

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD
JUL 24 9 36 AM '00

In the Matter of Fact Finding Between:

Trumbull County Board of Commissioners
(Office of Elderly Affairs)

and

S.E.R.B. Case No. 98-MED-10-0903

Chauffeurs, Teamsters, Warehousemen &
Helpers, Local Union No. 377, a/w
The International Brotherhood of Teamsters

Appearances:

For the County:

James W. Keating, Director
Human Resources Department

For the Union:

Kenneth M. Norris
Recording Secretary
and
Rick Kepler
Organizer

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Frank A. Keenan
Fact Finder

Background:

The bargaining unit consists of some thirty-two (32) employees at the County's Office of Elderly Affairs working in the following job classifications: Nine (9) van drivers; nine (9) home delivered meals drivers; one (1) clerk/dispatcher; one (1) bookkeeper; two (2) administrative specialists; and ten (10) site managers. Excluded are all custodians, the executive director, and the nutrition project director. The parties met some eighteen (18) times beginning in the Fall of 1998 to negotiate their first Collective Bargaining Agreement. The parties declared themselves at impasse on August 11, 1999.

The case initially came on for hearing on September 30, 1999. At that time the parties were at impasse over some thirteen issues, some of which were the County's issues and some of which were the Union's issues. In its pre-hearing statement the County accurately described the impasse issues as follows: should the Employer have the right to determine the hours of work, work schedules, work sites and establish rules for employees; shall the probationary period be sixty (60) or ninety (90) days and should they be calendar or work days; should employees working in excess of eight (8) hours in a workday be paid at time and one-half for those hours; should only personnel working thirty (30) or more hours in a week be entitled to vacation; must employees be paid for days that work sites are closed; should sick leave be front loaded at the beginning of each calendar year; what should be the compensation for

bargaining unit employees; should health insurance benefits be offered to those part-time employees that work less than thirty (30) hours a week; should an employee who quits or retires be entitled to "cash-in" all accrued but unused sick leave; should the County's Drug Free Work Place Policy be included in the Collective Bargaining Agreement; should a zipper clause be included in the Agreement; should a pre-emption clause be included in the Agreement; and at what rate should longevity pay be. At the outset of the hearing the undersigned undertook an effort to mediate these issues. With the good faith and diligent efforts of the County's advocate, Director Keating, and the Union's advocate, Rick Kepler, and their respective negotiating teams, and with some assistance from the undersigned, the parties reached agreement on all issues at impasse. When brought before the bargaining unit for notification the mediated settlement was rejected by a vote of 19 to 1. Thereafter the matters in dispute were reset for hearing on December 3, 1999. Prior to the hearing of December 3, 1999, the parties had reached agreement on all but three issues, to wit, should employees working in excess of eight (8) hours in a workday be paid at time and one-half for those hours; what should be the compensation for hourly employees; and should health insurance benefits be offered to those part-time employees that work less than thirty (30) hours a week. At the point in the hearing where evidence on the health benefits for certain part timers was to be presented, the parties sought a recess to further negotiate the issue and they reached agreement.

Accordingly, only the issues of overtime pay, or not, after eight hours, and compensation were brought to the hearing.

What follows hereinafter is a summary of the evidence; the parties' contention, and arguments; the Fact Finder's Recommendations; and the rationale for the Fact Finder's Recommendations. In arriving at the Recommendations, the Fact Finder has taken into account and relied upon the statutory criteria set forth below, whenever such factors were put forward by the parties or otherwise emerged from the record evidence, to wit: the factor of past collectively bargained agreements; comparisons of the 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; the interest and welfare of the public; the ability of the public employer to finance and administer the issues proposed; the effect of the adjustments on the normal standards of public service; the lawful authority of the public employer; the stipulations of the parties; and such other factors, not confined to those noted 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.

Finally it is noted that at the outset of the hearing on December 3, 1999, the County raised certain procedural issues

concerning the Union's pre-hearing statement, which, following the hearing were withdrawn.

Issue #1: Article - Hours of Work (Overtime)

Evidence and Positions of the Parties:

The Union seeks to have employees working in excess of eight (8) hours a work day be paid at time and one-half for all hours worked in excess of eight hours. The County resists such a contractual provision.

Van driver Margaret Hatcher indicated that having to work beyond eight hours was an occasion that "doesn't happen very often," such that to her Management's resistance is not well grounded. Ms. Hatcher pointed out that Management could easily control paying no overtime under a standard calling for overtime only after forty hours.

