

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD
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In the Matter of Negotiations Between:

ATHENS-HOCKING JOINT)	Case No. 99 MED 09 0821
SOLID WASTE DISTRICT)	
and)	Margaret Nancy Johnson
)	Fact-finder
AFSCME, OHIO COUNCIL 8)	Recommendations

Appearances

For the District:
Garry Hunter, Esq.
Joe Kasler, Director
Melissa McCune

For the Union:
Barry B. Bolin, Staff Rep.
David Davis
Richard Harris

In accordance with Ohio Revised Code Section 4117.14 (C) (3), the State Employment Relations Board appointed Margaret Nancy Johnson as fact-finder in the above referenced bargaining impasse. The parties convened on February 9, 2000, in a conference room of the Athens County Home, in Chauncey, Ohio. Prior to the meeting, both parties had timely submitted position statements for review by the fact-finder. At the scheduled hearing the fact-finder heard testimony and arguments on the respective positions of the parties. Although further attempts were made to resolve the dispute through mediation, the parties were unable to reach agreement. Accordingly, in accordance with the Ohio Revised Code, the fact finder now issues her report setting forth recommendations on those issues on which the parties have not heretofore been able to reach consensus.

Background

Historical information pertaining to the Athens-Hocking Joint Solid Waste District, hereinafter "Employer" or "District," was provided by its founder and current executive director, Joe Kasler. Originally conceived seven (7) years ago as a non-profit recycling center, the Employer has innovatively managed the collection and recycling of solid wastes within a two county area. Contracting with political subdivisions for labor enabled the District to secure the benefits of public employment for its employees.

By vote held on June 10, 1999, the employees of the District further availed themselves of rights conferred on public employees by the Ohio Collective Bargaining Act. The American Federation of State County and Municipal Employees, hereinafter "AFSCME" or "Union," was elected to represent the work force. On July 8, 1999, the State Employment Relations Board certified

AFSCME, Ohio Council 8, as the exclusive bargaining agent foreemployees in a unit consisting of all service and maintenance employees of the Athens-Hocking Joint Solid Waste District.

Initial efforts to negotiate the first contract for this bargaining unit failed to result in an agreement. While some progress was made through mediation, the parties remain at impasse on approximately twenty (20) issues. The following report sets forth recommendations for inclusion within the Collective Bargaining Agreement.

Issues

Issues on which the parties remain in impasse include the following: Union Recognition, Dues Checkoff, Union Representation, Grievance Procedure, Job Posting, Hours of Work, Labor-Management Meetings, Sub-Contracting, Leaves of Absence, Sick Leave, Holidays, Vacations, Insurance, Call-in Pay, Wages and Compensation, Savings Clause, Successor, Duration, Management Rights, No Strike or Lock-Out, Total Agreement.

Criteria

In submitting the recommendations which follow, the fact-finder has given consideration to those factors regularly relied upon by neutrals in impasse situations and as outlined in Ohio Revised Code, Section 4117.14(G)(7).

Position of the Parties

I Union Recognition

Language proposed by the Union consists of a single sentence setting forth AFSCME, Ohio Council 8, as the bargaining representative for all employees as certified by SERB. The District sets forth more comprehensive language defining employee and very specifically designating those classifications of employees included and excluded from the unit.

II Dues Checkoff

The Union proposes language incorporating dues deductions, fair share fees, and P.E.O.P.L.E. check-offs. In contrast, the District seeks language limiting the dues check-off to union dues as authorized in writing by each employee.

III Union Business

As with other contract provisions relating to union business, the Union seeks language which enables its representatives to conduct union business during work hours. Objecting to the use of work time for union business, the Employer proposes language which requires union business to be conducted on personal time. In support of its position, the Employer points out that permitting union business on work time would severely and unjustifiably impede the operations of its stream-lined work force, consisting only of approximately twenty-two (22) employees.

IV Grievance Procedures

Concurring in principal with the purpose and policy of the grievance procedure, the parties differ as to the final step in the process. While the Union proposes final and binding arbitration, the Employer is adamant that litigation be the last step in the grievance procedure.

V Job Posting

The Union proposes language by which vacancies are defined and awarded to employees on the basis of specified criteria. Job Posting provisions are rejected by the Employer in its entirety.

VI Hours of Work

Proposals on hours of work differ as to a paid lunch hour and active pay status for purposes of overtime calculation.

V Labor Management Meetings

As previously indicated, while the parties are in agreement as to the participatory nature of labor-management relations, the District believes that it cannot provide released time to Union members for this purpose. The opposition of the Employer to the concept of released time is more pragmatic than philosophical and derives from the work demands being made on a relatively small work force.

