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Statutory Dispute Resolution Proceedings STATE EMPLOYMENT RELATIONS BOARD  
 State Employment Relations Board  
 Fact Finding Report

JUN 17 9 20 AM '96

In The Matter Between	)	
	)	
The Fulton County Engineer	)	SERB Case No.
Employer	)	95MED-06-0579
	)	
-and-	)	
	)	
Ohio Council 8, A.F.S.C.M.E	)	Report Issued
	)	14 June 1996
Employee Union	)	
	)	
Representing The Engineer	)	Attorney for the Engineer
Robert W.Windle	)	
	)	
Representing the Union	)	Negotiator for the Union
Ronald H.Janetzke	)	

BACKGROUND

The American Federation of State and Municipal Employees, AFL-CIO represents ten employees within The Fulton County Engineer Unit. The parties met on July 3,24, August 8,10,28 September 11,13,14, November 27,28, February 29, March 1 and 8 in an attempt to reach agreement on a new contract. Mediation was also attempted during that time which resulted in agreement on a number of issues not considered at fact finding. A meeting was held on 6 June 1996 for the purpose of mediation and fact finding. Three people for the employer and four people for the union initially attended the hearing. As a result of mediation some issues were resolved, and were also not considered during fact finding. Those Issues include: CALL IN PROCEDURE, WAIVER IN CASE OF EMERGENCY, POLITICAL ACTIVITY AND DRUG AND ALCOHOL POLICY.

UNRESOLVED ISSUES

Thirteen issues remained unresolved after mediation. The fact finding hearing was held on June 6,1996 at the Fulton County Engineer Building in Wauseon, Ohio. The

factors listed in SERB's Administrative Rule 4117-9-05(5) were given consideration during this fact finding process.

#### ISSUE #1 PERSONAL DAYS/PAY

The fact finder understands, that the employers currently receive ten holidays, fifteen sick days and up to five weeks vacation. The fact finder agrees with the Employer that a personal day, with economic and manpower consequences is not warranted. Therefore the fact finder will not support the Personal Days/Pay provision.

#### RECOMMENDATION #1

THE PERSONAL DAYS/PAY provision be dropped and not included in a final contract.

#### ISSUE #2 WAGES

Some employees would not receive a wage increase at all under the employer plan. In addition the evaluation bonus pay is illusory and may not be paid to employees at all. The union plan on the other hand has a significant increase all present and future employees within the unit. The fact finder will recommend a combination of employer and employee proposals.

#### RECOMMENDATION #2 WAGES

##### Section 1

All employees currently classified as Highway Worker 1, 2, 3, or 4 will be reclassified to Highway Worker. There is hereby created only a single Highway Worker classification. Upon the effective date of this agreement, all employees and thereafter all new hires in the Highway Worker classification will be given a copy of the Highway Worker classification. All employees currently employed by the Employer in Highway Worker classifications shall be considered for the newly created Highway Worker job classification.

##### Section 2.

Current Employees in the bargaining unit shall receive the following rates of pay:

	July 1,1996	July 1,1997	July 1,1998
Highway Workers	\$11.28	\$11.62	\$11.97
Mechanic	\$12.04	\$12.40	\$12.77
Route Marker	\$12.04	\$12.40	\$12.77
Garage Clerk	\$9.48	\$9.87	\$10.17

### Section 3

Employees hired after the execution of this agreement will receive the following rates of pay:

	Hire Rate
Highway Worker	\$11.28
Mechanic	\$12.04
Route Marker	\$12.04
Garage Clerk	\$9.72

After one year in the classification the employee shall receive the rate specified in Section 2.

### Section 4.

In addition, unit employees shall be eligible for an annual performance bonus to be paid commencing in December, 1997, and each December thereafter (each year) at the time of the first pay period payment, based upon the average bi-annual performance reviews, pursuant to the system established herein.

### Section 5.

The ratings of employees shall be based upon evaluations performed in good faith by the Superintendent and an Employee Evaluation Committee consisting of three (3) employees selected by the Union under internal procedures. The current evaluations shall be used. Each standard shall be ranked from Always to Never reading from left to right with a numerical value of 4-3-2-1-0. The Highway Worker, Mechanic, and Route Marker evaluation shall have forty (40) standards. The Garage Clerk classification shall have forty-two (42) standards. The NA shall not be used.

