

STATE EMPLOYMENT
RELATIONS BOARD
Aug 9 9 27 AM '99
R

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact Finding Between:

Licking County Engineer
(Highway Department)

and

S.E.R.B. Case No. 99-MED-03-0285

Bus, Sales, Truck Drivers, Warehousemen &
Helpers, Local Union No. 637, a/w
International Brotherhood of Teamsters,
Chauffeurs, Warehousemen & Helpers of America

Appearances:

For the County:

Jonathan J. Downes, Esq.
Downes & Hurst
Columbus, Ohio
and
Jeffrey R. Gordon, Esq.
Downes & Hurst (Assisting)

For the Union:

Susan D. Jansen, Esq.
Logothetis, Pence & Doll
Dayton, Ohio
and
Jim Romine, President
IBT Local #639
Zanesville, Ohio (Assisting)

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Frank A. Keenan
Fact Finder

Introduction and Background:

This case came on for hearing on June 24, 1999. Before opening the hearing the parties sought mediation of the many issues then at impasse. These mediation efforts were continued on July 1, 1999. The parties' advocates, assisted by the good faith and diligent efforts of their assistants and respective bargaining teams, and with the assistance of the undersigned acting as Mediator, were able to resolve numerous issues. Thereafter, on July 23, 1999, the formal Fact Finding hearing was opened. The case was well presented with evidence and argument heard with respect to the issues remaining at impasse. In this regard the parties brought to Fact Finding issues remaining within Article 7 - Dues Deduction; Article 15 - Discipline; Article 18 - Job Assignment; Article 20 - Hours of Work; Article 32 - Wages and Benefits; and Article 29 - Duration.

The Contract to result from the parties' negotiations and Fact Finding is their first. On June 26, 1998, the Union was certified as exclusive representative of the following bargaining unit:

"Included: All full-time employees in the following classifications: Highway Maintenance Worker I, II, III, and IV; Mechanic I, II, and III; and Welder.

Excluded: All management, supervisor, confidential, seasonal, and casual employees as set forth in Ohio Revised Code Chapter 4117, and all other classifications not specifically included."

Of thirty-eight (38) ballots cast, twenty-two (22) votes were cast for the Union, and sixteen (16) votes were cast for no representation.

What follows is a summary of the evidence, the parties, contentions and arguments, the Fact Finder's Recommendations, and the rationale for same. In arriving at the Recommendations, the Fact Finder has taken into account and relied upon the statutory criteria set forth in O.R.C. 4117.14 (G)(7)(a) to (f), to wit: the factors 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 standard 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.

Issue #1: Article 7 - Dues Deduction

Evidence and Parties' Position:

The principal dispute concerning Article 7 focuses on the Union's proposal for "fair share" and its indemnification proposals. The Employer resists "fair share" on several bases including the position that it is a permissive subject of

bargaining, and it is opposed to the Union's proposed indemnification proposal as inadequate to protect it.

In support of its proposal the Union notes that in negotiations the County resisted fair share on philosophical grounds, and not on the grounds that such was a permissive subject of bargaining. Furthermore, asserts the Union, during negotiations the County did not expressly state that it was reserving its contention that "fair share" was permissive, before discussing the issue with the Union. Additionally, argues the Union, the Employer lists it as an item in dispute.

The Union also points to internal comparable data, noting that three separate contracts between IBT Local #637 and the Sheriff's Department contain "fair share" provisions. In this regard the Union notes that the Sheriff Department's first collective bargaining agreement, at that time with the F.O.P., O.L.C. Inc., followed Fact Finding in cases numbers 85-MF-07-3946 through 3949, and that Fact Finder Leach recommended "fair share." Conciliator Gable noted in those same cases that at conciliation the F.O.P. was merely seeking a maintenance of membership provision. Conciliator Gable noted that the "Employer's position is that the contract should not include either a fair share fee provision or a maintenance of membership clause. The Employer argues that the conciliator should not address this issue at all because it is merely a permissive item for collective bargaining under the Ohio Revised Code and the Employer is not required to submit it to conciliation."

Conciliator Gable addressed the Employer's arguments concerning fair share as a permissive subject of bargaining only as follows:

"The Conciliator must find that the issue of a fair share fee on a maintenance of membership clause is a valid issue for collective bargaining between the parties and, as such, can validly be submitted to the conciliator as an unresolved issue between the parties. The current law in the State of Ohio allows the parties to agree on either fair share fee provisions or maintenance of membership provisions, but does not require that the parties agree on such items. That is, the parties can enter into a collectively bargained agreement which does not include either of those above-mentioned provisions, but the parties are also allowed to enter into a collectively bargained agreement which does include one or both of those provisions . . .

[T]here is presently no case law regarding this issue in the State of Ohio. At this time, the law in the State of Ohio is clear and we must presume that it is valid and is applicable to the parties. Therefore, the conciliator will consider this issue as an unresolved item between the parties and will make a decision and award on one of the final positions of the parties."

Conciliator Gable also ordered maintenance-of-membership, the F.O.P.'s final offer. However, the first contracts between the F.O.P. and the Sheriff's Department contained "fair share."

One of the principal contentions of the Union is that it is eminently fair that all bargaining unit employees share in the costs of the Union's negotiating efforts, and that this is especially so here where considerable time (and hence monies) have been expended in obtaining a first contract.

The Employer supports its position of resistance to "fair share" firstly by pointing to the Union's margin of victory, characterizing same as a "bare majority." The Employer contends that if three votes had been cast differently, the vote would have been 19 to 19, and the Union would not have prevailed. The

Employer asserts that it's the Union's obligation to sell the benefits of membership in it, and not Management's task nor the Fact Finder's task. The Employer explains its philosophical opposition as grounded in optimizing the freedom of choice of its employees to choose whether or not they want to pay a fee to the Union; by agreeing to "fair share" the Employer would be making the employee's choice for him/her.

Secondly, argues the Employer, this is a first contract, and the majority viewpoint of neutral panelists is that "fair share" is not included in an initial agreement. A number of Fact Finding reports do not provide for "fair share" in an initial contract "of which the [undersigned] Fact-Finder previously acknowledged he was aware." In this regard the Union points to Fact Finder McCormick's Report and Recommendations in Fairfield County Department of Human Services and Teamsters Local Union 284, SERB Case Number 97-MED-02-0100, which issued September 22, 1997, which recommended "fair share" in a first contract, as well as Fact Finder Leach's recommendation vis-a-vis the Sheriff's Department in Licking County, previously referenced. In this regard the Employer counters that that Report was rejected by Fairfield County, a strike ensued, and the Contract ultimately concluded did not contain a "fair share" fee provision.

