

STATE EMPLOYMENT
RELATIONS BOARD

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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT FINDER'S REPORT AND RECOMMENDATIONS

CLERMONT COUNTY COMMISSIONERS
(COMMUNICATIONS CENTER)

AND

FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.

SERB CASE NUMBER 98-MED-10-0947

MICHAEL MARMO

FACTFINDER

MARCH 18, 1999

HEARING

The Factfinding Hearing took place on March 5, 1999 at 2279 Clermont Center Road , and lasted from 10:00 a.m. until 2:00 p.m.. Representing the County were Agency Director James E. Owens, and Attorney Paul R. Berninger, the principal representative of the County. Representing the FOP were Patricia A. Schramm, a Dispatcher and FOP Associate; Michael J. Smith, a Dispatcher; Michael S. Pierce; a Dispatcher and FOP Alternate; Joyce Fehr, an FOP/OLC staff employee; and their principal representative, Deborah McCormick, a Staff Representative for the FOP/OLC.

ISSUES REMAINING AT IMPASSE

At the time the Factfinder entered the dispute, the following issues remained at impasse:

- Article 6 Management Rights
- Article 12 Discipline
- Article 14 Personnel Files
- Article 19 Shift Assignments
- Article 20 Shift Premium
- Article 22 Wages
- Article 25 Sick Leave
- Article 33 Communications Training Officers
- New Article Bargaining Unit Work
- New Article Retirement
- Article 41 Duration

MEDIATION

Mediation was attempted and was successful in resolving two issues:

- Article 12 Discipline, and
- Article 14 Personnel Files

CRITERIA FOR DECISION

As provided by the procedures of the State Employment Relations Board, the Factfinder based his recommendation on the following:

- Past collectively bargained contracts between the parties;
- A comparison of 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, and the ability of the public employer to finance the issues proposed, and the effect of the adjustments on the normal standard of public service;
- The lawful authority of the employer;
- Any stipulations of the parties; and
- 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 dispute settlement procedures in the public service or in private employment.

PROCEDURAL ISSUE

At the outset of the Hearing, the principal representative for the FOP, stated that she did not receive the County's pre-Hearing statement prior to the Hearing. After examining the pre-Hearing statement, she indicated that "there were no surprises" and she "did not feel she was disadvantaged" by not receiving the statement prior to the Hearing. Both parties stipulated that they wanted the Hearing to go forward, with each being able to introduce any evidence they deemed appropriate.

ARTICLE 6 MANAGEMENT RIGHTS AND NEW ARTICLE BARGAINING UNIT WORK

Since the matter in dispute in both of these articles is essentially the same issue, they will be discussed jointly.

POSITIONS OF THE PARTIES

The County proposed the addition of language to Article 6, to expressly grant it the right to assign work outside of the bargaining unit and to contract with other providers for such services. They believe that based on technological advances, it may become advantageous to provide dispatching and telecommunications services by using an outside

contractor. The County believes it must provide these services at the lowest possible cost to taxpayers, and must therefore have the flexibility to pursue all possible options.

The FOP proposed in their new article, "Bargaining Unit Work", to prevent non-bargaining unit employees from performing unit work if it would displace bargaining unit employees from their regular assignments. They also proposed that the County be prohibited from contracting out bargaining unit work. Although the Union does not oppose the hiring of an outside vendor to provide the latest technology, they believe that the jobs must remain in the public sector. They indicated that their members have a devotion to public service that would be lost if this work was subcontracted. Finally, they said that bargaining unit members are willing and able to learn any new technology that would be introduced.

FINDING OF FACT

As the parties realize, this is a particularly troublesome issue. Clearly, if the Factfinder recommended the proposal of either the FOP or the County, the situation would be rather unambiguous. The County proposal would give them the right to eliminate all bargaining unit jobs. The FOP proposal would make it virtually impossible to subcontract bargaining unit work. The current situation, in contrast, is ambiguous. An attempt by the County to subcontract unit work, under current contractual language, would likely result in grievances filed that proceed to arbitration.

The Factfinder does not believe, however, that lack of clarity in the current Agreement regarding subcontracting is a bad thing. The reduction, or total elimination, of bargaining unit jobs is not something that should be undertaken lightly. It should not be too easy for the Employer to take this action.

The Union proposal, on the other hand, is too constraining on the ability of the County to pursue all options in providing services as cheaply as possible.

RECOMMENDATION

ARTICLE 6 The County proposal on Article 6 should not be incorporated in the new Agreement.

NEW ARTICLE This Article proposed by the FOP should not be included in the new Agreement.

ARTICLE 19 SHIFT ASSIGNMENTS

POSITIONS OF THE PARTIES

This Article deals with shift bidding procedures.

