

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding	:	SERB Case Numbers: 2013-MED-09-1210
Between the	:	2013-MED-09-1212
	:	2013-MED-09-1213
JACKSON COUNTY, OHIO	:	
COMMISSIONERS, TREASURER,	:	
AND RECORDER,	:	
	:	Date of Fact Finding Hearing:
Employers	:	May 29, 2014
and the	:	
	:	
UNITED MINE WORKERS OF	:	
AMERICA, LOCAL UNION 4231,	:	
AFL-CIO,	:	Howard D. Silver, Esquire
	:	Fact Finder
Union	:	

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: Jackson County, Ohio Commissioners, Treasurer, and Recorder,
Employers

Brad E. Bennett, Esquire
FISHEL HASS KIM ALBRECHT LLP
400 South Fifth Street, Suite 200
Columbus, Ohio 43215
bbennett@fishelhass.com

For: United Mine Workers of America, Local Union 4231, AFL-CIO,
Union

Ken Holbrook
International Field Representative
United Mine Workers of America
Post Office Box 28
Castlewood, Virginia 14114
krhunion@yahoo.com

PROCEDURAL BACKGROUND

This matter came on for a fact-finding hearing at 10:00 a.m. on May 29, 2014 in a second floor conference room at the Jackson County, Ohio Health Department Building, 200 East Main Street, Jackson, Ohio 45640. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. Following the presentation of evidence and arguments, the hearing record was closed at 1:25 p.m. on May 29, 2014.

This matter proceeds under the authority of Ohio Revised Code section 4117.14(C) and in accordance with Ohio Administrative Code section 4117-9-05. Prior to the day of the fact-finding hearing each party delivered to the fact finder and the other party the party's position on each unresolved issue.

This matter is properly before the fact finder for review, for the preparation of a fact-finding report, and to recommend language to be included in the parties' successor Agreements.

FINDINGS OF FACT

1. The parties to this fact-finding procedure, the Jackson County, Ohio Commissioners, Treasurer, and Recorder, the Employers, and the United Mine Workers of America, Local Union 4231, AFL-CIO, the Union, were parties to collective bargaining agreements in effect from December 1, 2010 through November 30, 2013.
2. The parties have engaged in bargaining successor collective bargaining agreements and have reached tentative agreements on all Articles to be included in the parties' successor Agreements except for two Articles –

Article VI – Hours of Work/Pay Day/Meal Period, and Article XXIX – Wages.

3. The three bargaining units to be covered by the parties' successor Agreements are comprised of eight full-time employees employed by the Jackson County Commissioners, two full-time employees employed by the Jackson County Treasurer, and one full-time employee and one part-time employee employed by the Jackson County Recorder.

4. The funds available to pay for the bargaining unit positions addressed by this fact-finding proceeding come from Jackson County, Ohio's General Fund.

5. The Jackson County General Fund's annual revenue from 2007 through 2013 was: 2007 - \$6,099,043.97; 2008 - \$6,169,274.09; 2009 - \$5,557,332.89; 2010 - \$5,765,465.71; 2011 - \$5,351,549.81; 2012 - \$5,550,600.29; and 2013 - \$5,001,429.00.

6. The Jackson County General Fund's revenue in 2014 is estimated to be \$5,200,160.00.

7. The Jackson County General Fund's annual expenditures from 2007 through 2013 were: 2007 - \$5,949,657.21; 2008 - \$6,195,710.12; 2009 - \$6,141,412.04; 2010 - \$5,306,519.56; 2011 - \$5,381,164.86; 2012 - \$5,518,831.28; and 2013 - \$5,617,554.58.

UNRESOLVED ARTICLES

The following Articles are unresolved between the parties:

Article VI – Hours of Work/Pay Day/Meal Period

Article XXIX – Wages

DISCUSSION OF UNRESOLVED ARTICLES AND RECOMMENDED LANGUAGE

Article XXIX - Wages

Under the parties' prior collective bargaining agreements, bargaining unit members received a two percent (2%) wage increase effective April 20, 2011; a one percent (1%) wage increase effective December 1, 2011; and a two percent (2%) wage increase effective December 1, 2012.

The state of the economy, locally and regionally, that affects the amount of revenue generated annually for the Jackson County General Fund is not disputed by the parties.