Thirdly, argues the Employer, the Union proposed fair share language and indemnification language does not provide sufficient protection for the County in the event that the Union is sued regarding the accuracy or validity of its fair share fee. The

Employer asserts that to date the Union has not provided any documentation that it has submitted an annual report for IBT Local 637 to the State Employment Relations Board outlining and justifying its fair share fee. In support of its contention in this regard it points to Fact Finder McCormick's Report and Recommendations in Fairfield County Department of Human Services, supra, and the cases cited therein at page 6, namely, Tierney v. City of Toledo, 824 F.2d 1497 (6th Cir., 1987); Chicago Teacher's Union v. Hudson, 475 U.S. 292, 106 S. Ct. 1066 (1986); Keith Jordan et al. v. City of Bucyrus, Ohio, 754 F. Supp. 554 (1991); and Reese v. City of Columbus (S.D. Ohio, 1993). The Employer asserts that these cases show that the case law is clear that employees are not restricted to resorting to S.E.R.B. in their challenges to fair share fees and that the County could well be named as a co-defendant in such litigation. It also points out that in the Bucyrus case the National Right to Work Committee subsidized and funded the fair share fee payors challenge.

The Union notes in support of its contention that of its comparables (based primarily on comparable County population) namely, Greene County Engineer; Medina County Engineer; Richland County Engineer; Columbiana County Engineer; and Wayne County Engineer, both Richland County and Medina County Engineer provide for "fair share." Of the seven jurisdictions which the Employer would deem comparable, based primarily on geographic proximity, namely, Coshocton County, Fairfield County, Knox County, Madison County, Muskingham County, Perry County, and Union County,

Coshocton, Knox, and Fairfield provide for "fair share"; the other four counties are unorganized.

Rationale:

Preliminarily it is noted that SERB neutral panelists are assigned principally only to the SERB Region within which they reside. It is noted that the U.S. Supreme Court has, with certain safeguards, sanctioned imposing "fair share" fees on bargaining unit employees who are non-members of the Union and who benefit from the Union's collective bargaining efforts, which obviously enough involve monetary costs, notwithstanding said non-members first amendment rights. It does so essentially on the grounds that such fees are simply a matter of fairness. As if to give emphasis to the "fairness" of the proposition that such non-members of the Union participate in the cost of the Union's bargaining efforts which results in their benefiting from the Contract terms exacted in collective bargaining negotiations with the Employer, the U.S. Supreme Court unflatteringly refers to such non-member bargaining unit employees as "free riders." Suffice it to say that the Union's fairness argument is as eminently persuasive to the undersigned as it has been to the United States Supreme Court. Clearly based on reliance on the Supreme Court's viewpoint in this regard, neutral panelists, from the outset of O.R.C. 4117, from the northern tier of the State, awarded "fair share," even in first contracts, typically relying virtually solely on the "fairness" of doing so. This rationale was less common in the Central or Southern regions of the State.

In these areas the Employer legislative body was often politically conservative, often extremely so, and opposed philosophically to "fair share." Many neutral panelists, including the undersigned, believed that this stance was worthy of recognition and respect and hence frequently, at least for a first Contract, "fair share" would not be recommended. It was felt that after a contract's worth of dealing with the Union, the legislative body might come to be less hostile to reality of being organized generally, and more specifically less hostile to the fair share concept. But these Reports and Recommendations of mine (as best I recall, and the Employer produced none to the contrary) and others which I became familiar with, either as presented for hopeful persuasive precedent, or as statutorily mandated to be taken into account by me as Conciliator, never involved a situation such as that presented here, wherein internal comparables existed, that is, where the legislative body had previously accepted "fair share" for other bargaining units concerning which they were the legislative body. Thus here the Commissioners have accepted "fair share" in the last round of the Sheriff's Department negotiations, and not pressed on to challenge same in a fact finding or conciliation hearing, where a philosophical objection could potentially prevail. Moreover, the Employer's legislative body went along with fair share in the first contract between the F.O.P. and the Sheriff's Department. In sum, the acceptance of "fair share" at the outset and for many years in the Sheriff's Department undermines any contention of

philosophical objectives vis-a-vis other Licking County bargaining units.

Nor do I find that the rather overwhelming recent acceptance of IBT Local 637 by the Sheriff's Department's employees, and the closer vote here, serves to distinguish the matter. Thus I am unable to agree with the Employer's characterization of the vote here as a "bare majority." To the contrary the Union prevailed with five (5) votes more than it needed for victory in a unit of but 38 employees. This represents a very respectable margin of victory.

As for the Employer's "permissive" contentions, I concur in Conciliator Gable's analysis. Significantly, the Employer points out no case law which would warrant a contrary conclusion.

With respect to the Employer's rebate procedure and indemnification concerns, directly to the point, I believe that the modifications I hereinafter recommend to the Union's proposal, requiring the Union's rebate procedure conform to O.R.C. 4117.09 (C)'s provisions, meet the Employer's concerns. Further on this point, public sector employers and unions alike, as well as neutral panelists, cannot be held hostage to anxiety by the fact that a national organization located in suburban Washington, D.C., the National Right To Work Committee, increasingly sees fit to come into Ohio to underwrite with its deep pockets fair share fee payors litigation.

Recommendation:

It is recommended that the parties' Contract at Article 7 - Dues Deduction, read as per Appendix I hereto.

Issue #2: Article 15 - Discipline Procedure and Personnel Records

Evidence and Parties' Positions:

The parties are at impasse over Section 15.4, Appeals of Discipline. The County proposes to maintain the current standard which tracks O.R.C. Section 124.34, such that only discipline of suspension of three days or more, discharge, and demotions would be grievable. The Union proposal to allow the appeal of any suspension would expand the level of discipline appealable into an area not proven necessary. Thus the Employer contends that the Union can point to no instance of abuse of management's disciplinary prerogatives. In this regard suspension and removal discipline imposed by the Engineer over the last eight (8) years has never been appealed albeit could have been appealed to the State Personnel Board of Review.