### Section 6.

The already completed evaluations of the Superintendent and the Committee shall be exchanged at a separate labor -management meetings to be held in May and November. The ratings shall be compared at each meeting. If the rating of the Superintendent and Union Committee fail within the same range, the ratings shall be added together and divided by two (2) to arrive at the employee's rating for that evaluation period. If the evaluation rating of the Employer and Union do not agree and it affects the employee's range for the period, the parties shall, in good faith attempt to reconcile the difference in order that their ratings fall within the same range. To determine the employee's overall rating used to determine the bonus amount, the employee's rating on the two (2) evaluations shall be added together and divided by two (2). A grievance filed under this section may not be appealed to arbitration.

### Section 7.

Employees may challenge the evaluations and ratings given by filing a grievance. The filing of a grievance shall not delay the bonus payment.

### Section 8.

The classification, rating, and bonus amount shall be based upon the following standard for the classifications set forth:

Classification	Numerical Rating	Bonus Amount
Highway Worker	140-160	3%
Route Mark, and Mechanic	120-139 100-120	2% 1%
Garage Clerk	147-168 126-146 105-126	3% 2% 1%

The bonus shall be paid in a lump sum on the date provided above. The computation is made as follows: 1) The evaluations determine the rating. 2) The rating determines the percentage (%). 3) The percentage and salary determine the bonus.

The sample bonus for an employee with the highest rating is then computed as follows: 1) Annual Salary X .03 = Annual Bonus. The annual salary of an employee for computation purposes shall be 2,080 hours times the employee's base rate of pay. For example: 2,080 X \$12.00 = \$24,949.60 X .03 = \$748.80.

### ISSUE #3 HEALTH INSURANCE

The employer proposes that the current cap remain in effect. The Union has proposed that it receive the same insurance's other county employees. Apparently both parties had agreed to the union proposal at one point. The Engineer at one point this year changed procedures and posed increased costs along to employees rather than continue to "pick up" such costs. The cost of health insurance can be made more efficient by a large group. The fact finder shall recommend that this occur.

### RECOMMENDATION #3 HOSPITALIZATION/MAJOR MEDICAL

The Employer shall, for the life of this agreement, make the same hospitalization and major medical insurance and other health insurance benefits available to bargaining unit employees as provided by the County Commissioners to unorganized county employees. The costs of such insurance benefits shall be the same as those established by the County Commissioners for said unorganized county employees.

### ISSUE #4. HOLIDAYS

The union and the employer differed as to the "two employees off" rule and the requirement for a physicians statement if on sick leave before or after a holiday. The

employer request is reasonable given manpower needs and sick leave use incidental to a holiday. The fact finder will recommend a combination of union and employer proposals.

#### RECOMMENDATION #4 HOLIDAYS

##### Section 1.

Eligible full-time bargaining unit employee shall be entitled to the following paid holidays:

- New Year's day
- Martin Luther King Day
- Presidents' Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veterans' Day
- Thanksgiving
- Christmas

##### Section 2.

In the event any of the listed holidays fall on a Saturday, the preceding work day shall be observed as the holiday. Should a holiday fall on a Sunday, the following work day shall be observed as the holiday.

##### Section 3.

Employees shall receive holiday pay at the rate of pay applicable on the holiday.

##### Section 4.

Employees must work the day before and the day after a holiday to be eligible for holiday pay, unless on vacation or sick leave verified by a physician's statement.

##### Section 5.

Employees required to work on a legal holiday will be compensated at the applicable rate (i.e. regular rate or overtime rate) plus straight time pay for the holiday.

#### ISSUE #5 FAIR SHARE FEE

The employer objects to this proposal and the union supports it. The fact finder will recommend that it not be included in the contract.

#### RECOMMENDATION #5 FAIR SHARE FEE

This potential article is not recommended to be included in the contract.

#### ISSUE #6 ENTIRE AGREEMENT

The parties were in substantial agreement on this proposal.

#### RECOMMENDATION #6

##### Section 1

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter of which the State Employment Relations Board imposes an obligation to bargain and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in its entirety in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each knowingly, unmistakably, voluntarily and unequivocally waives the right, and each agrees that the other shall not be obligated to bargain with respect to any subject matter covered or referred to in this Agreement. The Employer shall have no obligation whatsoever to bargain collectively with respect to the exercise of any rights under article \_\_\_\_\_, Management Rights.