Notwithstanding its infrequency, there are occasions when more than eight hours in a work day are worked. Thus Ms. Hatcher noted that often drivers work through their lunch hours, and that while 1/2 hour is allotted for van washing at a car wash, the car wash is often busy and it takes considerably longer to get the van washed. Ms. Hatcher conceded that van drivers have "down time," which, in some instances is in excess of one (1) hour. The Union introduced certain purportedly "comparable" evidence on this issue also. Ms. Hatcher indicated that unionized cooks and transport aides with the Trumbull County Children Services Board receive time and one-half after eight (8) hours. Other "comparable" data involving the payment of overtime after eight

(8) hours include employees represented by the Local at Western Reserve Transit Authority; St. Elizabeth Hospital; and Youngstown Osteopathic Hospital.

In support of its resistance to overtime after eight hours instead of just after forty hours, both Executive Director Jane Dickson and Nutrition Program Director Karen SaMer point out that for Office of Elderly Affairs work force, the Federal Labor Standards Act does not require payment of overtime rates after eight (8) hours. Most significantly, however, they point out that there is very little need for an employee to work in excess of eight (8) hours on any one day and hence there is simply no need for such a provision. On the occasion when there is such a need, the employee is typically out in the field unsupervised. Both expressed concern that the lack of supervision over approximately two-thirds of the workforce (the van and meals drivers) created problems of monitoring overtime. As Director Dickson succinctly put it: "I can't determine if they are working or sitting waiting to go into overtime." As Director Dickson candidly put it: "I'm concerned with padding of time." The County also notes that its Child Support Enforcement Agency, represented by AFSCME Local 3808 and its 9-1-1 Center, represented by OPBA, pay overtime only after 40 hours. The same is true in three different bargaining units in Mahoning County, represented by AFSCME Local 3956, AFSCME Local 1156, and CWA, respectively.

Rationale:

As the County notes, there is no demonstrable need for an overtime pay-after-eight-hours provision here, since it is infrequent that an employee is called upon to work beyond eight hours. Moreover, due to the nature of the agency's operations, employees are unsupervised with the consequence that it is difficult to monitor overtime use. And while there is no warrant to believe that such a provision would be abused, in the absence of supervision to monitor it, sound management understandably resists it in the setting here.

Recommendation:

Overtime pay after eight hours work in any one work day is NOT recommended.

Issue #2: Article - Wages

Evidence and Positions of the Parties:

The record shows that among the bargaining unit employees, the average hourly rate is \$5.52 per hour, encompassing a range of a low of \$5.15 per hour to a high of \$7.11 per hour. Union data indicate that some twenty-three (23) employees are at or near the minimum wage. Union data further indicate that the average years of service are 7.1 and that the average hours on the job are 1,222. The drivers' average hours are 1,163; the nine (9) site managers average 952 hours; and the four (4) office workers average 2080 hours per annum. Union data indicate that among the bargaining unit employees, nine (9) employees are

presently entitled to health and life insurance; nine (9) employees receive a paid vacation benefit; and thirteen (13) employees receive longevity pay.

Against this backdrop, the Union takes the position that the present wages of bargaining unit employees are too low, when compared to certain internal and external "comparables." Thus the Union proposes that, retroactive to August 1, 1999, all employees start at the rate of \$7.50 per hour, with a 3.5% increase in the second and third year of the Contract. In support of its proposal and contentions, the Union points to purported internal comparables such as TACT, the County's public transport system. There, starting wages for part-time employees are \$7.50 an hour and \$8.50 an hour for full-time employees.

The Union also notes that recently the County granted certain unionized Department of Human Services employees 9% to 12% raises to bring them up to parity with other County workers, and pledged to give non-Union employees in that Department comparable raises. The Union also points out that the lowest paid unionized worker for the County, a custodian, is paid \$7.59 per hour. The Union also points to the wage scale of transport aides working for the County's Children's Services' Department, which ranges from \$6.29 per hour to \$11.45 per hour.

The Union additionally points to purported external "comparables" as well. Thus it points out that a bus cleaner with one year of service with the unionized Western Reserve Transit Authority earns \$9.84 per hour, and that the starting

rate at the unionized Ashtabula County Transportation System is \$6.90 per hour, with the rate of \$8.71 after five (5) years of service. The Union also points out that Summit County SCAT drivers earn from \$8.00 to \$17.00 per hour. Pointing to the non-unionized work force at Portage County Transportation Authority, the Union notes that drivers' start rate, without a Commercial Drivers License (CDL), is \$6.76 and with a CDL is \$7.39.

