

STATE EMPLOYMENT
RELATIONS BOARD
MAR 21 10 30 AM '96

FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
March 19, 1996

In the Matter of:)
)
)
)
The Mahoning County)
Commissioners)
)
and) 95-MED-06-0564
)
The Fraternal Order of Police)
Ohio Labor Council)
)

APPEARANCES

For the Union:

- Pat Daugherty, Staff Representative
- Fraternal Order of Police/Ohio Labor Council
- Paula Dellick, Telecommunications Unit Representative
- Betsy Murphy, Telecommunications Unit Representative
- Bruce Paulitty, Telecommunications Unit Representative
- Robert Eckenrode, Telecommunications Unit Representative
- Richard Kennedy, Telecommunications Unit Representative

For The Mahoning County Sheriff:

- Michael Angelo, Representative
- Michael Sciortina, Assistant County Administrator

Fact Finder: Dennis M. Byrne

Background

The Fact Finding involves the Mahoning County Commissioners and the Fraternal Order of Police/Ohio Labor Council, FOP/OLC, Telecommunications Operators, et al. Prior to the formal Fact Finding Hearing there were numerous negotiating sessions and a mediation effort. The mediation effort resulted in a tentative agreement between the parties. The tentative agreement was ratified by the County but was overwhelmingly rejected by the union membership because of a disagreement over the wage package. After the contract rejection, the parties attempted to find a mutually acceptable agreement but they were unsuccessful. Therefore, a formal Fact Finding Hearing was scheduled. The Fact Finding was conducted on February 21, 1996 in the Mahoning County Administration Building. The Hearing started at 10:15 A.M. and was adjourned at 11:15 A.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:

There are three separate issues involved in this dispute. First, the union membership strongly argued that there is an issue of basic fairness involved in these negotiations above and beyond the size of any wage increase. The union membership believes that the change in the organizational structure of the dispatch operations within Mahoning County has created a basic inequity that must be remedied. Second, the parties reached a tentative agreement and questions surrounding that agreement must be answered before a recommendation on a wage increase can be put forth. Finally, the factors affecting the wage issue itself must be examined, this final issue is the subject of the report. However, before the wage issue can be addressed, the other two issues must be discussed.

There is no dispute over the facts surrounding the formation of the current dispatch operation within Mahoning County. Previously both the City of Youngstown and Mahoning County had separate dispatch offices. The City operation has been closed and the functions, etc. folded into the Mahoning County system. The Mahoning County system was in the Sheriff's office, but the expanded operation is now run by the County Commissioners. It is clear that these changes were made in an effort to 1) save money, and 2) provide better service to the area's citizens.

Unfortunately, the merger took place at the same time that the City of Youngstown was in the process of hiring new dispatchers. The candidates for these positions applied to the City and expected to work as Civil Service employees for Youngstown. In fact these employees were offered employment by the County at substantially lower wages than the City had promised. The employees who signed up to work for the City but ended up working for the County believe that they are entitled to the pay and benefits originally offered by the City as a matter of equity.

The County argued that each of the affected employees was given a choice and all the employees decided to work for the County. The County does not dispute the fact that the City's employment offer was superior to the County's, but it did point out that all the new dispatchers were paid according to the current County pay scale, which is the same for all County dispatchers. Therefore, the County believes that it did not discriminate against the affected employees. The Union answered that Hobson's choice is no choice and basic fairness demands that the employees' wages be raised to the level offered by the City.

The Fact Finder understands the employees' position but disagrees with it. It is clear that the City and County merged their operations for economic and efficiency reasons. It is also clear that the County did not discriminate against the affected employees when judged by the yardstick of the Mahoning County Dispatch operation, that is, the County treated the new employees exactly the same as it treated its existing dispatcher operators. To expect the County to be bound by the terms of an agreement it was not a party to is unreasonable. The

County's position on this issue, that all County dispatchers are treated the same, is unobjectionable in and of itself.

The Fact Finder sympathizes with the employees' position. However, to bind the County to the terms of an agreement that it was not party to is not right either. In this case two wrongs do not make a right. Given there was no evidence presented to show that the County was acting in a discriminatory way, the Fact Finder cannot recommend accepting the Union's position on this issue.

The second issue that needs some discussion is the fact that the parties reached a tentative agreement that the union membership overwhelmingly rejected. At the outset it must be noted that both parties negotiated in good faith. This was not a case of some form of strategic behavior on either side.

In general the literature that discusses this type of situation maintains that the original agreement become a template for the final agreement. The reason is that by allowing one or the other of the parties to reject a settlement and then have a neutral recommend a significantly different outcome undermines the integrity of the collective bargaining process. This result occurs because the parties no longer attempt to find a mutually agreeable settlement, rather they negotiate with the neutral's recommendation firmly in mind. The Fact Finder is aware of this literature. Usually, the Fact Finder would give considerable weight to the original agreement. However, in this particular case the evidence presented at the Hearing compels the Fact Finder to believe that the tentative settlement is not acceptable to the Union membership.

