

FACT - FINDER'S REPORT

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AFSCME OHIO COUNCIL 8,)	
LOCAL 673)	
)	
(UNION))	
)	
- and -)	CASE 11-MED-08-1020
)	
JEFFERSON COUNTY WATER AND)	
SEWER DISTRICT)	
)	
(EMPLOYER)	

January 11, 2012

Proceedings before Jared D. Simmer, Fact-Finder. The undersigned was selected by the Parties to serve in the role of Fact-Finder in the above-captioned case pursuant to the provisions of Section 4117-9-05 of the Ohio Revised Code.

I. APPEARANCES

For the Union -

Jaladah Aslam (ASCME Ohio Council 8 representative), Ken Bradley and Darrin Corrigan.

For the Employer -

Michael Seyer (Clemons, Nelson & Associates), Shannon Gosbin, Michael Eroshevich and Michael Warren.

II. BACKGROUND

This proceeding involves collective bargaining negotiations between AFSCME Local 673 (Union) and the Jefferson County Sewer and Water Authority (Employer). This bargaining unit consists of approximately fifteen (15) employees, representing the following job classifications: computer programmer, equipment operator, wastewater treatment plant operator, general foreman wastewater collection and treatment, general foreman water distribution, water distribution foreman, waterline maintenance worker, laborer/truck driver, customer service manager, account clerk, account clerk II, wastewater maintenance, and mechanic.

The current collective bargaining agreement (“Contract”) expired on September 30, 2011. The parties made honest effort to negotiate a successor agreement over a number of bargaining sessions but reached impasse after the final session on November 18, 2011. As a result, for the past three months the parties have been operating under the terms of the expired Contract.

The fact-finding hearing was held on December 21, 2011 at the Employer’s Service Center, located at 598 State Route 43, Steubenville, OH. Prior to the hearing, the parties submitted prehearing statements. Both parties identified wages as the sole remaining, unresolved issue.

In preparation for this Fact-finding Report, it should be noted that any changes to the contract that the Parties have already agreed to (if any) prior to the hearing are adopted by the Fact-finder without discussion and incorporated by reference.

In this Report, the Fact-Finder has attempted to balance the respective equities of both parties. In addition, his recommendations reflect the reality that governments at all levels (local, state and federal), and their respective political subdivisions, continue to wrestle with the economic consequences of the lingering national recession, most notably rising costs, flat or falling tax revenues, and uncertain revenue streams going forward.

III. RELEVANT CONTRACT ARTICLE

Article 33 Wages

IV. PARTIES’ POSITIONS

Union’s Position

At the conclusion of negotiations, the Union’s last proposal was a 3% increase in base wage rates effective October 1, 2011¹, 2% increase effective October 1, 2012, and another 2% effective October 1, 2013. However, at the fact-finding hearing, the Union modified its proposal to request a 3% increase in the first year, followed by wage reopeners in the second and third years of the contract (2012 and 2013).

The Union offered the following in support of its proposal. One, it emphasized out that in the last 3-year agreement, this unit agreed to accept a wage freeze in the first year. Two, it points out that inability to pay was not raised by the Employer and so should not be considered in the Fact-finding Report. Third, as a matter of internal equity, the Union points out that while it is being asked to incur a wage freeze in year one of the new agreement, bonuses were recently given to employees in the Auditor’s office, and not only do employees in the County Engineer’s office already receive higher wages for jobs that are similar to those held by Local 673

¹ The Fact-finder presumes that incorporated in this proposal was a request for retroactivity of said increase.

employees², but they recently received pay increases that exceed the Employer's final offer to this unit³. Fourth, the Union goes to lengths to emphasize that the Sewer and Water Department generates more revenue for the County than any other unit. And, finally, the employees in this bargaining unit are underpaid relative to other similarly classified public sector employees in the surrounding geographic area (comparables).⁴

V. Employer's Position

The Employer proposed a wage freeze in the first year of the contract (2012), followed by a wage reopener in the sixty (60) calendar days prior to September 30, 2012 to negotiate wages for the remaining two years of the agreement (2012, 2013).

More specifically, the Employer proposed the following contract language:

During the period of October 1, 2011 through September 30, 2012, the hourly wage rates shall remain as provided on October 1, 2011. During the sixty (60) day period prior to October 1, 2012d, either party may reopen the agreement for the purpose of discussing hourly wage rates. It is agreed such negotiations shall be in accordance with the applicable provisions of ORC 4117. Notwithstanding the above, effective the first full pay period following the execution of this agreement, a bargaining unit employee for whom the Employer has approved the processing of a "back flow certification" will receive a twenty-five cent (\$.25) stipend added to his hour rate of pay.

While admitting that ability to pay was not raised as a defense to the Union's proposed wage increase, the Employer believes that any wage increase should be viewed in the context of internal equity, that is, what's fair given what employees in other units in the County are receiving. For instance, the Employer points out that non-bargaining unit employees of the County have not enjoyed a raise in over three (3) years, and the two bargaining units in the Sheriff's Department in over four (4) years. Further, the Corrections department not only has had to endure layoffs but was forced to move some full-time employees to part-time. And, lastly, budget constraints have forced the department of Job & Family Services to lay off about twenty (20) employees.

And, as to the County Engineer's Department, the Employer explains that that unit is an anomaly because it is headed up by an elected official and enjoys different funding sources than Sewer and Water. And, so, it's not appropriate to use that group as a reference point for what should be recommended in this case.

