

c

**STATUTORY IMPASSE PROCEEDINGS UNDER THE AUSPICES
OF THE STATE EMPLOYMENT RELATIONS BOARD
FACT-FINDER'S REPORT AND RECOMMENDATION**

STATE EMPLOYMENT
RELATIONS BOARD

FEB 8 10 42 AM '99

IN THE IMPASSE BETWEEN:

CUYAHOGA COUNTY SHERIFF'S DEPARTMENT

-AND-

**REGION 2, INTERNATIONAL UNION UNITED
AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW), LOCAL 70**

SERB CASE NO. 98-MED-08-0737

**FACT-FINDER'S OPINION AND RECOMMENDATION
FACT-FINDER: DAVID M. PINCUS**

APPEARANCES

**For the Employer
James P. Wilkins**

Attorney

**For the Union
David Roloff**

Attorney

BACKGROUND OF FACT-FINDING

The bargaining unit involved in the present impasse consists of approximately forty (40) employees who are Corrections Corporals employed by the Cuyahoga County Sheriff (the "Employer"). It is represented by UAW Local 70 (the "Union"). The parties have engaged in negotiations in accordance with procedures specified in Ohio Revised Code, Chapter 4117.

In accordance with Ohio Revised Code §4117.14(c)(3), the parties selected this Fact-Finder to make recommendations as to all unresolved issues in impasse. A fact-finding hearing was held on January 20, 1999. A total of fifteen (15) issues were at impasse at the time of the hearing. The following issues were resolved by the parties, which reduced the total number of issues for consideration.

1. Bereavement Leave
2. Breaks
3. Injury and Illness Leave (By Inmate)
4. Lunch and Area
5. Overtime
6. Part-time Employment
7. Roll-call Compensation

Matters were reviewed by this Fact-Finder by employing criteria specified in Ohio Revised Code §4117.14(C)(4)(e), §4117.14(G)(7) and §4117.14(G)(7)(a)-(f). These guidelines include in pertinent part:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those uses related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interests and welfare of the public, 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. The stipulations of these parties;
6. Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

Each of these above-mentioned factors were considered and given appropriate weight when deemed to be relevant by the Fact-Finder.

The following reflects the evidence and arguments presented by the parties, and the application of the relevant guidelines previously described. The subsequent portions of this report shall summarize each parties' arguments and evidence pertaining to the issues at impasse, followed by this Fact-Finder's conclusions and recommendations.

GRIEVANCE PROCEDURE

The Union's Position

The Union proffered a number of changes to Section 3. Changes were deemed essential because of the grievance backlog, and the Employer's reluctance to settle disputed matters prior to arbitration. The changes in question dealt with methods and procedures used to expedite the process. They included the following general themes.

1. A "shake-out" grievance meeting held within ten (10) calendar days following the Union's notice to appeal to arbitration.
2. Creation of an arbitration panel, preemptory exclusion, and method of appointment.
3. Scheduling of arbitration hearings within a specified date and conduct of the hearing under the auspices of rules and procedures promulgated by the Federal Mediation and Conciliation Service (FMCS).
4. Specifications dealing with the scope of an arbitrator's authority.

The Employer's Position

The Employer recognized that the present grievance processing mechanism needs to be modified to expedite the process. Certain time lines were discussed and other language limiting an arbitrator's authority.

THE FACT-FINDER'S RECOMMENDATION

The Fact-Finder recommends the inclusion, and substitution, of the following language:

ARBITRATION

Section 3. When a timely request for arbitration is submitted, the parties shall attempt to select an arbitrator by mutual agreement. In the event that no mutual agreement is reached within ten (10) working days of the request, the Union and Employer will request a list of arbitrators from the Federal Mediation and Conciliation Service, which will contain the names of at least seven (7) arbitrators who are members of the National Academy of Arbitrators. Within thirty (30) days of receipt of the panel, the parties shall confer and shall alternately strike the names of the arbitrators until only one name remains. Either party may reject an entire list of proposed arbitrators on one (1) occasion only, in which case a second list shall be requested from FMCS and both parties shall be required to strike names alternately from this list until an arbitrator is selected. The arbitrator shall have the authority to schedule the hearing. The decision of the arbitrator shall be final and binding on the grievant, the Union, and the Employer. The arbitrator shall be requested to issue his decision within thirty (30) calendar days after the conclusion of testimony and argument or submission of final briefs. The arbitrator shall not have the power to add to or subtract from or modify or supplement any of the terms of this Agreement.

