

IN THE MATTER OF FACT FINDING

BETWEEN

TUSCARAWAS COUNTY ENGINEER

AND

AFSCME OHIO COUNCIL 8, LOCAL 2308

SERB CASE # 2009-MED-11-1425

Robert G. Stein, Fact Finder

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INTRODUCTION

The issues in dispute that were initially brought before the fact-finder Ohio are addressed below. The bargaining unit is represented by the American Federation of State, County, and Municipal Employees, Ohio Council 8, and its Local 2308 (hereinafter "Union" or "bargaining unit") and consists of approximately eighteen (18) people employed in the classifications of Bridge Inspector; Draftsman; Mechanic 1 and 2; Highway Maintenance Worker 1, 2, and 3; Tax Map Drafting Technician; Account Clerk/Mechanic Stores Clerk; House Number Coordinator. The employer in this matter is the Tuscarawas County Engineer (hereinafter "Employer" or "Engineer").

The Agreement expired on March 2, 2010; however, the parties continued to bargain and held mediation/fact-finding sessions on the dates of May 25, 2010 and June 10, 2010. The undersigned fact-finder is familiar with the parties, and in the recent past has had the privilege of serving as a neutral mediator and fact-finder on two previous occasions. As a result of a concerted effort to resolve the issues initially brought to fact-finding, the fact-finder had an in depth opportunity to understand the basis and background for the parties' positions on each issue in dispute. Several issues were resolved in fact-finding; however, a number of the issues remained unsettled and were submitted to formal fact-finding at the conclusion of mediation on June 6, 2010. The demeanor and conduct of the advocates from both bargaining teams exemplify the responsibility with which the parties view their roles.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 © (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made.

General/Local Economic Outlook and Discussion of Issues

The economy in Ohio, and in particular where the Employer is located, is still experiencing the effects of a national recession. While officially considered to have reached an end, the impact of the recession upon the County's and Ohio's revenue stream is plain. Unlike many other states, in Ohio there has historically been a lag time between a declared end to a recession and recovery from it. Yet, the current decline in revenue, caused by what many call the "Great Recession" is arguably far deeper and broader than those of the past, and it is severely testing even the most resilient of Ohio's public employers. Ohio's path and timetable to recovery remain uncertain to a large degree. Every month on a national and state level there are mixed signals being provided by various sectors of the economy and by consumers. One of the more certain and troubling aspects to the current economic times are the job losses Ohio has experienced, particularly the high paying skilled jobs. They number in the tens of thousands and underscore the existing structural problems of unemployment in areas such as manufacturing and construction. Moreover, conventional wisdom indicates that many of the losses of high paying manufacturing jobs are permanent, requiring a recovery in Ohio to take a very different path than it has in the past. All the news is not negative, and there are some indicators of recovery. It is not uncommon to find that some employers

are doing well in this recession. The stimulus funds, while welcomed by many to sustain public services, are a temporary fix that buys public employers a little time. Looming on the horizon and what will most likely become a hotly debated matter following the November election cycle is the projected state of Ohio deficit. Currently estimated to be between five (5) and eight (8) billion dollars, all public employers in Ohio, regardless of jurisdiction are concerned. With the likelihood of less support from the federal government, the state of Ohio continues to struggle to find ways to fund the many obligations it shoulders, such as Medicaid costs, education, job growth, and a myriad of other pressing economic demands. To their credit, public employee unions and employees in Ohio have, in the main, recognized and responded to their employers who continue to experience a shortfall in revenue coupled with rising costs. State employees and many public employees in and outside of Ohio continue to make unprecedented financial sacrifices in the form of wage freezes, benefit givebacks, furlough days and layoffs. The story is no different in Tuscarawas County where it is recognized that bargaining units through negotiations have agreed to terms that reflect the gravity of current economic times. The undersigned fact-finder, having served as a neutral in the county on many occasions, is familiar with the resilience and tenacity of the population and its employees. The leadership in County government, and in particular the Tuscarawas Engineer's office, is reflected in this experience and in the facts presented in this matter. While it is must be said that financial uncertainty is

severely testing the resolve of employees and employers alike in Tuscarawas County, the continued balance of prudence and pragmatism, which this fact-finder has observed in working with AFSCME and with the Engineer's office, will serve them well in dealing in the months and years ahead.