Of course the County believes that the tentative agreement is valid. The County noted that the wage article mirrors the wage agreements signed with other County employees and that internal parity considerations must be considered. The County does not think that it should be forced to reopen what was essentially a closed issue. The Fact Finder understands this position and most of the time would agree with it. However, to reiterate, the facts of this situation force the Fact Finder to conclude that the original agreement would never have been acceptable to the Union membership. To hold the union captive to the tentative agreement with no chance to avail itself of the dispute resolution procedures of ORC 4117 does not seem warranted given the facts of the situation.

Issue: Article XXXIV Wages

Union Position: The Union is demanding a wage increase of 39% in year one, 3% in year two, and 3% in the year three of the proposed contract.

County Position: The County is offering 3% in the first year, 3% in the second year, and 3.5% in the third year of the proposed contract.

Discussion: The Union's position is based on evidence gleaned from comparable jurisdictions. Essentially the Union presented data that proved the dispatchers in Mahoning County are paid between 16% and 18% less than other

dispatchers when they are hired. The disparity rises to approximately 40% for a senior dispatcher. This pattern holds regardless of which external jurisdictions are used as comparables. Based on the data presented at the Hearing, Mahoning County dispatchers are at the bottom of any ranking of departments based on wages.

The Union also presented evidence on the work load of their membership vis-à-vis other jurisdictions. The information presented supports a conclusion that the average work load of a Mahoning County dispatcher is at least equal to and most probably higher than the work load of most other dispatchers. Consequently, considering all the evidence, the conclusion is inescapable that the Mahoning County dispatchers are underpaid relative to other dispatchers.

The County for its part did not dispute the Union's facts. Rather the County indicated that the reorganization of the dispatch operation has caused numerous problems and currently the County is attempting to organize and staff the consolidated dispatch center. Therefore, the County believes that until the "kinks" had been worked out of the system, there is no valid reason for a neutral to recommend a pay increase in excess of the percentage(s) tentatively agreed upon. That is, the County believes that it should be allowed to determine the final structure of the new dispatch system before it must address alleged pay inequities.

The County made two further points. First, the County argued that internal parity considerations should be a controlling factor in this situation. To buttress this argument the County presented evidence that the tentative agreement between the parties mirrored the agreements the County signed with all other County employees. The County believes that any wage increase in excess of the 3.0% to 3.5% specified in the tentative agreement would cause problems within Mahoning County taken as a whole. The County also presented evidence that showed that the wage increases negotiated in the tentative agreement are reasonable compared to 1) the overall national inflation rate and 2) 1995 negotiated wage increases in the US economy. According to data published by the Labor Department the average 1995 increase is 2.9%. The County argued that a wage increase of 3.0% is justified when these facts are considered.

Without going into a protracted discussion, the Fact Finder believes that the Union proved its point. The Mahoning County dispatchers are underpaid. The evidence presented on this point is overwhelming. The County, in its presentation, addressed all of its comments to proving that the 3.0% raise is reasonable. This is true, all other things equal. Of course the Union presented evidence that all other things are not equal and proved that the base rate paid to the affected dispatchers is unreasonably low. The Fact Finder believes that a 3.0% raise applied to a reasonable base rate would be acceptable. However in this case the percentage increase per se is not the problem. The problem is the existing rate schedule.

The Fact Finder is conscious of the internal parity considerations mentioned by the County. However the willingness of other bargaining units to

enter into agreements that specify wage increases in the 3.0% to 3.5% range implies that these units receive roughly the same pay as other Sheriff, Fire, Service Department, etc., employees. That is, there was no evidence that showed other Mahoning County employees are paid 40% less than comparable employees doing similar work. Rather, the evidence, taken as a whole, shows that the dispatchers are in a unique situation. A unique situation demands a unique solution.

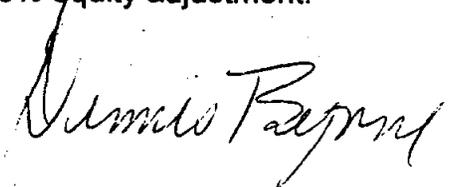
The Fact Finder believes that internal comparability is an extremely powerful argument all other things roughly equal. Internal comparability cannot be the sole criteria for evaluating a wage offer, however. In this case external comparability must also be considered and the inequities that this comparison illuminates need to be addressed.

