

STATE OF OHIO

AUG 18 10 00 AM '97

STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	Case No. 97-MED-03-0218
	*	
Fact-finding between:	*	
	*	
AFSCME, Ohio Council 8	*	Fact-finder:
Local 3540	*	
	*	Martin R. Fitts
and	*	
	*	
Seneca County Engineer	*	August 14, 1997
	*	
	*	

REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

Appearances

For the AFSCME, Ohio Council 8, Local 3540:

William F. Fogle, Staff Representative
 Thomas L. Hinkley, Local 3540
 Gregory P. Kinn, local 3540
 Valerie Robertson, AFSCME

For the Seneca County Engineer:

Robert W. Windle, Advanced Management Systems
 Caroline Minges, Seneca County Engineer's Office

PRELIMINARY COMMENTS

The bargaining unit consists of the service, clerical, maintenance, and labor employees who perform work related to the construction, repair, and maintenance of county roads, bridges and right-of-ways within the geographic boundaries of Seneca County. There are approximately 24 employees in the bargaining unit.

The State Employment Relations Board appointed the undersigned as Fact-finder in this dispute on June 20, 1997. The parties engaged in collective bargaining April 30, 1997; May 19, 1997; June 4, 1997; June 18, 1997; July 9, 1997; and July 17, 1997.

The fact-finding hearing was held on August 7, 1997 in the conference room at the Seneca County road maintenance garage. Both parties attended the hearing, presented written positions, and elaborated upon their respective positions. There were six issues at impasse: Vacation; Hospitalization/Major Medical; Wages/Longevity; Duration; Transitional Work/Industrial Injury; and Drug Testing Policy. The parties declined mediation at the hearing, and thus six issues were submitted for Fact-finding.

In rendering the recommendations in this fact-finding report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison 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 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 standard of public service;
4. The lawful authority of the public employer;

5. Any stipulations of the parties; and
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 in private employment.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented in writing at the August 7, 1997 hearing.

ISSUES AND RECOMMENDATIONS

Issue: Vacation

Positions of the Parties

The Employer wishes to reduce the number of personal days from the current four days to two personal days. The primary argument of the employer is that the employees presently do not use the four days, but rather cash them in. Further, it claims that few of the other county engineers offer personal days, and none of the others offer four days. The Employer also wants to eliminate the ability of the employees to cash in the days rather than taking them off, noting that this results in the Employees getting, in essence, a bonus. It noted that most other county engineers that have personal days do not allow them to be cashed in if unused.

The Union proposes retaining the four personal days, as well as retaining the ability to cash them in. It noted that the employees have come to expect this as part of their compensation package, and many rely on the ability to cash them in as a way to meet expenses at the end of summer, such as back to school expenses for their

children. It also noted that the original intent of the four personal days was to provide the employees with a total of 15 days of combined sick leave and personal days, and that the parties have already signed off on 10 sick days per year.

The Employer also wants to change the crediting of the days from once a year, on July 21st, to twice a year. It claims that this will afford a fairer distribution of the personal days for new hires.

The Union proposes changing the agreement to allow for the taking of vacation time in one hour increments, rather than one day increments. It noted that some supervisory personnel are allowed to leave 15-30 minutes early to attend to personal business. It also noted that one of the reasons for the non-use of the personal days is that many times the worker needs some time to take care of personal business, but not an entire day.

The Employer noted that supervisors already float from job to job, and that the supervisor's absence does not necessarily shut down a crew. However, the absence of one of the work crew, for instance a heavy equipment operator, could effectively shut down a crew for that increment of the day that a person takes off. It noted that it would be extremely difficult to schedule around that, and that it would be unproductive and unreasonable to have the crew wait for the employee to get to the job, or stop work if the employee leaves in the middle of the day.

Findings and Recommendation

The Employer gives no compelling reason for the reduction in the number of personal days from four to two, other than the claim that the employees don't use them. Actually that's not true, the employees do use them, only they primarily use them as a "bonus" by cashing them in rather than taking the time off. This is a benefit that the employees have obviously won in previous collective bargaining.

The Employer offered no evidence that it created a hardship to the County Engineer, or that it was administratively difficult to administer. The mere fact that the Employer does not like the manner in which the employees utilize this benefit is not reason enough to eliminate the ability to cash in the days not used, nor to reduce the benefit from four days to two.