VI Subcontracting

The Union proposes language setting forth restrictions on contract labor. Asserting that its viability is dependent upon an ability to continue to subcontract services, the District rejects any provisions restricting its rights in this regard.

VII Leaves of Absence and Sick Leave

The Union proposal sets forth language entitling employees to seven (7) different types of leave: personal leave, medical leave, union leave, military leave, funeral leave, maternity leave, and jury duty leave. In addition the Union proposes an Article on Sick Leave including the availability of credit for unused sick leave. Pointing out that the parties have had little opportunity to discuss the concept of leaves, the Employer proposes the adaption of statutory language for those leaves addressed in federal or state law. For example, maternity and medical leave should follow the language of the Family Medical Leave Act. State statute should govern Military Leave, and the Civil Service provisions should determine Sick Leave. Employer proposes two days for Personal Leave and three days for Funeral Leave

VIII Holidays

The Union proposes the current paid holidays with the addition of the birthday of the employee. The District seeks to maintain the current practice.

IX Vacations

While proposals on vacation were never discussed by the parties, the Union herein advanced a modified vacation schedule with an entitlement to take vacation days in one (1) hour increments. The Employer's proposal retains the current vacation entitlement based on Civil Service language and enables vacation days be taken in increments of one day.

X Insurance

The Union proposes Employer contributions to an AFSCME Care Plan. The District proposes current practice which presently exceeds insurance benefits provided to county employees.

XI Call in Pay

The Union proposes language guaranteeing work for four hours when an employee is called in to work from off-duty status.

XII Wages and Compensation

The Union proposes hourly rates of pay for employees in three different job classifications: Laborers and Custodial, Truck Drivers and Equipment Operator. In addition, the Union proposes longevity pay. While the proposal of the District initially consisted of a profit sharing plan, at the meeting the Employer proposed an across the board wage increase for employees based upon job classification and a step system.

XIII Savings Clause

The fact-finder understands that the parties have agreed upon language to be incorporated into the Agreement pertaining to the Savings Clause.

XIV Successor

The fact-finder understands that this language is no longer in contention.

XV Management Rights

The Employer proposes language that sets forth those managerial rights traditionally retained by administrative agencies.

XVI No Strike or Lock Out

The Employer proposes language prohibiting strikes and lockouts.

XVII Total Agreement

The Employer seeks language commonly termed a "Zipper Clause" indicating that the written agreement constitutes the entire understanding of the parties on negotiated items.

XVIII Duration

Both parties have adhered to the position that the duration of the contract is dependent upon the economic and non-economic terms finally negotiated.

Discussion

In negotiating this initial labor agreement, the parties have encountered those impediments normally experienced by parties engaged in collective bargaining for the first time. Additionally, however, these negotiations have been impacted by the unique history and characteristics of the Employer and of its work force. While the State Employment Relations Board has designated the district as a public employer, aspects of the organization distinguish it from typical governmental agencies. Funding for the activities of the district, for example, is independent of tax revenues and derives from the services rendered. As a corollary to its distinct financial structure and its origins as a nonprofit corporation, a managerial style atypical of public employers has developed. Against this backdrop, then, the employees sought representation under the Ohio Collective Bargaining Act and on June 10, 1999, chose AFSCME, Ohio Council 8, to be their bargaining representative in an election subsequently certified by SERB.

With this fact-finding report, the neutral has endeavored to acknowledge the essence of the Employer, as well as the expectations of the bargaining unit. The intent of these recommendations has been to incorporate well-established principles of public sector labor relations while recognizing the specific needs and managerial style of this Employer. Mindful of the advantages of a negotiated settlement, the neutral urges the parties to continue working towards a compromise which embodies the spirit of co-operation.

I Union Recognition

In recommending the language proposed by the Union for the recognition clause, the fact-finder, like the parties herein, is bound by the certification of the unit by SERB. It is not the prerogative of either the mediator or one of the parties to modify what has been deemed by SERB to be the appropriate unit. To address the issue raised by the Employer, however, that the unit ought to be defined in the contract, the hearing officer recommends inclusion of the SERB Certification as an appendix to the agreement rather than as "negotiated" language.

II Dues Check-Off

The neutral recommends the adoption of the Dues Check-off language proposed by the Employer. While the employers of larger units may agree to deduct P.E.O.P.L.E. contributions, the size of this unit does not justify such a deduction. As to the Fair Share fee, this neutral is of the opinion that the primary purpose of negotiations now ought to be to reach a basic agreement which the parties may further refine and develop in the future. Union security and fair share fees may always be addressed in subsequent collective bargaining.