Issues: The fact-finder will address the issues in the order in which they were presented at the fact-finding hearing. **1. Article 16 Temporary Assignment:** the Employer withdrew this proposal at the fact-finding hearing and therefore it will not be addressed by the fact-finder; **2. Article 17.2 Layoff:** the Union is proposing to add categories of employees who would be laid off, by inverse seniority, prior to bargaining unit employees being laid off. Layoffs are by classification, which is typically found in public and private sector layoff provisions. Currently, the employees affected by this method would first be newly hired employees who have not completed their probationary period, promoted employees who have not completed their probationary period, and then non-probationary employees. The Union is proposing that casual, temporary, seasonal, and part-time employees be placed in this order prior to the current listing and uses the cities of Dover and New Philadelphia as comparables. The Employer objects to the Union's comparables as not being relevant and argues that adding this list will take away rights from employees who are not part of the bargaining unit. The facts do not indicate that casual or temporary employees are employed in bargaining unit positions in the Engineer's office, yet the Union accurately points out that term casual is used in

Article 2, Recognition. With regard to seasonal and part-time employees, I find the Union's position to be consistent with bargaining unit convention. It is not unusual to clarify an order of layoff and to provide a measure of protection from layoff to full time employees, as opposed to seasonal or casual employees who, in contrast to full time bargaining unit employees, have invested far less of their work life with the Engineer's office.

3. Article 42.3 CDL: The Union is proposing that the Employer pay the cost of CDL renewal which is required every four (4) years. The Employer argues that it already provides training and vehicles for employees to obtain their CDL license. The nature of a CDL is portable. It is not unusual that where a CDL is required to obtain employment that employers financially assist their employees in obtaining said license designation, including providing qualifying vehicles for employees to use. In addition to a fairly rigorous written test, the use of a qualifying vehicle to train and practice on is often, in the experience of this fact-finder, the most difficult condition that employees face in obtaining a CDL license. It is far less common that employers, who understand that employees with a CDL could obtain employment elsewhere at anytime, pay to maintain said license endorsement. I find the Employer's position to be more persuasive.

4. Article 25.1 and 25.12 Sick Leave: The parties reached tentative agreement at the hearing. **5. Article 7.3 Corrective Action:** The Employer argued that with an already lean workforce, productivity has been impacted by excessive sick leave use. As a result the employer, in addition to addressing this issue under Article

11, is also addressing this issue through the disciplinary section. The Employer is proposing that any corrective action for absenteeism remain active for a period of twenty-four (24) months. The Union is proposing current language and argues that it is unreasonable to consider any discipline for absenteeism to remain active longer than discipline for other reasons. The Union also asserts that some bargaining unit members have had long term illnesses such as cancer and heart attacks, and therefore it would be unreasonable to penalize employees who as a result of these misfortunes have had to take extended sick leave. While the Employer provided convincing data regarding its concerns regarding sick leave usage, I find the Union's arguments to be persuasive regarding the preservation of order and predictability in the area of discipline. For example, it is unconventional and arguably inconsistent to consider discipline for sick leave to remain active longer than other discipline that may be based upon a more egregious rule violation. The facts also support the Union's contention that while there is a disproportionate amount of sick leave use by a handful of employees, not every employee is using sick leave excessively. **6. Article 31.4, 31.5, 31.6**

Protective Clothing: The Union is proposing that the work boot allowance be increased, due to the increased cost of boots over the past six (6) years. Additionally, the Union is seeking to establish a clothing allowance of \$500, arguing that due to work hazards and soiling, work clothes wear out quickly. It cited the cities of Coshocton and Massillon as comparables. Once again rejecting city comparables, the Employer argues that Section 31.2 already

provides for the replacement of gloves and rubber boots identified in Section 31.1. Additionally, the Employer argues it provides tar aprons to protect employee's clothing and provides coveralls for mechanics and bridge crew workers. There was a great deal of conflicting argument and testimony regarding the need for a change in this provision of the Agreement. The facts indicate the Employer has historically provided some protective clothing for employees who most likely will experience excessive clothing wear (e.g. mechanics). According to the Department of Labor, the CPI-U has increased 16.3% from March of 2004 through March of 2010, or an average of 2.71 % per year. In order to maintain the value of the boot allowance, a modest periodic adjustment to account for inflation is not unreasonable, given the importance of proper work boots for the safety and health of workers. It is also noted that the Board's Exhibit 1 demonstrates that mid-level work boots are priced on the Internet in the ninety dollar (\$90) plus range. Union/American made boots of a reputable quality are in the one-hundred and thirty dollar (\$130) range and higher (See TheUnionBootPro.com)