The question then becomes what wage is the wage recommendation? The Union's demand for 39% in the first year is understandable based on the comparables, but it is not a realistic demand. It is true that there is a 40% gap between the pay of a Mahoning County dispatcher and the average pay of other dispatchers. However, to expect this gap to be closed in one year is unrealistic. The inequity emerged over time and must be closed in the same way. To recommend that the County increase the budget of the dispatch operation by 40% in one year given the other financial obligations facing the Commissioners is not tenable. This is especially true given the testimony that the City of Youngstown is in arrears on its payments to the County for taking over the entire dispatch operation.

The Fact Finder believes a 9.5% equity adjustment is a reasonable first step toward curing the wage inequity that exists. A raise of this magnitude will close over 20% of the existing wage gap, and it means that the dispatchers will receive a wage increase of approximately 20% over the life of the current agreement. It does not mean that the dispatchers will earn as much as other dispatchers. It is intended to start redressing the inequities that currently exist. Given the testimony about the County's financial condition, and the state of affairs in the dispatch operation, the Fact finder believes that a 9.5% equity adjustment is reasonable.

Finding of Fact: The evidence is overwhelming that the dispatchers in Mahoning County are underpaid relative to other dispatchers in Ohio.

Suggested Language: The language in Article XXXIV be changed to reflect a pay increase of 6% in the first year of the contract consisting of a 3% across the board increase and a 3% equity adjustment; an increase of 6% in the second year of the contract consisting of a 3% across the board increase and a 3% equity adjustment, and a 7.0% increase in the third year of the contract consisting of a 3.5% across the board increase and a 3.5% equity adjustment.





State
Employment
Relations
Board



65 East State Street
Columbus, Ohio 43215-4213
(614) 644-8573

April 5, 1996

Ms. Catherine A. Brockman
222 East Town Street
Columbus, OH 43215

Sheriff Edward Nemeth
Mahoning County Sheriff
21 West Boardman Street
Youngstown, OH 44503

RE: Case No. 95-MED-06-0564
Fraternal Order of Police, Ohio Labor
Council, Inc. and Mahoning County Sheriff

Dear Ms. Brockman and Sheriff Nemeth:

The State Employment Relations Board has ordered the parties to conciliation pursuant to Ohio Administrative Code Rule 4117-9-06(A). The Bureau of Mediation has determined that the necessary conditions set forth in the general order of the Board have been met. April 5, 1996, is the effective date of the order of conciliation in this case.

In accordance with the statute, the parties are to select a conciliator at this time. We provide you with the names and biographies of five potential conciliators for selection: Robert C. Devlin, Joseph W. Gardner, Alan Miles Ruben, Robert G. Stein, and I. Bernard Trombetta.

The parties must notify the SERB of their mutual selection(s) and send written confirmation of the selection(s) by April 10, 1996, or the SERB in its sole discretion will appoint a conciliator on April 11, 1996. (See enclosed Conciliation Selection Guidelines.)

Please contact the Bureau of Mediation at (614) 644-8716 if you have questions concerning the conciliation process.

Sincerely,

G. Thomas Worley
Administrator, Bureau of Mediation

GTW:dym
95-0564m/106m
Enclosures



State
Employment
Relations
Board



65 East State Street
Columbus, Ohio 43215-4213
(614) 644-8573

April 11, 1996

Ms. Catherine A. Brockman
222 East Town Street
Columbus, OH 43215

Sheriff Edward Nemeth
Mahoning County Sheriff
21 West Boardman Street
Youngstown, OH 44503

RE: Case No. 95-MED-06-0564
Fraternal Order of Police, Ohio Labor Council,
Inc. and Mahoning County Sheriff

Dear Ms. Brockman and Sheriff Nemeth:

Because you have not communicated your conciliation selection(s), the SERB is obligated to choose a conciliator under Ohio Administrative Code Rule 4117-9-06(D). Therefore, the State Employment Relations Board has appointed Anna DuVal Smith as the conciliator in this matter in accordance with Ohio Revised Code Section 4117.14(D)(1). The conciliator shall schedule a hearing within 30 days of April 5, 1996, which is the effective date of the Board's conciliation order, or as soon thereafter as is practicable.

In advance of the hearing, each party must send its position statement to the conciliator and to the other party in compliance with Ohio Administrative Code Rule 4117-9-06(E). (See enclosed Conciliation Hearing and Report Guidelines.)

After hearing, the conciliator will resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers. The issuance of a final offer settlement award constitutes a binding mandate to the public employer and the exclusive representative to take whatever actions are necessary to implement the award.

Please contact the Bureau of Mediation at (614) 644-8716 if you have questions concerning the conciliation process.

Sincerely,

G. Thomas Worley
Administrator, Bureau of Mediation

GTW:dym
95-0564p/106p
Enclosures

cc: Michael Monfils
Anna DuVal Smith

An Equal Opportunity Employer