III Union Representation

A major point of contention running through the union

business language of the agreement has to do with what the parties have termed "released time." While the Union has proposed that employees not lose pay when engaged in union business, the Employer has adamantly opposed the same. The neutral is hopeful that a compromise on this matter may be reached.

The rationale for "released time" is clear and understandable. Participation in a labor union is a well-established employment right designed to foster stability and order, as well as consistency and fairness. Benefits from an efficient labor organization extend to management as well as to the work force. Controlled concessions on union representation during work time may circumvent a haphazard approach to union activity and ensure an orderliness consistent with managerial goals.

Nonetheless, to effect the compromise on this matter, the neutral recommends that all contract language pertaining to the grievance procedures, union leaves, and labor-management meetings be included in the articles on those subjects rather than inserted into the Article on Union Representation. Accordingly, the neutral recommends the language proposed by the Employer on Union Business and Responsibilities, with the exception of its Section 4 which the neutral recommends be addressed elsewhere in the contract as discussed more fully hereafter.

IV Grievance Procedures

The proposals of the parties on the grievance procedure do not significantly differ except for the final step of the process. The neutral would propose the language of the employer with the exception of the final step. In addition, the neutral would recommend language excluding holidays and weekends from the calculation of "calendar days" and providing for written extensions of time limits by mutual agreement.

Clearly, the last step of the process has been a stumbling block in these negotiations. Unwilling to agree to final and binding arbitration of grievances, the Employer has proposed litigation in lieu thereof. In recommending arbitration as the final step, the neutral attempts to address the opposition of the employer to the process.

In both the public and the private sectors, the emergence of arbitration in labor agreements has an historical context. Labor arbitration emerged as an alternative to costly and disruptive labor strikes. "No strike" language in collective bargaining agreements became the "quid pro quo" for final and binding arbitration. The acceptability of arbitration, however, lies with its efficacy and well-documented advantages. Indeed, even the employers of an unorganized work force have established arbitration as a mechanism for the resolution of disputes with employees. Nationally, as our courts struggle with case backlogs, arbitration has increasingly been implemented by judicial administrators to alleviate the impact of a litigious society.

Although the neutral agrees that the expenses and time required for arbitration have escalated, litigation is a far more costly and time-consuming process. Moreover, and significantly, the parties to this agreement can exercise control over those very factors. For example, the parties may agree to an expedited arbitration process, setting time limits for the selection of the arbitrator, the scheduling of a hearing, and the issuance of the award. Bound by the terms of the labor agreement, the arbitrator must comply with the time requirements of the parties. In addition, the parties can exercise control over the arbitrators, establishing a rotating list of permanent umpires chosen on the basis of their expertise, integrity, as well as their per diems and billing practices. To further restrict expenses, the parties can agree to preclude the filing of briefs, the use of stenographic records or the renting of private hearing rooms. In the opinion of the neutral, the underlying concerns and objections of the Employer to arbitration as a final step can be and should be addressed in the grievance provisions, but arbitration is a valuable and tested mechanism which the neutral endorses for inclusion in the labor agreement.

Finally, as to processing, investigation and appeal of grievances, the neutral recommends language to the effect that the same be accomplished, to the extent possible, during non-work time. Understanding, however, that it will be impossible to properly perform such representation only during off hours, the neutral recommends a negotiated limit on work time for the performance of such union duties.

V Job Posting

Suggesting that in these negotiations the focus should be on current rather than potential assignments, the neutral does not recommend language on job posting and transfers at this time.

VI Hours of Work

Except for the inclusion of a paid lunch hour and a prohibition on pyramiding of premium pay, the language on hours of work is not a matter of dissension. As the employees do not presently have a paid lunch hour and as a precaution against pyramiding is a reasonable provision, the neutral recommends the language of the Employer on Hours of Work and Overtime.

VII Labor Management Meetings

Again, the primary difference between the parties is the concept of "released time." The Employer recognizes the benefits of encouraging the parties to work together to resolve differences and address mutual concerns before the same develop into problems. The function and role of labor management meetings is not in dispute. At issue is whether or not the meetings should occur outside work time.

When one considers the purpose of the labor-management meeting is to enhance the quality of work life, then, the rationale for the meeting occurring on work time becomes more

apparent. Participation at such a meeting is clearly work related. It is not an extra activity which the employee engages in for pleasure or relaxation, but, rather, it constitutes a commitment to improving the enterprise. Employees ought not be discouraged from participating in such activities.

Nonetheless, some compromise and restrictions are appropriate. For example, the parties can agree to limit the number of meetings per month and the duration of the same. Moreover, the parties can agree to schedule the meetings the least intrusively as possible, such as one hour meetings within one-half hour of either the start or finish of a shift. Thus, one half of the meeting would occur on work time and one-half on off time.