While the Employer's proposal to change the manner in which the days are credited from once a year to twice a year may have some merit, the reality is that any new employee benefits from the existing system within one year or less, and under the Employer's proposal would only gain by receiving one half of the existing benefit in six months time. However, the existing employees would have half of their four-day personal leave benefit delayed by six months. The Fact-finder finds that the potential gain for new employees is more than offset by the unfairness that the existing employees would be faced with should the existing benefit be distributed in half increments, which would mean delaying the receipt of half of their benefit for an additional six months. Thus the Fact-finder recommends retaining the existing method of crediting the personal days once a year on July 21st.

Finally, the Union's proposal to be able to take vacation time in one hour increments, while offering a tremendous benefit to the employees, would prove very difficult to administer due to the fact that the work is performed in the field, sometimes a large distance from the road maintenance garage, and the fact that crews depend on the right mix of classifications to accomplish their work. However, an ability to take vacation in four hour increments, provided that it be taken in the first four or the last four hours of the shift only (not in the middle of the day) does not seem unreasonable. It may well have the impact of encouraging more usage of the personal days, which is desired by the Employer, and it will definitely greatly benefit the employees. It would not seem to prove to be a difficult scheduling burden for the Employer, since it would be broken into only a half-day increment.

Therefore, the Fact-finder recommends that Article 33 Vacation, retain the current language except for Section 4, which should read as follows:

Article 33

Vacation

Section 4. Vacation leave may be taken in four hour increments, at the discretion of the Engineer, for bona fide emergencies where adequate notice is given together with appropriate documentation if required and reasonably available. Said four hour increment must comprise either the first four hours of the work day, or the last four hours.

Issue: Hospitalization/Major Medical

Positions of the Parties

The Employer proposes retaining the current language which calls for the county to pay 100% of the cost of single coverage under the county's health insurance plan for each full time employee, with the employees desiring family coverage required to pay the difference, which is currently \$105/month. The employer noted that all other county employees, including those in the county's department of human services which are represented by AFSCME, have the same policy. It also noted that the engineer's office consists of only 32 of the county's 500 employees, and it believes that these employees should be treated the same as all the others. The Employer also provided a number of comparables showing other counties that require not only a percentage of the family coverage premium, but also a percentage of the single coverage premium to be paid by the employee.

The Union countered with comparables from Henry, Erie, and Lucas counties showing that employees of the county engineers in those counties have both single and family coverage health insurance premiums paid by their respective counties.

The Union also argued that since the engineer is an elected official, it is not improper for his employees to receive benefits different from the remainder of the county.

Findings and Recommendation

The Fact-finder believes that the best comparable when dealing with health care coverage premiums is what other employees in the county receive. It only makes practical sense that Seneca County, or any county, administer a single health care plan and policy for all its employees. Not only does this make administrative sense for the county, the larger pool can make a difference in the types and quality of the benefits received from the providers. Further, the Employer noted that in the Union's comparables showing counties where the engineers' offices provide full-paid premiums for family coverage, these counties provide the same benefit to all of their employees, thus providing equal treatment.

Given that the employees in this bargaining unit are already treated the same as all of the other county employees, including other employees covered by this same union, there was no convincing argument presented by the Union to change the existing practice as outlined in the current agreement. Thus the Fact-finder recommends retaining the current language.

A second issue was also proposed by the Union, that of providing health insurance coverage for part-time employees. The Employer noted that the county's practice in all of its departments and agencies is to provide health insurance for full time employees only. It also noted that the Engineer's Office does not have any part time employees, and is not contemplating hiring any. While the Fact-finder is a firm believer in providing health insurance to employees, it would be imprudent to recommend a change in the current agreement given that there are no part time employees in this bargaining unit. Such a recommendation could have significant

ramifications for other bargaining units that are not a party to these negotiations, while at the same time having no ramification for this bargaining unit. Again, the Fact-finder recommends retaining the current language.

Issue: Wages/Longevity

Positions of the Parties

The Union proposes a \$0.55 across the board increase for each of the wage classifications in each year of the Agreement. It is asking for a cents per hour increase versus a percentage increase in an effort to be fairer to those employees in the lower wage classifications. It noted that the average wage of the members in the bargaining unit is \$10.52, based on the seniority list showing the actual wages paid each employee. The Union noted that the Ohio Department of Transportation pays its workers higher wages for similar work at the state garage down the road from the Seneca County road garage. It also cited comparables of other counties that paid higher wages.

