

FACT FINDING RECOMMENDATION

WRIGHT STATE UNIVERSITY

INTERNATIONAL BROTHERHOOD
TEAMSTERS LOCAL 957

RE: SERB # 2015-MED-05-0515
JERRY HETRICK, FACT FINDER
DATE OF HEARING: MARCH 17, 2016
DATE OF DECISION: MARCH 31, 2016

FOR WRIGHT STATE

DAVID S. KESSLER, ATTORNEY
SYLVIA BROCKMAN, DIRECTOR, COMPENSATION
EMILY HAMMAN, EMPLOYEE & LABOR RELATIONS MANAGER

FOR INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL #957

JOHN R. DOLL, ATTORNEY
ROBERT SMITH, BUSINESS REPRESENTATIVE
UNION COMMITTEE MEMBERS

BACKGROUND

This matter came up for hearing on March 17, 2016 before Jerry Hetrick appointed as Fact Finder pursuant to Ohio Rev. Code Section 4117.14. The hearing was conducted at Wright State University with the University and the IBT Local # 957. The University and IBT Local 957 are parties to a collective bargaining agreement governing the terms and conditions of employment for approximately 147 employees for the September 1, 2012 through August 31, 2015 period.¹ The parties conducted eight bargaining sessions, including a SERB mediation session. Following reaching tentative agreement on a successor collective bargaining agreement, the tentative agreement was rejected by the membership. Both parties advised the Fact Finder further medication was not likely to be beneficial and suggested proceeding to fact finding. The Union withdrew its proposal on contracting out leaving at issue: Article 17 Wages-specifically job rate increases for twelve (12) classifications. The University proposes the additional issue of the expiration date of the successor agreement, June 30, 2018 rather than

¹ The University also has collective bargaining agreements with the AAUP & FOP. Both agreements expire on June 30, 2017.

August 31, 2018. The issues for the fact finder's recommendations are: wage adjustments for twelve classifications and the expiration date of the successor agreement, including retroactivity.

FACT FINDING CRITERIA

In the determination of facts and recommendations, the fact finder considered the criteria required by the Ohio Rev. Code, Section 4117.14@(4)(e) :

1. Past Collective Bargaining Agreements, if any between the parties.
2. Comparisons of 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 classifications involved.
3. The interests and welfare of the Public, the ability of the public Employer to finance and administer the issues proposed and the effects 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 issues submitted to mutually agreed upon dispute settlement procedures in the public service or private employment.

FINDINGS OF FACT AND RECOMMENDATIONS

Pursuant to Article 17-Section 2 bargaining unit employees, including this unit, received the same 2.5% provided the non- represented staff to its job rates in the collective bargaining agreement. Additionally for the remainder of the Tentative Agreement all bargaining unit employees shall receive increases in their hourly rate of pay in accordance with the annual increases provided for other non represented University staff, exempt and/or non-exempt. Additionally, all job rates will increase by the same amount and a new chart will be forwarded to the Union. There is a "me too" provision.

The expiring collective bargaining agreement requires the University to perform a market analysis of the bargaining unit classifications on an annual basis for the length of this contract. The tentative agreement provided for a lump sum ratification bonus of \$ 175.00 per employee. The basis for the rejection of the tentative agreement is the market analysis adjustment to twelve job classifications. The University has increased six classifications by

2% and three other classifications received market adjustments.² That constitutes the tentative agreement reached by the University and the Union Bargaining Committee. The job classifications receiving market rate adjustments are listed as TAD job rates, rates the parties had tentatively agreed upon while the Union proposal represents what the Union now believes the market adjustment should merit.

TITLE	TAD JOB RATE	UNION PROPOSAL ³	
Automotive Tech	\$18.85	20.49	8.7%
Custodial Floor Care	13.99	14.70	8.25%
Custodial Service	13.39	14.40	10.77%
Electrician	24.05	24.70	5.29%
Grounds Main 1	14.80	14.95	1.00%
Grounds Main 2	17.62	17.75	5.78%
Grounds Maint-Ath.	18.01	18.19	1.00%
Grounds Main-Ath LD	18.68	18.87	1.02%
HVAC-Boiler Tech	21.13	23.46	14.38%
Maintenance Worker	18.47	19.76	10.21%
Parking Attendant	14.06	14.58	3.70%
Plumber	24.46	24.70	0.98%

The University's proposal reflects Survey's conducted or purchased Universities, Municipalities as well as recommendations from members of management. The tentative rate proposed by the University for the automotive technician is below the rate of the University's average overall data. The custodial floor technician's proposed rate falls above the average overall data, the custodial services worker falls below the average overall data, the electrician above, the ground maintenance 1 below, ground maintenance 2 above, ground maintenance athletics above, HVAC above, Parking Attendant relatively equal, Plumber above. In comparison with Surveys (Red) the tentative rates fall above nine of the twelve classifications in dispute. In comparison with Universities (yellow) the tentative rates fall below six of the classifications in dispute.

The Union likewise conducted its own market analysis from collective bargaining agreements essentially from local school districts and Universities. That analysis reflects the school district rates for most if not all

² Employer Position Brief

³ Union Exhibit Page 5

supports the Union premises that the Wright University rates are below area school districts. When compared with Universities in Ohio, the automotive technician falls below that of Ohio State, Toledo, Bowling Green, Cleveland, and Ohio University or above five of eight state Universities and below all eight of the municipalities as well as the two purchased surveys. In the most populated classification, custodial services, the proposed rate is below that of Toledo, Bowling Green, Green County Montgomery County, Beavercreek, Moraine, Miamiburg but above the two purchased surveys. Other disputed classifications show the same pattern, the tentative agreement above some and below others.