The Union, argues the Employer, should be held to its theme of contractualizing the current manner of doing things. Maintaining the status quo is a strong factor in Fact Finding, asserts the Employer.

The Union takes the position that it is important for an employee to be able to file a grievance and to proceed to arbitration regarding any discipline which results in a loss of pay or paid time to the employee. Moreover, argues the Union, this ability to grieve this kind of discipline, and have Union

representation and assistance in doing so, is fundamental to the concept of a collective bargaining agreement. The Union points to the Discipline provisions of all the Contracts of its comparable jurisdictions and notes that they provide for appeals through the grievance/arbitration machinery for all suspensions, demotions and discharges. The Union also points to similar contractual provisions in the internal comparables of the Sheriff's Department's collective bargaining agreements.

Rationale:

As the Union points out, the provisions it seeks are fundamental in the typical collective bargaining agreement. Any suspension, not just suspensions of three days or more, can seriously impact an employee's career. And while the Employer is correct that often seeking the status quo represents a position of strength, this proposition is based upon the rationale that the status quo represents a bargain the parties have already struck after due consideration to alternatives such that a meaningful reason and basis for abandoning that bargain needs to be established. But that rationale is by definition inapplicable to a first contract.

Recommendation:

It is recommended that the parties' contract at Article 15 - Discipline Procedures and Personnel Rteconds shall read as per Appendix II.

Issue #3 - Article 18 - Job Posting (Employer)
Job Assignment and Training (Union)

Evidence and Parties' Positions:

There was a lot of hearing time devoted to these issues. And in addition to the advocates' presentations, County Engineer Rollo, Highway Maintenance Worker II McCoy, and Union President Romine weighed in. The parties' proposals differ markedly. In a nutshell the Employer proposes to contractualize the Employer's current promotion policy. The Union's proposal seeks the posting of vacancies; that among employees qualified for the vacancy, the employee with the greatest seniority will be placed in the position; that a probationary period be established to enable newly placed employees to learn the job; and that in the event no qualified employees apply, the Employer may, at his discretion, hire from outside the Department. Additionally, the Union proposes a training program for interested bargaining unit employees to be able to obtain experience on different pieces of equipment, training to be offered one Saturday per month, with bargaining unit employees participating on their own time. Considerable time was spent in the mediation sessions on training and the Employer proposed that the parties enter into a letter of understanding whereby training issues would be submitted to the Labor Management Committee established by the tentatively agreed

to Article 12 - Labor Management Meetings, for resolution. That approach was renewed at the hearing.

The record reflects that prior to Engineer Lollo's tenure the County inaugurated a short-lived training program. The Employer maintains that the training program was short-lived due to lack of employee interest. The Union maintains that the training program was short-lived because, following training, employees were nonetheless not promoted. This brings up an important point. As Engineer Lollo testified, presently, if an employee gains experience and demonstrates the willingness and ability to accept responsibility the Employer considers adding, for example, a Highway Maintenance Worker III position, and promoting the employee into it, even though there is no position by way of quit, retirement, or promotion out of that classification, thereby creating a vacancy. This practice clearly works to favor the bargaining unit. The Engineer in effect contended that the Union's proposal creates a disincentive to continue to do so, and could lead to an exacerbation of stagnation-in-classification, the current perception of which is the Union's motivation in seeking the provisions it does. Also noted is the fact that the Union points to no instance wherein the Engineer was arbitrary or capricious in his promotional decisions. The Engineer testified without contradiction that he follows a policy of promotion from within, and does so whenever possible. He anticipates that there may be state or federal regulations, such as HazMet situations, requiring hiring of

outside applicants with established experience in the future. In support of its position the Union points to the contracts of the comparable jurisdictions, namely, Greene County Engineer; Medina County Engineer; Richland County Engineer; Columbiana County Engineer and Wayne County Engineer, wherein each such contract creates a much greater role for the seniority factor than does the Employer's proposal here. And some of these contracts specifically provide for employee training. Further with respect to the Union's training proposal, the Employer points out that supervisory personnel would be required to be present on the Saturdays proposed, and such would incur costs not now incurred. Additionally, argues the Employer, issues concerning liability are not addressed in the Union's proposal.

Rationale:

There's no question but that the Employer's proposal creates very little check on the Engineer's discretion in making promotional and/or filling vacancies decisions. However, to date, and over the past 8-1/2 years, the Engineer has followed a policy of promotion from within, and to date he's not been accused of arbitrariness or capriciousness in his decisions. The Union's proposal on the other hand sets forth several restraints on the Engineer and indeed is quite sophisticated for a first contract proposal. Thus it makes seniority a determinative factor where more than one employee is "qualified"; provides (arguably somewhat inconsistently) for a training and probationary period "to learn the new job; establishes a back

tracking process and procedure for those unable to satisfactorily learn the job. And at each juncture grievable issues can be raised, as the Union's proposal makes clear. I note that the Elkouris in their learned arbitration treatise How Arbitration Works (Fifth Edition, 1997), at page 1102 observe that in impasse situations such as here "the [neutral's] task is to determine what the parties, as reasonable persons, should have agreed upon by negotiations." In this regard, and as the Union's comparables indicate, I have no doubt but that down the line in the parties' collective bargaining relationship, pursuant to the Elkouris' observation, most if not all of the postings and filling-of-vacancies provisions the Union currently seeks will come to pass. But for this the parties' first contract, it represents too sophisticated and dramatic a change, and represents an incursion into managerial prerogatives not shown to be warranted by the manner said prerogatives have heretofore been exercised. Accordingly, I shall recommend the Employee's Job Posting provisions. Additionally, it seems to me that the bargaining unit will have more input concerning training program content under the Employer's Labor Management Committee formula set forth in its proposed Letter of Understanding, than they will under the Union's proposed Section 18.3. Accordingly it will be recommended that said Letter of Understanding be entered into by the parties as well.

Recommendation:

It is recommended that the parties' Contract at Article 18 read as per Appendix III. It is further recommended that the parties enter into the Letter of Understanding set forth in Appendix IV.

