

STATE EMPLOYMENT
RELATIONS BOARD
IN THE MATTER
OF Jul 22 10 21 AM '97
FACT FINDING

BETWEEN

The
LUCAS COUNTY COMMISSIONERS

v

**AFSCME, OHIO COUNCIL 8
LOCAL 544-01**

CASE NO. : SERB 96-MED-11-1081

FACT FINDER: JOHN S. WEISHEIT

DATE OF HEARING: July 1, 1997

DATE OF REPORT: July 21, 1997

**REPRESENTATION
by**

Employer Representatives

Steve Sprin, Employee Relations Cons.

Union Representatives

Cheryl Tyler-Folsum, AFSCME Rep.

AUTHORITY

This matter was brought before Fact Finder John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation based on merit and fact according to the provisions of ORC 4117.

BACKGROUND

Lucas County Commissioners, hereinafter referred to as the "Employer" and/or the "County," is located in north-west Ohio, including the city of Toledo. It provides comprehensive services to its citizens under its jurisdiction.

The County engages in collective bargaining with unions representing different employee units. AFSCME, OH Council 8, Local 544-01, hereinafter referred to as the "Union" and/or the "AFSCME" is the employees' representative for a number of the Employer employee classifications. Local 544-01 includes about 600 employees working in different service agencies. A collective bargained agreement has been in place between the parties for several years. The most recent agreement expired December 31, 1996.

The parties engaged in good faith bargaining on a successor agreement except for ten (10) issues. These items are at impasse and were submitted to Fact-finding in keeping with statutory provisions of ORC 4117.

The above-named Fact-finder was selected by the parties and appointed by SERB. A fact-finding hearing was convened on July 1, 1997. At that time the parties presented testimony and documents in support of their respective positions on the unresolved issues. Upon accepting said testimony and documents, the Fact-finder reviewed the facts and positions according to rules and procedures set forth under ORC 4117 and the rules and regulations of the State Employment Relations Board. This Report and Recommendations are based on a review of the facts provided.

ISSUES AT IMPASSE

The following issues were at impasse at the fact finding hearing:

7.5(A)(3) Bidding Restrictions	17.3(C) Funeral Lv.
7.5(B) Time in bidded position (Min.)	20.1 Hrly Comp. Rate
9.2(A) Temp. Work Level	20.1(B)(2)(b) Differential Pay-Security Floaters
12.3(B) Basis of Perf. & Eval. Rating	24.3 Barg. unit supervisor's mangmt. Role
15.1(D) Personal Lv.	24.12 Role in Gr. Adm. - Testimony

All other matters have been withdrawn, tentatively agreed to, or otherwise disposed of between the parties.

**SUMMARY OF THE PARTIES RESPECTIVE POSITION
ON ISSUES AT IMPASSE**

Employer	Issue	Union
Exclude bid rt. due to <u>any</u> active discipline record.	7.5(A)(3) Bidding Restrictions	Current Language
Min. of 2 yrs in bid-in position.	7.5(B) Time in bidded position	Current Language
Add criteria for assignment to TWL	9.2(A) Temporary Work Level (TWL)	Current Language
Add lang. regarding use of leave in the employee performance and evaluation rating.	12.3(B) Basis of Performance. & Evaluation Rating	Current Language
Add lang. that restricts personal leave use to same controls of annual. leave.	15.1(D) Personal Leave	Current Language
Add grandchild to current section with limitations.	17.3(C) Funeral Leave	Add grandchild to current section.
4% inc., retro to 1 st pay of '97 4% inc. 1/1/98 4% inc. 1/1/99	20.1 Hourly Compensation Rate	7% inc. 1/1/97 4% inc. 1/1/98 4% inc. 1/1/99 \$500.00 signing bonus
2.5% Differential	20.1(B)(2)(b) Security Floaters, Differential Pay	2.5% Differential
Add lang. reinforcing management responsibilities	24.3 BU Supervisors management role	Current Language
Add lang. reinforcing management responsibilities	24.12 BU Supervisors management role, grievance admin.	Current Language

DISCUSSION & FINDINGS

General

The issues at impasse are reviewed in total context of all issues referred to in fact finding. Recommendations are reflected in an item by item basis; however, total consideration is made of related contract terms at tentative agreement.

Regarding economic issues, "Ability to pay" is not raised in this case. Rather "appropriateness" of rate in pay and benefit is argued.

7.5(A)(3) Bidding Restrictions

Current language provides "An employee with active discipline in his Personnel file (reprimand or suspension) which is performance related is not eligible to bid on lateral or promotional positions." The County proposes to delete "which is performance related". The Employer argues the term performance related can be vague and the basis of potential grievances. The Union contends it has not been raised as an issue in the last contract nor has it been a matter of discussion in LMC meetings during that time. The Union further contends the change would bring personal motivation into the process.

The parties have developed a comprehensive bidding provision in this Article. It promotes objectivity over subjectivity in the selection process. A review of a standard dictionary definition of the word performance, by itself, is found ambiguous in the context used in the provision in question.