Then too the Union points to the classification of bus aide in certain geographically near and unionized School Districts, and their starting and top hourly rates of pay. Thus it points to Mahoning County where bus aides start at \$9.60 per hour; to Portage County, where bus aides start at \$8.01 and top out at \$9.25; the Summit County where they start at \$8.22 and top out at \$10.85; to Geauga County where they start at \$6.70 and top out at \$10.45; and to Ashtabula County where they start at \$7.44 and top out at \$11.74. The Union also points to Trumbull County itself where bus aides start at \$9.80 and top out at \$10.36. It is noted that the Union submitted no job descriptions for the positions to which it would compare the bargaining unit's jobs and that no breakdown of the funding sources of its "comparables" was furnished.

The County, for its part, proposes a wage increase of 3% in each of three (3) years commencing with and retroactive to, August 1, 1999. In support of its proposal the County notes that the County's General Fund is predicted to receive less revenue in the past due to a .25% reduction in the sales tax which went into

effect June 1, 1999. Director Dickson also cautioned that the Office's Title XX fund source could be reduced in the upcoming year by as much as 29% or \$19,000.00. In this regard the Office of Elderly Affairs is funded from several different sources in addition to the County's General Fund, many of them Federal funds. Director Dickson indicated that she had been informed by the Department of Human Services, one of the funding sources for the Office's Transportation Program, that she would receive at least a 10% reduction in funds from the Department beginning January 1, 2000. Still further with respect to funding, the County counters the Union's "comparables" and argues that they are invalid because they do not have the same funding base as the County's Office of Elderly Affairs; for "comparability" as contemplated by O.R.C. 4117, the institutions being compared must share essentially the same funding sources, asserts the County. Some counties furnish the same services to the elderly as does Trumbull County, but they do so by contracting out the services needed to private or public-not-for-profit entities. Trumbull County is the only County in the State to engage direct employees to service the elderly's transport and home delivered meals needs. In any event the funding source for all of these vehicles for the delivery of services to the elderly are essentially the same as those existing for Trumbull County. In this regard the County introduced data with respect to employees delivering the same or some of the same kind of services to the elderly as those furnished by the County's Office of Elderly Affairs, and funded

by the same funding sources, in certain counties abutting Trumbull County (Mahoning and Ashtabula) or nearby (Columbiana). These data reveal that in Mahoning County elderly affairs drivers start at \$5.25 and receive increases of \$.25 per year thereafter; and work 25-30 hours per week. In Columbiana, site managers are paid \$5.17 per hour and drivers \$5.68 per hour; and site managers work 16-20 hours per week whereas drivers average 30 hours per week. In Ashtabula, only home delivered meals services are offered. Drivers delivering home delivered meals are paid \$5.25 per hour, and then a \$.25 increase. These drivers average 20 per week. In light of these pay rates in Mahoning, Columbiana, and Ashtabula counties, Trumbull County's Office of Elderly Affairs is clearly "within the ball park," contends the County; and its average rate of \$5.52 per hour is higher than Mahoning County's rate. The Union points out that the Ashtabula workforce is non-union.

Costing out the Union's proposal, the County contends that its data reveal the average rate in the year 2000 would be \$7.76 per hour and the average rate in the year 2001 would be \$8.03 per hour. By way of contrast, County furnished data reflect that under the County's proposal, the average rate in 1999 will be \$6.11; the average rate in 2000 will be \$6.30; and the average rate in 2001 will be \$6.49. These rates fare favorably with abutting county rates and at the end of the Contract put the County in the lead. Further contrasting the costs of the parties' respective proposals, County Auditor prepared data

reflect that the total additional cost over the life of the Contract of the Union's proposal is some \$174,358.43; the total additional cost over the life of the Contract of the County's proposal is some \$44,298.19.

Under the mediated settlement agreed to by the bargaining teams on September 30, 1999, which was rejected by the bargaining unit, it was agreed that:

Effective 8-1-99, all employees will receive a \$.50 an hour equity increase. In years two (2) of the Contract, all employees will receive a 3.5% increase.

Rationale:

It is noted at the outset that the County makes no claim that it is unable to pay the wages the Union proposes. Such a claim is always difficult to establish in the face of a small bargaining unit such as here. But the County does caution moderation. Since the reduction of the sales tax will predictably reduce General Fund revenues, and since the Office of Elderly Affairs has been cautioned that some cuts are likely to be forthcoming in the near future, the County's caution for moderation is well taken.