Issue #4 - Article 22 - Hours of Work and Overtime

Evidence and Parties' Positions:

The Union is in agreement with the Employer's proposals concerning Article 22, except that it would add language to either Section 22.1 or Section 22.4 an assignment of overtime provision. Thus the Union seeks a scheme whereby overtime is equally distributed among eligible, qualified bargaining unit employees among the crew who normally perform the work that is being assigned for overtime. The Union's intent is to codify in the Contract certain language such that employees have a vehicle for addressing their concerns regarding the assignment of overtime. The Employer proposes that no language equally distributing overtime be added inasmuch as there is no evidence of disparate treatment in the assignment of overtime. Additionally, argues the Employer, the Union's proposal is in conflict with the "work crew" concept that exists. The Employer contends that there would be difficulty between the summer work crews and the snow removal crews, as well as the ancillary crews, such as in the garage. It also expresses concern that the Union's proposal is insensitive to the Engineer's emergency needs. The Union would also modify the Employer's Section 22.5

by capping total compensatory time to be accumulated at 80 hours instead of the 40 hours of the Employer's proposal. In this regard the record shows that approximately one-half of the bargaining unit prefers compensatory time and the other half payment of the premium rate of pay for overtime hours worked.

There was a great deal of discussion of these issues in the mediation sessions. The principal motivation behind the Union's effort to get contract provisions in this area were unit employees' perceptions that crew supervisors were garnering more overtime than regular crew members. The Employer shared record evidence of overtime assignments, which, except for apparently a few aberrations, did not bear out the employee's perceptions.

The Employer emphasizes too that a quick response by the geographically nearest employee is significant in an emergency for public safety and the integrity of the public treasury, given the potential for liability on a delayed response scenario.

As for the doubling of the cap on compensatory time, such would cause scheduling problems, asserts the Employer. Three of the Union's comparable jurisdictions provide for compensatory time in lieu of overtime payments: Wayne County has a 50 hours cap; Greene County has 180 days cap; and Richland County has a formula whereby all conversions from overtime pay to compensatory time will be no greater than 40% overtime pay and 60% compensatory time, with the need to use it or cash it out annually. The other of the Union's comparables, Medina and

Columbiana, apparently have no overtime distribution and comp time provisions.

In Wayne County, overtime is distributed "as equally as practicable"; in Greene County there exists an elaborate "crew" overtime provision, along with the following provision:

"management shall endeavor to distribute call-in overtime among all employees on a non-preferential and equal basis, except in case of emergency or when a particular employee or group of employees with special skills, knowledge, or qualifications is needed . . ."; in Richland County there is an overtime list for all employees, along with a special list as follows: "since quick replacement/repair of damaged stop signs and quick closure of roads because of hazards on the roads . . . is of paramount importance . . . and since following our standard overtime call out procedure is not always the most expeditious way . . . special procedures are hereby incorporated, etc." Thereafter, elaborate and geographically oriented rosters are set forth.

The Union here proposes its overtime assignment provision as follows: "Whenever the Employer determines to offer overtime to bargaining unit employees, the Employer shall attempt to equally distribute offerings of overtime among eligible, qualified bargaining unit employees among the crew who normally perform the work that is being assigned for overtime. In the initial preparation of the overtime rotation lists, the employees shall be ranked in order of their seniority, beginning with the most senior person. When an overtime opportunity arises, the employee

who has the most seniority, and who is qualified to perform the overtime assignment, shall be offered the overtime opportunity first. If the overtime is turned down, the next senior most employee will be offered the opportunity. If an employee on the seniority list accepts the overtime opportunity, the next overtime opportunity will be offered to the next most senior employee until the opportunity is covered."

Rationale:

Directly to the point, I find the Employer's contentions persuasive. As the Employer contends, there is no showing of any meaningful inequities in the distribution of overtime, and the Union's provision, unlike, for example, Richland's distribution provisions, are not sufficiently and detailedly tailored to the Department's operational needs. On this issue, less is not more; simplicity is not a virtue. Similarly detailed and operationally tailored provisions exist in Greene County. And significantly, two of the Union's comparables apparently have no overtime distribution provisions. Perhaps, as here, there were no meaningful inequities in the distribution of overtime to be addressed.

As for the comp time cap, a reasonable expectation following organization of the work force is that economic benefits already existing will be sought to be improved upon. In my view an increase in the comp time cap to "50" hours instead of the "40" hours set forth in Section 22.5 represents such a reasonable expectation, and such is recommended.

It is highly improbable that such an increase will lead to scheduling problems as the Employer suggests, especially in light of the fact that half of the bargaining unit shuns comp time.

Recommendation:

It is recommended that the parties' contract at Article 22 - Hours of Work and Overtime, read as per the Employer's proposal, i.e., as per Appendix V, except that the reference to forty (40) hours in the third sentence of Section 22.5 shall be changed to fifty (50) hours.

Issue #5 - Article 32 - Wages and Benefits

Evidence and Parties' Positions:

The Union proposes a four percent (4%) increase in the base rate of pay for all classifications effective January 1, 2000 and January 1, 2001. Additionally, the Union also proposes an increase effective upon the signing of the contract in the base rate of pay for all employees in the bargaining unit. This increase is not an across-the-board percentage but is designed to bring base rates within each classification to the same amount.

With respect to the longevity payment the Union contends that presently, employees receive a percentage (.4%) multiplied by the number of years of service multiplied by the base rate of pay. In essence, asserts the Union, the longevity pay is factored into the base rate. The Union asserts that it does not seek to change this system in each of the years of the contract. These benefits are set forth in the Union's proposal at Section 32.1.

The Union also seeks a step-up pay provision. This benefit is set forth in the Union's proposal at Section 32.2.

The Union additionally seeks to have the Employer provide five (5) uniforms to the bargaining unit employees. This provision is set forth in Section 32.3 - Uniforms.

In Section 32.4 the Union proposes one-half day off on the Tuesday and all day off on the Wednesday preceding Thanksgiving upon completion of a successful annual inspection, and the choice of either pay, vacation time, or personal leave time, if the Engineer declares that work cannot be performed due to inclement weather. The Union asserts that these provisions comport with current practice and that the Union wants to codify these practices so as not to lose them.

In Section 32.5 the Union seeks an annual tool allowance for Mechanics and 40¢ per hour increment for employees who hold hazardous materials and herbicide licenses.

More specifically, the Union proposes as follows:

" ARTICLE 32

WAGES AND BENEFITS

Section 32.1.