The County proposed the deletion of this entire article. They argued that they needed greater flexibility to manage the Communications Center.

The FOP argued that, with one modification, the existing contract provision should be retained. Currently, employees bid for their preferred shift based on their seniority within classification. Using seniority as a basis for shift assignments is extremely common, the FOP argued. It should also, the FOP maintained, improve morale and reduce turnover. If seniority is in place, the union argued, there is an incentive to remain at the agency, because an employee knows they will eventually be able to select their desired shift. Finally, the FOP argued that the use of seniority allows employees to plan ahead. They know where they stand seniority wise, and can anticipate when a shift change is likely to occur.

The one change the FOP proposed concerns the assignment of probationary employees. The union conceded that it makes sense for the County to be able to assign probationary employees to a shift that will most aid their training. However, such an assignment, the FOP maintained, should not bump a non-probationary employee from his/her preferred shift.

FINDING OF FACT

No compelling evidence was presented to justify a change in current contract language. The current contract language has been in effect for six years, with no major problems. Based on "the comparables", the use of seniority for shift assignments is extremely common. The County may be correct when it states that it experiences turnover among some newly hired workers when they find they have to work a less than desired shift. However, the elimination of seniority as the basis for shift assignment would likely create a turnover problem among more experienced workers.

The FOP voices a valid concern when it argues that the assignment of a probationary employee to a particular shift should not bump a non-probationary employee from his/her preferred shift. However, the implementation of the FOP proposed change would result in inefficiencies. Although, a trainee clearly cannot perform as efficiently as a non-probationary employee, at certain stages of their probationary period they should be able to carry a significant workload. Initially, a probationary employee may be able to perform little work on their own. As their training progresses, however, they should be able to handle more complicated matters without the constant involvement of their trainer. The County should be allowed to continue to have the ability to assign probationary employees to shifts they deem most appropriate, in order to most efficiently allocate their resources. Although such contractual language does temporarily disadvantage non-probationary employees, as they accrue more seniority, this will no longer be a problem.

RECOMMENDATION

With the exception of those changes in Article 19 that have been tentatively agreed upon by the parties, the current language in this Article should be included in the new Agreement.

ARTICLE 20 SHIFT PREMIUM

POSITIONS OF THE PARTIES

At present, bargaining unit employees receive a shift premium of either 35 cents or 40 cents per hour. The shift premium is designed to compensate employees who work shifts with an unusually heavy workload, as well as those who work undesirable hours.

The FOP proposed that the shift premiums each be increased by 5 cents per hour, to 40 and 45 cents per hour. The FOP cited the increased workload on these shifts as justification for the additional premium.

The County argued that the current premium is reasonable. They do not believe there is an adequate justification for the additional cost.

FINDING OF FACT

Although somewhat unusual, both the FOP and the County conceded that the rationale for a shift premium in Clermont County was partially based on the heavier workloads of certain shifts. Based on the unrefuted evidence presented by the FOP, the workload of employees on the "C" shift increased by approximately 15% between 1997 and 1998. Because of this increase in workload, the Factfinder believes that "C" shift employees should receive the same premium as those on the "B" and "E" shifts

RECOMMENDATION

Section 20.1 should read as follows:

"Employees who work a regularly scheduled shift commencing after 1:59 p.m. and before 5:59 a.m. shall receive a shift differential of forty cents (\$.40) for all hours worked on the regular shift."

ARTICLE 22 WAGES

POSITIONS OF THE PARTIES

Two areas of disagreement exist on this Article.

First, the Union proposed the deletion of section 22.2, which provides for step increases so long as other County employees are granted step increases. Although these step increases have been granted in the past, the FOP argues that the continuation of this benefit "should not be contingent on the whim of county administrators to grant, or not to grant, step increases to non-bargaining unit employees."

The County argued that it needs greater flexibility, and should not be contractually obligated to provide the step increases.

The second issue in dispute is the amount of the wage increase.

The FOP proposed wage increases of 4%, 3.5%, and 3.5%, to take effect on January 1, of 1999, 2000, and 2001 respectively. The Union attributed the high turnover rate of

employees to the inadequate pay structure. It pointed out that Clermont County is one of the fastest growing counties in the state, and that County revenues are more than adequate to fund their salary proposal. The Union cited the increased workload of unit members as justification for their salary proposal. Finally, the FOP argued that because they do not receive benefits typically enjoyed by comparable employees in other jurisdictions, such as longevity pay, a uniform maintenance allowance, paid funeral leave, and educational incentives, they should receive higher salaries to compensate for deficiencies in these other areas. The wage increases, the FOP argued, should be retroactive to the first day of the new contract. They contend that neither party was responsible for delays in negotiations, and there is no reason to deny retroactivity.

