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FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
March 22, 1996

In the Matter of: )  
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)  
The Perry Township )  
Trustees )  
)  
and ) 95-MED-03-018<sup>1</sup>/~~0~~  
)  
The Perry Organized Workers )  
)  
)

APPEARANCES

For the Perry Organized Workers:

Thomas W. Kimmins, Attorney

Thomas J. Gotch, Bargaining Unit Representative

Dale A. Lake, Bargaining Unit Representative

Harold Moore, Bargaining Unit Representative

For The Perry Township Trustees:

Charles D. Hall, III, Attorney

Fact Finder: Dennis M. Byrne

## Background

The Fact Finding involves the Perry Township Trustees and the Perry Organized Workers. Prior to the formal Fact Finding Hearing there were numerous negotiating sessions. Prior to the Fact Finding hearing there was a mediation effort. The mediation effort resulted in a frank discussion of the areas of disagreement between the parties. There is disagreement on two major issues; 1) wages and 2) sick leave buyout. In addition there was some discussion on three other issues; 3) hours of work, 4) the health insurance plan and 5) a retroactive pay increase for 1995. The Fact Finding was conducted on March 18, 1996 in the Perry Township Administration Building. The Hearing started at 2:00 P.M. and adjourned at approximately 4:00 P.M.

The Fact Finder wishes to state that he appreciates the courtesy with which he was treated. Additionally, the conduct of the parties toward the Fact Finder and each other was exemplary. The Hearing was conducted with the greatest professionalism by both parties.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards 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 agree-upon dispute settlement procedures in the public service or private employment.

The Report is attached and the Fact Finder hopes the discussion of the issues is sufficiently clear to be understandable. If either or both of the parties require a further discussion, however, the Fact Finder would be glad to meet with the parties and discuss any questions that remain.

## **Introduction:**

The major problem between the parties is a retroactive pay increase for 1995. Prior to these negotiations, the Perry Organized Workers (the road crew) were represented by the Utility Workers of America. However, the road crew filed a decertification petition and ultimately voted to decertify the Utility Workers as their bargaining agent in early 1995. At the same time the petition was moving through the SERB decertification process, the window for notification of the intent to reopen the 1992-1994 labor agreement opened and closed. Because of the decertification petition, the Utility Workers simply did not notify the Trustees and SERB of the road crew's desire to renegotiate the existing contract. The road crew, therefore, was unable to bargain wage increases, etc., in 1995. After decertifying the Utility Workers, the road crew formed the Perry Organized Workers and started to negotiate with the Trustees. Although this is the first negotiation between the Perry Organized Workers and the Trustees, the parties are the same individuals involved in prior negotiations and they are treating the contract as a successor agreement. The Trustees have, however, refused to consider a retroactive pay raise for 1995 because of the untimely filing of the Notice to Negotiate. The Union believes that this is unfair. The result is that the parties are close to an agreement, but have been unable to finalize the contract. It is in some ways this is a dispute about, "the principle of the thing."

The Fact Finder understands the Union's position and is sympathetic to it. However, ORC 4117 requires adherence to certain procedural guidelines. For whatever reason the union did not file the required documents in a timely fashion. The Township cannot be held accountable for that lapse. Consequently, the Fact Finder does not believe that the Trustees have acted improperly during these negotiations. The Trustees have simply adhered to the law and, as a result, the Fact Finder does not believe that retroactivity is justified in this case.

**Issue:** Article 23: Compensation

**Union Position:** The Union demand is for a 5% wage increase in 1995, a 5% increase in 1996, and a 5% increase in 1997.

**Township Position:** Perry Township has offered an increase of 3% in 1996, 3% in 1997, and 3% in 1998.

**Discussion:** At the outset it must be noted that the Township and the Union have agree to extend the contract to December 31, 1998 if there is an agreement on the retroactivity question. The parties presented their positions on both the wage issue and the retroactivity dispute during the mediation session. While the Fact Finder does not believe that a retroactive pay increase is justified in this case, it is clear that the Union membership did not have a chance to negotiate a 1995 wage increase because of an unusual set of circumstances. It is also clear that the Township will benefit by having the contract expire in 1998 rather than 1997. Consequently, the Fact Finder believes that a

signing bonus is justified in this case. This bonus will help offset the 1995 wage freeze and induce the Union to accept the 1998 expiration date. That is, there is a benefit to both sides in considering a signing bonus payment.