Effective upon ratification of this Agreement, each bargaining unit employee will receive the following wage increase:

<u>Job Classification</u>	<u>Base Rate</u>
Highway Maintenance Worker I	\$12.00
Highway Maintenance Worker II	\$12.50
Highway Maintenance Worker III	\$13.00
Highway Maintenance Worker IV	\$13.50
Mechanic I	\$13.50
Mechanic II	\$14.25
Mechanic III	\$15.00
Welder	\$14.00

On January 1, 2000 and January 1, 2001, each bargaining unit employee will receive an increase of four percent (4%) added to the base rate.

The current longevity factor of .4% for each year of service will be added to the base rates specified in this contract. The formula to calculate the wage rate would be the base rate multiplied by the number of years of service multiplied by .004.

Section 32.2

When an employee works in a supervisory or crew chief position, or works in a position in a higher classification, he/she shall be paid the applicable rate of the classification to which he/she is transferred.

Section 32.3. Uniforms.

Employees will be provided five (5) uniforms. The Employer will determine the appropriate clothing which will constitute the uniform. Employees will be required to wear the uniform while on the job. The Employer shall replace uniforms when they are

damaged beyond repair in the ordinary course of an employee's duties. The determination as to when a uniform needs to be replaced or serviced shall rest with the Employer. Uniform items that are lost, stolen, or damaged due to the fault of the employee shall be replaced by the employee. All uniforms shall be recognized as property of the Employer.

Section 32.4.

Upon completion of a successful annual inspection, employees will receive one-half (1/2) day off on Tuesday and all day off on the Wednesday before Thanksgiving.

If the Engineer determines that work cannot be performed due to inclement weather, employees will have the option to receive four (4) hours pay and may elect to take four (4) hours of vacation or personal leave time. The option will be extended to five (5) hours when the employees are working ten (10) hour days.

Section 32.5.

The employee(s) in the Mechanic classification will receive a tool allowance of One Hundred Dollars (\$100.00) per year for the purchase and maintenance of tools. Employees whose positions require them to hold a specialized license(s) (hazardous materials and herbicide license) will be paid an additional forty (\$.40) cents per hour. "

In support of its position the Union contends that the counties contiguous to Licking County, namely, Franklin, Fairfield, Muskingham, Delaware, Knox, Coshocton, and Perry, contrary to the Employer's contentions, are not truly

"comparable" to Licking County. This is so because by and large they are far less populous than Licking. Only Fairfield, with a population of 109,318 comes fairly close to Licking's population of 131,975. Next closest is Muskingham with an 82,594 population. Perry County has a population of but 32,298. And Franklin County, with a population of 992,095, is clearly not comparable, argues the Union, notwithstanding the fact that it abuts Licking County. The Union, comparing the base rate of each bargaining unit classification to the average base rates of its comparables of the counties of Greene, Medina, Richland, Columbiana, and Wayne (based on comparable populations to the population in Licking) contends that the Employer's base wage rates are well below the average rates obtaining at its comparables. Thus for Highway Maintenance Worker I, top level, at \$11.00/hr. in Licking, the average of the Union's comparables is \$13.11; for Highway Maintenance Worker II, top level, at \$12.10/hr. in Licking, the average of the Union's comparables is \$13.16 per hour; for Highway Maintenance Worker III, top level, at \$12.36/hr. in Licking, the average of the Union's comparables is \$13.80/hr.; for Highway Maintenance worker IV, top level, at \$13.06/hr. in Licking, the average of the Union's comparables is \$14.14/hr.; for Mechanic I, top level, at \$12.887/hr. in Licking, the average of the Union's comparables is \$14.15/hr.; and for Mechanic II, top level, at \$13.71/hr. in Licking, the average of the Union's comparables is \$14.45/hr. As for longevity pay, the Union notes that Greene, Medina, Richland, and Columbiana all pay

a longevity benefit. As for a uniforms benefit, Greene, Medina, Richland and Wayne provide a uniform benefit. As for plus rating, Greene, Medina, and Richland provide a plus rating benefit.

The Employer's proposal for Article 32 - Wages and Benefits is as follows:

ARTICLE 32

WAGES AND BENEFITS

Section 32.1 Wages Members shall receive the base hourly wage rate for their classification as set forth in the wage scale, Appendix A.

Section 32.2 Longevity In addition to the base hourly wage rate, members shall receive longevity supplement based on a formula of four-tenths of one percent (.4%) for each completed or partial year of service as of January 1. Employees in their initial probationary period shall not receive the longevity supplement until they complete their probationary period.

Section 32.3 Uniforms Employees will be provided uniforms by the Employer. The Employer will determine the appropriate clothing which will constitute the uniform. Employees will be required to wear the uniform while on the job. The Employer shall replace uniforms when they are damaged beyond repair in the ordinary course of an employee's duties. The determination as to when a uniform needs to be replaced or serviced shall rest with the Employer. Uniform items that are lost, stolen, or damaged due to the fault or negligence of the employee shall be replaced

by the employee. All uniforms shall be recognized as property of the employer.

APPENDIX A.

Licking County Highway Department Base Wage Rates

Classification	1998	1999	2000	2001
H.M.W. I	10.70	11.00	11.33	11.67
H.M.W. II	11.78	12.10	12.47	12.85
H.M.W. III	12.03	12.36	12.73	13.12
H.M.W. IV	12.72	13.06	13.46	13.87
Mech. I	12.54	12.88	13.27	13.67
Mech. II	13.34	13.71	14.13	14.56
Mech. III	14.44	14.84	15.29	15.75
Welder	13.10	13.77	14.19	14.62

These increases reflect a 3% increase each year 1999 through 2001 in the base wage rate for each classification. The employee longevity supplement is added to the base wage rate according to Article 32. "

Thus it can be seen that the County proposes a three year contract with the three percent (3%) increase already awarded January 1, 1999, with approval of the Union, as the increase in 1999. The County further proposes continuing the longevity plan of .4% (four-tenths of one percent) per year of service. Additionally, the County asserts it would agree, if the remainder of the Employer wage proposal is recommended, that the employees be provided uniforms. The County is opposed to the Union proposal at their Section 32.1 for base rate increases, and is

opposed to the Union's step-up provision (32.2); time off at Thanksgiving (32.4); inclement weather pay or time off option (32.4); and tool and licensure allowance proposal (32.5).

