

**STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF FACT FINDING**

Between

**The Communications Workers of America
Local 4501**

And

The Franklin County Veterans Service Commission

SERB Case # 10-MED-09-1265

STATE EMPLOYMENT
RELATIONS BOARD
2011 JUL 12 A 9:50

Hearing date: June 24, 2011--E. William Lewis, Fact Finder

Fact Finder's Findings and Recommendations

Appearances:

For the Employer:

Aaron L. Granger, Esq.
Schotenstein Zox & Dunn
250 West Street, Suite 700
Columbus, Ohio 43215

For the Union:

Michael A. Moses, Attorney
Moses Law Offices, LLC
100 East Broad Street, Suite 1350
Columbus, Ohio 43215

AUTHORITY

This matter was brought before Fact Finder E. William Lewis, in keeping with applicable provisions of the Ohio Revised Code 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation based on merit and fact according to the provisions of Ohio Revised Code 4117.

In attendance:

For the Employer:

Aaron L. Granger, Esq.

Advocate

Ms. Christy Russell

Assistant Dir. OMB, Franklin
County (witness)

Mr. John Warrix

Assistant Dir. Franklin County
Veterans Commission (witness)

For the Union:

Mr. Michael Moses

Attorney--Advocate

Mr. Bill Khourie

Law Clerk

Ms. Anna Henry

Administrative Asst. (witness)

Ms. Doreen Lafferty

Veterans Benefit Specialist
(witness)

Mr. Barry J. Roberts

Fiscal Specialist (witness)

Mr. Matthew Wyman

Veterans Benefit Specialist
(witness)

BACKGROUND:

The Franklin County Veterans Service Commission, hereinafter known as the Employer/VSC, provides financial and consultation assistance to veterans and active duty personnel and their dependents. Their mission is to obtain benefits and entitlements from federal, state and local agencies for their clients. The Communications Workers of America, Local 4501, hereinafter known as the Union/CWA, represents a bargaining unit of approximately sixteen employees. The bargaining unit is composed of ten Veterans Benefit Specialists, one Fiscal Specialist, one Case Review Officer, two Administrative Secretaries, one Administrative Assistant, and one Administrative Specialist.

The VSC draws its annual revenue from a mil rate from tax on real property within Franklin County. Under the Ohio Revised Code 5901, the VSC may levy a mil rate not to exceed one-half of a mil per dollar on real property. One mil is equal to one tenth of a cent (\$0.001).

The parties commenced bargaining in October 2010, on their first successor contract. Numerous bargaining sessions were held which included assistance from a SERB mediator. All issues were resolved except Article 14, 21, 30, 33, and 36, prior to the appointment of this Fact Finder. The parties agreed to mediation with the Fact Finder, and during two sessions (June 10 & 22) all issues were resolved except Article 33-Wages and Article 36 as related to Article 33.

The Fact Finding Hearing was scheduled for June 24, 2011 at the VSC. The Hearing was commenced at 11:00am, with all parties having complied with their pre-submittal statutory requirements. In accordance with Ohio Revised Code, Section 4117.14(C)(4)(e), in making recommendations, the Fact Finder takes into consideration the following factors:

- (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 interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustment 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 agreed-upon dispute settlement procedures in the public service or in private employment.

The format of this Report will be to list the Article, followed by a review of each parties' position, a discussion, followed by the Fact Finder's recommendation. According to the parties pre-submittals and their concurrence, the following Article 33 remained unresolved and was addressed during the Evidentiary Hearing:

ARTICLE 33 WAGES

Section 33.1 Wage Increases

Section 33.3(new) Parity Clause

Union Position:

Section 33.1: Retroactive to January 1, 2011, a wage increase of one and one half percent (1.5%) to the base rate of all bargaining unit members.

Effective January 1, 2012, all bargaining unit members shall receive a wage increase of two and one half percent (2.5%) to the base wage rate.

Effective January 1, 2013, all bargaining unit members shall receive a wage increase of two and one half percent (2.5%) to the base wage rate.

Section 33.3(new) Parity Clause

If the County Commissioners approve a higher general pay increase or if the non-bargaining unit receive a higher general percentage wage increase to their rate of pay during the term of this Agreement, all bargaining unit employees will receive the difference between the higher percentage rate and the bargaining unit increases, if any. Such adjustment will be made retroactive to the effective date of above mentioned non-bargaining unit increases, by virtue of the salary range adjustments, pay bonuses, across the board raises or cost of living adjustments (COLA) that cause an aggregate increase.

Employer Position:

Section 33.1 The Veterans Service Commission shall provide a wage increase of one percent (1%) to the base rate of pay to all bargaining unit members effective retroactively to January 1, 2011.

Effective January 1, 2012, all bargaining unit members shall receive a wage increase of one percent (1%) to the base wage rate of pay.

Effective January 1, 2013, all bargaining unit members shall receive a wage increase of one percent (1%) to the base wage rate of pay.

DISCUSSION:

The Evidentiary Hearing commenced with the Union, in support of their proposals, claiming that the County Commissioners were not the empowered body to have final say on what wage increase would be approved. They stated that ORC 5901 gave the Veterans Service Commissioners authority over VSC employees compensation. If the VSC budgetary process violated ORC 5901.21, by over spending, the County Commissioners could replace up to six VSC Commissioners.