##### Section 2

The provisions of this Agreement established certain rights and benefits for the Union and employees which shall only be coextensive with the terms of this Agreement, and such rights and benefits shall automatically terminate and cease upon the expiration of this Agreement.

##### Section 3

The Union shall not make or have any claim to any rights or benefits not expressly and specifically set forth in this Agreement.

#### ISSUE #7 MANAGEMENT RIGHTS

The parties were in substantial agreement about this issue.

#### RECOMMENDATION #7 MANAGEMENT RIGHTS

The Engineer maintains the exclusive right to manage and direct the work force; the right to control all aspects of the operations of the institution and all rights that are customary functions of management except those which are specifically restricted or modified by the Agreement. This Article neither establishes nor grants any right or benefits to employees.

The Engineer retains the right and authority to exercise sole and exclusive judgment and discretion on all employment and operational matters, not removed by law where this Agreement is silent and for the exercise of which there is no accountability to the Union

as to the fact and manner of its exercise. Such rights, authorities, prerogatives and functions of the Engineer include, by way of illustration and not by way of limitation, the following:

- A. To effectively manage and direct employees including the right to select, hire, determine acceptable standards of conduct and performance, schedule, promote, demote, retire, transfer, assign, evaluate, classify, discipline discharge and determine the qualifications and standards of selection and continued employment.
- B. To determine the adequacy, size, composition and qualifications of the work force, staffing patterns, and organizational structure.
- C. To determine the goals, objectives, programs, services and work to be performed and to utilize personnel in a manner designed to meet these purposes and improve productivity.
- D. To determine the methods, means, equipment, materials and processes for the accomplishment of work or other alternate ways, methods or means of accomplishing the same.
- E. To make such operational changes and decisions as are deemed necessary for the efficient and economical operation of the Engineer's business.
- F. To eliminate, combine, reallocate, or change the duties of bargaining unit classifications.
- G. To contract or subcontract out where the work can be performed more efficiently or economically.
- H. To issue, amend, and revise policies, procedures, practices, rules and regulations.
- I. To layoff or otherwise relieve employees from duty, permanently or temporarily.
- J. To determine and/or change the number of hours of work, work week, work schedules, length of work day, and beginning and/or ending time of the workshift.
- K. To determine the necessity to schedule and require overtime and the amount required.

- L. To determine when a job vacancy exists, when and if such vacancy is to be filled and the standards of quality and performance to be maintained.
- M. To exercise complete control and discretion over the budget and finances of the Engineer.
- N. To maintain the security of records and other pertinent information.
- O. To determine when an emergency exists and implement advisable and necessary actions in emergency situations.
- P. To reorganize and restructure the organization for the purpose of becoming more cost-effective or efficient.
- Q. To modify or discontinue certain programs, services, methods or ways of performing the work.
- R. To determine the location and number of facilities of the Engineer.

The Engineer shall exercise the above management rights and other management rights without interference from the Union except where it can be shown by the Union that the Engineer has violated a specific provision of the Agreement. Further, the Union may not grieve the exercise of management rights except where it can be demonstrated that such exercise is contrary to express contractual limitations placed upon management.

The Engineers failure to exercise any right, prerogative or function hereby reserved to him, or the Engineer's exercise of any such right, prerogative or function in a particular manner, shall not be considered in any way a waiver of the Engineer's right to exercise such right, prerogative, or function or preclude him from exercising the same in some other manner.

The Union waives the right to bargain during the term of the Agreement, the exercise by the Engineer of any and all traditional, statutory or contractual rights reserved to the Engineer under this Article or applicable law.

Any doubt as to whether or not a right has been reserved to management shall be resolved in favor of the Engineer.

#### ISSUE #8 VACATION

The employer objects to the union's vacation proposal because of its impact upon manpower needs. The fact finder agrees and will recommend that present vacation procedures and provisions be included in the new contract.

#### RECOMMENDATION #8 VACATION

The employer objects to the union's vacation proposal because of its impact upon manpower needs. The fact finder agrees and will recommend that present vacation procedures and provisions be included in the new contract.

#### RECOMMENDATION #8 VACATION

Employees requesting vacation of five (5) working days or more must make such request at least five (5) working days in advance. Vacation requests must be in writing and are subject to the approval by the Engineer. In no event shall more than two (2) vacation requests be approved for the same period.

