

ALAN M. WOLK

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STATE EMPLOYMENT
RELATIONS BOARD

IMPARTIAL ARBITRATOR

JUN 1 10 07 AM '98

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER BETWEEN:

AFSCME OHIO COUNCIL #8)

)

)

Union)

NO. 97-MED-10-1030

)

and)

FACT-FINDER'S

RECOMMENDATIONS

)

TRUMBULL COUNTY RECORDER)

)

Employer)

APPEARANCES:

FOR THE UNION:

Mark T. Carlson AFSCME/OHIO Council #8

FOR THE EMPLOYER:

Diana Marchase, Trumbull County Recorder.

[James W. Keating, Trumbull County Director of County Personnel and Risk Management; Blaugrund, Herbert & Martin, Incorporated (David S. Kessler, Legal Assistant; representation of *both withdrawn* as of 3/16/98)].

The undersigned was selected by the parties through the State Employment Relations Board of Ohio [SERB] to serve as impartial neutral Fact-Finder to hear and decide issues presented pursuant to Ohio law.

By agreement of the parties, a hearing was initially opened 3/6/98 and later concluded 5/19/98 at 347 N. Park #313 Warren, (TRUMBULL County) Ohio, at which time the parties were afforded a full opportunity to present opening statements; to submit, object to, and cross-examine evidence; as well as to offer exhibits and documents, and to argue the respective merits of their respective positions orally and/or by briefs. A court reporter was NOT present.

Representation Issue

At the commencement of the Fact Finding hearing on 3/6/98, the parties were fully prepared to proceed, however, before proceeding, the Union objected to the Employer's representative by questioning whether the Commissioner's employee was authorized to

represent the Employer's position. Management rejected the raising a new issue so late in the process. There was evidence that this issue had just come to the Union's attention. [See copy of letter dated 3/5/98 regarding conversation 3/4/98].

James W. Keating, Director of the Department of Personnel and Risk Management for the Trumbull County Commissioners, was present (and the only individual with whom the Fact-Finder had contact on the Employer's behalf prior to the hearing). He stated that he had been authorized to represent the interests of the Employer who is the County Recorder. He stated further that the Recorder has no authority to accept or reject the Fact-Finder's recommendations. Nevertheless, the Union contended that the Recorder did not cede her negotiating authority to the Commissioners.

The Union had just received on the morning of the first hearing (3/6/98) a letter is dated 3/5/98, signed by the County Recorder, addressed to the Trumbull County Commissioners, referring to a conversation on 3/4/98. The substance of the letter is that the Recorder favors settlement on all issues including the pay schedule issue that the Trumbull County Commissioners oppose.

SERB had certified the Employer as the "Trumbull County Recorder," not the Commissioners. However, under O.R.C. 4117, the County Commission has the sole authority, according to the Union, as limited to matters requiring expenditures by the County Recorder. The Commissioner's representative, Mr. Keating, contended that the Fact-Finder's ultimate recommendations are all subject to the approval of the County Commissioners, not the County Recorder. The Fact-Finder noted that ability to pay is an underlying issue in Fact-Finding, however, the Employer did not assert any inability to pay.

Mr. Keating was unaware of and surprised to learn of the Recorder's conversation and letter, and moved for a continuance. The Recorder appeared in person pursuant to subpoena and confirmed the she is the Employer and that the position of the Recorder differed from the position of the Commissioners and that the Recorder and the Union are in agreement as to all terms and conditions of a Tentative Agreement.

In the interest of fairness, despite objections by the Union, the Fact-Finder granted a continuance to 3/20/98, so as to allow the parties to submit briefs on or before 3/16/98.

A second motion by Management to assess the costs of the first hearing solely against the Union was rejected by the Fact-Finder.

At the initial hearing, the Employer and her representative were in conflict. A continuance was granted by the Fact Finder. The matter was rescheduled for 3/20/98 to allow the representation conflict to be resolved and for submission of briefs on pretrial motions by 3/16/98. The Union submitted a timely brief, however, on 3/16/98, without filing a brief, the Employer's representative, Blaugrund, Herbert & Martin, Incorporated, withdrew.