The County proposed a two year agreement, with annual increases of 2%, with the first increase effective upon ratification. They argued that based on increases in both the national and local Consumer Price Indices, their proposed increase would maintain the relative salary position of bargaining unit members. The County proposed that salary increases become effective upon ratification.

FINDING OF FACT

First issue.

The use of the step system is clearly an integral part of the County's pay system for bargaining unit employees. The pay differential between entry level employees and those at the top step is quite large because of the existence of this much larger than average number of steps. Because step pay is such an integral part of the pay structure, it is appropriate to incorporate it into the collective bargaining Agreement.

Second issue.

Based on the evidence and testimony presented at the Hearing, both sides appeared to accept the fact that bargaining unit members are currently paid an appropriate amount compared to other similar agencies. In order to maintain this relative position, therefore, it is appropriate to grant an increase that approximates the increase in the cost of living. A number of FOP arguments, however, justify an increase that exceeds the cost of living increase; the high turnover rate of employees, the increased workload, the large number of steps required to achieve top pay, the absence of certain benefits typically provided to comparable employees.

The Factfinder did not find the FOP evidence concerning possible shortcomings in CPI statistics to be particularly relevant. Two potential pitfalls were raised. First, that increases in the CPI are average national increases, and therefore may not approximate the increases actually experienced in a particular geographic area. While this is true, CPI statistics are available for particular metropolitan areas, and the appropriate local CPI figure is not significantly different than the national figure. Second, the Union evidence contended that a CPI figure is an average figure and may not accurately reflect the actual price increases experienced by a particular family. While also true, this observation is not particularly enlightening. Because the bargaining unit contains nineteen employees, we are concerned with how an "average" employee is impacted by price increases, rather than the impact on a particular employee.

There is no reason to deny retroactivity. The parties have negotiated in good faith, and there is no reason to penalize bargaining unit members just because a new agreement was not reached by January 1, 1999.

RECOMMENDATION

First issue:

For the reasons given, it is recommended that Article 22.2 be deleted from the new Agreement

Second issue:

The salary schedule shall increase by three percent(3%) effective January 1, 1999, and by two and one-half percent(2 1/2%) on January 1, 2000.

ARTICLE 25 SICK LEAVE CONVERSION

POSITIONS OF THE PARTIES

Two areas of disagreement exist on this Article.

First, the County proposed the elimination of the contractual provision that allows unit members the right to convert up to six days of unused sick days to personal leave days, on the basis of two for one, provided the employee maintains a balance of at least 240 hours of accumulated sick time. The County argued that this is a cost saving measure intended to improve efficiency by reducing lost time.

The FOP argued that the current policy is not only in their current Agreement, it is also the County policy that applies for non-bargaining unit personnel in the County.

The second issue concerns the FOP's proposal to incorporate current County policy regarding sick leave conversion to cash upon retirement, into the collective bargaining Agreement. The FOP argued that sick leave conversion on retirement is very common in collective bargaining agreements. They also contended that in a bargaining unit that has experienced high rates of turnover, such a provision would encourage employees to remain on the job.

The County argued that it is appropriate for bargaining unit members to receive what other County employees receive, but there is no reason to mandate specific conversion terms in the Agreement.

FINDING OF FACT

First issue. Bargaining unit members currently enjoy the contractual right to convert up to six unused sick days to personal days at the two for one conversion rate. Certainly the County is correct in arguing that the elimination of this provision would save the County money. However, if the Factfinder accepted cost reduction as an adequate rationale to eliminate or reduce a contractual obligation, then virtually all contractual provisions would be in jeopardy. Because this conversion clause is currently in the Agreement, and there is no reason other than cost to eliminate it, it should remain in the Agreement.

Second issue. Both sides agree that current County policy regarding conversion of sick days to cash on retirement is acceptable. The FOP believes that this policy needs to be incorporated into the collective bargaining Agreement; the County feels this is not necessary.

The FOP position on this issue is supported by the very nature of the collective bargaining process. The purpose of a collectively bargained agreement is to formalize the relationship between the parties, and to incorporate their areas of agreement into a written contract. Based on the quid pro quo nature of the bargaining process, it makes no sense to make a concession in one area if what you are getting in return is not contractually guaranteed.

RECOMMENDATION

First issue: Section 25.13, B in the current contract, should be included in the new Agreement without change.