To effect the intent of the parties, the neutral recommends the language proposed by the Employer with the inclusion of language imposing time limitations on the scheduling of the meetings and providing for limited scheduling of meetings during work hours.

VIII Subcontracting

As the Union recognizes the need of the Employer to subcontract, the hearing officer does not recommend the inclusion of such restrictive language at this time.

IX Leaves of Absence

The Union proposal for Leaves of Absences includes seven (7) different reasons for which leave may be sought and defines the duration of such leave. The hearing officer analyzes each leave and submits her recommendations thereon as follows.

Rejecting the union proposal for personal leave, the neutral finds that should an employee have a need for extended time off, there are sufficient provisions which enable the employee to do the same. With a very limited work force, the stability and reliability of each employee is an expectation this Employer cannot compromise. The neutral does recommend, however, that the current practice of two (2) personal days be increased to three (3) personal days.

As to medical and maternity leave, the neutral agrees with the Employer that the statutory language of the Family Medical Leave Act ought to be adapted. Similarly, statutory language on Military Leave ought to control.

Currently, employees are entitled to three days funeral leave with pay, a leave the neutral finds to be reasonable and consistent with leave provisions in the public sector. As for the definition of immediate family in the funeral leave section proposed by the Union, the neutral finds the same to be reasonable. The neutral also finds the jury leave proposal of the Union to be reasonable contract language.

Union Leave, again, proves to be a point of disagreement between the parties. While the Employer objects to the proposal, informed and capable union leaders will have a positive impact on the efficiency of the District. To better enable union officers to understand their roles as leaders in the work

place, the neutral recommends that union officials be able to attend seminars, conventions and training sessions provided for that purpose. The seven days without pay requested by the Union, however, does seem excessive and the neutral recommends a limit of three or four such days per calendar year. As this is a new unit, the neutral does not recommend leave to pursue assignment with the International. Rather, future union leaders may develop skills and experience while helping to establish this bargaining unit. As proposed by the Union, leave for union training should be without pay.

Sick Leave is discussed hereafter under the sick leave proposal.

X Sick Leave

The sick leave provisions of the Agreement generated much discussion between the parties. The fact finder recommends that for the purposes of these negotiations the parties maintain the status quo on sick leave, with severance pay following state law and including statutory limitations and maximums. Although many changes are being recommended in these negotiations, in the opinion of the neutral the most important function of these negotiations is to create a collective bargaining agreement with which the parties may work for a defined period of time and from which the parties may subsequently forge modifications as needed. It is not the purpose of the parties to now create a document deemed unchangeable, but, rather, to create the framework of a mutual understanding upon which the parties will build their co-operative relationship.

XI Holidays

The major difference in the holiday provision from current practice is an additional holiday proposed by the Union. In regard to holidays, the fact finder recommends consistency with other bargaining units with which the counties in question negotiate. While there is some evidence that the extra holiday is, indeed, provided to other units, the parties should explore the issue and agree upon a resolution which conforms to the practice county-wide.

XII Vacations

As suggested above with regard to holidays, the parties should review contracts involving comparable units within the counties. This unit should receive the same vacation benefits provided other county employees. The fact-finder understands present practice to be consistent with county vacation benefits. In negotiating vacation language, the parties should consider the impact that vacation time will have on the operations of this relatively small bargaining unit. Finally, the parties should recognize that with a "new" unit, there really is no need to impasse upon vacation pay for an employee having twenty (20) or (25) or twenty-five years of service. Such employees will be the focus of future negotiations. As to the minimum of vacation time, the neutral agrees with the Employer that

the increments should be in days. The current practice of considering special needs and permitting one vacation day is a reasonable practice which ought to be continued under the collective bargaining agreement.

XIII Insurance

The neutral does not recommend a change in the insurance coverage for employees which, presently, exceeds that provided to other county employees. Nor does the neutral recommend requiring contribution to an AFSCME plan since employees already have a satisfactory program. Accordingly, the neutral recommends the status quo on insurance language.

XIV Call in Pay

Although her notes are somewhat unclear, the neutral understood that under current practice an employee called-in is paid for hours actually worked and that when a call-in does occur, it typically involves a minimum of three hours. To an extent, then, the union proposal expresses in writing the practice already in place. The neutral finds that the union proposal reasonably addresses the concerns of employees who may be called to work during off time without creating an undue burden on the employer. The thrust of the union proposal is not to pay employees for work not performed, but rather, to put the employee to work if he has been called in at a time he would not normally be working. The minimum guarantee proposed by the union is four hours or one-half of a work day. In the opinion of the neutral, the four hours is a reasonable proposal for an individual who has agreed to forego time with family, for relaxation or recreation, and has reported to be of service to the employer when not required to do so.

