

AFSCME OHIO COUNCIL 8
LOCAL 101

CASE NO. 09-MED-09-1085

MONTGOMERY COUNTY
CLERK OF COURTS

FACT-FINDING REPORT
AND
RECOMMENDATIONS

FOR THE UNION

FOR THE COUNTY

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DATE OF HEARING: AUGUST 26, 2010

DATE OF RECOMMENDATION: SEPTEMBER 8, 2010

September 8, 2010

Ms. Stacey Benson-Taylor
Staff Representative
AFSCME Ohio Council 8, Local 101
15 Gates Street
Dayton, Ohio 45402-2917

Mr. Robert E. Portune
Goffschlich & Portune, LLP
201 East Sixth Street
Dayton, Ohio 45402

Dear Ms. Taylor & Mr. Portune:

Enclosed is the Fact-Finder's Report & Recommendations for a collective bargaining agreement between AFSCME Ohio Council 8, Local 101 and the Montgomery Court of Clerks.

After careful review of the exhibits, testimony, notes, position papers and relevant factors under O.R.C. 4117-9-05(K) 1-6, the recommendations made reflect my best judgment for a successor agreement.

I hope the recommendations will assist both in making recommendations for a successor agreement that will be acceptable to both of you.

It is clear that in the difficult period and financial conditions in Montgomery County you have maintained a good working relationship. With luck I did nothing to damage it.

Sincerely:

Jerry Hetrick, Fact-Finder

BACKGROUND

This matter came up for hearing on August 26, 2010 before Jerry Hetrick, appointed as Fact-Finder pursuant to Ohio Rev. Code Section 4117.14. The hearing was conducted with AFSCME Ohio Council 8, Local 101 and the Montgomery Clerk of Courts involving the terms and conditions of a successor agreement to the collective bargaining agreement expired December 2010. The bargaining unit consists of approximately 76(76) full time employees.

The Fact-Finder incorporates into the successor agreement all tentative agreements and unchanged provisions as initialed by the parties. The unresolved issues set forth in the respective briefs are as follows:

- A. Recognition
- B. Wages
- C. Hours of Work
- D. Overtime
- E. Seniority
- F. Miscellaneous

Both parties continued to be quite willing to explore options for settlement and were able at the hearing reached tentative agreement on Article 1 Recognition based on the Amended Certification issued by SERB Certification Case No. Rep. 12-0148 on June 8, 2010 as well as tentative agreement on the miscellaneous provision. Tentative agreement was reached on Article 10-Overtime in which the Union proposed to clarify Section 4 Paragraph 2 relating to “compensatory time off to be scheduled in the same manner as vacation days.” The clarification would add the language from the Vacation Article relating to how vacations are scheduled. While discussions

were open and frank regarding final positions necessary to obtain recommendations for acceptance by both parties, in the final analysis the Fact-Finder concluded agreement could not be reached without issuance of the Fact-Finder's recommendations. At the conclusion of discussions, the Fact-Finder was given through September 13, 2010 for submission of recommendations.

FACT-FINDING CRITERIA

In the determination of facts and recommendations, the fact-finder considered the criteria required by the Ohio Rev. Code Section 4117.14@ (4) (e) as follows;

- (1) Past collective bargaining 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 classifications involved.
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed and the effects 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 agree upon dispute settlement procedures in the public service or private employment.

FINDINGS OF FACT AND FINAL RECOMMENDATIONS

ISSUE-WAGES

Both the Employer and Union position statements and discussions acknowledge the financial position of the County. In its position paper the County proposes no wage increase for 2010. In 2011, the County proposes employees receive the same percentage wage increase and lump sum payment provided in the contract between the Montgomery County Board of County Commissioners and AFSCME Ohio Council 8, Local 101, contingent upon the County providing the funding. If the County is not willing to fund the 2011 increase, the County proposes a wage reopener for 2011 and 2012. The Union's proposal acknowledges the financial conditions of the County, including the fact the Employer relies on the County for a significant amount of its funding. The Union proposes that employees receive the same percentage and or lump sum payment provided non bargaining unit Clerk employees or provided in the contract between the Montgomery County Board of County Commissioners and AFSCME Ohio Council 8, Local 101 effective January 1, 2010 and January 1, 2011 with a wage reopener for January 1, 2012 which would trigger SERB's dispute settlement procedures.