The recommended language meets the various concerns of the parties raised at the hearing. It establishes certain specified time related requirements, the method of selection, and language curtailing an arbitrator's scope and authority. None of this language is unique, and in fact, is generally found in most collective bargaining agreements.

HEALTH AND SAFETY

The Employer's Position

The Employer proposes two (2) changes to this article. In Section 5, the Employer wishes to delete reference to the Department of Inmate Service. The name of the department has been changed.

The Employer also seeks to delete Section 6. This provision contains the procedure which identifies inmates that have medical and psychiatric problems. This proposal focuses on the privacy rights of inmates.

The Union's Position

The Union is not opposed to the change requested in Section 5, as long as actual on-sight emergency medical aid to bargaining unit members is retained. The Union strongly opposes the deletion of Section 6. Health and safety concerns require the identification of inmates to ensure any unique handling and monitoring requirements.

THE FACT-FINDER'S RECOMMENDATION

The Fact-Finder recommends that the parties incorporate the following language into the Agreement:

Section 5. Emergency medical aid shall continue to be made available to all employees.

This recommendation accomplishes a dual objective. An inappropriate reference to a non-existent department is eliminated, while an important benefit is retained. Nothing in the record properly supports an argument for eliminating this benefit.

Proper identification of inmates serves as a necessary prerequisite for inmate control. As such, this Fact-Finder does not recommend deletion of Section 6, and thus,

recommends that the status quo should be maintained. This is truly a basic health and safety concern; an essential protection for every member of the bargaining unit.

HOSPITALIZATION (GROUP INSURANCE)

The Employer's Position

The Employer desires to institute a Flexcount Plan, a form of cafeteria plan, in accordance with IRS §125. A different formula has been proposed for sharing in the cost of premiums for health care coverage. The formula in question has already been negotiated with other relevant bargaining units; which includes the largest bargaining unit in the county.

The Union's Position

The Union also proposes some sweeping changes to the existing language. It proposes a modification to Section 3, which would require the Employer to provide fully paid health insurance.

THE FACT-FINDER'S RECOMMENDATION

This Fact-Finder recommends the acceptance of the Employer's proposal language. As such, the following should be incorporated by the parties:

Section 1. An eligible employee is defined as a full-time employee covered by this Agreement. The Flexcount Plan is defined as the IRS Section 125 or "Cafeteria Plan" which is provided by the Employer for health insurance benefits for employees of the Employer. The Employer shall be responsible for enrolling all eligible employees in the Plan once during each Plan year at its annual enrollment period. The Plan year commences on January 1 and ends on December 31 of the calendar year, but is subject to change.

Section 2. Effective June 1, 1999, and for the duration of this Agreement, the Employer will contribute eighty percent (80%) of the premium costs for its most expensive medical benefit plan option (currently the Qualchoice PPO Plan) and employees electing to participate in that plan will contribute twenty percent (20%). For all other medical benefit plan options offered by the Employer (currently the Qualchoice HMO and Kaiser plans), the Employer will contribute

ninety-two and one-half percent (92.5%) of the premium costs for each plan and employees electing to participate in a plan will contribute seven and one-half percent (7.5%) of the premium costs for that plan.

The Employer's proposal reflects internal and external comparisons. Obviously, a pattern of sorts has been established by the other bargaining units in terms of their acceptance of the identical proposal. Some significant distinction would need to be provided to avoid a similar outcome.