XV Wages and Compensation

Without a doubt, the single most important result of these negotiations should be the establishment of well-defined job classifications with rates of pay based upon a uniform progression. Currently there is great disparity in the way employees are compensated, with hourly rates ranging from \$6.50 to \$17.43, and employees with greater seniority receiving substantially less than junior employees. To preclude any perception of inequity, hourly rates and wage increases ought to consistently follow a negotiated pattern.

In order to accomplish a consistency, it is incumbent upon the parties, first, to establish and define the job classifications or classification held by employees. Then, employees ought to be placed in a "step" within such job classification. To bring the employees into a step system which equitably and consistently pays employees according to an established rate is, then, the challenge now before the parties.

The neutral recognizes that the sweeping wage increases sought by the Union are not feasible given the budgetary constraints of this Employer. At the same time the neutral observes that significant wage adjustments are needed to restore

a semblance of equity. Moreover, no employee should incur a reduction in wages while the parties endeavor to effect the pay schedule now recommended.

To bring about the equity sought in these proceedings, the neutral recommends that the parties establish a step system and place the employees on the appropriate step. At the hearing the Employer proposed such a step system with a \$.34, \$.33 and \$.33 adjustment across the board for three contract years. While the proposal of the employer was not fully developed and came late in these negotiations, the fact-finder believes that the proposal may become the basis for an agreement on wages between the parties. The fact-finder would recommend that once the steps have been established and employees placed in the step appropriate for his or her classification and seniority, wage adjustments be made accordingly. Wage rates for the steps could then be determined by adding \$.35 to the hourly rate of the highest paid employee in the step. As the neutral understands the proposal, the hourly wage for the highest paid employee would then be \$10.10, while the starting hourly wage would be \$7.85. Equitable rates for the steps in between would have to be established by the parties. In negotiating these wage rates, consideration ought to be given to specific licensing qualifications of an individual employee, with wage adjustments or "bonuses" being provided for such additional qualifications.

While the District indicated that no employee would incur a reduction in salary in implementing a step system, the neutral discerned that, indeed, some current employees may be receiving hourly rates higher than the step onto which they would be placed. In such cases, the hourly rate of the employee would be "grandfathered" until the employee was properly in step.

XVI Savings Clause

The first paragraph of the Union proposal on potential inconsistencies of the Agreement with legislation, merely restates statutory requirements and its inclusion in a Collective Bargaining Agreement is a routine exercise. The second paragraph was withdrawn by the Union at the hearing.

XVI Successor (withdrawn)

XVII Management Rights

The Employer's proposal on Management Rights is a comprehensive statement of administrative authority as recognized by the collective bargaining statute. Its inclusion in the Agreement between the parties is recommended by the fact-finder.

XVIII No Strike or Lock-Out

Again, the language proposed by the Employer is for the most part a restatement of what may be expected under the terms of a Collective Bargaining Agreement. Given the fact that this is a new bargaining relationship, stability as well as equity

is a goal in these negotiations. Accordingly, the language proposed by the Employer is recommended.

XIV Total Agreement

For the reasons expressed above, the fact finder recommends the language proposed by the Employer.

XV Duration

The neutral recommends a three year contract. It is essential that the parties get a contract into place and then function under those terms for a reasonable period of time before engaging again in the negotiation process. After three years the parties will have a better idea of what needs adjustment and what has worked well for them. Entering into collective bargaining any earlier than three years may prove to be disruptive to the establishment of a cohesive labor-management relationship.

In proposing that "bargaining" occur when employees are off duty, the District omits the "collective" from the process. Not all proposals for change within a labor agreement will originate with the union. No doubt, there will be changes and modifications to the language which the employer initiates. Accordingly, as previously suggested and what actually does occur, the neutral recommends a hybrid approach to this problem, providing that some bargaining occur during work time, but limiting the same to a limited number of hours per work week. Bargaining will, of necessity, extend into off duty time, but to require that all bargaining occur on free time is a disservice to the spirit of co-operation.

Respectfully submitted,


Margaret Nancy Johnson

A copy of the foregoing recommendations was mailed on March 28, 2000, by express service to Barry Bolin, Staff Representative, at the offices of AFSCME, Ohio Council 8, 36 South Plains Road, The Plains, Ohio 45780; and to Garry Hunter, Attorney at Law, 26 South Congress, Athens, Ohio 45701; and by regular mail to George Albu, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215.


Margaret Nancy Johnson