On 3/19/98 a the parties jointly requested a postponement pending settlement. The Recorder and the Union then advised the Fact Finder that on 3/21/98 that the parties had a

Tentative Agreement (later confirmed in writing by letter dated 3/24/98 [JX-2 (B)]), which was ratified by the Union on 3/27/98, and which was then being submitted to the legislative body, the Trumbull County Commission for its approval (to the extent such approval is reserved pursuant to O.R.C. 4117 or other code provisions).

By 3/27/98, duplicate loose-leaf notebooks, containing the specific language of each provision that was included in the Tentative Agreement, were then and remain in the possession of and available to the Commissioners' representative, as well as the County Recorder, and the Union. [See also Tab 2 of Mr. Keating's presentation on 3/6/98 containing the specific provisions of each approved provision].

The Commissioners rejected the Tentative Agreement on 5/6/98.

Jurisdiction

[Reportedly, the Commissioners received the Tentative Agreement 4/6/98, although there was credible evidence that this submission occurred several days earlier. At the hearing, neither party raised any question of jurisdiction which might be based on the 30 day limit within which the legislative body is required under O.R.C. 4117 to accept or reject].

Fact Finding Hearing

Hearing proceeded in Warren (Trumbull County), Ohio on 5/19/98. All evidence such as stipulations, exhibits, affidavits, testimony, and all arguments, citations and briefs (if any) were been duly received and given such weight as deemed appropriate by the Fact-Finder.

The Award may be published by SERB.

Criteria [4117-9-06(J)]

The FACT-FINDER, in making recommendations, shall take into consideration all reliable information relevant to the issues, including, but not limited to:

- (1) Past collective bargaining agreements, if any, between the parties;
- (2) Comparison of unresolved 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 a dispute settlement procedures in the public service or in private employment.

ISSUE

Article 25 Payroll (Attached)

The sole issue between the parties, as presented, is the payroll schedule to be included in the collective bargaining agreement, particularly the pay schedule for longevity of 10, 15, and 20 years.

FACTS

The Recorders' Office is a new bargaining unit which has ten (10) members. They have not been assigned a local # within AFSCME yet. There are also approximately 290 non-union and 130 members of AFSCME Local # 2493. Other county workers serving within a variety of Trumbull County offices are also represented by six other bargaining units two of which are the Ohio Patrolman's Benevolent Association locals, and the rest are various AFSCME locals.

The facts as presented are that the sole objection of the Commissioners is the language of Article 25 - Wages which includes specified wages after 10, 15 and 20 years of service. There is no evidence that there is any other objection to the Agreement communicated to the Recorder or the Union by the Commissioners. Although the initial Pretrial Statement submitted by the Commissioners indicated other remaining disputes e.g. Reclassification and Sick Leave (no fault) these were no longer disputed at the hearing.

The Union and the Trumbull County Recorder are in full agreement, however, the Recorder reported that the legislative body, the Trumbull County Commissioners do not approve the payroll schedule. Specifically, *the schedule included herein is identical*, for years of service and rank, to the payroll schedule *for the non-bargaining unit employees for the same calendar years*, and the Commissioner's objection communicated to the Recorder is that the members of this bargaining unit should not receive the same increases after 10, 15 and 20 years as will be received by the non-bargaining unit employees.

There is evidence that the Commissioners profess to be offering "no less than what other union employees receive" and are "adamantly committed to uniformity in union contracts [RX-2 (A)]"

DISCUSSION AND ANALYSIS

This is a very unusual case in that the Employer and the Union fully agree.

However, the legislative authority, which has certain authority under O.R.C. 4117, rejected the Tentative Agreement.

