

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of: :
: **10-MED-01-0072**
Mahoning County Sanitary Engineer :
Employees Union : **FACT FINDING REPORT**
: **AND RECOMMENDATIONS**
and :
:
:
Mahoning County Sanitary Engineer : **August 13, 2012**
and Commissioners :

APPEARANCES

For the Union:

Dennis Haines, Attorney, Green Haines Sgambati Co., L.P.A.
John Michael, President
Gerald Ross, Negotiating Team
Rick Salreno, Negotiating Team

For the Employer:

Micheal Esposito, Attorney, Clemans Nelson
William Coleman, Fiscal Manager
Robert Lyden, Sanitary Engineer

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I. BACKGROUND

The Fact Finder was appointed by the State Employment Relations Board (SERB) on June 13, 2012, pursuant to Ohio Revised Code Section 4117.14(C)(3). The parties are the Mahoning County Sanitary Engineer Employees Association (Union or MCSEEA) and the Mahoning County Commissioners and Sanitary Engineer (Employer or Sanitary Engineer). The Employer is a department of Mahoning County, which is located in northeast Ohio on the state line with Pennsylvania. Youngstown is the county seat. The Sanitary Engineer reports to the County Commissioners and is responsible for the treatment of wastewater and maintenance of sanitary sewers for various communities within the county. The Union represents the permanent full time and part time employees of the Employer, primarily in the classifications of Laborer, Maintenance Worker, WWTP Aide, WWTP Operator, Mechanic, and Plant Supervisor. Currently, there are approximately sixty-eight (68) employees in the bargaining unit.

The collective bargaining agreement expired on March 31, 2010. The parties agreed to continue its terms while attempting to negotiate a new agreement and during the fact finding process. They also agreed that any provisions not changed in negotiations or fact finding would remain in effect. They began negotiations in 2010 and have held twenty-three (23) negotiating sessions. There were a number of tentative agreements reached during negotiations, though some differences remained depending on the overall resolution of the contract.

II. THE HEARING

The fact finding hearing was held on Monday, July 30, 2012 at the offices of the Employer, 761 Industrial Road, Youngstown, Ohio. Each party provided a pre-hearing

statement. The hearing began at 10:00 a.m and adjourned at approximately 1:00 p.m.
The Fact Finder attempted mediation without success.

The parties jointly introduced the following exhibit into evidence:

1. A Labor Agreement between the Mahoning County Commissioners, the Mahoning County Sanitary Engineer and the Mahoning County Sanitary Engineer Employees Union, Effective April 1, 2007, Expires March 31, 2010.
2. Negotiations Package between Mahoning County Board of Commissioners and the Mahoning County Sanitary Engineer Employee's Association (MCSEEA) (Legislative Draft for Review) Version #4 (with noted 5/25/2012 changes).

Additionally, the parties introduced other exhibits into evidence.

There were four (4) issues remaining at impasse at the hearing. Two (2) involved contract language and two (2) involved economic issues. They were:

1. Article 21, Temporary Transfers.
2. Article 38, Sick Leave.
3. Appendix A-2, Pay Schedule.
4. \$1000 Bonus.

Other than these four (4) issues, the tentative agreements reached by the parties and the contract language that was not modified are adopted by the Fact Finder as part of this report. The parties also agreed to extend the fact finding process until August 13 when this report was to be issued.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and are:

- (1) Past collectively bargained 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 classification involved;
- (3) The interests and welfare of the public, 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;
 - (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Fact Finder hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the Fact Finder would be glad to meet with the parties to discuss any remaining questions and clarify any ambiguities.

III. ISSUES AND RECOMMENDATIONS

Introduction

The Union initially offered to extend the 2007-10 collective bargaining agreement for three (3) years, until March 31, 2013, without any changes in wages or benefits. The Employer rejected this offer and sought a wage freeze and the elimination of the pension pick up. During negotiations, the parties substantially revised the contract, reworking existing provisions and adding a number of new ones. They reached tentative agreements on most items, including an overall 13.46% increase during the

three (3) year contract in exchange for the elimination of the 9.50% pension pick up and the pay schedule requested by the Employer. The Employer wanted to reduce the starting wage scale for new hires and increase the number of steps to sixteen (16) before reaching the top wage rate. The Union also sought a \$1000 lump sum payment for each member of the bargaining unit. During the final negotiating session on May 25, 2012, the parties agreed to submit the lump sum payment to the County Commissioners. The Commissioners rejected the bonus and this matter proceeded to fact finding.

At the hearing, the Union modified its request for a lump sum to \$750. It also raised the issue of the wage schedule. According to the Union, the parties had agreed that new hires would reach the top wage rate with the sixteenth step in the scale. However, since the new wage scale would include the 13.46% increase, the sixteenth step should reflect that increase and be increased on the wage scale. The Union also raised two (2) language issues.

