

ALAN M. WOLK

IMPARTIAL FACT FINDER

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER BETWEEN:

TEAMSTERS LOCAL UNION)

NO. 348)

Affiliated with the)

International Brotherhood of)

Teamsters)

Union)

and)

COPLEY TOWNSHIP TRUSTEES)

Employer)

NO. 98-MED-01-0018

FACT FINDER'S
RECOMMENDATIONS

APPEARANCES:

FOR THE UNION:

Bruce E. Pence, Esq. of Logothetis, Pence & Doll (937)-461-5310; Patrick Darrow, Business Representative; Patrick J. Zigs, Business Representative.

FOR THE EMPLOYER:

Mr. Robert A. Edwards, Esq., (330) 535-7547; Helen Humphreys, Clerk; James Welton, Road Superintendent.

History of the Proceedings

Pursuant to Ohio Revised Code Section 4117.14(C) and by letter issued by SERB, dated 3/12/98, 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.

Except to the extent that parties mutually agree otherwise, or wish to pursue mediation first, pretrial statements are required pursuant to Ohio Administrative Regulations (particularly) 4117-9-05) to be provided to the Fact Finder and to the opposing party at least 48 hours prior to the hearing.

The Union submitted its *Position Statement* in advance of the hearing.

At the commencement of the Fact Finding hearing the parties agreed that each was fully prepared to proceed. However, by agreement of the parties, mediation was attempted for

one full day on May 27, 1998 at Copley Township Hall, (SUMMIT County) Ohio. A court reporter was not present.

SUBMISSION

I. Parties

The Union is represented by Bruce E. Pence, Esq. of Logothetis, Pence and Doll.

Robert E. Edwards, Esq. represents Copley Township, which is located in Summit County, Ohio approximately 11 square miles, with approximately 11,000 residents.

II. Description of the Bargaining Unit

The bargaining unit consists of six (6) employees, all of whom are hourly road and maintenance employees and recycling employees. Teamster's Local #348 became exclusive representative in 1998.

II. Current Collective Bargaining Agreement

This is the FIRST Collective Bargaining Agreement between the parties.

IV. Unresolved Issues in Dispute

At the start of the hearing the parties agreed that the following 13 issues were in dispute: (1) Layoff/recall [Art. XIII; Art. XX]; (2) job bidding [Art. XXXV]; (3) guaranteed standard workweek [Art. XVI] and workday including overtime and paid lunch [Art. XXIII]; (4) wages [Art. XVII; Art. XXV]; (5) longevity [Art. XXII; Art. XXX]; (6) insurance [Art. XXIII; Art. XXXI]; (7) holidays [Art. XXI; Art. XXIX]; (8) subcontracting [Art. XXVI]; (9) dangerous conditions of work [Art. XXVII]; (10) defective equipment [Art. XXVIII]; (11) maintenance of standards; (12) management's rights [Art. VII]; and (13) C.E.R. fund [Art. XXXVII].

Tentative Agreement

Following mediation, the representatives of both parties recommended the tentative agreement to their clients, which was rejected by a secret ballot vote of the bargaining unit.

The vote was reported by letter dated 7/23/98 and received by the employer on 7/28/98. This letter requested additional dates for a Fact Finding hearing. The employer submitted a letter to the fact finder, dated 7/31/98, which was also addressed to SERB (responded to 8/24/98). With this letter, and another dated 8/13/98, Copley waived any additional hearing and the ten-day notice to strike: "with one exception, Copley stands by the agreement previously made and rejected by the Teamsters." By letter dated 8/27/98 [not received by the fact finder until after Labor Day], the Union effectively waived any additional hearing, unless required by the fact finder.

Although management was never called upon to approve or disapprove, counsel for Copley represented that the Township definitely favors the tentative agreement.

On the date of the union vote, counsel for the employer received a call from counsel for the union and, according to counsel for Copley, "raised a wholly new issue." The letter dated 8/27/98 from counsel for the union states, with respect to his letter of 7/2/98, in part:

"Unfortunately, some differences occurred between Mr. Edwards (counsel for Copley) and the undersigned (counsel for the union) concerning the meaning and the intent of a few elements of the tentative agreement. In addition, the subject of subcontracting was inadvertently left out of my letter."