The proposal also complies with certain existing trends. A recent State Employment Relations Board (SERB) publication¹ indicates the Employer's proposal reflects certain existing regional and statewide trends. A significant number of employees are presently engaged in health care sharing efforts. Clearly, this recommendation is well-supported by these external comparables.

HOURS OF WORK

The Union's Position

The Union wishes to retain the status quo. The current practice has employees work either five (5) eight-hour days with two (2) days off or four (4) ten-hour days with three (3) days off.

The manpower imbalances suggested by the Employer, would not be eliminated by the proposed language. It might heighten an already dismal situation. Twelve (12) hours shifts would be an excessive unrealistic alternative further dampening existing efficiency problems.

¹ Report on the cost of Health Insurance in Ohio's Public Sector, State Employment Relations Board: Research and Training Section, 1997).

The Employer's Position

The Employer proposes to replace the existing terms and conditions of employment. It seeks to establish seven (7) twelve (12) hour shifts within a fourteen (14) day period. Quality and efficiency of the operation are impaired by manpower imbalances on certain days of the week.

THE FACT-FINDER'S RECOMMENDATION

The Fact-Finder recommends the following proposal, which for the most part, incorporates the parties' primary concerns.

HOURS OF WORK

The normal workweek shall consist of five (5) consecutive workdays of eight (8) consecutive hours followed by two (2) consecutive days off.

Employees shall not be authorized or allowed to work more than twelve (12) consecutive hours, unless emergency conditions exist.

Modifications or adjustments to a work schedule, which may have a significant effect on bargaining unit Employees shall be discussed with the Union prior to any such change. A minimum advance notice to the Employees of a work schedule change shall be thirty (30) days.

SHIFT AND DAYS OFF ASSIGNMENT

The Parties' Positions

The parties' positions regarding this term and condition of employment closely reflect the arguments discussed in the prior section of this report. As such, there is no need to reproduce the various proposed arguments. Two major additional themes were discussed at the hearing. The Union desired to retain preference for selection by seniority, while the Employer was concerned with manpower equalization.

THE FACT-FINDER'S RECOMMENDATION

The following language is recommended because it meets the needs of both parties. It represents a reasonable compromise outcome, which both parties should be able to live with.

SHIFT AND DAYS OFF ASSIGNMENT

Section 1. Shift and days off assignments shall be assigned pursuant to preference of unit members with priority for selection granted by seniority in the unit. In making day off assignments, the Employer will schedule employees so that on a day to day basis manpower is relatively equal.

PROBATIONARY PERIOD

The Employer's Position

The Employer argues that the existing language is too restrictive. It proposes to increase the probationary period from 120 days to 180 days. This proposed change would provide the Employer with an appropriate period to evaluate new Corporals.

The Union's Position

The Union seeks to retain the status quo in terms of duration. It did, however, raise several concerns regarding its ability to properly represent these individuals during their probationary period.

THE FACT-FINDER'S RECOMMENDATION

The parties' various concerns are deemed appropriate and are, therefore, recommended in the following contract language.

PROBATIONARY PERIOD

Section 1. Employees entering this unit are probationary employees for a period of 180 days. There shall be no extension of the 180-day probationary period other than for leave of absence of that employee during those 180 days. The Union may represent a probationary employee, but neither the Union nor the

probationary employee may grieve any discipline or demotion imposed during the probationary period.

SENIORITY

THE FACT-FINDER'S RECOMMENDATION

Again, no formal settlement was reached regarding this matter. And yet, the Union was not outwardly opposed to the Employer's requested change. The Employer wished to delete existing Section 3(c). The following recommendation reflects the desired deletion.

SENIORITY

Section 3. An employee shall lose his seniority when:

- a) The Employee resigns or retires;
- b) The Employee is discharged for just cause;
- c) The Employee fails to return to work within ten (10) calendar days after the initial date of receipt of certified mailing of a recall notice after layoff.