Issue: Article 21, Temporary Transfers/Out of Classification Assignments

Position of the Employer: This is a new article. The parties have agreed on much of the language. The Employer proposes the following language for Section 1:

Section 1. Temporary Transfers. In connection with the efficient operations of the Employer, the Employer has the right to temporarily transfer an employee to a different classification for emergencies or for other reasons determined by the Employer, which include but are not limited to extended leaves, worker's comp, FMLA, military leave, etc. which are anticipated to be greater than thirty (30) days. Such transfers shall normally not exceed one hundred twenty (120) calendar days unless mutually agreed to between the Union and the Employer, except if done to address an extended leave of absence (e.g., FMLA, Military Leave, Worker's Compensation/IOD Leave, etc.).

Position of the Union: The word “not” should be removed so that the first sentence reads “which include but are limited to...”

Findings: The Employer argues that it needs to retain the management right to make temporary transfers and the parties cannot anticipate every situation. Retaining discretion gives it the ability to make decisions as needed. The Union claims that the parties wrote the language with certain situations in mind. The Employer sought the language and the Union asked the Employer to propose the situations where it wanted the ability to make a temporary transfer. The Employer listed extended leave, workers’ compensation, FMLA, and military leave. The Employer now wants to leave the door open for other situations. The Union is concerned that unlimited discretion could be abused.

Contract language should be flexible and allow for unanticipated circumstances. Parties cannot anticipate every possibility that might arise. While the Union asked the Employer to list those situations where it might want to temporarily transfer an employee, the Employer cannot realistically be expected to anticipate all possibilities. It seeks to retain some discretion when making a temporary transfer. This is consistent with the management rights it has retained in Article 2.

The Union is concerned that the Employer will have too much discretion. The proposed language provides some limitations. It lists examples where temporary transfers are permitted, i.e., emergencies, workers’ compensation, FMLA, and military. This indicates the kind of leaves that are intended and excludes others by implication, such as personal time. The leaves must be anticipated to be more than thirty (30) days. Based on this language, the Employer could not temporarily transfer an employee

because of a vacation, illness, or short term leave such as bereavement. Additionally, the language is subject to the grievance procedure, so the Union can grieve if it believes a temporary transfer is improper under the contract. In short, the Fact Finder concludes that there are adequate protections from abuse for the bargaining unit. Finally, the Union can always request information from the Sanitary Engineer regarding a particular temporary transfer. During the hearing, the Sanitary Engineer indicated that it would be willing to discuss temporary transfers so that the Union understands the need for it. The Fact Finder urges the parties to discuss them when the need arises so that the Union understands the reasons for them and the Employer is aware of any concerns on the part of the Union as a result.

Recommendation: The Fact Finder recommends the Employer's proposed language.

Issue: Article 38, Sick Leave

Position of the Employer: This is another new article and the parties have agreed upon most of it. The Employer proposes the first paragraph of Section 5 to read as follows:

Section 5. Documentation. The Employer may require an employee to furnish a satisfactory written, signed statement to justify the use of sick leave. Such statement is not a certificate from a medical practitioner. If medical attention is required, or the absence is greater than three (3) days, a satisfactory certificate from a licensed physician may be required to justify the use of sick leave. Such inquiry will not be made by the employee's immediate supervisor. The Employer may require a physician's certificate every ten (10) days to justify the continued use of leave, but the imposition of such requirement shall be subject to the reasonableness standard.

Position of the Union: Remove the word “satisfactory” from line 4 above immediately prior to the word “certificate,” so that the second sentence reads “a certificate from a licensed physician may be required to justify the use of sick leave.”

Findings: The Union contends that there have been some issues with sick leave certificates submitted by doctors, which have held up approval for certain time off. It believes that removing the word “satisfactory” will eliminate those problems. The Employer does not object to the Union’s position and removing the word “satisfactory” from the second sentence.

Recommendation: The Fact Finder adopts the Union’s position.

Issue: Appendix A and A-2, Pay Schedule

Position of the Union: The sixteenth (16th) step of the pay schedule for employees hired after June 1, 2012 (Appendix A) should include the 13.46% increase agreed to by the parties.

Position of the Employer: The pay schedule should remain as written.

Findings: The parties agreed to increases during the three (3) year contract in exchange for eliminating payment of the employees’ 9.5% PERS contribution by the Employer. They also agreed to lower entry level pay rates and increase the number of steps in the wage scale from eight (8) to sixteen (16) steps. The Union negotiated an additional increase of almost 4% over the three (3) years contract in exchange for the new pay scale. At the hearing, it contended that the pay scale should reflect these increases, i.e., that the 16th step of the new scale should include the 13.46% overall

increase. The Employer counters that the increase was intended for current employees only and it should not provide increases to employees who have yet to be hired.

The Employer entered these negotiations intending to decrease its costs. However, it wanted current employees to be hurt as little as possible. One (1) way to accomplish this is to cut pay rates for new hires. Current employees are not affected and, as current employees retire or leave, the Employer is able to pay a new worker less money. Another way is to increase the steps of the wage scale so that it takes longer for new employees take longer to reach the highest wage rages. The Union agreed to these and was able to negotiate some additional increase over and above the elimination of the 9.5% pension pick up in exchange. Both parties benefit.