The Employer proposes a 2.5% increase in each of the three years of the Agreement. It noted a number of comparable, rural, counties that have averaged around 3% increases in their labor agreements, and argued that the Union's comparables included more urban counties with increasing revenues and a much greater ratio of revenue per employee than in Seneca County. Further, it stated that the Seneca County Engineer's revenues have been stagnant. It also noted that other county employees in Seneca County have averaged 3% wage increases.

Findings and Recommendation

In the previous Agreement, the parties had a cents per hour increase, which is what the Union is asking for in this Agreement. The Employer offered no argument against a cents per hour increase. A cents per hour increase is a fair and reasonable request that puts the Employer at no disadvantage, and so that is the format that the Fact-finder recommends.

The Fact-finder agrees with the Employer that the Union's comparable showing the wages paid by the ODOT garage is not a completely valid comparable, due to the great differences in sources of revenue available to the two entities. However, it does show to some extent the wages available for similar work in the immediate area, and thus cannot be completely discarded. In the same light, the Employer's citing 3% increases for other Seneca County employees cannot be completely discarded either, as it demonstrates to some degree what the public is willing to pay for wage increases for county government employees. Thus some middle ground must be sought that provides the employees with a reasonable increase in light of wages paid for similar work in the area, balanced by the trend in Seneca County government.

The Employer's proposal, when translated to a cents per hour increase based on a \$10.52 average wage in the bargaining unit, is roughly equivalent to an average \$0.26/hour increase in the first year, an average \$0.27/hour increase in the second year, and an average \$0.28/hour increase in the third year. This is less than the Fact-finder believes is fair. The \$0.55/hour proposed by the Union is not fair to the Employer and the taxpayers. An increase of \$0.37/hour the first year, \$0.38/hour the second year, and \$0.39/hour the third year would provide an average increase of 3.5% each year based upon the current average hourly wage in the bargaining unit of \$10.52. This is reasonable and fair to both parties.

Thus the Fact-finder recommends that Article 48, Wages/Longevity Pay should read as follows:

ARTICLE 48
WAGES/LONGEVITY PAY

SECTION 1. Employees rates of pay effective 7-21-97 are as follows:

<u>Classification</u>	<u>LENGTH OF SERVICE (YEARS)</u>				
	<u>less than 1</u>	<u>1 thru 5</u>	<u>6 thru 12</u>	<u>13 thru 20</u>	<u>21+</u>
Custodial Worker 1	8.17	8.42	9.42	10.67	11.17
Security Officer 1	8.17	8.42	9.42	10.67	11.17
Secretary 1	8.17	8.42	9.42	10.67	11.17
Highway Worker 2	8.92	9.42	10.42	11.42	11.92
Bridge Worker 1	8.92	9.42	10.42	11.42	11.92
Route Marker 1	8.92	9.42	10.42	11.42	11.92
Storekeeper/ Comm Tech	8.92	9.42	10.42	11.42	11.92
Equipment Operator 1	9.37	9.87	10.87	11.87	12.37
Equipment Operator 2	9.67	10.17	11.17	12.17	12.67
Mechanic 1	9.67	10.17	11.17	12.17	12.67

*Bridge crew to receive an additional thirty-five cents (\$0.35) differential.

SECTION 2. The above rates shall be increased as additional thirty-eight cents (\$0.38) per hour effective 7-21-98.

SECTION 3. The above rates in Sections 1 and 2 shall be increased by thirty-nine cents (\$0.39) per hour effective 7-21-99.

Employees shall move through the above schedule on their anniversary dates.

Issue: Duration

Positions of the Parties

Both parties propose that the new agreement shall expire at 11:59 P.M. on July 20, 2000. The Employer proposes retaining the current language which calls for the agreement to be in effect as of the date of ratification, while the Union proposes that it specify that the agreement shall be in effect as of July 21, 1997. The Union's concern is that the economic provisions be effective retroactive to the expiration of the existing agreement on July 20, 1997. The parties are currently operating under a continuation of the provisions of the expired agreement.

Findings and Recommendation

Both parties want a three year agreement, with the Union expressing a desire to ensure that wage and benefit adjustments contained in the new agreement are retroactive to July 21, 1997. This seems fair, and will not cause the Employer undue harm or difficulty. Thus the Fact-finder recommends that the first paragraph of Article 53, Duration, Section 1 read as follows:

Article 53

Duration

Section 1. This Agreement shall be effective as of ratification and shall remain in full force and effect until July 20, 2000 at 11:59 P.M. All wages and economic benefits contained in this Agreement shall be retroactive to July 21, 1997. If either party desires to modify, alter, amend or terminate this Agreement, it shall give notice in writing to the other party no earlier than ninety (90) days prior to the expiration date of this Agreement nor later than sixty (60) days prior to the expiration date. Negotiations for a successor Agreement shall begin within two (2) weeks of receipt of such notice or on a mutually agreed upon date.