FACT-FINDER'S FINDINGS AND RECOMMENDATIONS

² Union Exhibit- 1.

³ Employees in the Engineers Office received a 2% general wage increase effective 6-11.

⁴ For reasons that will be addressed in this Report, *infra*, comparables will not be a factor in to the Fact-finder's recommendation.

The Fact-finder has reflected on the Parties' pre-hearing position statements, external equity considerations (i.e., current settlements in other Ohio public sector employee contracts, and wage adjustments to Ohio public sector non-union employees), as well as internal equity concerns (what other County employees, both union and non-union, have recently received), and the current state of the local and state economies. With these considerations in mind, the Fact-finder will lay out what he believes to be a fair and workable recommendation.

While the Union's proposed 3% wage adjustment in the first year of the contract, with wage reopeners in years two and three, is modest by historical standards, it's important to note that, unfortunately, our country is not facing normal conditions. Rather we now find ourselves enduring the worst economic conditions since the great depression⁵. As a consequence, across the country wages have been frozen or cut, tens of thousands of private and public jobs have been lost (particularly in hard-hit industrial states like Ohio)⁶, there have been service cuts and increased taxes, and we have an unemployment rate that approaches 1 out of every 11 working Americans (9%)⁷.

In the case of this Employer, the impact on its budget has been unavoidable, predictable and severe. As we have seen, County employees, both union and non-union, have had to accept wage freezes that in some instances have extended over a number of years, layoffs, and permanent reductions in staffing levels. This bargaining unit has not been asked to endure a commensurate level of sacrifice.

More specifically, in Local 673's case, while the Fact-finder acknowledges that it had a wage freeze in year one of the current agreement, it, however, received increases of 2%⁸ in the last two years of the agreement that were probably the envy of most other County employees. While in most years 2% wage gains could be viewed as modest, they look downright generous compared to what the County's non-bargaining unit employees, Sheriff's Office, Corrections Department and Job & Family employees received. In fact, it could be argued that while most public sector employees were experiencing wage freezes or wage cuts during the last two years, this unit was one of the minority in the public sector that enjoyed a wage increase the past two years running.⁹

The Union is correct in pointing out that there have been other County employees (to wit, the Engineering Department) that have not only received pay increases but also enjoy higher levels of pay than Water and Sewer bargaining unit employees holding comparable positions. However, as the County correctly pointed out, this group is an anomaly because it not only receives funding from multiple sources outside of the general fund, but it is headed up by an

⁵ Hence the term the "Great Recession".

⁶ In fact, Ohio and Michigan have been the two states most impacted by the recession.

⁷ And this calculation doesn't even count the many who are underemployed, employed part-time, and those who have simply given up looking for work.

⁸ Relatively robust, that is, in comparison to what other employee groups were getting,.

⁹ And, apparently, no cuts in what in the private sector would be seen as generous pensions and benefits.

elected official who has a degree of independence and latitude not necessarily afforded other County departments. And, if my notes are correct, it should be noted that they received the same 2% general wage increase over the past two years that this unit did. In short, rather than using them as a reference point for further increases, it would be more accurate to point out that unlike almost every other County employee group, Water & Sewer and Engineering were the two departments that have been insulated from the economic storm the best.

And, while it may be true that Water & Sewer on an annual basis makes more money for the County than any other department, in the opinion of this Fact-finder the internal equity considerations of shared sacrifice discussed, supra, override that consideration.

Lastly, as to the proposal by both Parties for wage reopeners in year two and three of the new contract, this Fact-finder is reluctant to recommend adoption of reopeners. Rather, he would recommend the budgeting certainty that a guaranteed adjustment would bring. Towards that end, he will recommend base wage rate increases in years two and three of the contract.

RECOMMENDATIONS

In short, after due consideration of all of the above factors, the Fact-Finder recommends a 1.5% increase in base wages in the first year of a new three-year agreement¹⁰, with retroactivity. And, in lieu of wage reopeners, 1% general hourly wage increases in both the second and third years (i.e., 1.5 – 1 - 1%).

Further, he also recommends adoption of the proposal that bargaining unit employees who earn back flow certification receive a twenty-five cent (\$.25) adjustment to his/her hourly rate of pay.

CONCLUSION

While this Fact-Finder realizes that neither Party may be fully satisfied with the recommendations in this Report, I do believe that it meets the standard of the definition of a good report, i.e., both Parties are equally unhappy with the results.

So, with that in mind, the Fact-finder is confident that both parties should feel comfortable recommending it for adoption to their respective constituencies.

Issued: January 11, 2012

Respectfully submitted,

JARED D. SIMMER

Jared D. Simmer, Esq.
Fact-Finder

¹⁰ Again, more than many other County employees will be receiving this year.

Attach.

CERTIFICATE OF SERVICE

I hereby certify that the above Fact-Finder's Report and Recommendations were served upon the following parties, to wit, AFSCME, Ohio Council 8, Local 1992 (Jaladah Aslam) and the Jefferson County Water & Sewer Authority (Michael Seyer) via electronic mail (e-mail), and upon the Ohio State Employment Relations Board (via the Administrator, SERB Bureau of Mediation) in similar fashion this 11th day of January, 2012.

Jared D. Simmer, Esq.
Fact-Finder