It is found such proposed change in terms of the Contract are more appropriate to the bargaining process than in the labor-management committee setting. LMC's normally provide an arena in which to deal with matters of contract interpretation and application while the bargaining setting provides the opportunity to modify structure and content of the contract.

When considering the bidding restrictions agreed to in total context, an employee with an active disciplinary record was to be denied this right. Any questioned disciplinary action should be timely pursued through the grievance procedure. The Contract's grievance procedure provides a process for an employee to orderly challenge any alleged management violation or misapplication of a Contract term, including reprimand or suspension.

It is therefore recommended to delete the phrase "which is performance related" from the section.

7.5(B)
Time in bidded
position

The Employer proposes increasing the minimum time an employee remains in a position attained by transfer should be 2 years as to the present 6 months. In the fact finding hearing, the Employer modified its position to 1 year.

The Union argues there are reasons why an employee should not be required to remain in a position for a longer time. Much of the Union argument centers on new hires in social services.

Considering the testimony and evidence presented, the proposed 1 year minimum period is determined to provide a balance between the positions and concerns of the parties.

9.2(A)
Temporary
Work Level
(TWL)

The Employer proposes adding 3 criteria to the eligibility requirement in order to serve as a TWL: 1) not in a probationary period; 2) meet minimum qualification; and 3) In the case of the Eligibility Specialist classification, have completed the entire training class taught by Staff Development.

The Union contends the purpose of TWL is to serve as a vehicle to promote career ladder and experience for promotion. As such, assignments are not a bid position and therefore argues minimum qualifications should not be a mandatory requirement.

A review of the respective testimony and documents leads to the conclusion that the proposed revision would, for the most part, enhance the knowledge needed in career ladder development. Only the 3rd proposed criteria is found to pose a potential conflict. That is how timely the local training program is completed.

It is therefore recommended that the criteria be included with the provision that in no case will the added criteria delay an employee's opportunity to participate in the program after 1 year in his/her current position.

12.3(B)
Basis of
Performance.
& Evaluation
Rating

The Employer proposes to include language regarding performance rating based on a factor including a combination of sick leave and unexcused leave (AWOL) time.

The Union, proposes current language and argues the inappropriateness of using approved leave as a factor in this process and the degree of weight that this component will carry in the category of "Attendance". It further states concern on the adverse impact the proposed provision will have on an individual's total evaluation and performance rating.

The parties have defined, in Section 17.8, "satisfactory employee attendance" is when an employee uses no more than forty hours of sick leave per year. The current EPR Guide (EX#3) incorporates this standard. The EPR Guide also calls for taking into consideration procedural compliance of approved leaves in determining an employee's attendance rating. The Employer's proposal can cause an employee meeting the "Satisfactory Attendance" definition under Section 17.8 to fall under "Needs Improvement" under the EPR attendance category. The proposed language would further cause an employee limited to receive an overall EPR rating of "Meets Requirement" based solely on attendance. Further, the proposal would replace the existing attendance criteria in the EPR Guide. The Contract addresses sick leave, in various sections, in a comprehensive manner. The modification proposed by the Employer at this time could result in conflicting contractual term application by including unapproved absences to this section. This could be detrimental to both parties in the course of contract application. Management has the right to incorporate such rules and regulations it determines necessary, that are not inconsistent with the terms of the Contract. Unexcused absenteeism and misuse of approved absences are more appropriately subject of discipline than evaluation. Further, the two situations would be more appropriately addressed individually than together.

In consideration of the above, it is recommended that this section be included as current language in the Contract.

15.1(D) Personal Leave The parties have agreed that 24 hours of sick leave may be used for personal leave.

The Employer seeks language to insure adequate staffing needs.

The concern, as presented, occurs when employees obtain advance approved time off on or in conjunction with primary holidays while other employees take personal leave with short notice at the same time.

The Fact Finder finds Section 9.10 weak in addressing the issue raised in its proposal. No contract language was found to allow the Employer the right it seeks to modify leave usage of any type in order to retain minimal staffing levels.

It is recommended that the concept proposed by the Employer be included in the Contract, limited to the day of, before, and after defined Holidays.

17.3(C) Funeral Leave Current language limits use of funeral leave for death in the immediate family. The Employer's proposal follows that concept. Other leave is available to attend funerals of other relatives or friends.

It is recommended to include the language as proposed by the Employer.

20.1 Hourly Compensation Rate A review of the data and testimony provided lead this Fact Finder to conclude that, except for the signing bonus, the 4% annual wage rate increase is found fair and equitable.

It is recommended to include a 4% increase in the pay schedule effective 1/1/97, 1/1/98, and 1/1/99. Further each employee in the bargaining unit is to receive a \$500.00 signing bonus upon the Union's ratification of this Contract.

20.1(B)(2)(b) Security Floaters, Differential Pay The parties made oral tentative agreement at the fact finding hearing that the Security Floaters should be paid a differential of 2.5%.

