Termination

The Engineer's Position: The Engineer proposes that the agreement start on the day it is executed and continue for 36 months, the maximum length of time allowed pursuant to Chapter 4117.

The bargaining unit's Position: The bargaining unit proposes a contract that starts April 1, 2009 and ends December 31, 2011, which amounts to 33 months, and sets the contract ending point as the end of the year where it was before the last negotiation.

Discussion and recommendation:

Most contracts that I see begin the day after the previous contract expires and end three years later. The issue of retroactive pay is a different one, and my recommendation for it is in the Wages discussion. On balance, I prefer a full three year contract period starting on the day after the last contract expired.

I recommend a contract that begins April 1, 2009 and terminates March 31, 2011.

CONCLUSION

I recommend that the parties adopt the tentative agreements reached by them. The parties cooperated in presenting their positions to me and in dealing with one another. The courtesy and professional behavior was evidence of the good relations between the parties.

Good faith bargaining does not necessarily lead to agreement, but I encourage the parties to continue to bargain in good faith even if they are unable to agree on my recommendations.

Respectfully submitted,



PHILIP H. SHERIDAN, JR.
Fact-finder
S.C. #0006486
915 South High Street
Columbus, Ohio 43206-2523
(614) 445-0733

CERTIFICATE OF SERVICE

A copy of the foregoing Fact-Finder Report was served by email and Ordinary U.S. Mail, postage prepaid, this 31st day of July, 2009, to the principal representatives of the parties, and by Ordinary U.S. Mail, postage prepaid, to State Employment Relations Board, 65 E. State St., 12th Floor, Columbus, OH 43215-4213.



PHILIP H. SHERIDAN, JR.

PHILIP H. SHERIDAN, JR. STATE EMPLOYMENT
RELATIONS BOARD
ATTORNEY AT LAW
915 SOUTH HIGH STREET
COLUMBUS, OHIO 43215-2523

2009 AUG -3 P 4: 15

PHILIP H. SHERIDAN, JR.

(614) 445-0733
1-800-686-2852
FAX: (614) 445-0983

July 30, 2009

J. Russell Keith
General Counsel & Assistant Executive Director
State Employment Relations Bd.
65 East State St. 12th Floor
Columbus, Ohio 43215-4213

**RE: Case No. 09-MED-01-0014, Pike County Engineer
and AFSCME, Ohio Council 8, Local 1408**

Dear Mr. Keith:

Enclosed please find fact finder report for this matter. Thank you for your consideration.

Very truly yours,



Philip H. Sheridan, Jr.

PHS/ps
Enclosure
cc: file