However, evidence shows that this bargaining unit(#06-REP-12-0179) was certified by SERB, which was created by the passage of ORC 4117(UE-F-CBA). The previous Agreement, their first, was signed by the FCVSC Commissioners, but was subsequently approved by resolution of the Board of Franklin County Commissioners(EE-9)(4117.10) The SERB mediator and this fact finder, who have assisted the parties in this negotiation process, were made possible by the existence of ORC 4117. Additionally Section 5.2 of the Agreement states: “However, the Union specifically retains its rights under Chapter 4117 of the Ohio Revised Code to bargain on wages, hours, terms and other conditions of employment and on management decisions as they affect wages, hours, terms and other conditions of employment”.

Although this is a unique agency within Franklin County, regarding ear marked funding, the CBA is full of references of the these bargaining unit members being County employees. Their benefits are similar if not identical in most instances.

Both parties submitted evidence in support of their positions or beliefs: Union Exhibit H, and Employer Exhibit 9. The parties respective arguments would be germane to this Report if evidence were submitted to show a dispute between the VSC Commissioners and the County Commissioners. However, no convincing evidence was brought forward.

Regarding the CWA’s proposed Parity provision(Section 33.3), in the fact finder’s opinion, the inclusion of these types of provisions are counter productive. By the mere fact of their existence, they create “contract police”, always “snooping around” looking for what others are doing. They do not in any way help a healthy labor/management relationship. If Parity clauses are vague, the parties argue over who is covered by the provision. If they are specific, then some are unhappy because that group or person was not included in the parity comparison.

No evidence was submitted identifying comparable language(Parity), because they are rarely included in labor agreements. When times are difficult, bargaining agreements typically reflect those circumstances by shorter durations or economic re-openers.

The Union submits their comparables as being other large county VSC's, showing this bargaining unit behind. Their submitted evidence show them not close to Cuyahoga County VSC, generally behind Montgomery County VSC employees, but within range of Hamilton County VSC(UE-B,C,D). No comprehensive evidence was submitted depicting what wage increases were being granted by other large VSC's.

This County and the country are attempting to recover from the biggest recession since the "Great Depression". This recession has impacted the County's General Fund, according to evidence and testimony. The approved 2011 budget is 2.7% less than the 2010 actual expenditures(EE-2). A five year look-back of the Franklin County General Fund shows a decrease in annual revenue from \$346,929,618 to \$281,674,667(2011-appropriated). The result is a current annual loss of \$65,254,951, or nearly nineteen percent(19%)(EE-2). These budget decreases will be further exacerbated by expected State budget cuts to local government, decreases in County property values, drops in County income, investment income being down, and high County unemployment(EE-2,3,4 & 10).

The current status of bargaining between the County and its Labor Unions shows, only one small bargaining unit has recently settled(E PreS, pg9, & EE-5). Five of the ten bargaining units are currently in bargaining, including this unit. The other four units are in their last year of their CBA's. Internal comparables are important, especially with so many bargaining units covering County employees. However, internal comparables are hard to evaluate with so many units in transition or soon to be.

The fact finder cannot ignore recent wage settlements within the area and statewide(EE-7). Public employees wage settlements, both regionally and statewide, have been on a steady decline for the past decade, according to published wage data(SERB Report,2001-2010). Wage increases since 2001 have decreased from the four percent levels to the one percent levels. With revenue declines to public employers, as is with this one, and the preponderance of their expenditures being wage and benefits, sacrifices have been and are being made by their employees.

RECOMMENDATION:

ARTICLE 33

WAGES

Section 33.1 Wage Increases. The Veterans Service Commissioners shall provide a wage increase of one and a half percent (1.5%) to the base rate of all bargaining unit members effective retroactively to January 1, 2011. To be eligible for the retroactive pay the bargaining unit member must be employed on the date this Agreement is ratified by the Union and approved by the Commissioners.

Effective January 1, 2012 all bargaining unit members shall receive a wage increase of one percent (1.0%) to the base wage rate through December 31, 2012. The parties shall reopen wage negotiations solely on wages for January 1, 2013 through December 31, 2013. Negotiations on the wage reopener shall begin no sooner than July 1, 2012.

Section 33.2 Current language, except per tentative agreement, last paragraph to reflect anniversary date and second regular pay day.

Section 33.3(new) Parity Clause: Not to be included.

ARTICLE 36

DURATION OF AGREEMENT

(Reflecting changes to ARTICLE 33)

The Agreement shall be effective, upon the date of ratification and shall continue in full force and effect through December 31, 2013 at 11:00 p.m., except as provided in **ARTICLE 33-WAGES, Section 33.1**. The negotiations will be conducted pursuant to the provisions of the Ohio Revised Code Chapter 4117.

SUMMARY

This will affirm the foregoing Report consisting of nine pages, and recommendations contained therein, are made in this matter of Fact Finding by the below signed Fact Finder. All matters of tentative agreement are recommended to be included in the Agreement. To the best of my knowledge, said Report and its recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

This concludes the Fact Finding Report.

Respectfully submitted and issued this 6th day of July 2011.

A handwritten signature in cursive script that reads "E. William Lewis".

E. William Lewis
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this Fact Finder's Report was served by regular U. S. Mail to Aaron L. Granger, Esq., SCHOTENSTEIN ZOX & DUNN, 250 West Street, Columbus, Ohio 43215, for The Franklin County Veterans Service Commission, and Michael A. Moses, Attorney, 100 East Broad Street, suite 1350, Columbus, Ohio 43215, for the Union, and to J. Russell Keith, Assistant Executive Director, State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215, this 6th day of July 2011.

A handwritten signature in black ink, appearing to read "E. William Lewis". The signature is written in a cursive style with a large, sweeping initial "E".

E. William Lewis
Fact Finder