Further inquiry on a conference telephone call on 9/24/98 revealed two conflicts. As I understand the issues: one concern is whether or not management may subcontract. The other relates to the bargaining unit and duty assignments of Russ Myers.

As to the subcontracting question, the employer contends that a substantial part of the township's workload has often been subcontracted in the past. The township does not accept any restriction on subcontracting.

With regard to Russ Myers, the union seeks to protect him from always having to perform recycling work, which historically may be assigned to employee with the least seniority.

Criteria

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.

FINDINGS AND RECOMMENDATIONS

All evidence such as stipulations, exhibits, affidavits, testimony, and all arguments, citations and briefs (if any) have been duly received and given such weight as deemed appropriate by the Fact Finder.

While subcontracting may remain an issue for future negotiations, it is not necessary to preclude subcontracting at this time with a relatively small staff. However, this finding should not encourage the employer to eliminate any members of the bargaining unit by subcontracting the work they have historically performed.

The letter from counsel for the union that transmitted the tentative agreement contained the following description of intent or understanding regarding job bidding:

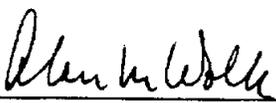
"2. Job Bidding, Layoff and Recall

The parties have agreed that Russ Myers shall be transferred to the Road Maintenance Department, but will continue to be assigned to perform recycling work. As a member of the Road Maintenance Department, Mr. Myers shall have Department seniority within that Department. Job Bidding, layoff and recall shall be governed by Departmental seniority."

As to work assignments, the tentative agreement provides customary language reserving to management the right to direct the working force. Article III recognizes the Union "for all hourly employees covered by the service department and occupying positions in road maintenance and recycle employees." The term "service department" and "Road Maintenance Department" are one and the same.

I find nothing, other than seniority, in Article XX (page 9 - LAY-OFF AND RECALL) or ARTICLE XXI (page 10 - JOB BIDDING) that would prevent Mr. Myers from bidding on a new job or from being protected in a lay-off or recall situation.

Based on the foregoing, and in light of the criteria and the history of these proceedings, I find the tentative agreement (attached) to be fair and reasonable. *As the union representatives accepted the Tentative Agreement on 7/2/98, and the acceptance was received according to the employer on 7/7/98, I recommend that the same be adopted effective July 7, 1998.*


ALAN M. WOLK, Fact Finder

*Amended award issued
this 28th day of October, 1998
effective in SUMMIT County, Ohio.*

ALAN M. WOLK
ARBITRATOR

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October 28, 1998

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RE: SERB 98-MED-01-0018
Copley Township/Teamsters #348

Gentlemen:

History

This is the first collective bargaining agreement between the parties. The union was certified on 1/15/98. On 3/12/98, the undersigned was appointed Fact-Finder. Hearing was scheduled 5/7/98 but continued at the request of the parties to 5/27/98. The parties were encouraged to continue negotiations in the hope of settlement. The employer initiated the idea of mediation at that hearing which was undertaken for more than a full day on 5/27/98.

A mutually achieved Tentative Agreement was approved by the union representatives as indicated by letter of 7/2/98, received by management's representative on 7/7/98. However, a letter from the union counsel to the employer's counsel, dated 7/23/98, advised that the union had voted to reject the Tentative Agreement.

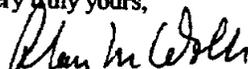
On October 1, 1998, as Fact-Finder, I recommended approval of the Tentative Agreement, which I found fair and reasonable without any change. My Recommendation simply approves the Tentative Agreement as it was achieved through mediation.

Adjustment

Enclosed find an adjusted Report and Recommendation. I have deleted language on page 2: "The agreement does not provide for retroactive payments," which appeared at the end of the first paragraph following the sub-head: "Tentative Agreement. This statement had been included because of my misunderstanding. The employer had issued a letter dated 8/13/98, after the representatives of both parties recommended the Tentative Agreement in July. This letter states, in part: " *** there will be no retroactive payments."

In retrospect, this was not what the parties agreed to in the mediation process, but it was clearly a unilateral change of position taken by the employer after the union vote. My records and recollection are silent on the commencement date of the Agreement. In the absence of evidence that the parties had, in fact, agreed to retroactive effect, I now recommend that the agreement be made effective as of 7/7/98.

Very truly yours,


Alan M. Wolk