The percentage of citizens in the United States living below the federal poverty level is 14.9%; the percentage of citizens in the state of Ohio living below the federal poverty level is 15.4%; the percentage of citizens in Jackson County living below the federal poverty level is 24.8%.

The unemployment rate in Jackson County has gone from 7.9% in 2007 to 8.5% in 2008, to 11.1% in 2009, to 11.4% in 2010, to 10.7% in 2011, to 9.2% in 2012 to 9.5% in 2013. The average United States unemployment rate in 2013 was 7.4%; the average state of Ohio unemployment rate in 2013 was 7.4%.

Average per capita income in Jackson County in 2012 was \$19,619; average per capita income in the state of Ohio in 2012 was \$25,857; average per capita income in the United States in 2012 was \$28,051.

Median household income in Jackson County in 2012 was \$36,903; median household income in the state of Ohio in 2012 was \$48,246; median household income in the United States in 2012 was \$53,046.

The revenue generated for the Jackson County General Fund in 2013 was 18% less than the revenue generated for the Jackson County General Fund in 2007. Expenditures from the Jackson County General Fund in 2013 were 5.58% less than the expenditures from the Jackson County General Fund in 2007. These figures show revenue in the Jackson County General Fund declining from 2007 to 2013 at a much higher rate, 18%, than the rate of decline in expenditures from the Jackson County General Fund from 2007 to 2013, 5.58%.

With the economic conditions described above as background, the Union proposes an annual wage increase of two percent (2%) in each of the three years of the successor Agreements. The Union contends that among the parties over the three prior collective bargaining agreements, contracts in effect from 2003 to 2013, a standard had been applied to the effect that a sufficiently substantial wage increase would be provided (usually 2% or more) to allow bargaining unit members to earn a living wage. In support of this claim the Union reminds the fact finder that the average wage among the three collective bargaining agreements addressed by this proceeding is \$10.84 per hour, \$22,547.20 per year. Earnings at this level are below the federal poverty level for a family of four.

The Employers propose an annual wage increase of one percent (1%) in each of the three years of the successor Agreements, beginning with the ratification of each successor Agreement. The Employer emphasizes the very difficult financial conditions faced by Jackson County, the inability of the Employers to fund the wage increases proposed by the Union, and the negative impact such wage increases would have upon the operations of these Jackson County Offices.

The fact finder recognizes that the wage increases proposed by the parties are only separated by one percent (1%) per annum. The fact finder is persuaded by the annual Jackson County General Fund revenue and expenditure figures from 2007 through 2013 presented in the hearing record and by the estimated revenue and expenditure figures for 2014 to recommend the Employer's proposal on wages. The figures that describe annual General Fund revenue and expenditures persuade the fact finder that the funds needed for wage increases during the three years of the parties' successor Agreements at the level proposed by the Union, 2%, 2%, and 2%, are not available. Revenue available to the Jackson County General Fund has decreased substantially since 2007, and the expenditures necessary to the operations of Jackson County's government have been held in check but have not decreased at the higher rate of the decrease in revenue.

The data presented to the hearing record as to the Jackson County General Fund's annual revenue and expenditures are not disputed. The financial picture presented does not show these public employers to be in a position to obligate their offices to annual two percent (2%) wage increases over the three years of the successor Agreements.

The fact finder recommends the Employer's wage proposal of one percent (1%) per annum for each of the three years of the successor Agreements, with one modification to the Employer's wage proposal.

This Report and Recommended Language of the Fact Finder has been filed with the Ohio State Employment Relations Board and served upon the parties on June 30, 2014. If ratification of the successor Agreements were to occur, ratification would occur in the second half of calendar year 2014. Without some form of retroactivity, the wage

increase for the first year of the successor Agreement, December 1, 2013 through November 30, 2014, would be largely illusory.

The parties' predecessor Agreements expired on November 30, 2013 and the successor Agreements, if ratified, are to begin effective December 1, 2013. The fact finder is not authorized to recommend an initial wage increase that is retroactive to December 1, 2013 because such a recommendation would require action in a prior calendar year. The fact finder can, however, recommend an initial wage increase that is retroactive to a date that does not cross into a prior calendar year.

