

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

LAWRENCE COUNTY COMMISSIONERS,

Employer,

-and-

Case No. 98-MED-10-0884

AFSCME, OHIO COUNCIL 8, AFL-CIO, and LOCAL 3319B

Employee Organization.

FACT-FINDING

Philip H. Sheridan, Jr., Fact-finder

Issued: July 19, 1999

*Robert W. Cross, President
Cross Management Consulting Services, Inc.
8593 Ohio River Road
Wheelersburg, Ohio 45694*

FOR THE EMPLOYER

*Sandra S. Shonborn
Staff Representative
AFSCME Ohio Council 8, AFL-CIO
36 South Plains Road
The Plains, Ohio 45780-1348*

STATEMENT OF THE CASE

The parties, Lawrence County Commissioners, represented by Robert W. Cross, President, Cross Management Consultant Services, Inc., and the bargaining unit, AFSCME, Ohio Council 8, AFL-CIO, Local 3319-B, including approximately 30 employees in the maintenance, technical and clerical areas, represented by Sandra S. Shonborn AFSCME Staff Representative., have entered into negotiations for a successor contract covering the contract period January 1, 1999 through December 31, 2001.

The parties met and bargained in good faith, holding 7 negotiating sessions and two meetings with the SERB mediator, and the parties have agreed to 24 articles of the contract, but the parties were unable to reach agreement on all issues.

Pursuant to R.C. 4117.14 and Admin.R. 4117-9-05, Philip H. Sheridan, Jr., 580 South High Street, Columbus, Ohio, was chosen as fact finder.

The parties agreed to a fact finding hearing on July 1, 1999, and the meeting was convened at 10:00 a.m. in Ironton. In addition to their representative, David D. Lang, Director of Human Resources, Susan Brown, Director of Child Support and Les York, from the Commissioners' Office appeared. In addition to their representative, Connie D. Boll, President of the Local, Cathyrn W. Doughman, Secretary of the Local, Eddie Salyers, Carol J. Pennington and Ernie Sizemore, members of the negotiating team, appeared on behalf of the bargaining unit. The matter was presented upon statements, documents and arguments presented to the fact finder.

Resolved issues:

The parties have reached agreement on twenty-four articles of the contract, and I recommend the adoption of all of those articles, as listed in the party's submissions. After discussion before the hearing the parties also agreed to maintain language contained in the contract between the parties which expired January 1, 1999 (hereafter referred to as current contract language) concerning Article 14, and I recommend adoption of that article as well. In addition, in some of the articles which contain unresolved issues the parties have agreed to other changes in them, and I recommend adoption of those changes. Finally, the parties agree to remove Memorandum Number 1 from the agreement as it no longer has any purpose.

Unresolved Issues:

Article 10: Vacancies and Postings
Article 13: Overtime
Article 22: Miscellaneous
Article 26: Vacations
Article 27: Holidays
Article 28: Insurance
Article 29: Wages
New Article: Outside Employment
New Article: Alcohol and Drug Testing
New Article: Impasse Procedures

In accordance with the provisions of R.C. Chapter 4117, the parties provided me with a copy of each party's final offer on the unresolved issues.

In issuing this fact finding report, I have given consideration to the provisions of R.C. Chapter 4117 and, in particular, the criteria contained within R.C. 4117.14(G)(7)(a)-(f).

THE POSITION OF THE PARTIES

ARTICLE 10: VACANCIES AND POSTINGS

Management Position: The Commissioners propose changes to the posting of vacancies which would allow the employer to choose the most qualified applicant for posted positions, and would only consider seniority when two or more applicants are equally qualified. The employer would also change the language of the article to refer to a "probationary" period rather than a "trial" period, delete reference to "training" and extend the period from 6 to 12 months the amount of time an employee must wait to reapply for the same position when the employee has been returned to the previous position as a result of a failure to satisfactorily complete the probationary period.

Bargaining Unit Position: The bargaining unit proposes no changes to the contract language of Article 10. The employees believe in the seniority system, and believe training is necessary in any new position.

ARTICLE 13: OVERTIME

Management Position: The Commissioners favor current contract language on this issue. Management does not accept beeper pay for the dog warden who is on duty for calls after normal business hours. According to management there are not that many calls and the employees already get call-in pay for being recalled to work, and receive time and one half for time worked in excess of 40 hours in a week.

Bargaining Unit Position: The bargaining unit proposes the weekly payment of \$150 for the dog warden employee who is required to wear the pager for calls during off duty periods. There are only three employees in that department, and the pager restricts

the employee in terms of distance he can travel, and it inhibits the employee's alcohol consumption. The call-in pay is only paid once per 24 hour call in period, and employees of the dog warden are sometimes called out as many as 5 times per night.