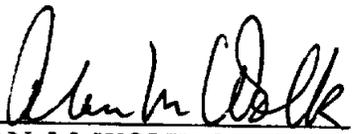
As the matter was submitted and upon reviewing the exhibits, I find that the Commissioners have agreed to all of the provisions of the Tentative Agreement except that a 2-1 majority rejected that portion of Article 25 - Wages. This is entirely with respect to the pay schedule particularly as it extends out to pay for service longevity after 10, 15 and 20 years.

Although the Commissioner's desire that there be uniformity in union contracts [RX-2(A)], there are already seven different pay schedules [RX-2(B) and RX 3 (A-F)] with Trumbull County. There is also a Commissioner's statement that the Recorder's Employees are to be offered "no less than what other *union* employees receive." [RX-2 (A)], however, the criteria applied by a Fact-Finder does not limit fairness to what other *union* employees receive. [O.A.C.4117-9-06(J)]. How non-union employees are treated can also be considered. (The argument was raised that treating non-union employees more favorably than union employees may be an unfair labor practice).

AWARD

After review of all of the terms and conditions contained in the Tentative Agreement, including but not limited to Article 25 Payroll and including its provision for specific longevity increases after 10, 15 and 20 years, is hereby found to be fair and reasonable.

As Fact-Finder I approve and recommend adoption of the entire Agreement (previously called the "Tentative Agreement" and as previously ratified by the Union and as rejected by the Commissioners).


ALAN M. WOLK, Conciliator
File # 289-97

Made effective in
TRUMBULL County, Ohio
this 1st day of June, 1998.

EXHIBITS

JOINT

- JX-1 Ratification Summary (11 double sided sheets, one single sided).
[This contains: "Article 25, Wages]"
- JX-2(A) Tentative Agreement between AFSCME and The Trumbull County Recorder
to be Effective August 1, 1998 through 7/31/00. [This contains: "Article 25, Wages]"
- (B) Notice of same dated 3/24/98

RECORDER

Booklet submitted by James W. Keating, 3/3/98

TAB 1 Pretrial Statement

TAB 2 Tentative Agreements

TAB 3 Articles for Fact Finding

Wages

Reclassification

Sick Leave

TAB 4 Comparables (to be supplied later)

Blaugrund, Herbert & Martin

1/9/97 submission to Fact-Finder Robert G. Stein in Case 96-MED 04-031

[See Appendix F]

11/13/95 lt #2493 withdrawing proposal

3/16/98 lt Alan M. Wolk seeking a continuance from 3/20/98 and advising
of withdrawal for Blaugrund and Keating from representing Marchase

3/16/98 LF Carlson objecting to continuance

RX-1 Pre-Hearing Statement via letter to Fact-Finder from Recorder

RX-2 5/16/98 Position of Recorder regarding ARTICLE 26 - Wage Schedule

Attached Exhibit A

5/14/98 - Letter from Trumbull County Commissioners to Mr. Michael A.
Aurilio, Chairman, CMT-UAW CAP Council, stating, among other items, the following
regarding the Commissioner's position:

"This entire matter can be boiled down to one issue - fairness. In
attempting to treat all employees equally, union and non-union
alike, this Board of Commissioners is adamantly committed to
uniformity in union contracts. Would it be fair to grant this union of
eleven (11) members a much richer agreement than that which
AFSCME, Local 2493, has with one hundred thirty members."

Attached Exhibit B

Copy of handwritten worksheet prepared by Personnel Director and given to
the Recorder noting there are approx. 290 employees on the Non-Union Pay Schedule
and approx. 130 members in AFSCME #2493; also naming seven (7) which have
specific different Union pay scales in Trumbull County.

RX-3- Comparable Collective Bargaining Agreements (or excerpts) Trumbull County Commissioners [Each reflects different pay schedules].