In the Fact Finder's opinion, data provided by each has merit. However the University's Witness Bowman's testimony indicates the parties have previously utilized the University's data for its market analysis and must be given greater weight than that of the Union's.

In the final analysis both relied on the respective market analysis data that was in their possession when reaching the tentative agreement. Whitney McCoy when discussing the function of an interest arbitrator stated: "the fundamental inquiry, as to each issue, is: what should the parties themselves as reasonable men, have voluntarily agreed to?"⁴ There can be no disagreement that tentative agreements must be considered and weight given by fact finders under Ohio Statute. Tentative agreements have been recognized as "Such other factors which are normally or traditionally taken into consideration in the dispute resolution process because of the impact on collective bargaining process and the party's relationship.

The primary responsibility of a Fact Finder is to put the parties into the same position they would have occupied but for their inability to reach full agreement at the bargaining table. Fact Finders must be reluctant to impose terms that vary from a tentative agreement as their role is to be supportive of the bargaining process rather than to supplant it. But a Fact Finder must also consider the issue as well as the reasons causing the rejection of a tentative agreement and cannot be blind to whether conditions have changed. In the instant case there is no information that came to light after the tentative agreement was reached by the respective bargaining committees. Moreover the makeup of the Union's bargaining committee reflects individuals holding the classifications in dispute. In the Fact Finder's opinion, a

⁴ Twin City Rapid Transit Co. 7LA 845-48

recommendation to implement the tentative agreement furthers the collective bargaining relationship between the parties.

RECOMMENDATION

The Fact Finder recommends the tentative agreement reached by the bargaining committees on the twelve classifications: Automotive Service Technician, Custodial Floor Care Technician, Custodial Service Worker, Electrician, Grounds Maintenance Worker I, Grounds Maintenance Worker II, Grounds Maintenance Worker-Athletic, Ground Maintenance Worker Lead, HVAC Boiler-Operator Technician, Maintenance Worker, Parking Attendant, Plumber, to be incorporated in the successor agreement and effective September 1, 2015. That also includes the Lump Sum Agreement of \$175.⁵

ISSUE-Expiration Date. The tentative agreement provided for the effective date of the successor agreement to be effective September 1, 2015 until and including August 31, 2018. The effective date for job rates tentatively agreed upon was September 1, 2015. The University seeks to change the expiration date of the successor agreement from August 31st to June 30th. The change is sought to bring the IBT agreement's expiration date to the same expiration date of other University agreements. In support of its position the University notes the "Me too" provisions of the IBT agreement which results in this unit receiving wage increases agreed upon with its other bargaining units, normally June 30th. A review of bargaining history indicates the Union agreed to change the effective dates of increases in 2010 & 2011 to September 1 at the request of the University who now seeks to change the expiration date to June 30th. Now the University seeks to return to the June 30 expiration date and July 1 for the date for increasing job rates.

The Fact Finder agrees with the University's comment that it makes more sense to have all of its collective bargaining agreements expire on June 30th. Where change is an issue in fact finding the burden of justifying change is on the party proposing that change. In this case, the employer to show: (A) the present contract language gives rise to a condition requiring change: (B) the proposed change reasonably can be expected to remedy that condition: (C) that change will not impose an unreasonable burden on the other party.

In the Fact Finder's opinion, the University has not met the burden justifying its change. First it did not advance that change in expiration date in reaching

⁵ The amount of the Lump Sum payment was not before the Fact Finder for recommendation.

the tentative agreement. Second at least two previous agreements with this unit expired on August 31st. In those agreements the employer has found a solution to the differences with other units expiring on June 30th through the use of lump sum settlements. Third, the University has offered no quid pro quo to the Union for the change. That the bargaining unit tends to insist on raises upon ratification with an August 31 expiration following across the board increases has not been an operational or administrative problem justifying the change recommended. The Fact-Finder cannot agree with the University that because retroactivity to September 1 is a time consuming process to calculate supports its request for ending the June 30 expiration date. If it is a problem now it was a problem, it was a problem when the tentative agreement was proposed. The University did not raise the ability to pay as a determining factor & was not given weight in the Fact Finder's recommendation. Finally in support of his decision on the effective date the Fact Finder notes the Fact Finding Hearing was held in abeyance due to an absence of the University's Human Resource and the University's recommendation for a March hearing date.

RECOMMENDATION-DURATION.

The Fact-Finder recommends the tentative agreement signed by the parties with an effective date September 1, 2015 until and including August 31, 2018.

Respectfully:

/s/ Jerry Hetrick-Fact Finder

The Fact Finder certifies the Fact Finder's Recommendation was served by email on March 31, 2016 to David S. Kessler @ dsk@bkmplaw.com and John R. Doll @ jdolldjflawfirm.com

TENTATIVE AGREEMENT REACHED BY PARTIES

Article 1-General Provisions
Article 6-Union Representation
Article 7- Grievance & Arbitration
Article 8-Labor-Management Committee
Article 9- Miscellaneous
Article 10-Safety
Article 15-Probation
Article 16-Hours of Work
Article 17-Wages
Article 18-Position Changes
Article 20-Special Pay Considerations
Article 21-Leaves for Medical/Bereavement Reasons
Article 24-Other Leaves
Article 25-Employment Benefits
Article 26-Training as Career Development
Article 27-University Provided Clothing
Article-28-Duration