The Employer challenges the validity of reliance on the Union's comparables, based as they are principally on population, because in doing so the Union fails to take into consideration the funding sources and the size of the workforce of its comparables. Thus the Employer points out that the Union's comparables have a smaller workforce (only Richland and Medina, with thirty-five employees, come truly close to the Employer's 52 Highway Department, of which 38 are in the bargaining unit) than Licking County. The Employer also points out that many of the organizations the Union proposes as comparable have a smaller percentage of their budgets devoted to payroll (while no figures were made available for Richland County), all spend less percentage-wise on payroll, and, indeed, Wayne County's payroll expense, the lowest, is only at 29%, whereas Licking County's is 48%. Then too, asserts the Employer, some of the organizations the Union proposes as comparable receive additional funding not received by Licking County (e.g., permissive license tax revenues [O.R.C. Section 4504.15 and 4504.16] are received in Columbiana [recently: \$354,215.00]; similarly in Greene County [recently: \$936,009.00]; similarly in Medina County [recently: \$1,075,075.00]; and Wayne County [recently: \$802,828.00]).

Contrary to the Union, the Employer puts forth for its comparables the contiguous and otherwise geographically near

counties of Coshocton, Fairfield, Greene, Knox, Madison, Muskingham, Perry, and Union. Doing so, and comparing wages in Licking with those counties, the Employer is correct when it observes that the Licking County Engineer's Highway Department employees are generally in a superior compensation position. But for Franklin County, a metropolitan area of nearly one million population, and a jurisdiction which both parties agree is not a proper "comparable," Licking County employees are comparably or better paid than all other geographically near employees. In this regard the Employer asserts that it is important to note that the turnover rate is extremely low, attributable only to retirements and unchallenged disciplinary discharges.

The Employer notes that County Engineer Lollo has been working over the past few years to improve the compensation plan for the Highway Department employees. Prior to Engineer Lollo, who assumed his position about 8-1/2 years ago, the County had in place a merit pay system which over time became insufficient to address the needs of the Engineer's Office, asserts the Employer. Beginning in 1997, the Engineer implemented a plan which would level the rates of employees within classifications but would do so over a period of three to four years depending on the individual employee and classification. The first two years of that plan have been implemented with the major increases for some employees already occurring in 1997 or 1998. There are some employees who are still above the suggested rates who have continued to receive their wage increases so that they are not

detrimentally affected by the implementation of the revised pay plan. The Employer urges that the undersigned recommend the continuation of the wage plan established by the Engineer, with increases for January 1, 2000, and January 1, 2001, continuing the wage increase for 1999 as previously implemented.

Further, argues the Employer, it should also be noted that although County-wide increases in Licking County over the past two years were three percent each year, the rates received by employees in the bargaining unit greatly exceeded those amounts. Those larger increases were due to the Engineer's revision of the pay plan referenced above, and his implementation of a new pay plan and the longevity. The new pay plan included the longevity pay which had not been previously included.

There is no claim that the County is unable to finance the Union's proposal.

Rationale:

Given the fact that the statute at 4117.14 (a) (7) (b) expressly states that "factors peculiar to the area" be given consideration vis-a-vis comparable data, there can be little question but that the Employer's "comparables" qualify as legitimate "comparables." Indeed, since the inception of Fact Finding under the Statute, Fact Finders have found that this express statutory provision calls upon the Fact Finder to give special weight to jurisdictions/organizations that are geographically near. Such is the principal rationale behind the Employer's "comparables." And while logic supports the

"population" rationale behind the Union's comparables, and indeed does in fact make them comparable, given the Statute's express reference to the geographically near, the point to be made is that the Statute tends to favor the geographically based comparables put forth by the Employer. The Legislature apparently had in mind that it was the geographically near labor markets, which truly competed with an organization. The Legislature's apparent logic seems to be borne out here, where, in the face of superior compensation, there has been virtually no turnover in the bargaining unit classifications. Then too I find legitimacy in the County's arguments concerning differing funding bases, smaller workforces, and smaller percentages of the payroll of the entire budget in most jurisdictions to which the Union would have me compare the Employer here. This circumstance further weakens the persuasiveness of the Union's comparables vis-a-vis wages and other compensation devices.

As for the Union's request for step-up pay, licensing stipends, tool allowance, and extra time off at Thanksgiving, and declared no work due to inclement weather pay and/or credited time off, I find that all of these matters are more properly measured for contractualization at a point when the parties' relationship is more mature. And in any event there is no evidence that such benefits exist in the jurisdictions found to be the more comparable, namely, the Employer's comparables. Still further with respect to step-up pay, to contractualize such at this juncture may serve to hinder the creativeness that may be

necessary for the Labor Management Committee to put together the training program the Letter of Understanding recommended hereinabove contemplates. Finally, nothing herein is intended to preclude the continuance of those matters, such as the extra-time off at Thanksgiving, so often given in the past, albeit perhaps "the law" may stand in the way of doing so without the Union's, the exclusive representative's, concurrence.

In sum, except for two caveats which follow, I'm persuaded to recommend the Employer's wage and benefit proposal. The first caveat concerns the quantum of the across-the-board increase for 1999. In this regard I again invoke the Elkouris, supra, observation that "the [neutral's] task is to determine what the parties, as reasonable persons, should have agreed upon by negotiations." In this regard I believe the only reasonable expectation would be that the Union would be expected to bargain a little greater increase than that also applicable to the unorganized workforce. I view President Romine's letter to the Engineer of December 21, 1998, as a waiver of any objection by the Union to the 3% increase given 1-1-99 to other unorganized County employees, and not as a concurrence with that amount of raise. Indeed Romine's letter expressly notes that "should the parties agree upon a higher wage as a result of negotiations, that increase may be made retroactive to January 1, 1999." In my view a reasonable increment for the bargaining unit to the County-wide across-the-board increase of 3% on 1-1-99 for calendar year 1999, would be an additional one-half of one

percent across-the-board increase for the bargaining unit effective July 1, 1999, and such shall be recommended. In my view this is not enough of a departure from the County's proposal to undermine its commitment to furnish uniforms to the bargaining unit if its proposal were accepted. Hence the County's proposal on Uniforms will be recommended.