The evidence presented by the parties during the wage discussions leads the Fact Finder to believe that the combination of a signing bonus and a 10.5% wage increase spread over three years is a workable settlement. The Township's proposal, which is essentially 12% spread over four years, would cause the Perry employees to drop far behind other comparable jurisdictions. At the same time, the Union's demand for 15% over three years does not seem justified when all the facts involved are considered.

**Finding of Fact:** The Perry Township road crew would fall behind other comparable jurisdictions if the Township's position is accepted. Similarly, the Union's position is not justified by the evidence presented during the mediation/fact finding hearing.

**Suggested Language:** The Perry Organized Workers receive a \$600.00 signing bonus when the contract is ratified.

The language in Article 23 be modified to reflect a 3.5% wage increase payable on January 1, 1996, a 3.5% wage increase paid on January 1, 1997, and a 3.5% wage increase paid on January 1, 1998.

The contract shall expire at midnight on December 31, 1998.

**Issue:** Article 19: Sick Leave

**Union Position:** The Union is willing to change the current unlimited buyout provision in Article 19 to a 50% buyout provision.

**Township Position:** The Township is demanding that the buyout provision be capped at a 30 day maximum.

**Discussion:** The current buyout provision is unusually generous. Essentially, the total accrued sick leave is paid either to the employee on separation or to the employee's estate in the event of death. The financial liability to the Township can be immense depending on the exact facts of the situation. The comparables presented by the parties show that the current provision is exceptional by any measure.

The difference in the parties' positions is less than their position statements indicate. In an attempt to reach an agreement, the Union dropped its demand from 50% of the accumulated sick leave to 120 days. The Township, for its part, raised its demand to a cap of 90 days. It should be pointed out that either of those positions is still generous when judged by the yardstick of comparable jurisdictions.

The Fact Finder believes that the parties have agreed on the concept of capping the buyout. The only question that needs to be answered is the size of the buyout. In this case a fifty-fifty split, i.e., a compromise seems to be a workable solution. That is the cap is set at 105 days. This still leaves the buyout at a significant level. The comparables data shows that this is still the best buyout provision in the Stark County area.

**Finding of Fact:** The buyout provision is unusually generous compared to any other jurisdiction. Additionally, the parties have narrowed the gap between their positions to the point where a compromise position is a workable solution.

**Suggested Language:** Article 19.

Section 2. All accumulated sick leave, **up to a limit of 105 days**, shall be paid to any employee upon retirement.

Section 3. All accumulated sick leave, **up to a limit of 105 days**, shall be paid to the estate of a deceased employee.

**Issue:** Article 16: Hours of Work

**Union Position:** The Union demands that the current contract language be included in the current contract.

**Township Position:** The Township is demanding that the Union membership work a standard work day with no paid lunch.

**Discussion:** The parties agreed in their expired contract that the Union would receive a paid half-hour lunch break. The Township now wishes to return to an unpaid lunch period. There was testimony that the paid lunch break had been negotiated into the contract as a tradeoff for other issues. While the Township's position on this issue is understandable, there was no compelling evidence presented that would force a recommendation for deleting the current language from the contract. If the Township wishes to change this article, the free give and take of negotiations is the place to do it.

**Finding of Fact:** There was no evidence presented on the hours of work provision that proves the current language is unacceptable.

**Suggested Language:** Current language.

**Issue:** Article 24: Insurance

**Union Position:** The Union demand is for the status quo, i.e., current language.

**Township Position:** The Township demand is that the employees pay part of the cost of their health insurance.

**Discussion:** The discussion on this issue proved that the health care plan is working. The Township wishes the employees to contribute to the plan. However, while employee contributions to their health insurance is the norm throughout Ohio, there was little evidence presented that implied the Township was suffering because of the current plan. Consequently, the Fact Finder Believes that this may be the exception to the rule of employee contributions. While the need for employee contributions to their health insurance may arise in the future, the evidence presented does not warrant changing the current plan at this time.

**Finding of Fact:** The current health insurance plan works for both parties, and there was no evidence presented that would necessitate changing the plan at this point in time.

**Suggested Language:** Current language.