UNION BUSINESS LEAVE

THE FACT-FINDER'S RECOMMENDATION

This provision was not truly in dispute, but represents a need to take care of a clerical error regarding the reference to Local 1936. As such, the following provision envisions the agreed to change.

UNION BUSINESS LEAVE

Section 1. Leaves of absence without loss of seniority shall be granted to those stewards, or Local Union officers, involved in grievance matters, arbitration matters, local-regional Union matters, negotiating preparation and meetings. The above-mentioned personnel shall suffer no loss of pay or benefits for their Union Business Leave of Absence. The Local Union (Local 70) shall be responsible to forward to the Employer the full cost of all lost time and benefits beyond the reservoir, prior to the closing date of the pay period. A reservoir of twenty five (25) working day benefits will be paid to any steward(s) or officer(s) who claim

time off for those events. The amount of twenty-five (25) days is in the aggregate. The benefits paid shall include vacation time.

VACATION LEAVE

The Union's Position

The Union proposes to modify this provision by seeking to change the permissive language contained therein. It proposes that an employee will be permitted to carry over unused vacation time for three years.

The Employer's Position

The Employer wishes to retain the status quo. There is no disagreement that employees should be paid for unused vacation time.

THE FACT-FINDER'S RECOMMENDATION

The Fact-Finder recommends the following modifications to Section 5.

VACATION LEAVE

Section 5. Vacation leave shall be taken by the Employee during the year in which it is accrued and prior to the next recurrence of the anniversary date of employment. The Employer may permit an Employee to accumulate and carry over his vacation leave to the following year. No vacation leave shall be carried over for more than three (3) years. Any unused vacation leave which the Employer does not permit an Employee to carry over or is in excess of three (3) years shall be paid to the Employee at the applicable current rate of pay.

The proposed language still retains the permissive language, which reflects the Employer's position. Yet, this benefit is expanded because it guarantees payment for unused vacation, whEN the Employer does not permit any carry over or is in excess of three (3) years. The old provision, in my view, did not necessarily guarantee payment for unused vacation time.

WAGES

The Union's Position

The Union proposes a 7% increase on January 1, 1999, a 5% increase on January 1, 2000, and 5% increase on January 1, 2001.

The Employer's Position

The Employer argues for a 3% increase effective January 1, 1999, a 3% increase on January 1, 2000, and a 3% increase effective January 1, 2001.

THE FACT-FINDER'S RECOMMENDATION

The following wage bargain is recommended by the Fact-Finder.

WAGES

Section 1. Effective January 1, 1999, there shall be a five percent (5%) wage increase.

Section 2. Effective January 1, 2000, there shall be a four percent (4%) wage increase.

Section 3. Effective January 1, 2001, there shall be a four percent (4%) wage increase.

This recommendation is based on certain internal equity considerations. It, moreover, reflects an awareness of the existing wage schedule as opposed to those enjoyed by other comparable bargaining units providing similar duties and performing similar responsibilities.

EXPIRATION AND RENEWAL

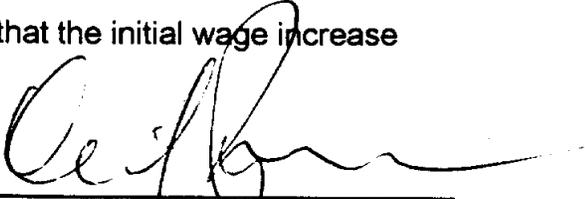
THE FACT-FINDER'S RECOMMENDATION

Section 1. This Agreement is effective the ____ day of January, 1999, and shall remain in full force and effect until 12:00 midnight, the 31st day of December, 2001, at which time this Agreement shall terminate, unless the parties mutually agree in writing to an extension of any or all of the Agreement.

Notwithstanding the foregoing, the parties agree that the initial wage increase provided herein shall be retroactive to January 1, 1999.

February 5, 1999

Issued on February 5, 1999
Moreland Hills, Ohio



Dr. David M. Pincus
Fact-Finder