Second Issue: The following should be added to the new Agreement:

Section 25,14 Sick Leave Conversion Upon Retirement

A. A bargaining unit employee who, at the time of retirement from active service with the Employer has ten(10) years of service with the County, the State, any political subdivision or combination thereof, is entitles to convert all accrued but unused sick leave credits to cash at the following rates:

1. All unused sick leave credits earned and credited prior to January 23, 1984 by an employee employed with Clermont County as of January 1, 1983 shall be converted at 100% of the value of the accrued but unused credits,

2. All unused sick leave credits earned and credited between January 1, 1983 and January 23, 1984 by an employee employed with Clermont County between January 1, 1983 and December 31, 1983 shall be converted at 100% of the value of the accrued but unused credits.

3. All unused sick leave credits earned on and after January 23, 1984 shall be converted at one-fourth(1/4) the value of the accrued credits. The aggregate value of accrued but unused credits shall not exceed the value of thirty(30) days of accrued but unused sick leave.

B. Payment under A.1, A.2 and A.3 shall be based upon the employees hourly rate of pay at the time of retirement.

C. Payment under this provision shall be made only once and shall eliminate all sick leave credit accrued by an employee.

D. Eligible employees, retiring from active service shall complete a sick leave conversion form to initiate the payment process.

E. Employees who die shall be considered to have retired from their employment as of the date of their death and be eligible for such sick leave payment for which they would otherwise have qualified. Such payment shall be made in accordance with Section 2113.04 of the Ohio Revised Code, or paid to the employees estate.

NEW ARTICLE RETIREMENT

POSITIONS OF THE PARTIES

The FOP proposed that retiring employees be presented with the badge worn during service to the community, department patch, service decorations and their name plate, suitably encased. The article would allow retired employees to retain their department credentials(stamped retired), and to retain one complete set of the department's uniform with all accessories.

The FOP argued that unit employees are proud of their commitment and service to the community and desire to retain similar items to law enforcement officers upon their retirement.

The County expressed two main reservations regarding this proposal. First, they did not want to commit to providing uniforms to retiring employees, when it was not certain that unit employees would even be required to wear uniforms in the future. Second, they were concerned about the potential for misuse, if employees were given credentials upon retirement.

FINDING OF FACT

Although this is not a significant cost issue, it is of considerable symbolic value to unit members. On the other hand, the County's reservations about the possible discontinuance of uniforms and misuse of credentials have merit.

It appears that it is possible for the County to appropriately recognize retiring employees, without abandoning the County's concerns. This can be achieved by not providing retirees with a uniform, and encasing credentials so they cannot be misused.

RECOMMENDATIONS

The new article, Retirement, should read:

Employees approaching retirement shall be presented with the badge worn during service to the community, department patch, service decorations and name plate suitably encased for presentation.

ARTICLE 41 DURATION

POSITIONS OF THE PARTIES

The FOP proposed a three year agreement, because all of the previous agreements had been for three years. The County proposed a two year agreement, and cited its need for greater flexibility.

FINDING OF FACT

The Factfinder is very mindful of the fact that in spite of the Employer's many arguments in favor of increased managerial flexibility, his recommendations to include several County policies in the collective bargaining Agreement, has probably reduced their flexibility. Because the work that bargaining unit members perform is so heavily dependent on technology, and that technology is changing so rapidly, a shorter than usual contract is appropriate in this case.

RECOMMENDATION

Article 41 should read:

This Agreement shall be effective the 1st day of January, 1999 and shall remain in full force and effect until midnight of the last day of December, 2000. Should either party desire to terminate or modify this Agreement, they shall give written notice to the other party not later than sixty(60) days prior to December 31, 2000.

FINAL RECOMMENDATION

The Factfinder recommends that all articles tentatively agreed to by both parties, be incorporated in the new Agreement. He further recommends that where no change has been proposed by either party to sections or articles, the existing contract language shall prevail.

This concludes the Factfinder's recommendations.

Michael Marmo

Michael Marmo
Factfinder

Cincinnati, Ohio
March 18, 1999

PROOF OF SERVICE

This is to certify proof of service on March 18, 1999 by U.S. Mail, overnight delivery, to Deborah McCormick, FOP/OLC, 10979 Reed-Hartman Highway, Suite 311-313, Blue Ash, Ohio 45242; Jim Owens, Clermont County Department of Emergency Planning and Operations, 2279 Clermont Center Drive, Batavia, Ohio 45103, and G. Thomas Worley, SERB, 65 E. State Street, 12th Floor, Columbus, Ohio 43215-4213. Copies were also sent by regular U.S. Mail to Paul R. Berninger, Wood and Lamping, 2500 Cincinnati Commerce Center, 600 Vine Street, Cincinnati, Ohio 45202-2409 and Cathy Brockman, FOP/OLC, 222 E. State Street, Columbus, Ohio 43215-4611.

Michael Manmo
March 18, 1999