Issue: Transitional Work/Industrial Injury

Positions of the Parties

The Union seeks to add an appendix, to be called Appendix B, to the agreement which would state that "the Employer shall be required to recognize and provide the full provisions and benefits to all employees of Ohio Revised Code #4123 and #4167. This recognition includes that employees will receive all materials, manuals, forms, training rehabilitations, if necessary, transitional work, if necessary, and whatever is required of these laws." Included in the Appendix would be the complete Claims Management Program Leader's Guide from CompManagement Health Systems Health Partnership Program, the firm that manages workers compensation claims for the County Engineer. The Union contends that the employees and supervisors have not been trained, and that employees have received a much smaller document than the original document included in its proposal. It stated that its interest in including this appendix is so that employees and supervisors receive this document and receive training.

The Employer countered that the Ohio Revised Code already requires the Employer to comply with its provisions, and the Engineer believes that he has complied, thus there is no need to include this in the collective bargaining agreement. It believes that any questions regarding this issue can properly be raised in labor-management meetings. Any disputes as to whether or not the Engineer has complied can be handled in the appropriate legal manner as specified within the law. Further, the Employer noted that it had surveyed 35-40 collective bargaining agreements of other Ohio county engineers and could not find a single one that included a document such as this.

Findings and Recommendation

The Union offered no rationale as to why this should be included except its assertion that the Employer has not fully trained the employees and supervisors, nor provided enough information to them. It also provided no evidence why this was needed as part of this collective bargaining agreement, when others do not include it.

The Fact-finder is inclined to agree with the Employer that any disagreements over the training needed for employees or supervisors is properly an issue to be addressed in labor-management conference, as per Article 23 of the current agreement. Legal remedies exist under Ohio law for the redress of violations of the law by employers. To include such language in the collective bargaining agreement would be tantamount to including other state or federal laws such as the Americans with Disabilities Act, Family Medical Leave Act, or a host of others. This would not only be unwieldy, it would be redundant. If the intent of the Union is to provide its members with a copy of the CompManagement Health Systems plan, it is certainly free to do so unilaterally, as this document is on file as a public document, and the Union already has a copy of it.

Educating its members of their rights under the law is well within the rights and abilities of the Union, but the Employer is under no obligation other than provided by law to assist the Union in this effort. To add this appendix to the Agreement would constitute redundancy and possibly provide the Union with an inappropriate vehicle, the grievance procedure, to attempt remedy for violations of the law.

Issue: Drug Testing Policy

Positions of the Parties

The Union is proposing that the County Engineer's drug testing policy be incorporated into the collective bargaining agreement as Appendix C. The Union notes that the drug policy is mandated by federal law for those holding commercial drivers licenses. It argued that its proposed Appendix C puts into layman's language the provisions of the law, and assures that its members receive a copy of the policy.

The Employer argued that inclusion of the drug testing policy is unnecessary. It noted that the policy has been in force since January, 1996 and there has never been an issue raised over it. It also noted that no employee has been under "reasonable suspicion" for testing, and also noted that the Engineer contracts with Mercy Hospital for implementation of its drug policy to further ensure that the law is complied with.

Findings and Recommendation

The Fact-finder notes that some county engineers, according to the Employer's own comparables, do include the drug testing policy in their collective bargaining units. The fact that the policy is dictated by federal law does not take away from the fact that the employees are subject to discipline for violation of this policy. Simple fairness dictates that discipline be subject to the grievance procedure, which is only possible if this provision is included as part of the collective bargaining unit through appearing as an appendix. Issues such as reasonable cause, chain of custody of samples, etc. are cited in the current policy, yet are fraught with varying interpretations and possible error. Being subject to the grievance procedure assures the employee a measure of protection against abuses. Since no provision of

the agreement can be in conflict with federal law, the Employer is assured that whatever is in the appendix must comply with the law or be null and void.

As a matter of fairness to the employees, the Fact-finder recommends that the drug testing policy be included as an appendix to the collective bargaining agreement, and subject to the grievance procedure.



Martin R. Fitts 8/14/97
Fact-finder