

**FACT FINDER'S REPORT
AND
RECOMMENDATION**

IN THE MATTER OF:

LORAIN COUNTY DEPARTMENT OF
JOB AND FAMILY SERVICES

AND

UNITED AUTO WORKERS, LOCAL 2192

Case Number:
2013-MED-04-0541

Before Fact Finder: Thomas J. Nowel

PRESENTED TO:

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INTRODUCTION

Thomas J. Nowel was appointed to serve as Fact Finder in the above referenced case by the State Employment Relations Board on May 8, 2013 in compliance with Ohio Revised Code Section 4117.14 (C) (3).

The subject matter of this Fact Finding is a wage re-opener. The term of the collective bargaining agreement is March 28, 2011 through September 15, 2013. Section 33.2 of the Agreement provides that the "Union may reopen negotiations for the sole purpose of negotiating wages by providing written notice to the other party between June 1 and June 15, 2012." The parties met on three occasions prior to fact finding, July 31, 2012, December 6, 2012 and March 7, 2013 and were unable to resolve the wage re-opener. The parties submitted pre-hearing statements in a timely manner. Hearing at Fact Finding was held on July 18, 2013. The Fact Finder inquired if the parties were interested in engaging in mediation, but, as the only issue was the wage re-opener, it was decided to move directly into the evidentiary hearing. The parties agreed that the Report and Recommendation would be issued, via electronic mail, on September 5, 2013.

The Union represents approximately 165 employees in a wall-to-wall unit at the agency including Account Clerks, Accountants, Custodial staff, Data Entry Operators, Family Service Aides, Investigators and numerous additional classifications at the Lorain County Department of Job and Family Services. The current Agreement included wage freezes during the first two years of its term. Including unionized employees at Job and Family Services, which are the subject of this Report, there are nineteen bargaining units within the jurisdiction of the Lorain

County Board of Commissioners. Wages have been frozen for all employees in these bargaining units during the labor contract cycle of 2010 through 2013.

Those participating at hearing for the Employer included the following:
Michael D. Esposito, Employer Advocate, Clemans, Nelson & Associates
Sandy Conley, Clemans, Nelson & Associates
Alisa Thacker, Administrative Assistant

Those participating at hearing for the Union included the following:
Jim Waingrow, UAW International Union Representative
Kelly Fields, Vice President
Andrea Thomas, Bargaining Committee
Nadine Plavsich, Bargaining Committee

BACKGROUND

In analyzing the positions of the parties regarding the wage re-opener and then making a recommendation, the Fact Finder is guided by the principles that are outlined in Ohio Revised Code section 4117.14 (G) (7) (a-f) as follows.

1. The past collectively bargained agreement between the parties.
2. Comparison of the issues submitted to fact finding relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification.
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. The stipulations of the parties.
6. Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding, or other impasse resolution procedures in the public service or in private employment.

During the course of the hearing, the parties had full opportunity to advocate for their positions, submit exhibits, present testimony and discussion and engage in rebuttal of the submissions and arguments of the other party.

The Union's proposal at Fact Finding is a three percent (3%) across the board wage increase for all employees in the bargaining unit. The Union's original wage proposal included an effective date in 2012, but it was modified at Fact Finding to be effective on January 1, 2013 (Union Exb. 1). The Union states that wages have been frozen for two years, and, although the Employer argues that other unionized county employees have not been granted an increase in 2013, the parties agreed to a wage re-opener for the last year of the Agreement. At the same time, the employee share of the cost for health insurance was not frozen during the life of the Agreement. Bargaining unit employees pay an additional \$8.00 per month for health insurance while wages have remained static. Low wage earners are particularly impacted. The Union states that it recommended changes to the health care plan at the County that may have reduced costs, but the Employer refused to give consideration to its suggestions. The Union states further that the Executive Director of the Agency received a 3% wage increase effective January 1, 2013. The

Director was also impacted by the \$8.00 health insurance increase, but her wages increased \$3425.00 in 2013 (Union Exb. 2). The Union states that all salaried employees of the Agency were granted a 3% wage increase on January 1, 2013. The Union asserts that the Employer has suggested that funds have not been available to meet the demands for its proposed increase, but the Agency was able to increase the wages of non-bargaining unit employees. The Union argues that its proposal is based on fairness and equity and urges the Fact Finder to recommend its proposal for a 3% across the board wage increase.