The Union seeks to add the 13.46% increase to the pay scale. In effect, this would give new hires the increase, although it would not take effect until they reached the sixteenth (16th) step. This appears to run counter to the Employer's objective of cutting costs for new workers. Appendix A-2 sets forth the pay rates for current employees, those hired prior to June 1, 2012. The 13.46% increase is reflected in this pay scale, not Appendix 2, which applies to workers hired after June 1, 2012. The Employer opposes adding the increase to the scale for hew hires. As the Fact Finder understands it, the Employer offered to essentially grandfather current employees with regard to the increase. That is, current employees will receive the increases during this contract, but new hires are not eligible to receive it.

The Fact Finder is hesitant to add the increase to the pay scale. This was apparently not discussed during negotiations and the Employer agreed to the increase, at least in part, to obtain the reduced wages for new hires and stretched out step scale.

Adding the increase at this stage adds significant future costs that the Employer sought to eliminate. Additionally, the new pay scale contains sixteen (16) steps. It will take new hires a number of years to get to the final step. This will allow the parties several contracts to negotiate a new scale as economic circumstances dictate. Should the County's fiscal situation improve, as the Union believes it will, they can adjust the scale accordingly. The Fact Finder is aware that the Union, as most Unions, does not look forward to a two (2) tiered wage scale. Such scales can cause resentment and disharmony among employees. However, the Union was able to obtain some money for its members in exchange for the new scale and has plenty of opportunity to renegotiate the scale in subsequent contracts. The Union and the bargaining unit should also be commended for sharing some of the financial pain. These are not the best of times and many units have accepted freezes, pay cuts, and the reduction or elimination of benefits. In the Fact Finder's recent experience, this unit has done better than most.

Recommendation: The sixteenth (16th) step of the wage scale should not include the 13.46% increase.

Issue: Bonus or Lump Sum Payment

Position of the Union: Each bargaining unit member should receive \$1000 in each year of the contract.

Position of the Employer: No bonus or lump sum payment.

Findings: During the hearing, the Union reduced its position to \$750 for each member in each year of the contract. The Sanitary Engineer opposes any bonus or lump sum payment. The Union submits that there is adequate money in the budget to pay the

bonus. The Sanitary Engineer responds that it is heavily indebted, much of the money in the budget is earmarked for debt payment and other purposes, and, as a result, there is not as much money in the budget as appears at first glance.

As noted above, these are difficult economic times. The Mahoning County/Youngstown area, like many in Ohio, is experiencing financial difficulties. In fact, it has suffered more than many areas in Ohio. Youngstown and the County have lost many businesses, jobs, and residents. The County's population has declined by almost a third since 1970. Revenues have decreased while expenses have increased. The State of Ohio has also experienced budget woes and has cut aid to local government. Overall, it is not a pretty picture.

The Union reasons that the Sanitary Engineer's budget shows adequate money and there are new developments that will increase revenues. For example, a new race track with slot machines, a "racino," is being constructed and the reconstructed travel plaza on the Ohio Turnpike in the County will be opening soon. The Employer answers that its budget is heavily indebted and it has had to spend money to construct sewers for the "racino" and travel plaza. It has sought to decrease expenses by eliminating paying the employees' share of pension contributions and negotiating lower wage rates for new hires and a stretched out pay scale. To obtain these, it agreed to pay bargaining unit members an overall increase of 13.46%. Paying \$1000 or \$750 to each member each year would cost too much.

The Sanitary Engineer is not the only department of the County with a collective bargaining agreement. The County has negotiated new agreements with other units in 2012. Of these, none have received increases in 2012 equalling what the Sanitary

Engineer has negotiated. During the hearing, the Fact Finder explained to the Union negotiating committee that it would be difficult to justify recommending a bonus since it had already negotiated an increase that was more than what other units had negotiated. However, if it could show other units had received money that it had not, the Fact Finder might be persuaded to award the bonus. The Union was not able to provide evidence that another unit had received money or an increase it did not. On this record, the Fact Finder cannot recommend a bonus payment each year of the agreement.

On the other hand, the Fact Finder is well aware of the economic difficulties public employees are facing. All employees want to see their incomes increase so that they can better support themselves and their families. There are times, though, when it is necessary to accept less than what one wants. The employees of this unit have agreed to share the economic burden by paying for their share of pension contributions, lower starting wage rates, and a new pay scale. The Fact Finder acknowledges their sacrifice and efforts. Although awarding the bonus would help the members of this unit, on this record and at this time it is not warranted. While he cannot justify a bonus each year, the Fact Finder recommends that the 6.5% increase to offset eliminating the pension pick up be effective June 1, 2012. He also recommends that the employees begin paying the 6.5% pension contribution effective September 1, 2012. This will allow employees some additional time to adjust to paying their pension contributions.

Recommendation: No bonus or lump sum payment is recommended. The Fact Finder recommends that the 6.5 % increase to offset elimination of the pension pick up be effective on June 1, 2012, while elimination of the pension pick up by the Sanitary Engineer be effective September 1, 2012.

All other tentative agreements reached during negotiations are adopted by the Fact Finder and incorporated into this Report and Recommendation.

Dated: August 13, 2012

A handwritten signature in blue ink, appearing to read "Daniel G. Zeiser".

Daniel G. Zeiser
Fact Finder