7. New Article Miscellaneous: The Union is seeking to establish minimum staffing and the Employer argues that besides being a permissive subject of bargaining, it is management's exclusive right to determine staffing. It appears clear from the testimony provided by the Union at the hearing that the bargaining unit has been shrunk by some eight (8) employees during the past nine or ten years. It is apparent from the facts that during this same time period the Engineer has been managing to provide

service to the public and keep bargaining unit members employed while coping with the troublesome trend of increasing costs and declining revenue. Without even addressing the issue as a proper subject of fact-finding, there is insufficient evidence to support additional language regarding staffing. Two additional observations need to be made regarding this issue. The shrinking of the work force does not permit an employer to use supervisory personnel in place of bargaining unit personnel in violation of a collective bargaining agreement. Secondly, with the exception of safety forces, where improper staffing may have immediate and severe consequences, in most service and maintenance bargaining units that this fact-finding is familiar with staffing remains a management right. **8. Article 11.3, 11.5, 11.7 Hours of Work:** The Employer is seeking to address sick leave usage by eliminating it from the calculation of time worked (See Employer Tab 5 for data). Both parties agree that it is more reasonable to address those employees who truly abuse sick leave. Each employee creates his or her own disciplinary record, which may be one way of specifically addressing individual employees rather than an across-the-board reduction in benefits. The Union proposes language that continues to allow employees to take breaks and when needed make stops in conjunction with those breaks. **9. Article 27.1 Hospitalization:** The Union is proposing to secure the same cap on health care premiums that exists with the other county bargaining units represented by AFSCME. The Employer proposes to maintain current language, submitting Employer Exhibits 2, and 3 in support of its position.

The Sheriff's bargaining unit and the 911 bargaining unit also contain caps, but these caps progress from \$70 to \$80. The evidence in this matter is mixed, with some AFSCME bargaining units having a cap (e.g. JFS) while others do not (e.g. Metro Sewer District). Other bargaining units such as the Sheriff's office and the 911 unit have agreed upon progressive caps and non-bargaining unit employees have uncapped premiums. **10. Article 29 Wages:** The Union proposes 3.5% increases each year of a three (3) year agreement. Additionally, the Union proposes language that grants employees an annual wage increase in order to bring about their wages comparable to those of other area HMW. Furthermore, the Union proposes that top rate (rather than the lowest tier) be paid to employees who perform work out of classification. The Union withdrew its proposal regarding Article 29.6. The Employer is proposing a one (1) year wage freeze and reopener language during the period of February 1, 2011 through February 28, 2011, for the purpose of discussing wages for the remainder of the Agreement. Given the financial discussion above, the fact that other comparable bargaining units in the county have agreed to first year wage freezes, the evidence submitted by the Employer (including Employer Exhibit 5) regarding declining revenue in 2008 and 2009 totaling some 7.5%, and the immediate interest and welfare of the public, including the ability of the Employer to finance a settlement, the facts support the Employer's position with the caveat the Union may address some of its pay equity concerns in subsequent re-opener negotiations. **11. Article 28 P.E.R.S. Pick-up:** The Union

proposes that the Employer pay the employee's share of P.E.R. S. contribution. The Employer proposes current language. The same rationale for the fact-finder's determination in this matter applies to this issue as it does to Issue 10. **12. Article 46 Term of Agreement:** both parties are proposing a three (3) year agreement.

DETERMINATIONS (RECOMMENDATIONS):

Issue 1	Article 16 Temporary Layoffs (Employer Withdrew Language) Maintain Current Language or as agreed to by the parties prior to or during fact-finding.
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Issue 2	Article 17.2 Layoffs
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Article 17 - Lay Off and Recall

Article 17. 1, 17.3 to 17.7 Maintain Current Language or as agreed to by the parties prior to or during fact-finding.