ARTICLE 22: MISCELLANEOUS

Management Position. The Commissioners propose paying up to \$45 per day for meals with receipts when the employee travels outside of Lawrence County. The employer will pay mileage at current IRS rate to those employees who drive their own vehicle to the meeting. Management would also delete the section forbidding non-bargaining unit workers performing duties of an existing bargaining unit member. Finally, management would only consider Lawrence County service for vacation accrual.

The bargaining unit position. The employees ask that they be given a \$50 advance to pay for meals when attending conferences outside Lawrence County. The bargaining unit is against deleting paragraph D as there have been no problems with the clause. The employees are also against limiting the service counted for vacation accrual to only service in Lawrence County.

ARTICLE 26: VACATIONS

Management Position: Management proposes current contract language concerning accrual of vacation. The employer argues the comparables submitted demonstrate the current vacation accrual is reasonable and within the range of what is available to similarly situated employees in the County and in the surrounding Counties. The proposal would have scheduling and cost implications.

Bargaining Unit Position: The bargaining unit proposes accruing four weeks of vacation after 12 full years of service instead of the current 15 full years of service, and five weeks vacation after 20 full years of service instead of the current 25 full years. The bargaining unit submits its comparables support its position, especially in light of the vacation accrual currently enjoyed by the Lawrence County Administrators.

ARTICLE 27: HOLIDAYS

Management Position: The Commissioners propose current contract language which provides for 11 full vacation days and two half vacation days.

Bargaining Unit Position: The bargaining unit proposes that the contract reflect the true number of vacation days which they have enjoyed during the current contract. This includes the days listed in the current contract as well as the day after Thanksgiving, and one half day on Good Friday.

ARTICLE 28: INSURANCE

Management Position. The employer recommends current contract language.

Bargaining Unit Position. The union requests a change in premium payment which would do away with the 15 percent co-pay which the employees currently pay for insurance coverage, and the addition of the \$55.25 per month, per employee to obtain the AFSCME Care Plan to provide coverage for dental, hearing aid, life insurance prescription and legal coverage.

ARTICLE 29: WAGES

Management Position. The Commissioners offer raises of .30 per hour in each of the three years of the contract, effective January 1, 1999. Management admits the County

has the ability to pay, but argues for restraint in light of the comparables and financial information offered. The Commissioners must be prudent and the County's offer is in accordance with the increases enjoyed by other employees in its county pay raise comparisons.

The Bargaining Unit Position. The bargaining unit proposes equity raises in a number of positions found on its proposed Appendix A, based upon an asserted low pay that the positions have compared with similar positions elsewhere. The employees propose a one time \$1,000 signing bonus. In addition to the equity raises and signing bonus the union proposes 5 percent across the board raises in each of the three years of the contract, beginning January 1, 1999. The bargaining unit would change the hours for shift differential pay. Finally, the bargaining unit proposes a change in the longevity allowance equivalent to 2-1\2 percent of the classification salary rate after five years service, and an additional 1\2 percent for each additional year of service.

NEW ARTICLE: OUTSIDE EMPLOYMENT

Management Position. The employer proposes a new article which deals with outside employment, preventing any conflict with County work.

The Bargaining Unit. The bargaining unit opposes this additional article for several reasons. Employees should have free will and free enterprise on their own time, and the disciplinary articles already adequately deal with the issues the county is raising.

NEW ARTICLE: ALCOHOL AND DRUG TESTING

Management Position. The Commissioners propose an alcohol and drug policy, and points to similar articles in the County Engineer contract and the contract with the City of Ironton.

The Bargaining Unit Position. The union opposes adding this proposed article to the contract as it gives up rights its members would otherwise have, and there has been no demonstration of a problem in need of action in this bargaining unit.

NEW ARTICLE: IMPASSE PROCEDURES

Management Position. The Commissioners propose replacing R.C. 4117.14 with an agreement to negotiate in good faith, then to contact Federal Mediation and Conciliation Service for assignment of a mediator. No fact finding would be used, and after declaration of impasse the union could exercise its right to strike pursuant to R.C. 4117.14(D).

The Bargaining Unit Position. The union opposes giving up its statutory rights as a part of the contract. The union is willing to consider proposals for a M.A.D. during the course of negotiation, but sees no current issues that need to be addressed.