#### ISSUE #9 UNION REPRESENTATION

The union and employer differ on specific language in this section that appeared to be inconsistent with other proposed contract language. The fact finder shall recommend a combination of both parties proposals.

#### RECOMMENDATION #9 UNION REPRESENTATION

Local Union officers and employees shall be granted unpaid administrative leave time off to attend labor management and grievance meetings, and arbitration hearings. Time off to conduct such unpaid union business leave shall count as if it were paid time for the purposes of vacation accrual, holiday accrual, sick leave accrual, seniority accrual and other fringe benefits.

Labor management and grievance meetings shall be held on Employer's premises to conduct such Union/Employer business. Non-employee Union representatives shall not meet with the employees at the work site, but may meet unit employees on the Employer's premises before or after their work shift.

The Employer shall provide a bulletin board for the Union which shall be placed in the work area where notices to employees are usually posted. The parties have agreed this area is now the employee's lunch room. The Union may post meeting notices, legislative bulletins, and other pertinent information relating to Union activities.

Employees shall not use County resources such as vehicles and telephone to conduct union business or activity, unless permission to use the telephone is granted by the employer.

#### ISSUE #10 HOURS OF WORK

The employer and the union differ over the computation of "hours worked" for purposes of overtime. The fact finder shall recommend a combination of both proposals.

#### RECOMMENDATION #10 HOURS OF WORK

##### Section 1.

The normal standard work day and work week shall be Monday through Friday, 7:00a.m. through 3:30p.m. and consisting of eight(8) hours a day, forty (40) hours per

week. Operational needs and/or emergencies, however, may necessitate the establishment of other work hours, days, or weeks on a temporary basis. The Employer may establish summer hours of Four (4) ten (10) hour days in advance. Upon request, the Employer will meet to discuss the summer hours.

#### Section 2.

There shall be one (1) fifteen (15) minute rest break in the first four (4) hours of work, and one (1) fifteen (15) minute rest break in the second four (4) hours of work. There shall be one half (1/2) hour unpaid lunch period each work day. Lunch and break times will otherwise be at the discretion of the Employer. Break times are to be paid. Breaks will be taken at the work site.

#### Section 3.

Vacation and holidays shall be computed as actual hours worked for payment of overtime. Overtime shall be paid for actual hours of work in excess of forty (40) hours per week.

#### Section 4.

When the employee works more than four (4) hours overtime contiguous to the regular shift or when an employee has been called out for emergency overtime which exceeds four (4) hours, the Employer shall grant a 15 minute paid break. Such break shall be scheduled by or with the approval of the Employer.

### ISSUE #11 COMPENSATORY TIME OFF

The union supports this issue as a way to reduce overtime costs. The employer views the proposal as a record keeping nightmare and as causing manpower need problems. The fact finder will recommend that this proposal not be included in the new contract.

### RECOMMENDATION #11 COMPENSATORY TIME OFF

The fact finder recommended that this potential ARTICLE not be included in the contract.

### ISSUE #12 UNION RECOGNITION

The parties were in substantial agreement on this issue.

### RECOMMENDATION #12 UNION RECOGNITION

Should the Engineer hire regular part-time employees in a bargaining unit classification, it will notify the Union when that decision is made.

### ISSUE #13 EMPLOYEE TRAINING

The union and employer differ on the need for this provision. The union supports training during regular working hours and compensation for required seminars. The employer objects to the non essential nature of the proposal. The fact finder agrees that the proposal is extensive and has additional economic implications.

#### RECOMMENDATION #13 EMPLOYEE TRAINING

The fact finder recommends that this provision not be included in the contract.

#### FACT FINDERS CONCLUSION

In the Fact Finders opinion the foregoing recommendations provide for fair and equitable resolution of the impasse. In the event that any of the recommendations fail to meet the tentative agreement established between the parties is noted that Ohio Revised Code 4117.14(c)(b) permits correction and modifications by mutual agreement of the parties.

#### CERTIFICATION OF SERVICE

This is to certify that the foregoing Fact Finder Report Case Number 95-MED-06-0579 was sent by registered overnight mail to:

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Submitted this 14th day of June 1996.

  
 Daniel L Merritt  
 Fact Finder