In recommending the Employer's wage proposal the fact finder wishes to avoid any erosion to the initial wage increase recommended in that proposal. The fact finder therefore recommends to the parties that the one percent (1%) wage increase to be effective during the first year of the successor Agreements following ratification of the successor Agreements be made retroactive to the first day of the first pay period after January 1, 2014.

Other language agreed by the parties for inclusion in Article XXIX is also recommended by the fact finder for inclusion in the successor Agreements.

RECOMMENDED LANGUAGE – Article XXIX, Wages

Year one (December 1, 2013 – November 30, 2014)

Upon ratification of this Agreement, each bargaining unit employee will receive a 1% wage increase retroactive to the first day of the first pay period following January 1, 2014.

Year two (December 1, 2014 – November 30, 2015)

Each bargaining unit employee will receive a 1% wage increase, effective December 1, 2014.

Year three (December 1, 2015 – November 30, 2016)

Each bargaining unit employee will receive a 1% wage increase, effective December 1, 2015

(The rate of reimbursement for personal automobile mileage used for county business shall be updated to rates that govern currently. The Wage Table is attached as Appendix A.)

For each office, the parties also agree to eliminate the “End of Probation” Wage Rate in Appendix A. Instead, the “End of Probation” rate will become the new “Starting Rate” in Appendix A. Further, Appendix A will be revised to reflect that employees will remain in the “Starting Rate” for 48 weeks before moving to Step 1 and will then remain at Step 1 for 48 weeks before moving to Step 2.

Article VI – Hours of Work/Pay Day/Meal Period

The parties have agreed to two changes to the language of Article VI but have not agreed to a third change proposed by the Employer. The changes to the language in Article VI agreed by the parties include the deletion of language in the second paragraph of section 3 and the addition of language in section 5 that refers to a bargaining unit member’s entitlement to flex a work schedule when unable to take a lunch period.

What separates the parties on Article VI is the Employer’s proposal to alter language in Article VI, section 5 that, during the past three collective bargaining agreements, from 2003 through 2013, guaranteed to all full-time employees “...an uninterrupted lunch period of one (1) hour scheduled between the hours of 11:00 a.m. and 1:00 p.m. at the discretion of the Employer. The Employee shall be paid one (1) hour of the uninterrupted lunch period...” The language of Article VI, section 5 also guaranteed to part-time bargaining unit members a one-half (1/2) hour paid lunch period if working six or more hours in a day.

The changes to the language of Article VI, section 5 proposed by the Employer would eliminate the word “uninterrupted” and would substitute a paid one-half (1/2) hour scheduled lunch break at the discretion of the Employer for the paid one (1) hour uninterrupted lunch period. In support of its proposal the Employer points to the rarity in the public sector of paid lunch breaks and refers to the disapproval of such a practice expressed by some Jackson County voters during a recent levy campaign.

The Union points out that the paid one hour lunch guaranteed to each full-time bargaining unit member is a condition or term of employment that has been in effect during the parties’ past three collective bargaining agreements. The Union points to the low compensation paid to Jackson County employees, contending that to apply the changes proposed by the Employer to Article VI, section 5 would diminish the already low hourly wage rate of each bargaining unit member. The Union emphasizes the need for bargaining unit members to keep pace with the cost of living. The Union does not oppose deleting “uninterrupted” from Article VI, section 5 but opposes the other changes proposed by the Employer because those changes would erode the already low hourly rate of pay now being earned by bargaining unit members.

The fact finder finds the deletion of “uninterrupted” from Article VI, section 5, a word that appears twice in the language of section 5, in each instance immediately prior to the term “lunch period,” to be a significant alteration to the parties’ working relationship as it relates to a lunch break. The deletion of “uninterrupted” from section 5 leaves an employee during the employee’s lunch period with less autonomy in determining how the lunch period is to be taken.

One of the conceptual complications in assessing the changes proposed by the Employer for Article VI, section 5 involves defining “lunch period.” The fact finder understands an “uninterrupted lunch period” to be a period of time controlled solely and exclusively by the employee taking the lunch break, a period of time not subject to the directions of the Employer.

A lunch period that is not an “uninterrupted lunch period” is not solely and exclusively within the control of the employee. The facts of this case reflect that Jackson County Offices have very limited staffing but nonetheless intend to provide their services to the citizens of Jackson County in a way that provides the greatest accessibility.