FACT FINDING AND RECOMMENDATION

Article 10: Vacancies and Postings. I recommend current contract language for Article 10. Management presented evidence concerning a problem which it asserts would not have arisen if management were allowed to choose the most qualified applicant without regard to seniority. Management is willing to apply seniority where there are equal applicants. However, since management writes the qualifications for the positions I

see no compelling reason to change. In addition, I did not clearly understand what the difference is between "trial" and "Probationary" periods. Training is important in any change of position, and I would not suggest that training should be eliminated. I am not persuaded an increase in the amount of time before reapplication for the same classification is necessary either.

Article 13: Overtime. I recommend current contract language, including the changes to which the parties have tentatively agreed. Adding the dog wardens to the overtime list, and paying call in and overtime where appropriate appears to be a reasonable method of compensating them when the pager must be carried.

Article 22: Miscellaneous. I recommend current contract language to this article except for the per diem, to which I recommend management's language of \$45 with receipts, with no reimbursement for alcohol, tobacco products or tips. I would not delete paragraph D, nor would I change the way in which vacation is accrued.

Article 26: Vacations: I recommend the status quo, the current contract language. Both parties point to their comparables to advocate their positions. There is certainly variation in the vacation accrual in the comparables presented by both parties. The bargaining unit points to the Lawrence County comparables to support its position, especially the Lawrence County Administrator's contract, the County Engineer, County Department of Human Services, and the Union Rome Sub-Sewer District contract. Management counters that different contracts have different interests and we cannot separate each one as a perfect guide. The employer believes there are cost and scheduling issues, and the bargaining unit has not shown a real issue in need of correction, but rather

this proposal attempts to obtain through fact finding what the parties were unable to agree to in the give and take of bargaining. There are other jurisdictions among the comparables which have the same vacation accrual. However, it does not appear to me that there would be any significant changes in the accrual of vacation during the term of this contract, as many of the employees in the bargaining unit are relatively new hires, and I will leave the issue for the next contract.

Article 27: Holidays. I recommend the current contract language, with the addition of the following: "Any additional holidays granted by the County Commissioners to other County employees." I believe this compromise will allow both sides to accept this article as amended. Without a past practice clause in the contract this appears to be the method to prevent arbitrary or inconsistent action by the employer.

Article 28: Insurance. I recommend the current contract language. The union has an issue with the Commissioners because of a change of insurance providers which purportedly has resulted in additional costs to members, and fewer services. However, problems with the provider, if borne out, are management responsibilities, and I take notice of the comparables which demonstrate the 85 percent 15 percent sharing of premium costs is acceptable and some sharing of premiums is prevalent. The addition of the AFSCME plan would require a significant *quid pro quo* within the bargaining process.

Article 29: Wages. I recommend the change proposed by the bargaining unit to the times for accrual of shift differential pay. I also recommend across the board raises in each of the years of the contract, effective January 1, 1999, through December 31, 1999 of 5 percent, effective January 1, 2000, through December 31, 2000 of 4 percent, and effective

January 1, 2001, through December 31, 2001 of 4 percent. I do not recommend any of the other changes proposed by the bargaining unit. I am unable to value positions, and the equity raises proposed by the union were in excess of 10 percent in many of the positions. Similarly, the increases in the longevity allowance proposed would add about 1 percent to that agreed in the last contract. I cannot justify such increases on grounds of reasonableness or fairness to the citizens of the County. The employees have enjoyed 5 percent raises traditionally, but the comparables from the county did convince me to come closer to the management position. Under management's proposal, many of the employees would not enjoy even a 3 percent across the board raise. The County is able to pay, and I urge the adoption of my recommendation.

New Article: Outside Employment. I do not recommend management's new article concerning outside employment. There is no issue, and there have been no problems in this area that management could point to which supports this change.

New Article: Alcohol and Drug Testing. I do not recommend adoption of the new article concerning alcohol and drug testing. Here, again, I would rather the parties bargained such an addition to the contract absent any specific problem in need of address.

New Article: Impasse Procedures. I do not recommend adoption of the new article concerning impasse procedures, as the parties always have the option of entering into a mutually agreed dispute resolution agreement pursuant to R.C. 4117.14.

CONCLUSION

I have considered the final offers of the parties, and have chosen to recommend several proposals of the parties, and in several articles a compromise position. The parties

conducted themselves in a professional and informative manner which made my task less difficult. I thank them for their efforts. Of course, if my recommendations are of concern, the parties may, at any time, amend or modify a fact finder's recommendation by mutual agreement pursuant to R. C. 4117.14.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Philip H. Sheridan, Jr.", is written over a horizontal line.

PHILIP H. SHERIDAN, JR.

Fact Finder

S.C. #0006486

580 South High Street, Suite 200

Columbus, Ohio 43215-5644

(614) 221-2001