Finally, although the Employer seeks that the undersigned recommend that the Engineer be allowed to continue his compensation improvement program, the Employer proffers no contract language to effectuate same, and, in any event, given the Union's status as exclusive representative, such is likely beyond the Fact Finder's jurisdiction.

Recommendation:

It is recommended that the parties' Contract at Article 32 - Wages and Benefits read as follows:

Section 32.1 Wages and Appendix A, as per the Employer's proposal (as set forth hereinabove) with the exception that following the text of Section 32.1, ^{add} the following:

"Effective July 1, 1999, an across-the-board increase of one-half of one percent shall be added to the 1999 base rate of Appendix "A", and the 2000 base wage rate and 2001 base wage rate shall be adjusted accordingly. Thus the 2000 base wage rate shall be the base wage rate resulting from the one-half of one percent across-the-board increase effective July 1, 1999, in turn improved by 3% across-the-board increase, effective

January 1, 2000. And the 2001 base wage rate shall be *5210*
2000 base wage rate increased by an across the-
board increase of 3%."

Section 32.2 Longevity, and 32.3 Uniforms as per the
Employer's proposal (as set forth hereinabove).

Issue #6: Article 29 - Duration, Entire Agreement,
Subsequent Negotiations, and Waiver

Evidence and Parties' Positions:

The Employer seeks an early Spring 2002 expiration date of
March 31, 2002 asserting this is the best time available for
negotiations. It contends that summer is road construction and
repair season and employees need to be working. Winter is a
difficult negotiating period because of the unpredictability of
the weather and the need for work in snow removal, etc. Fall
would extend the contract past the three years permitted by
Statute, an apparent reference to the contract bar rule set forth
in O.R.C. 4117.05 (B).

The Union would have the contract remain in effect until
December 31, 2001.

Rationale:

As difficult and protracted as negotiations have been, a
circumstance which leads to uncertainty and instability in
working terms and conditions, I find that the longer contract
term proposed is the more desirable, as it would bring about a
desirable longer period of stability of working conditions.
Hence the Employer's position will be recommended.

Recommendation:

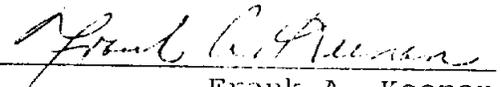
It is recommended that the parties' Contract at Article 29.1 read as follows:

"Section 29.1 Duration The provisions of this Agreement unless otherwise provided for herein, shall become effective upon execution by the parties, and shall remain in full force and effect until 11:59 p.m., on March 31, 2002."

It is also recommended that all tentatively agreed to provisions be incorporated into the parties' Agreement.

This concludes the Fact Finder's Report and Recommendations.

Dated: August 5, 1999



Frank A. Keenan
Fact Finder

APPENDIX I

ARTICLE 7

DUES DEDUCTION

Section 7.1. Deductions. The Employer agrees to deduct Union membership dues in accordance with this Article for all employees eligible for the bargaining unit.

Section 7.2. Authorization. The Employer agrees to deduct regular Union membership dues once each month from the pay of any employees in the bargaining unit eligible for membership upon receiving written authorization signed by the employee. Upon receipt of the proper authorization, the Employer will deduct Union dues from the payroll check for the next pay period in which the authorization was received by the Employer.

Section 7.3. Fair Share Fee. Any employee who is not a member of Local 637 shall pay Local 637, through payroll deduction, a contract service fee or fair share for the duration of this Agreement. This provision shall not require any employee to become or remain a member of Local 637, nor shall the fee exceed the dues paid by members of Local 637 in the same bargaining unit. Local 637 is responsible for notifying the Employer of the proportionate amount, if any, of its total dues and fees that was spent on activities that cannot be charged to the service fees of non-members during the preceding year. The amount of service fees required to be paid by each non-member employee in the unit (during the succeeding year) shall be the amount of the regular dues paid by employees in the unit who are members of Local 637 less each

non-member's proportionate share of the amount of Local 637's dues and service fees spent on activities not chargeable to such service fees during the prior year. If an employee challenges the propriety of Local 637's use of such fee, deductions shall continue, but Local 637 shall place the funds in an interest bearing escrow account until a resolution of the challenge is reached pursuant to the provisions of ORC 4117.09(C) and other appropriate provisions of federal and state law and rules of the State Employment Relations Board. The Union agrees to provide,

annually to the Employer, a copy of the fair share fee rebate procedure, which procedure shall comport with Ohio Revised Code Section 4117.09 (C).

Section 7.4. Indemnification of Employer. The parties agree that the Employer assumes no obligation, financial or otherwise, arising out of the provisions of this Article regarding the deduction of Local 637 dues and fair share fees. The Union hereby agrees that it will hold the Employer harmless from any claims, actions or proceedings by an employee arising from deductions made by the Employer pursuant to this Article. Once the funds are remitted to Local 637, their disposition thereafter shall be the sole and exclusive obligation and responsibility of Local 637.

Section 7.5. Cessation of Deduction. The Employer shall be relieved from making such individual dues "check-off" deductions upon an employee's: (1) termination of employment; (2) transfer to a job other than one covered by the bargaining unit; (3) layoff from work; (4) unpaid leave of absence; (5) revocation of

the check-off authorization; or (6) resignation by the employee from Local 637.

Section 7.6. Legality of Deduction. The parties agree that neither the employees nor Local 637 shall have a claim against the Employer for errors in the processing of deductions, unless a claim of error is made to the Employer in writing within sixty (60) days after the date such error is claimed to have occurred. If it is found an error was made, it will be corrected at the next pay period that Local 637 dues deduction would normally be made by deducting the proper amount. Notwithstanding the provisions of this Article or this Agreement all fair share fee provisions shall be subject to applicable and subordinate to federal and state law and rules of the State Employment Relations Board.

Section 7.7. Notification of Changes. The rate at which dues are to be deducted shall be certified to the payroll clerk by the treasurer of Local 637 during January of each year. One (1) month advance notice must be given the payroll clerk prior to making any changes in an individual's dues deductions.

Section 7.8. Written Authorization. Except as otherwise provided herein, each eligible employee's written authorization for dues deduction shall be honored by the Employer for the duration of this Agreement.

Section 7.9. Payment to Local 637. All dues and fees collected shall be paid over by the County, once each month to Local 637.