As has been seen, both parties have submitted "comparable" data. Directly to the point, I find the County's "comparables" to be more persuasive under the applicable statutory criteria. Thus it will be recalled, as indicated in the "Background" paragraph hereinabove, that the Statute provides that the Fact Finder take into account and rely upon (among other factors), "comparisons of the 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." Thus many of the Union's comparables involve County Transit Authorities whose wage structures are presumably dictated by commercial bus operator standards not applicable here. This weakens the "comparability" necessary under the statutory criteria. Still further weakening occurs when one considers the different funding sources for such public transportation services. In sum the inference is that these County Transit Systems are predominantly public transit entities which incidently are engaged in some of the same duties as the bargaining unit here. This weakening of the comparability factor also exists with respect to the School District bus aides wages. Again, the funding for such activities differs greatly from that obtaining here. This same observation must also be made with respect to the Union's internal comparables of the Trumbull County Department of Human Services and the Trumbull County Department of Children's Services. On the other hand, the County's comparables are clearly directly and principally involved in the very same duties and services to the elderly as those of the bargaining unit, with the same Federal funding sources. Hence the County's "comparables" are the more persuasive. In any event, even if one were to view all of the comparables offered by both parties as equally persuasive, there is such a range of wage rates that no consensus or pattern can be

found, thereby undermining the weight to be given here to the comparable factor.

Another statutory factor to be taken into account by the Fact Finder, as indicated in the Background paragraph hereinabove, is such other factors, not confined to those specifically delineated, 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. And in this regard a principle which has evolved in this statutory criteria category is that impasse resolutions concluded by the parties' respective bargaining teams at the bargaining table, such as the mediated compromise resolution of the wage issue here at the September 30, 1999 hearing, are not to be lightly set aside and varied from, in the absence of some rather compelling evidence to do so. This is so because the bargaining unit designates their bargaining team and thereby relies on its judgment, and when that team voluntarily accepts a resolution of an issue short of what the unit initially sought, it is understood that the resolution is an acceptable compromise. This is especially so here, where the settlement reached was bolstered by a similar and recent equity adjustment in the County's Department of Human Services. No compelling evidence to set aside and vary from the September 30, 1999 settlement was introduced in this proceeding. To the contrary, the County's evidence, as found hereinabove, was found on balance to be the more persuasive.

As has been seen the Union seeks to vary from the September 30th settlement by seeking significantly more of a wage increase and the County seeks to vary from the September 30th settlement by seeking a meaningfully lesser wage increase. In my view, the September 30th settlement is amply supported by the Statute's "other factors" criterion and the County's "comparable" criterion evidence. However, it appears from the bargaining unit vote on the September 30th settlement that the bargaining unit perceives that it is entitled to still greater compensation. As a practical matter the parties' impasse and dispute is of very long standing and it is time to bring it to a resolution. The non-safety force nature of the bargaining unit is such that there is no Statutory entitlement to binding arbitration of the parties' impasse.

Thus in my view, in the circumstances present here, the vehicle of a signing bonus is called for. This vehicle, a one-time lump sum, payable thirty days following acceptance of the Fact Finding Report, serves to put yet more money in the pockets of the bargaining unit, and has the appeal for the County of not being rolled into the base wage and thereby being perpetuated and additionally, this vehicle avoids any fringe benefit rollup costs for the County. Fixed at \$100.00, the sign up bonus to be Recommended is equivalent to an \$.081 cent an hour increase for a one year period for employees working 1222 hours per annum; equivalent to an \$.085 cent an hour increase for a one year period for employees working 1163 hours per annum;

equivalent to a \$.105 an hour increase for a one year period for employees working 952 hours per annum; and equivalent to a \$.048 cent an hour increase for a one year period for employees working 2080 hours per annum.

Recommendation:

It is Recommended that the parties' Contract provide with respect to Wages as follows:

Effective and retroactive to 8-1-99, all employees will receive a \$.50 an hour equity increase.

In year two (2) of the Contract, all employees will receive a 3.25% increase.

In year three (3) of the Contract, all employees will receive a 3.50% increase.

Thirty (30) days following the acceptance of the Fact Finding Report, by the bargaining unit and the Commissioners, or upon their respective failure to vote and report the results thereof to SERB as called for by the Statute and Administrative Rules, whereby the Report is "deemed accepted," or as soon as practicable for the Payroll Department thereafter, bargaining unit employees shall be paid a lump sum bonus of \$100.00.

It is further Recommended that all of the parties' tentative agreements be incorporated into their Contract.

This concludes the Fact Finder's Report and Recommendations.

January 19, 2000



Frank A. Keenan
Fact Finder