- A. Clerk & Treasurer/AFSCME #2493; 8/1/96 through 7/31/99
- B. Child Support Agency/AFSCME #3803; 9/10/95 through 8/9/98
- C. County Engineer/OCSE AFSCME Local #11; 4/19/95 through 4/19/98
- D. Dept. Human Services/AFSCME Local 458; 2/6/95 through 12/31/97
- E. Sheriff/OPBA; through 9/30/98
- F. 911/OPBA; through 1/1/96

RX-4 Sworn affidavit of the Chief Deputy of the Recorder's office, Barbara E. Adams, attesting to her personal hand delivery of a copy of the contract to Clerk Roselyn Ferris on 4/2/98 which was time stamped by the Clerk in the affiant's presence. Later that same day the affiant was told by Ms. Ferris that the copy she received was incomplete. The following morning, 4/3/98, affiant received and then handed a complete copy of the Contract to Ms. Ferris which was time stamped in her presence.

RX-5 Minutes of Special Meeting of Trumbull County Commissioners held 5/6/98 caption: "Adopt Resolution to Reject Bargaining Agreement-AFSCME, Ohio Council 8/ County Recorder." Passed 2-1. [This includes a public statement by the Recorder].

UNION:

UX-A Brief of Union

UX-A 5/15/98 4117.17 pretrial statement
incl. summary of wage issues

UX-A-(1) Fact Finding Recommendation between AFSCME Local #2493 and Trumbull County (Case # 96-MED-04-0301 before Robert G. Stein as Fact-Finder issued 2/11/97) [See Schedule F, i.e. 1996 Salary Schedule recommended and eventually adopted for 1996 only].

-(2) Blaugrund, Herbert & Martin
1/9/97 submission to Fact-Finder Robert G. Stein in Case 96-MED 04-031
[See Appendix F]

UX-B (1) Non Bargaining Unit 1997 Salary Schedule

(2) Non Bargaining Unit 1996 Salary Schedule

UX-C (1) Salary Schedule 1996

UX-D (2) Salary Schedule 1997

ALAN M. WOLK
ARBITRATOR

STATE EMPLOYMENT
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June 1, 1998

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RE: SERB 97-MED-10-1030 FACT-FINDER'S RECOMMENDATIONS
Trumbull County Recorder and AFSCME Ohio Council #8

This is a side note to the within decision:

Jurisdiction Facts

According to the evidence, the Union had submitted a "Ratification Summary" to the County Commissioners' Office on 4/2/98 and a signed copy of the Tentative Agreement in conformity with the loose-leaf notebook on 4/6/98. The evidence includes a sworn affidavit from an employee of the Recorder's office indicating that the same complete Tentative Agreement was hand delivered to the Commissioners' Office on 4/3/98. There was no time/date-stamped copy in the Commissioners' Office, and the Commissioners have asserted that the agreement was not received at the Commissioners' Office until 4/6/98. The Commissioners rejected the Tentative Agreement at a Special Meeting of the Commission held 5/6/98.

Coincidentally, this date was the day after the Ohio 1998 primary elections, in which there were contested slots in the Trumbull County Commissioners primary.

If delivery of the agreement to the Trumbull County Commission took place prior to 4/6/98, the provisions in O.R.C. 4117, requiring the Employer to take action within 30 days, apply and the Tentative Agreement became binding by operation of law and without this Fact Finding proceeding. The County Recorder and the Union agree that delivery took place prior to 4/6/98, however, there was evidence that the Commissioners assert delivery did not take place until 4/6/98.

If it is later confirmed or proven that the delivery of the Tentative Agreement did not take place until 4/6/98, and if the Commissioners' rejection was otherwise valid, the Fact-Finder's Recommendations herein, and the other processes regarding such recommendations under O.R.C. 4117, will then apply.

The Fact-Finder does not have jurisdiction to make a finding regarding the operation of law. Because of possible legal ramifications arising from the foregoing, I strongly suggested that each party obtain legal counsel. The Union chose not to obtain counsel. The Recorder reported that the Trumbull County Prosecutor suggested that she did not need counsel.

With the date that the Tentative Agreement was delivered to the County Commissioners in dispute, the parties mutually agreed to proceed with hearing without arguing the foregoing.

Respectfully submitted,

Alan M. Wolk
Fact Finder
AMW:bb