Economic agreements cannot always be compared apples to apples, especially when the sources of funding are entirely different. While me-too agreements provide a certain level of compensation protection for bargaining unit members, they also may not reflect economic conditions between this Employer and Union unless they are bargaining in the same time frame and are financed from the same source of funding. Not only is this employer dependent upon the County Commissioners for a major source of funding, it has no taxing authority and is faced with at least a

second year of a declining General Fund. Since 2008 the County has faced declining revenues, reducing expenditures in 2009 by 7.9%. The General Fund revenues continues to decline which required 2010 budgeted expenses to be reduced by an additional 6.6%. The County has implemented a wage freeze for 2010 for non union employees and reduced or eliminated non mandated services. The work force has already experienced a reduction of nine employees and impacted by the automation of services. A potential three (3) percent reduction in the work force is a potential for 2011. The Union has not been persuasive that the employer possesses the ability to award the same percentage of wage increase and/or lump sum payment provided to non bargaining unit clerks or in the contract between the Montgomery County Board of Commissioners and AFSCME Ohio Council 8, Local 101. Lacking is any evidence that the Employer has provided any wage increase an/or lump sum payment to its non bargaining unit employees or reached agreement with AFSCME Ohio Council 8, Local 101. Furthermore the Union acknowledged that while the Dayton Clerks work in the same building, they are not usually used as a comparable but were provided to refute the County's argument of where this unit stood vs other employees performing the same or similar work. Equally clear is that it is highly unlikely that the Board of County Commissioners are able to provide funding for any increase to this employer in 2010. Although neither party used the "ability to pay" phrase, it is clearly present at the moment. The Fact-Finder agrees that the Union employees would find it easier to "swallow" no increase with the inclusion of a paid lunch period but financial restraint is recommended. The Fact-Finder recommends, after review of the exhibits, that the County's proposal which maintains the

current wage rates for 2010 and provides for a wage increase in 2011 conditioned on the County providing the funding. If the County does not provide the funding for the 2011, economic re-openers will be provided for the second (2011) and third (2012) year of a recommended three year collective bargaining agreement.

ARTICLE 8 WAGES

SECTION 1. Wage rates in the Wage Addendum shall remain unchanged through December 31, 2010.

SECTION 2.

At least sixty (60) calendar days prior to December 31, 2010, the party agree to re-open negotiations for the purpose of discussing wages for 2011 and 2012. The re-opening of the Agreement shall invoke the dispute settlement procedures set forth in O.R.C. 4117.14. In 2011 employees covered by this agreement shall receive the same percentage of wage increase and lump sum payment provided in the contract between the Montgomery County Board of County Commissioners and AFSCME Ohio Council 8, Local 101, contingent upon the County providing the funding. In the event the County does not fund the 2011 wage increase or lump sum payment, the County will re-open negotiations for the purpose of discussing wages for 2011 and 2012. The re-opening of the Agreement shall invoke the dispute settlement procedures set forth in O.R.C. 4117.14.

ISSUE-HOURS OF WORK

Currently Montgomery County Clerks of Court are scheduled to work an eight hour day with a one (1) hour unpaid lunch. This schedule allows the County's operations to be properly staffed and serve the public

effectively. The Union proposal would provide for a paid one half hour lunch break. The Union says inclusion of a paid lunch helps “swallow” the lack of a first year wage increase. The Union believes that during such financial times where the County may be unable to provide pay increases or lump sum payments, the paid lunch period is a reasonable compromise. The Union seeks to support its proposal based on the Dayton Municipal Court Clerk’ Agreement with AFSCME Local 101. That Agreement provides for a sixty (60) minute paid lunch. The County proposes no change, in effect, maintenance of the status quo. The County says wage costs would either increase by 6.25% if employees work and are paid for eight (8) hours in addition to the paid lunch or it would have the effect of either reducing the effective hours of operation and service to the public should the County cut back operations to maintain a minimum working staff throughout the day. In effect the County argues that if it grants the paid lunch its costs will increase by 6.25% or to maintain its current costs it may have to reduce its staffing level, which it argues is unfair to current employees. Finally it argues the Union has already made significant economic gains in already agreed upon language. It is speculative that the County would have to reduce its staffing levels and it would not be fair to bargaining unit employees if it were compelled to do so. Whether a proposal is fair to unit employees is a decision for the bargaining unit representatives to weigh. While the Union’s argument might be persuasive in normal bargaining conditions, these are not normal conditions as the Union recognizes. Comparables cited by the Union are limited and in entirely different financial circumstances in terms of their source of finances, as well as their bargaining history, particularly the Veterans and Dayton Clerk of Courts.

A Fact-Finder must consider the interests and welfare of the public, ability of the public employer to finance and administer the issue proposed, and the effect of the adjustments on the normal standard of public service. There is a question both of financing and administration of this issue as the Clerk would have to stagger lunch periods to service the public in the same manner as the present. Without sufficient data on comparables and given the County financial conditions, the Fact-Finder recommendation for a successor agreement does not include the Union proposal for a paid lunch period.

ISSUE-SENIORITY-

The Union proposes maintaining the current Section 4d contract provision which provides employees up to twelve (12) months of health insurance while off due to a work related injury. The County is willing to accept the Union's latest proposal subject to reaching agreement on the County's other unresolved issues. Otherwise the Clerk proposes a reduction in coverage to six (6) months coverage. The County has made no showing that maintenance of coverage cannot be maintained and based on a need to reduce costs or to move in line with its comparables. It has offered no quid pro quo. Overwhelming support for the County's proposed change is lacking. The Fact-Finder recommends inclusion of the current Section 4d contract provision without change.

Respectfully:

_____, Fact Finder

Dated: September 8, 2010