Over the years what has become an accepted practice involves bargaining unit members within these offices, on a rotating basis, remaining available to serve the public during a lunch period so as not to present citizens with a closed office during normal lunch hours. It is believed that this arrangement facilitates uninterrupted access to the services offered by these County offices during a work day. Such a lunch period would include service provided to citizens who arrive or contact the office for assistance during the employee’s lunch period. Such a lunch period would not constitute an uninterrupted lunch period.

The fact finder is reluctant to recommend the modification of a system that supports the public policy of Jackson County to make sure that services are provided throughout the day, including normal lunch hours. This policy decision is within the discretion of these public employers. Such a decision, however, supports the payment of bargaining unit members during their lunch hours and does not support a change that

would increase the employee's work day by thirty minutes with no corresponding increase in compensation.

The fact finder understands the public relations conundrum faced by the public employers in Jackson County who must answer to and be accountable to the electorate in Jackson County. Paid lunch periods do not sound beneficial to some electors but the benefit for citizens in maintaining access to public offices throughout the work day, at minimal staffing levels, is a circumstance that directly benefits the citizens who access these offices.

The fact finder recommends the language agreed by the parties for inclusion in the parties' successor Agreements in Article VI, including the deletion of the word "uninterrupted" from section 5. The fact finder does not recommend an alteration of the language in Article VI, section 5 that would change the paid one (1) hour lunch period. The fact finder recommends allowing paid lunch periods that may be interrupted for official services but otherwise recommends retaining the current language of Article VI, section 5 in the successor Agreements.

RECOMMENDED LANGUAGE – Article VI, Hours of Work/Pay Day/Meal Period

Sections 1 and 2.

Retain current language.

Section 3.

The parties understand that employees work non-regular hours. Thus, the County has a limited ability to have a regularly posted schedule.

All full-time employees are required to work at least forty (40) hours per week, at the discretion of the Employer. The Employer may change the schedule for emergencies and/or operational needs of the department.

Section 4.

Retain current language.

Section 5.

All full-time employees shall be granted a lunch period of one (1) hour scheduled between the hours of 11:00 a.m. and 1:00 p.m. at the discretion of the Employer. The Employee shall be paid one (1) hour of the lunch period. Part time employees working 6 hours or more per day shall be granted a one-half (1/2) hour paid lunch. The lunch period may be altered, if requested by the employee, at the discretion of the Employer. If the Employer requires full-time employees to be unable to take their lunch period, said employees shall be entitled to flex their work schedule within 5 business days in order to make up for the missed lunch period. The Employer may extend the ability to use flex time beyond the 5 business day period.

Sections 6, 7, and 8.

Retain current language.

In making the recommendations presented in this report, the fact finder has considered the factors listed in Ohio Revised Code section 4117.14(G)(7)(a) - (f) as required by Ohio Revised Code section 4117.14(C)(4)(e) and Ohio Administrative Code section 4117-9-05(K).

Finally, the fact finder reminds the parties that any mistakes made by the fact finder are correctable by agreement of the parties pursuant to Ohio Revised Code section 4117.14(C)(6)(a).

Howard D. Silver

Howard D. Silver, Esquire
Fact Finder

Columbus, Ohio
June 30, 2014

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the foregoing Report and Recommended Language of the Fact Finder in the Matter of Fact-Finding Between the Jackson County, Ohio Commissioners, Treasurer, and Recorder, the Employers, and the United Mine Workers of America, Local Union 4231, AFL-CIO, the Union, SERB case numbers 2013-MED-09-1210, 2013-MED-09-1212, and 2013-MED-09-1213, was filed electronically with the Ohio State Employment Relations Board at MED@serb.state.oh.us and served electronically upon the following this 30th day of June, 2014:

Brad E. Bennett, Esquire
FISHEL HASS KIM ALBRECHT LLP
400 South Fifth Street, Suite 200
Columbus, Ohio 43215
bbennett@fishelhass.com

and

Ken Holbrook
International Field Representative
United Mine Workers of America
Post Office Box 28
Castlewood, Virginia 14114
krhunion@yahoo.com

Howard D. Silver

Howard D. Silver, Esquire
Fact Finder

Columbus, Ohio
June 30, 2014