The County will not charge Local 637 any fee for collecting these monies.

Section 7.10. Insufficient Wages. The Employer shall not be obligated to make dues deductions from any employee who, during any dues months involved, shall have failed to receive sufficient wages to make all legally required deductions in addition to the deduction of Local 637 dues.

APPENDIX II

Tentative Agreements, Plus:

Section 15.54 Appeals of Discipline. Employees may file grievances of any discipline above a written reprimand. Grievances must be appealed directly to Step 2 of the grievance procedure within seven (7) days of receipt of notice of the disciplinary action. All other discipline is not grievable. An employee may not pursue any appeal of a disciplinary action to the State Personnel Board of Review (SPBR), as the grievance arbitration procedure is the sole remedy.

ARTICLE 18

JOB POSTING

Section 18.1 Vacancy Defined A vacancy occurs when the Engineer intends to fill an existing full time bargaining unit job or when the Engineer intends to create a new position within the bargaining unit. It is the policy of the Engineer, when filling vacancies in the bargaining unit, to give all qualified applicants consideration and the opportunity to apply for vacant positions. Nothing in this Article shall be construed as limiting the Employer's authority to employ persons from outside the Department.

Section 18.2 Criteria for Selection Criteria to be utilized in reviewing qualified applicants shall include the applicant's previous work record, job performance, experience, qualifications and attendance. Each of these factors is not necessarily given equal weight. Vacancies shall be filled with the most qualified candidates as determined by the Engineer.

Section 18.3 Notice of Vacancy When it is determined that a vacant position is to be filled, a notice of vacancy shall be posted for five working days at each headquarters. The notice shall include the title of the position, the rate of pay for the position, and where possible, a description of the duties of the position.

Section 18.4 Applications Persons wishing to apply for the posted vacancies shall file their applications during the posting period. The Engineer shall not be required to consider applications received after the posting period.

Employees desiring the opportunity to be considered for vacant positions must apply, in writing, for vacancies. Employees must keep their personnel files current with any information which would reflect their skills and abilities. Employees desiring consideration of additional information (e.g. education, training, experience) must submit such with their application for a vacancy.

Section 18.5 Limit on Bids Employees in their probationary periods or who have received a promotion in the period one year prior to the posting date of a position are not eligible for consideration for a promotion.

Section 18.6 Testing Methods The Employer shall determine the method for testing or review of applicants for vacant positions. The Employer shall determine the methods for examinations which shall be used to select candidates for promotional positions subject to this Article.

Section 18.7 Notice to Applicants Once the selection has been made, the Employer will notify all applicants in writing of the selection.

Section 18.8 Temporary Appointments Nothing in this Article shall be construed to limit or prevent the Employer from temporarily filling a vacant position pending the Employer's determination to fill the vacancy on a permanent basis. Such temporary assignments shall not exceed one hundred eighty (180) days.

LETTER OF UNDERSTANDING

**BETWEEN THE LICKING COUNTY ENGINEER'S OFFICE
AND IBT, LOCAL 637**

The following is a Letter of Understanding between the Licking County Engineer's Office ("LCEO") and International Brotherhood of Teamsters Local 637 ("IBT")

The purpose of this Letter of Understanding is to provide a mechanism for further discussions between the parties regarding training opportunities for employees of the bargaining unit. It has been discussed between the parties that opportunities for individuals to receive training for equipment utilized by the LCEO would be beneficial to the employee and the LCEO. Because of the limited opportunities available within the LCEO and limited opportunities available for training for the equipment utilized by the LCEO, the parties have mutually agreed that this topic should be discussed and explored by the Labor-Management Committee. The Labor-Management Committee should explore alternatives, costs and availability, for employees to receiving training to operate equipment utilized by the LCEO. The parties agree that this is an appropriate topic for the Labor-Management Committee. IBT agrees that it will be responsible for placing this item on an agenda for Labor-Management and that it will also explore and research alternatives for training as well as costs required for such training.

FOR IBT LOCAL 637

FOR LCEO

DATE: _____

DATE: _____

ARTICLE 22**HOURS OF WORK AND OVERTIME**

Section 22.1 General Provisions Overtime work is expensive, and should be kept to a minimum. Any employee working on overtime pay must have express prior approval by supervisory personnel. This Article is intended to define the normal hours of work per day or per week in effect at the time of execution of this Agreement. Nothing contained herein shall be construed as preventing the Employer from restructuring the normal work day or work week for the purpose of promoting efficiency or improving services or from establishing the work schedules of employees. This Article shall not be construed as a guarantee of work per week nor as a restriction on the Employer's right to require overtime.

Section 22.2 Work Schedule Work schedules for employees will be arranged by the Employer so that the regularly scheduled work week shall consist of forty (40) hours based on five (5) consecutive eight (8) hour work days and two (2) consecutive days off or four (4) consecutive ten (10) hour days and three (3) consecutive days off. The Employer shall designate the start of the work week and work day.

Section 22.3 Lunch Period Each member may take one-half (1/2) hour unpaid for a lunch period. Scheduling breaks are subject to the workload and members must respond to emergency calls when on any break.

Section 22.4 Overtime All members shall be paid 1.5 times their base rate for overtime worked. Overtime shall be paid for those hours actually worked in excess of 40 (forty) hours in a 7 (seven) day work period. In the calculation of overtime hours worked in any one work week, time spent on vacation, paid sick leave, and holiday hours is to be considered as hours worked. Overtime pay for hours worked on Sunday will be at the rate of double (2) times the employee's basic hourly rate. Overtime pay for hours worked on legal holidays will be at the rate of double (2) times the employee's basic hourly rate, in addition to the regular day's pay for the holiday.

Section 22.5 Compensatory Time An employee may elect to take compensatory time off in lieu of pay. Compensatory time will be used at a rate equal to overtime pay. Total compensatory time accumulated may not exceed forty (40) hours per calendar year and must be used during the same calendar year in which it was earned. If compensatory time is chosen the employee/supervisor must notify the Clerk prior to the preparation of the payroll which includes the overtime hours. Compensatory time will be kept on record and will require supervisory approval prior to usage.

Section 22.6 Remedy For Missed Overtime The remedy for a missed opportunity for overtime is the next overtime opportunity will be offered to the qualified employee.