The Employer rejects the proposal for a wage increase and advocates for a wage freeze in the final year of the Agreement. In response to the Union's argument regarding non-bargaining unit employees, the Employer states that the wage increase was granted based on the United Steelworkers Union collective bargaining agreement with the Board of County Commissioners. This master agreement establishes a pattern which guides the Board of County Commissioners. The Employer states that the wages of management employees were frozen since 2009. The Employer states further that it pays 90% of the cost of health insurance. While the employee share of the premium increased, the Employer's share of the increase was considerably greater. The Employer states that, historically, pattern bargaining among that nineteen bargaining units has been consistent. During the current three year bargaining cycle, 2010 to 2013, every non-conciliation bargaining unit realized a three year wage freeze (Emp. Exb. 1). The Employer argues that this pattern must not be broken as it would result in bargaining chaos and would have a negative impact on the morale of other county employees. A number of wage re-openers in

2013 resulted in continued freezes. When the UAW attempted to gain lump sum pay increases for its members at Lorain County Children Services in 2012 based on a wage re-opener provision in the collective bargaining agreement, the Fact Finder's recommendation was for the continuation of no pay increases due, in part, to the pattern of bargaining among the County's bargaining units (Emp. Exb. 3, 7-8). The Employer points out that Fact Finders generally do not interfere with the stability which pattern bargaining establishes for an Employer with multiple collective bargaining agreements (Emp. Exb 3). The Employer states further that, in a comparison with similarly situated Ohio counties, Lorain County is in the middle in respect to various economic indicators (Emp. Exb. 4). In a sample of bargaining unit classifications, Lorain County Department of Job and Family Services employees are paid at or above the average of similarly situated Ohio counties (Emp. Exb. 5). The Employer argues that bargaining unit employees are paid competitively, and there is no reason therefore to deviate from the pattern of bargaining which has been established at the County. The Employer suggests that the current Agreement expires on September 15, 2013 and that an increase in wages will be on the table when the parties enter contract renewal negotiations in the next few months. The Employer asks the Fact Finder to recommend its position for the continuation of the wage freeze in the last year of the collective bargaining agreement.

DISCUSSION

The Union makes a number of constructive arguments for its position. Wages of employees have been frozen for two years, and the cost of health

insurance has increased during this period of time. The Union's concern regarding wage increases granted to management is also compelling. The Employer likewise makes a strong case for its position that wages should be frozen in the last year of the collective bargaining agreement in that they are generally competitive in a survey of comparable counties, and the pattern of bargaining across the County's nineteen bargaining units would preclude a wage increase in the instant case.

The Employer has not suggested an inability to pay as it granted wage increases to its managers at the Agency and suggests that monies will be available for economic negotiations later this year when the current Agreement expires and the parties engage in contract renewal negotiations which are probably taking place at the current time.

The argument of the Employer, that the Fact Finder must give significant consideration to pattern bargaining that exists within the jurisdiction of the Lorain County Board of Commissioners, is meritorious. As pointed out by the Employer, there are those Fact Finders who are reluctant to deviate from a clearly established pattern of bargaining. Fact Finder Rimmel supported the Employer's position of a continued wage freeze in 2012 at Lorain County Children Services based on the clearly established pattern of bargaining at the County (Emp. Exb. 3). But it may be determined at Fact Finding that there is a compelling reason to make a recommendation that deviates from an established pattern of bargaining. In the instant matter, there is no evidence to suggest that this is the case at the Lorain County Department of Job and Family Services. Pattern bargaining among nineteen bargaining units and six union organizations, within the jurisdiction of the Board of

County Commissioners, represents a significant factor which compels this Fact Finder to support the Employer's position. The Union's argument regarding the pay increase granted to management is legitimate. It is difficult to understand why the Employer granted this increase at a time when wages of the vast majority of employees at the Agency were still frozen. Nevertheless, the statute directs the Fact Finder to consider existing bargaining units and unionized employees as a primary factor in the development of a recommendation. The current Agreement will terminate this month, and the parties are, no doubt, at the bargaining table. The Employer has indicated that monies will be available to address the economic concerns of the Union going forward. This Fact Finder finds no compelling reason to deviate from the established pattern of wage freezes for the contract year 2012 to 2013.

RECOMMENDATION

Section 33.2 of the Agreement is not to be modified. The recommendation is the continuation of a wage freeze in the last year of the Agreement.

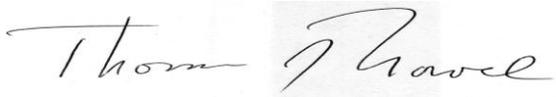
Respectfully submitted and issued at Cleveland, Ohio this 5th Day of September 2013.



Thomas J. Nowel
Fact Finder

CERTIFICATE OF SERVICE

I hereby certify that, on this 5th Day of September 2013, a copy of the foregoing Report and Recommendation of the Fact Finder was served by way of electronic mail upon Michael D. Esposito, representing the Lorain County Department of Job and Family Services; Jim Waingrow, representing UAW Local 2192; and Donald M. Collins, General Counsel, State Employment Relations Board.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

Thomas J. Nowel
Fact Finder