It is recommended that such be included in the Contract.

24.3 BU Supervisors management role It is determined that current language is sufficient in establishing the fact hat supervisors in the bargaining unit are to function in a management role.

It is recommended to retain current language.

24.12
BU
Supervisors
management
role, grievance
admin.

It is determined to require, by contract, one "must" testify may conflict with one's individual rights. Failure of a supervisor to fulfill any reasonable request would place him/her in jeopardy of insubordination and/or other charges subject to disciplinary action, inclusive of discharge.

It is recommended to retain current language.

RECOMMENDATIONS

7.5(A)(3)
Bidding
Restrictions

It is recommended that this section should read:
"An employee with active discipline in his Personnel file (reprimand or suspension) is not eligible to bid on lateral or promotional positions."

7.5(B)
Time in bided
position

It is recommended that this section should read as is in current language with the following change:

"...such transfer within his classification for a period of one (1) year,..."

9.2(A)
Temporary
Work Level
(TWL)

It is recommended that this section should include the Employer proposed additional language, with the following added provision:
"4. In no case shall criteria in three (3) above, deny an employee's right to a Temporary Work Level after one (1) year employment."

12.3(B)
Basis of
Performance. &
Evaluation
Rating

It is recommended that this section be included as current language.

15.1(D)
Personal Leave

It is recommended that the following be added to current language:

"Except in emergencies, personal leave must be requested and approved in the same manner as annual leave for use on defined Holidays and the work day before and after. Supervisors may deny personal leave (except in emergency situations) to maintain unit coverage. Employees wishing to use personal leave in any emergency situation, under this provision, must document the emergency. Personal leave shall not be unreasonably denied."

17.3(C)
Funeral Leave

It is recommended that the following be included in the Contract:

"Funeral leave may be charged to paid leaves available other than sick leave, at the employee's discretion. Three (3) days paid bereavement leave shall be granted for the death of the employee's spouse, parent, child, or grandchild if the grandchild resided with the employee and/or the employee had legal custody of the grandchild."

20.1
Hourly
Compensation
Rate

It is recommended the current hourly compensation rate be increased in keeping with the following:

"Effective 1/1/97 the pay schedule be increased by 4% of that in effect 12/31/96. Effective 1/1/98 and 1/1/99 the pay schedule be increased by 4%, respectively. Further each employee in the bargaining unit, in the employee of the County as of the date affixed to this Report, is to receive a \$500.00 upon the Union's ratification of this Contract."

20.1(B)(2)(b)
Security
Floaters,
Differential Pay

It is recommended that the 2 ½ % Security Floaters Differential be added to this provision..

24.3
BU Supervisors
management
role

It is recommended to retain current language.

24.12
BU Supervisors
management
role, grievance
admin.

It is recommended to retain current language.

TOTALITY OF AGREEMENT

This will affirm the foregoing report, consisting of -10- pages, inclusive of this page, and recommendations contained herein, are made in this matter of Fact Finding by the below signed Fact Finder.

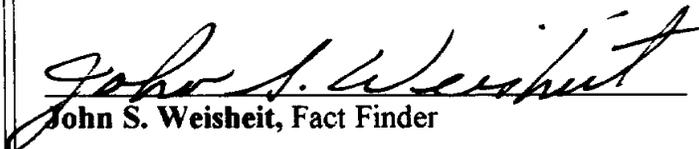
All matters presented before the Fact Finder and not specifically addressed were given consideration but are not recommended for inclusion in the Agreement.

If there is found conflict in the Report between the Fact Finder's Discussion and his Recommendations, that language in the Recommendations shall prevail.

All matters of tentative agreement are recommended to be included in the Agreement.

To the best of my knowledge, said Report and its included recommendations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I therefore affix my signature at the City of Galion, in the County of Crawford, in the State of Ohio, this July 21, 1997.


John S. Weisheit, Fact Finder

STATE EMPLOYMENT
RELATIONS BOARD

Jul 22 10 21 AM '97

CERTIFICATE OF SERVICE

This will affirm that the Fact finding Report in the Matter of Fact finding between

SERB Case No. 96-MED-11-1081

Lucas County Commissioners

v

AFSCME, OH Council 8

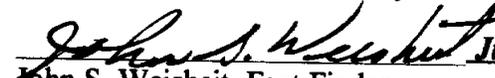
Local 544-01

was served to the below named parties and stated addresses:

Cheryl Tyler Folsom AFSCME, OH Council 8 Toledo Regional Office 420 S. Reynolds Rd., Suite 18 Toledo, OH 43615-5980	Steven Sprin 5650 W. Central Ave. C-4 Toledo, OH 43615	G. Thomas Worley SERB 65 E. State St. Columbus, OH 43215-4213
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by 1st Class U.S. Postal Service Mail, on July 21, 1997

I affirm, to the best of my knowledge that the foregoing is true and accurate.


John S. Weisheit, Fact Finder July 21, 1997
Date