Section 17.2. The Employer shall determine in which classification(s) and which work section(s) layoffs will occur. Within each classification affected, employees will be laid off in the following order:

- A. Casual help involved in bargaining unit work;**
- B. All seasonal employees involved in bargaining unit work;**
- C. All part-time employees involved in bargaining unit work;**

- D. Newly hired employees who have not completed their probationary period;
- E. Promoted employees who have not completed their promotional probationary period;
- F. Non-probationary employees.

Said employees shall be laid off on the inverse order of their seniority as defined in this Agreement.

Issue 3 Article 42.3 CDL

Maintain Current Language or as agreed to by the parties prior to or during fact-finding.

Issue 4 Article 25.1, 25.12 (parties reached tentative agreement),
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Issue 5 Article 7.3 Corrective Action

Maintain Current Language or as agreed to by the parties prior to or during fact-finding.

Issue 6 Article 31.4, 31.5, New 31.6 Protective Clothing
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Article 31 Protective Clothing

Article 31.1-31.3 Maintain Current Language or as agreed to by the parties prior to or during fact-finding.

Article 31.4 The Engineer shall continue to provide aprons to no more than three (3) employees to be used while performing road repair duties limited to tar shooting. **If the Employer determines it needs more than three (3) employees on a given day to perform road repair duties limited to tar shooting they will also be provided aprons.**

Article 31.5 On an annual basis, the Engineer shall establish an account for each employee, limited to no more than seventy-five dollars (\$75) per employee for the purchase of work boots. **Effective March 3 of 2011 and on an annual basis, the Engineer shall establish an account for each employee, limited to no more than ninety dollars (\$90) per employee for the purchase of work boots.** Employees shall submit receipts to the Engineer/designee verifying the purchase of such items within five (5) work days of the purchase.

No additional language

Issue 7 New Article Miscellaneous
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No additional language

Issue 8 Article 11.3, 11.5, and 11.7 Hours of Work

Article 11 Hours of Work/Overtime

Article 11.1, 11.2, 11.4, 11.6 Maintain Current Language or as agreed to by the parties prior to or during fact-finding.

Article 11.3 All employees shall be paid at the rate of one and one-half (1 ½) times their regular rate for all hours in active pay status which exceeds eight (8) hours in one (1) work day or forty (40) hours in one (1) week. **However, if an employee has an active suspension on his/her record that was solely based upon absenteeism and or tardiness, sick leave used during the “force and effect” timeframe, described in Article 7, shall not be considered as time in active pay status under Article 11.3, until the employee’s suspension for absenteeism and or tardiness is no longer consider active per Article 7.**

Issue 9 Hospitalization

Article 27.1

Article 27. 2, 27.3

Section 27.1. Maintain current language or as agreed to by the parties prior to or during fact-finding for the first year of the agreement.*

*Health care coverage and caps on premium payments shall be part of the re-opener language contained herein.

Issue 10 Article 29 Wages

Replace current language with the following:

Current wages shall be maintained for the first year of the Agreement. Either party may, during the period between February 1,

2011, through February 28, 2011, re-open the Agreement for the purposes of discussing; 1. hourly wages, 2. inequities and out of class wage rates, and 3. hospitalization and employee premium payments. A notice shall be sent to the State Employment Relations Board (SERB) during this period, with a copy of such notice forwarded to the opposite party. Such negotiations shall be conducted in accordance with ORC 4117 unless mutually agreed to otherwise.

Issue 11 Article 28 P.E.R. S. Pick-Up

Maintain current language or as agreed to by the parties prior to or during fact-finding.

Issue 12 Article 46 Term of Agreement

Article 46 Term of Agreement

Article 46.2 Maintain current language or as agreed to by the parties prior to or during fact-finding.

This collective bargaining agreement shall be effective **March 3, 2010 and shall continue through March 2, 2013**, unless either party gives written notice to the other party no earlier than one hundred and twenty (120) days prior to the expiration date, not later than sixty (60) days prior to the expiration date of the desire to terminate, modify, or negotiate a successor collective bargaining agreement.

TENTATIVE AGREEMENT

During negotiations, mediation, and fact-finding the parties reached tentative agreements on several issues. These tentative agreements and any unchanged current language are part of the recommendations contained in this report.

The fact-finder respectfully submits the above recommendations to the parties this ____ day of July 2010 in Portage County, Ohio.

Robert G. Stein, Fact-finder